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10 ***Class Counsel***

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 12
 13 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

14
 15 MICHAEL TESTONE, COLLIN SHANKS,
 16 and LAMARTINE PIERRE, on behalf of
 17 themselves, all others similarly situated, and
 the general public,

18
19 Plaintiffs,

20
21 v.

22 BARLEAN’S ORGANIC OILS, LLC,

23
24 Defendant.

Case No.: 3:19-cv-00169-RBM-BGS

25
 26 **DECLARATION OF PAUL K.**
JOSEPH IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
ATTORNEYS’ FEES, COSTS, AND
SERVICE AWARDS

27 Judge: Hon. Ruth Bermudez Montenegro

28 Hearing: March 3, 2023

Time: 3:00p.m.

Courtroom: 5B

1 I, Paul Joseph, declare:

2 1. I am a member in good standing of the State Bars of California and of this Court.
3 I make this declaration based on my own personal knowledge, in support of Plaintiffs'
4 Motion for Attorneys' Fees, Costs, and Service Awards.

5 2. I established The Law Office of Paul K. Joseph, PC in 2015 and it has never
6 been larger than two attorneys.

7 3. This case was filed with my co-counsel, Jack Fitzgerald. He founded The Law
8 Office of Jack Fitzgerald, PC in 2015. Throughout almost the entire litigation, there were
9 only three attorneys at his firm: Jack Fitzgerald, Melanie R. Persinger, and Trevor M. Flynn.
10 During most (but not all) of the litigation, he was supported by one paralegal, either Val Erze
11 or Julie Hinton.

12 4. Mr. Fitzgerald and I prosecuted this case jointly until our firms merged in May
13 2021, as Fitzgerald Joseph LLP ["FJ"]. *See* Dkt. No. 83 (Notice of Change of Firm Name
14 and Contact Information of Plaintiffs' Counsel).

15 5. We prosecuted this action entirely on a contingency basis, advancing all out-of-
16 pocket costs, which amount to \$159,411.09, and which have not yet been reimbursed by
17 anyone. The firm had no financing or other assistance in funding the litigation.

18 6. As a result of the time, attention, and investment this action required of my firm,
19 its ability to file and prosecute other cases during the pendency of the litigation was
20 substantially affected as we needed to forgo taking on additional matters.

21 7. I believe that cases involving the health risks of consuming foods like coconut
22 oil that are scientifically demonstrated to increase risk of heart disease—the number one
23 cause of death in America—are important for consumers and benefit public health. This is
24 because heart disease is considered to be a preventable disease and because the coconut oil
25 fad that began in the mid-2010s was fueled by false claims, like those made by Barlean's,
26 that it is a healthy fat.

27 8. I am not aware of any lawsuits based on the theory that it is false or misleading
28 to label coconut oils with health and wellness claims, other than the matters filed by my firm.

1 9. I was willing to take on these risks, in part, given the limited stake any one
2 consumer would have and that a single plaintiff would never be expected to bear these risks
3 themselves.

4 10. As outlined in my October 25, 2022 declaration in support of the motion for
5 preliminary approval, this Settlement compares favorably to other coconut oil settlements as
6 it provides the highest recovery as a percentage of estimated retail sales. *See* PA Decl. ¶ 26.

7 11. In addition to the cases described in my previous declaration, this Settlement
8 compares favorably to the settlement in *Cumming v. BetterBody Foods & Nutrition, LLC*,
9 No. 37-2016-00019510-CU-BT-CTL (San Diego County Super. Ct.). In that case the \$1
10 million dollar settlement represented 1.6% of estimated retail sales, which were estimated to
11 by \$62.5 million.

12 12. This Settlement also compares favorably to the settlement in *Boswell et al. v.*
13 *Costco Wholesale Corp.*, Case No. 8:16-cv-00278-DOC-DFM (C.D. Cal.), where the
14 common fund of \$775,000 was just 1.1% of the estimated \$70 million in retail sales. In part
15 because the recovery in *Boswell* was significantly smaller than the 10% of estimated retail
16 sales that the instant Settlement provides, in that matter we only requested 25% of the
17 common fund in fees, which was granted in full.

