

Exhibit D

Testone v Barlean's Organic Oil - Settlement
Agreement

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”), effective upon the date of the signatures below, is made by and between, on the one hand, defendant Barlean’s Organic Oils LLC (“Barlean’s”), and on the other hand, the Class Representatives (defined below) on behalf of the Class (defined below) (collectively, the “Parties”), in the matter of *Michael Testone et al. v. Barlean’s Organic Oils, LLC*, Case No. 3:19-cv-00169-RBM-BGS (S.D. Cal.) (the “Action”).

RECITALS

- A. **WHEREAS**, on January 24, 2019, Class Representatives Michael Testone, Collin Shanks, and Lamartine Pierre commenced the Action for violations of California’s unfair competition law, false advertising law, and consumer legal remedies act, express and implied warranty laws; and for violations of New York’s unfair and deceptive business practices law, false advertising law, and express warranty law; in the United States District Court for the Southern District of California;
- B. **WHEREAS**, Barlean’s answered the Complaint and asserted various affirmative defenses on February 27, 2019.
- C. **WHEREAS**, on September 4, 2019, a First Amended Complaint was filed;
- D. **WHEREAS**, Barlean’s answered the First Amended Complaint and asserted various affirmative defenses on September 10, 2019.
- E. **WHEREAS**, Barlean’s contends the claims asserted in the Action have no merit, denies the allegations in the Action, denies that Class Representatives have been damaged in any sum whatsoever, and contends that it has affirmative defenses that could eliminate or reduce liability and monetary recovery in this case; and
- F. **WHEREAS**, Barlean’s and the Class Representatives on behalf of the Class wish to resolve any and all past, present, and future claims the Class has or may have against Barlean’s on a nationwide basis as they relate to the allegations in the Action.

NOW THEREFORE, the Parties, for good and valuable consideration, the sufficiency of which is hereby acknowledged, understand and agree to the following terms and conditions.

1. DEFINITIONS

In addition to the terms defined above, the below-listed terms shall be defined for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section.

1.1. “Agreement” means this Class Action Settlement Agreement, including all Exhibits hereto.

1.2. “Claims Administrator” means or refers to the professional claims administrator, Kroll, and any successors chosen to effectuate the Agreement.

1.3. “Class” or “Class Members” means all persons who in the United States, during the Class Period, purchased Coconut Oil Products (defined below), for personal or household use.

Excluded from the Class are: (a) persons or entities who purchased Coconut Oil Products for the purpose of resale or distribution; (b) persons who are directors and Officers of Barlean’s or its parent, subsidiary, or affiliate companies; (c) governmental entities; (d) persons who timely and properly exclude themselves from the Class as provided in the Agreement; (e) persons who signed a release of Barlean’s for compensation for the claims arising out of the facts or claims asserted in the Action; and (f) any judicial officer hearing this Action, including his or her immediate family members and employees.

1.4. “Claims Deadline” means the date by which a Claim Form must be submitted to be considered timely. The Claims Deadline shall be seventy (70) calendar days after the Notice Date.

1.5. “Claim Form” means the document to be submitted by a Class Member seeking direct monetary benefits pursuant to this Agreement.

1.6. “Class Period” means January 24, 2015 to the date of filing of a motion for preliminary approval of this Agreement.

1.7. “Class Representatives” means plaintiffs Michael Testone, Collin Shanks, and Lamartine Pierre, in their representative capacities on behalf of the general public and the Class.

1.8. “Class Counsel” means:

FITZGERALD JOSEPH LLP
2341 Jefferson Street, Ste. 200
San Diego, California 92110
P | (619) 215-1741

1.9. “Court” means the United States District Court for the Southern District of California.

1.10. “Common Fund” means a qualified settlement fund (QSF) formed solely for purposes of effectuating this Agreement.

1.11 “Barlean’s Counsel” or “Defendant’s Counsel” means:

GORDON REES SCULLY MANSUKHANI, LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101
P | (619) 696-6700

1.12 “Coconut Oil Products” means Barlean’s Organic Virgin Coconut Oil (16-, 32-, and 60-oz.), Barlean’s Organic Culinary Coconut Oil (32- and 60-oz.), and Barlean’s Organic Butter Flavored Coconut Oil (16- and 32-oz.) purchased during the Class Period.

1.13 “Fairness Hearing” means the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable, and adequate.

1.14 “Final Approval Order” means the order to be submitted to the Court in connection with the Fairness Hearing, substantially in the form attached hereto as **Exhibit 5**.

1.15 “Final Effective Settlement Date” shall be the date a judgment in the Action becomes final and non-appealable, plus five (5) business days.

1.16 “Full Class Notice” means the legal notice of the terms of the proposed Settlement, as approved by Plaintiffs’ Counsel, Defendant’s Counsel, and the Court, to be distributed according to a Notice Plan approved by the Court. The Full Class Notice shall be substantially in the form attached as **Exhibit 1** hereto, and/or any different or additional notice that might be ordered by the Court.

1.17 “Notice Date” means fourteen (14) calendar days after entry of the Preliminary Approval Order and is the date by which the Class Administrator will initiate the Notice Plan.

1.18 “Notice Plan” means the plan for notice as described in the Declaration of Jeanne C. Finegan set forth in **Exhibit 3** hereto.

1.19 “Objection Deadline” means the date by which Class Members must file with the Court a written statement objecting to any terms of the Settlement or to Class Counsel’s request for fees or expenses, and shall be seventy (70) calendar days after the Notice Date, or any other date required by the Court.

1.20 “Opt-Out Deadline” means the date by which a Class Member must exercise his or her option to opt out of the settlement so as not to release his or her claims, and shall be seventy (70) calendar days after the Notice Date, or any other date required by the Court.

1.21 “Preliminary Approval Order” means the proposed order to be submitted to the Court in connection with the Motion for Preliminary Approval, substantially in the form attached hereto as **Exhibit 4**.

1.22 “Request for Exclusion/Opt-Out” means any Class Member’s request to be excluded from the terms of this Agreement, by way of the procedures set forth in paragraph 3.5.

1.23 “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are set forth in this Agreement and the attached exhibits, which are incorporated by reference herein.

1.24 “Settlement Class” means those persons who are members of the Class who have not properly and timely submitted a Request for Exclusion/Opt-Out.

1.25 “**Settlement Website**” means the website established by the Claims Administrator to aid in the administration of the Settlement.

1.26 “**Short Form Notice**” means the summary Class Notice that is attached to this Agreement as **Exhibit 2**, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

2. SETTLEMENT TERMS

2.1. Certification of the Class.

(a) For the purposes of Settlement and the proceedings contemplated herein only, and subject to Court approval, the Parties stipulate and agree that the Class shall be provisionally certified pursuant to Federal Rule of Civil Procedure 23 in accordance with the definition contained herein, that Mr. Testone, Mr. Shanks, and Mr. Pierre shall be the Class Representatives for the Class, and that Class Counsel shall be appointed as counsel for the Class.

(b) As soon as reasonably practicable, Mr. Testone, Mr. Shanks, and Mr. Pierre shall apply to the Court for entry of the Preliminary Approval Order, as provided in this Agreement.

2.2 Injunctive Relief. For a period of five (5) years commencing from the date the Court issues a final approval order, Barlean’s agrees not to use any of the following statements on the Coconut Oil Products, except to the extent they are modified to conform with the requirements for nutrient content or health claims that are, at that point in time, applicable under federal and state law:

- a) “Nature’s Most Versatile Superfood”;
- b) “COCONUT OIL: A SMART FAT”;
- c) “A natural source of medium chain triglycerides (MCTs) coconut oil boosts the metabolism, supports the heart and immune system and provides quick energy”
- d) “Harvested at the Peak of Flavor and Nutrition”;
- e) “Harvested at the peak of flavor and nutritional value”;
- f) “Coconut Oil Nutrition[:] -Contains Lauric Acid, Caprylic Acid, & Capric Acid - Natural Source of Medium Chain Triglycerides”;
- g) “Coconut Oil Nutrition[:] -Rich in Lauric Acid & Caprylic Acid -Great Source of Medium Chain Triglycerides”;
- h) “The ultimate cooking oil for health-conscious gourmets. As versatile as it is delicious, Barlean’s Organic Culinary Coconut Oil is ideal for sautéing, stir-frying and baking, or as a dairy-free butter substitute”;
- i) “NO TRANS FAT OR CHOLESTEROL”;
- j) “HEALTHY ALTERNATIVE TO BUTTER”;
- k) “All the health benefits of coconut oil, now with the rich flavor of butter”;