18 13. FJ's timekeepers on this matter are myself; co-principal Jack Fitzgerald, partner
19 Melanie Persinger, senior associates Trevor Flynn and Richelle Kemler, and associate
20 Caroline Emhardt. FJ's practice is to keep contemporaneous records for each timekeeper,
21 and to regularly record time records in the normal course of business. Moreover, JF's
22 practice is to bill in 6-minute (tenth-of-an-hour) increments. Each timekeeper kept time
23 records in this case consistent with these practices during this litigation.

24 14. To calculate FJ's current lodestar, my office reviewed each timekeeper's hours
25 to eliminate or correct any obvious errors and erroneous duplications. Although we reviewed
26 and removed time entries that were obvious errors and erroneous duplications, we have not
27 conducted a comprehensive line-item review in order to analyze whether additional whether
28 there are isolated instances where additional billing discretion might be warranted to address

1 things like occasional “overstaffing” (to educate) or isolated inefficiencies. Based on my
 2 experience, conducting this additional level of billing discretion would likely result in cutting
 3 hours by only a dozen or two. Given that the process is rather time intensive, the lodestar
 4 here is used as a cross-check and is not the basis for our fee request, and that the lodestar
 5 based on the initial cuts is about 45 percent greater than the fees sought, I do not believe it
 6 is warranted at this time. Nevertheless, detailed time entries can be provided *in camera* upon
 7 request by the Court.

8 15. Although we “d[o] not submit detailed billing records,” set forth in **Exhibit 1**
 9 is a “table[] summarizing the amount of work each timekeeper performed at different stages
 10 of this litigation” which is “sufficient for purposes of performing a lodestar cross-check,”
 11 *Thomas v. MagnaChip Semiconductor Corp.*, 2018 WL 2234598, at *4 (N.D. Cal. May 15,
 12 2018).

13 16. Class Counsel’s hours can be broken down into the categories set forth in the
 14 following table:

Category	Hours	% of Work
Investigation and Complaint	45.9	3.2%
Case Management	20	1.4%
Written Discovery and Related Motions	436.7	30.1%
Work with Plaintiffs’ Experts	44.5	3.1%
Depositions (including Expert Depositions)	208.5	14.4%
Motions Regarding Experts	46.7	3.2%
Disqualification and Rule 11 Motions	130.9	9.0%
Summary Judgment	70.2	4.8%
Class Certification	260.4	18.0%
ADR & Settlement	80.7	5.6%
Preliminary Approval	-	-.1

27 _____
 28 ¹ Class Counsel recognizes that “[t]ime spent obtaining an attorneys’ fee in common fund cases is not compensable because it does not benefit the Plaintiff class,” *Pemberton v.*

Category	Hours	% of Work
Investigation and Complaint	105.3	7.3%
Total =	1449.8	100%

17. The current billing rates for timekeepers on this matter are as follows²:

Timekeeper (LS Graduation Year)	Position	Rate
Jack Fitzgerald (2004) - 19	Principal	\$865
Paul Joseph (2012) - 11	Principal	\$715
Melanie Persinger (2010) - 13	Partner	\$685
Trevor Flynn (2007) - 16	Senior Associate	\$665
Richelle Kemler (2004) - 13	Senior Associate	\$575
Caroline Emhardt (2017) - 6	Associate	\$550

18. In my opinion, these rates are consistent both with previous fee awards, and with prevailing rates in this district for attorneys of similar experience, skill, and reputation.

19. First, the requested rates are consistent with rates previously approved for the above timekeepers as follows.³ In January 2020, rates of \$750 per hour for Mr. Fitzgerald, \$600 per hour for me, \$575 per hour for Mr. Flynn, \$510 per hour for Ms. Persinger, and \$500 per hour for Ms. Kemler were approved by the Honorable William Q. Hayes in *Hunter v. Nature’s Way Prod., LCC*, 2020 WL 71160, at *7 (S.D. Cal. Jan. 6, 2020). The rates requested here, three years later, represent about a 5% annual increase for each timekeeper⁴

Nationstar Mortg., LLC, 2020 WL 230014, at *2 (S.D. Cal. Jan. 15, 2020), and therefore these hours are not included in the total lodestar calculation below.

² Although paralegals Ms. Erze and Ms. Hinton worked on this matter, we are only seeking fees based on attorney hours.

³ See *Johnson v. Quantum Learning Network, Inc.*, 2017 WL 747462, at *6 (N.D. Cal. Feb. 27, 2017) (that other courts had approved class counsel’s requested hourly rate “support[ed] granting Class Counsel’s [fee] request”).