- l) “No Trans or Hydrogenated Fats”;
- m) “Cholesterol Free”;
- n) “THE HEALTH BENEFITS OF COCONUT OIL, THE RICH TASTE OF BUTTER”;
- o) “SUB 1:1 FOR BUTTER”;
- p) “we’re bringing a whole new flavor to healthy eating”;
- q) “Our butter flavored coconut oil has all the healthy MCTs of our regular organic coconut oil, with a rich, buttery taste”;
- r) “No cholesterol, trans fats or hydrogenated fats”; and
- s) “Substitute 1:1 for butter”.

To the extent any of the aforementioned claims are currently on the Coconut Oil Products, Barlean’s shall have 180 days from the date of the Final Approval Order to remove such claims or otherwise modify them as set forth above (the “Grace Period”). Barlean’s shall not be liable for any sales of Coconut Oil Products that are delivered to retailers before the expiration of the Grace Period and in no event shall Barlean’s be required to recall any Coconut Oil Products that have already been delivered to retailers or Class Members prior to the expiration of the Grace Period.

For the avoidance of doubt, this injunction shall not apply to information that is required or otherwise permitted by law to be included in the Coconut Oil Products’ nutrition facts panel, such as, by way of example and not limitation, information disclosed in the nutrition facts panel disclosing the amount of trans fat and/or cholesterol in the Coconut Oil Products.

2.3 Common Fund for Class. Within forty-five (45) calendar days following entry of the Preliminary Approval Order, Barlean’s or any other entity on its behalf, shall deposit One Million Six Hundred Twelve Thousand Five Hundred dollars (\$1,612,500.00) into a Common Fund, through the Claims Administrator, to be held in trust.

The Common Fund shall be administered by the Claims Administrator. The Common Fund shall constitute the funds available to compensate Class Members, the Claims Administrator, Class Counsel, and the Class Representatives. The Common Fund, after deducting any attorneys’ fees and costs, class representative incentive payments, and notice and administration costs as approved and awarded by the Court, shall be paid to those Class Members who submit a timely and valid claim, as determined by the Claims Administrator.

Class Members who have their claims validated by the Claims Administrator will be reimbursed for each unit of the Coconut Oil Products purchase as follows:

Estimated <i>Per Unit</i> Reimbursement Without Proof of Purchase			
	Virgin	Culinary/Refined	Butter Flavored
16oz.	\$ 4		\$3
32oz.	\$ 7	\$5	\$3
60oz.	\$ 7	\$5	

Class Members who submit claims with valid proof of purchase, as determined by the Claims Administrator, will receive the allotted amount, subject to pro-rata adjustments, for each unit that they submit valid proof of purchase. Class Members without proof of purchase will be able to submit claims for up to five (5) units (single containers) of the Coconut Oil Products.

Pro rata Adjustments and Cy Pres. If the total amount of funds claimed by Class Members is less than the total amount of the fund that is available to Class Members after costs and expenses, the excess funds will be distributed to Class Members who submitted Valid Claims on a pro-rata basis that is proportional to the value of each Valid Claim, with such distribution occurring concurrently with the distribution of the original refund amount. If on the other hand, the total amount of funds claimed by Class Members is greater than the total amount of the fund that is available for Class Members after costs and expenses, each claim validated by the Claims Administrator will be reduced on a pro-rata basis that is proportional to the value of each claim validated by the Claims Administrator. In no event shall Barlean's be obligated to add any additional monies to the Common Fund.

If after any pro-rata adjustments in funds to be distributed to Class Members, the total amount of funds claimed and to be distributed is less than the total amount of the fund that is available to Class Members after costs and expenses, the excess funds will be paid to the Tufts University Friedman School of Nutrition or, if not acceptable to the Court, then to a nonprofit to be agreed to by the parties and approved by the Court. Likewise, excess funds that remain after distribution (i.e., uncashed checks), will be paid to the same nonprofits.

2.4 Release of Common Funds. Within seven (7) calendar days following the entry of a Final Approval Order, the Claims Administrator shall pay to Class Counsel the amount of attorneys' fees and costs awarded by the Court, provided, however, that counsel shall be obligated to return to the Common Fund any fees if the amount is reduced prior to the Final Effective Settlement Date. On the Final Effective Settlement Date, the remaining funds in the Common Fund will become available to pay any Court-approved incentive award, and to compensate Class Members. In the event that the Agreement does not obtain final approval from the Court, the Common Fund shall be remitted back to the funding party.

2.5 Attorneys' Fees and Expenses, and Incentive Award. At least fourteen (14) days before the Objection Deadline, Class Counsel and Class Representatives shall file a motion, set for hearing on the same date as the Fairness Hearing, requesting Fee Award and Service Awards, to be paid from the Common Fund.

The Parties have not agreed to any particular amounts that the Class Representative or Class Counsel may seek. Barlean's is not obligated to respond, but may respond to Class Counsel's fee motion and the Class Representative's motion for an incentive award in whatever

manner it deems appropriate. Any Court-approved attorney's fees and incentive award will be paid from the Common Fund. In the event the court does not approve the attorneys' fees and costs requested by class counsel, or the court awards fees and costs in an amount less than that requested by Class Counsel, such award shall not be a basis for rendering the entire Settlement null, void or unenforceable, provided however, that Class Counsel retain the right to appeal any decision by the Court regarding the Court's award of attorneys' fees and costs.

2.6 Settlement Implementation Costs. All reasonable costs of retaining the Claims Administrator to effectuate the Settlement and provide Full Class Notice in the manner prescribed in this Agreement shall be paid from the Common Fund.

3. CLASS SETTLEMENT PROCEDURES

3.1. Settlement Approval. As soon as practicable after the signing of this Agreement, Mr. Testone, Mr. Shanks, and Mr. Pierre shall prepare and file an application requesting that the Court enter the Preliminary Approval Order in substantially similar form as the proposed order attached as **Exhibit 4**.

3.2. Full Class Notice. Subject to Settlement Approval as provided in paragraph 3.1, Full Class Notice will commence no later than fourteen (14) days after entry of the Preliminary Approval Order, consistent with the manner set forth in the Notice Plan (**Exhibit 3**).

3.3. Claims Administrator Will Administrator Claims Process.

- i. The Claims Administrator will administrator the claims process and oversee the distribution of settlement proceeds to Class Members in accordance with the terms and conditions of the Settlement and orders of the Court.
- ii. The Claims Administrator will review and validate all claims submitted by Class members. The Claims Administrator shall have the discretion to review claims with the objectives of efficiency and effecting substantial justice to the Parties and the Class Members. The Claims Administrator shall have the right to contact Class Members to validate claims. Issues regarding the validity of claims that cannot be resolved by the Claims Administrator shall be submitted to Class Counsel and Barlean's Counsel for resolution and, if no resolution is reached, to the Court. The Parties shall have the right to review any claim handled by the Claims Administrator.

3.4. Procedures for Objecting to the Settlement. Class Members have the right to appear and show cause why the Settlement should not be granted final approval, subject to each of the provisions of this paragraph:

3.4.1 Timely Written Objection Required. Any objection to the Settlement must be in writing and must be filed with the Court on or before the Objection Deadline.

3.4.2 Form of Written Objection. Any objection regarding or related to the Agreement must contain:

- (i) a caption or title that clearly identifies the Action and that the document is an objection;
- (ii) information sufficient to identify and contact the objecting Class Member or his or her attorney if represented;
- (iii) information sufficient to establish the person's standing as a Settlement Class Member;
- (iv) a clear and concise statement of the Class Member's objection, as well as any facts and law supporting the objection;
- (v) the objector's signature; and
- (vi) the signature of the objector's counsel, if any.

3.4.3 Authorization of Objections Filed by Attorneys Representing Objectors. Class Members may object either on their own or through an attorney hired at their own expense, but a Class Member represented by an attorney must sign either the Objection itself or execute a separate declaration stating that the Class Member authorizes the filing of the Objection.

3.4.4 Effect of Both Opting Out and Objecting. If a Class Member submits both a Request for Exclusion/Opt-Out and files an Objection, the Class Member will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Request for Exclusion/Opt-Out will be bound by the terms of the Agreement upon the Court's final approval of the Settlement.

3.4.5 Appearance at Fairness Hearing. Objecting Class Members may appear at the Fairness Hearing and be heard. Such Class Members are requested, but not required, in advance of the Fairness Hearing, to file with the Court a Notice of Intent to Appear.

3.4.6 Right to Discovery. Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Class Member on topics relevant to the Objection.

3.4.7 Response to Objections. The Parties shall have the right, but not the obligation, either jointly or individually, to respond to any objection, with a written response due the same day as the Motion for Final Approval, or as otherwise ordered by the Court.

3.5. Opt-Out Procedures. Class Members who wish to opt out of and be excluded from the Settlement must submit a Request for Exclusion/Opt-Out to the Class Administrator, postmarked or submitted online no later than the Opt-Out Deadline. The Request for Exclusion/Opt-Out must be personally completed and submitted by the Class Member or his or her attorney, and so-called "mass" or "class" opt-outs shall not be permitted or recognized. The Class Administrator shall periodically notify Class Counsel and Barlean's Counsel of any Requests for Exclusion/Opt-Outs. All Class Members who submit a timely, valid Request for Exclusion/Opt-Out will be excluded from the Settlement and will not be bound by the terms of this Agreement, and all Class Members who do not submit a timely, valid Request for

Exclusion/Opt-Out will be bound by this Agreement and the Judgment, including the release in paragraph 4.3 below.

3.6. CAFA Notice. The Class Action Fairness Act of 2005 (“CAFA”) requires Barlean’s to inform certain federal and state officials about this Agreement and proposed Settlement. *See* 28 U.S.C. § 1715. Under the provisions of CAFA, the Class Administrator, on behalf of Barlean’s, will serve notice upon the appropriate officials within ten (10) calendar days after the Parties file the proposed Agreement with the Court. *See* 28 U.S.C. § 1715(b). The costs of such notice will be paid from the Common Fund.

3.7. Motion for Final Approval. A Fairness Hearing to determine final approval of the Agreement shall be scheduled as soon as practicable, subject to the calendar of the Court, but no sooner than one-hundred-and-twelve (112) calendar days after entry of the Preliminary Approval Order. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than twenty-eight (28) calendar days before the Fairness Hearing all Parties, individually or collectively, will move the Court for entry of the Final Approval Order in substantially similar form as the proposed order attached as **Exhibit 5**, with Class Counsel filing a memorandum of points and authorities in support of the motion. Barlean’s may, but is not required to, file a memorandum in support of the motion.

4. FINAL APPROVAL ORDER AND RELEASES

4.1. Approval of This Agreement. As soon as practicable after execution of this Agreement, counsel for all Parties will take all necessary and appropriate steps to secure the Court’s approval of this Agreement as set forth herein.

4.2. Final Approval Order. This agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that finally certifies the Class for the purposes of settlement only, and grants final approval of the Settlement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties’ performance of their continuing rights and obligations hereunder.

4.3. Release of Barlean’s by All Class Members. Upon the Final Effective Settlement Date, Mr. Testone, Mr. Shanks, and Mr. Pierre and each member of the Settlement Class, and each of his or her successors, assigns, legatees, heirs, and personal representatives, hereby release and forever discharge Barlean’s, and each of its respective parents, sister and subsidiary corporations, affiliated entities, predecessors, successors and assigns, and any of their present and former directors, officers, employees, shareholders, agents, partners, licensors, privies, representatives, attorneys, accountants, insurers, manufacturers, retailers, distributors or any of them (collectively, “Released Barlean’s Parties”), from any and all claims, demands, rights, suits, liabilities, damages (including statutory damages), losses, injunctive and/or declaratory relief, and causes of action, including costs, expenses, penalties, and attorneys’ fees, whether known or unknown, matured or unmatured, fixed or contingent, at law or in equity, existing under federal or state law, that any Class Member has or may have against the Released Barlean’s Parties that, as set forth in *Hesse v. Sprint Corp.*, 598 F.3d 581 (9th Cir. 2010), are based on the identical factual predicate as the underlying claims in this Action or depend on the same set of facts alleged in the Action regarding the Coconut Oil Products.

In addition, with respect to the released claims specified in Section 4.3 of this Agreement, Mr. Testone, Mr. Shanks, and Mr. Pierre, on behalf of themselves expressly and affirmatively waive and relinquish all rights afforded by California Civil Code Section 1542 to the fullest extent permitted by law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

In addition to the foregoing waiver of Section 1542 of the California Civil Code, upon the Final Effective Settlement Date, the Class Representatives and each member of the Settlement Class, and each of their successors, assigns, heirs, and personal representatives, shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any foreign country, and any and all principles of common law that are similar, comparable, or equivalent in substance or intent to Section 1542 of the California Civil Code.

4.4. Release of Plaintiffs and Related Persons. Upon the Final Effective Settlement Date, Barlean's will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged Class Representatives, and Class Counsel from any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, whether known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that Barlean's has or may have against any of them arising out of the transaction, occurrences, events, behaviors, conduct, practices, and policies alleged in the Action regarding the Coconut Oil Products, and in connection with the filing and conduct of the Action, that have been brought, could have been brought, or are currently pending in any forum in the United States.

4.5. Covenant Not To Sue. Upon the Final Effective Settlement Date, Mr. Testone, Mr. Shanks, and Mr. Pierre and each Class Member shall be deemed to have given and will be bound by the Covenant Not To Sue in favor of each Released Party. "Covenant Not To Sue" means for and in consideration of the Settlement, each Class Member shall be deemed to have covenanted that he or she will not in the future: (a) assert any claim for economic injury, damages (including statutory damages), or for an injunction related to the Coconut Oil Products and arising out of the facts and/or claims asserted in the Action; or (b) assert or maintain any Released Claim, directly or indirectly, against any Released Party in any court or other forum on behalf of the Class Member.

5. TERMINATION

5.1 This Agreement is being entered into only for the purpose of settlement. In the event that (a) the Court does not approve the Settlement or a Final Approval Order and Judgment is not entered for any reason, or (b) the Final Effective Settlement Date does not occur for any

reason, then either party may declare void ab initio the Agreement and Preliminary Approval Order, and all of their provisions shall be vacated by its own terms, and the Action shall revert to the status that existed prior to the execution date of this Agreement.

5.2 If there is a change in state or federal food labeling laws or regulations that expressly permits the use of any of the terms listed in paragraph 2.2, then the injunction provided in paragraph 2.2 shall terminate automatically as to those terms that become permitted by a change in law when the change in law goes into effect. Upon such an occurrence, Barlean's may label and market its Coconut Oil Products in accordance with such state or federal laws or regulations. Notwithstanding the foregoing, every other term of this Agreement shall remain in full force and effect.

6. ADDITIONAL PROVISIONS

6.1 No Admission of Liability / For Settlement Purposes Only. This Agreement reflects the compromise and settlement of disputed claims among the Parties and is for settlement purposes only. Neither the fact of, or any provision contained in this Agreement or its Exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Mr. Testone, Mr. Shanks, and Mr. Pierre, or the Class, or of any defense asserted by Barlean's, in the Action or any other action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, Defendant, Released Party, Class Member or their respective counsel.

6.2 Fair, Adequate, and Reasonable Settlement. The Parties believe this Settlement is fair, adequate, and reasonable, and the Parties arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential.

6.3 Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and notices of hearings are subject to approval and change by the Court or by the written agreement of counsel for the Parties, without notice to the Class.

6.4 Real Parties in Interest. In executing this Agreement, the Parties warrant and represent that they, including Mr. Testone, Mr. Shanks, and Mr. Pierre, in their representative capacities on behalf of the Class, are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

6.5 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

6.6 Binding on Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

6.7 Parties Represented by Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

6.8 Authorization. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

6.9 Entire Agreement. This Agreement and Exhibits attached hereto contain the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth herein.

6.10 Construction and Interpretation. Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and must be construed to have been, drafted by all Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

6.11 Headings. The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

6.12 Exhibits. The exhibits to this Agreement are integral parts of the Agreement and Settlement and are hereby incorporated and made a part of this Agreement. The Parties contemplate that certain of the Exhibits relating to Class Notice may be modified by the Court or by subsequent agreement of Class Counsel and Barlean's counsel (with approval by the Court) prior to dissemination to Class members.

6.13 Modifications and Amendments. No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties and approved by the Court, except as otherwise expressly provided herein.

6.14 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with those laws.

6.15 Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of his or her or its obligations hereunder to carry out the express intent of the Parties hereto.

6.16 Agreement Constitutes a Complete Defense. To the extent permitted by law this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

6.17 Execution Date. This Agreement shall be deemed executed upon the last date of execution of all of the undersigned.

6.18 Continuing Jurisdiction. The Parties agree that the Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to approve awards of attorneys' fees and costs pursuant hereto, to supervise the administration of and the distribution of money funded pursuant to this Agreement, and to enforce this Agreement.

6.19 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages will be collected and annexed to one or more documents to form a complete counterpart. Photocopies or "pdfs" of executed copies of signatures shall have the same force and effect as originals.

6.20 Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this Settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the Court.

6.21 Severability. Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of the Agreement.

6.22 Confidentiality of Documents and Information. All orders, agreements and designations regarding the confidentiality of documents and information remain in effect, and all Parties and counsel remain bound to comply with them. Within thirty (30) days of the Final Settlement Effective Date, the Parties will certify in writing that they have used their best efforts to destroy or return all documents and information produced in the Action that were designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only." It is stipulated and agreed that no money relief can remedy a breach of this provision such that immediate injunctive relief is proper and because of a breach of this provision by disclosure of or failure to destroy or return materials designated as "Confidential" or "Attorneys' Eyes Only," the prevailing party is entitled to reasonable attorneys' fees and costs associated with bringing and prosecuting such enforcement action or motion.

6.23 Notices Under Agreement. All notices or mailings required by this Agreement to be provided to or approved by Class Counsel and Barlean's Counsel, or otherwise made pursuant to this Agreement, shall be provided as follows:

Class Counsel
Paul Joseph
paul@fitzgeraldjoseph
Fitzgerald Joseph LLP
2341 Jefferson Street, Suite 200
San Diego, CA 92110

Barlean's Counsel
Gabriel Hedrick
ghedrick@grsm.com
Gordon Rees Scully Mansukhani, LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101

IN WITNESS WHEREOF, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: 10/20/2022 _____

DocuSigned by:
Michael Testone
2D2ED8C88EAD454...
Plaintiff Michael Testone, for himself and for the Class

Dated: 10/19/2022 _____

DocuSigned by:
Collin Shanks
F24FE2CDBA20426...
Plaintiff Collin Shanks, for himself and for the Class

Dated: 10/19/2022 _____

DocuSigned by:
Lamartine Pierre
247D72D5F5C6445...
Plaintiff Lamartine Pierre, for himself and for the Class

Dated: _____

Defendant Barlean's Organic Oils, LLC
By (*print*): Joel Matteson, General Counsel

Class Counsel
Paul Joseph
paul@fitzgeraldjoseph.com
Fitzgerald Joseph LLP
2341 Jefferson Street, Suite 200
San Diego, CA 92110

Barlean's Counsel
Gabriel Hedrick
ghedrick@grsm.com
Gordon Rees Scully Mansukhani, LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101

IN WITNESS WHEREOF, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: _____

Plaintiff Michael Testone, for himself and
for the Class

Dated: _____

Plaintiff Collin Shanks, for himself and for
the Class

Dated: _____

Plaintiff Lamartine Pierre, for himself and
for the Class

Dated: 10-25-22

Bruce Barlean
Defendant Barlean's Organic Oils, LLC
By: Bruce Barlean, Managing Member