⁴ Except Ms. Persinger, for whom we are requesting a further increased rate based on her promotion to partner, and Ms. Emhardt who was not then with the firm.

1 to account for the fact that “hourly attorney fee rates generally increase over time with
 2 inflation,” *Tehachapi Unified Sch. Dist. v. K.M. by & Through Markham*, 2019 WL 331153,
 3 at *6 (E.D. Cal. Jan. 25, 2019).

4 20. Second, the requested rates are consistent with prevailing rates in the
 5 community for attorneys of similar experience, skill, and reputation. “Recently, courts in this
 6 District have awarded hourly rates for work performed in civil cases by attorneys with
 7 significant experience anywhere in range of \$550 per hour to more than \$1000 per hour.”
 8 *Sengvong v. Probuild Co. LLC*, 2021 WL 4504620, at *8–9 (S.D. Cal. Oct. 1, 2021); *see*
 9 *also Herring Networks, Inc. v. Maddow*, 2021 WL 409724 at *7 (S.D. Cal. Feb. 5, 2021)
 10 (approving rates of between \$470 and \$1,150); *Kikkert v. Berryhill*, 2018 WL 3617268, at
 11 *2 (S.D. Cal. July 30, 2018) (approving a “de facto hourly rate [of] \$943.55” and finding
 12 that “although this rate appears rather high, fees within this general range have been
 13 approved by courts in similar cases, including this Court”).

14 21. In light of the rates and hours expended, Class Counsel’s lodestar in this case
 15 thus far totals \$972,456.50, as set forth below.

Timekeeper	Rate	Hours	Lodestar
Jack Fitzgerald (Principal)	\$865	110.1	\$95,236.50
Paul Joseph (Principal)	\$715	507	\$362,505.00
Melanie Persinger (Partner)	\$685	157.5	\$107,887.50
Trevor Flynn (Senior Associate)	\$665	224.5	\$149,292.50
Richelle Kemler (Senior Associate)	\$575	386	\$221,950.00
Caroline Emhardt (Associate)	\$550	64.7	\$35,585.00
Totals:		1,449.8	\$972,456.50

24 22. In addition to these hours already expended, we will spend time drafting the
 25 Motion for Final Approval, preparing for and arguing the motion during the Final Approval
 26 Hearing, and overseeing post-judgment proceedings, including the required post-distribution
 27 accounting. If there are objectors or appeals, that time could be significant.

28 23. My October 21, 2022 declaration estimated case expenses at approximately

1 \$161,818, PA Joseph Decl. ¶ 43. Based on further review and billing discretion, we are
 2 seeking reimbursement of \$159,411.09.⁵ Attached as **Exhibits 2** and **3** are detailed expense
 3 reports, with expenses listed by category and chronologically. As is our practice, we always
 4 chose standard or economy options when possible (e.g., no first-class flights, luxury hotels,
 5 Michelin star restaurants, etc.). Those same expenses listed categorically are repeated here
 6 for the Court's reference:

7	Category	Amount	Proportion
8	Filing, Service Fees, and Case Management Software	\$1,117.53	0.7%
9	Expert Witness Fees and Costs	\$144,747.25	90.8%
10	Travel, Accommodations, and Parking	\$2,339.10	1.5%
11	Depositions	\$10,857.15	6.8%
12	Meals While Traveling	\$410.06	0.3%
13	Total =	\$159,411.09	100%

14 24. In my opinion, Mr. Testone, Mr. Shanks, and Mr. Pierre each demonstrated
 15 significant commitment to this matter and were faithful to their duties as Class
 16 Representatives. Each volunteered their time on behalf of other class members and they all
 17 remained engaged throughout the litigation. Messrs. Testone, Shanks, and Pierre all
 18 reviewed documents before filing, provided feedback and perspective throughout the matter,
 19 fulfilled their duties in responding to discovery, spending hours with my firm preparing, then
 20 sitting for depositions, and were willing to appear at and provide trial testimony. Messrs.
 21 Testone and Pierre also both traveled for their depositions meaning they had to set aside
 22 multiple days.

23 25. Barlean's propounded written discovery to each named Plaintiff seeking
 24 information and records regarding Plaintiffs' medical care providers, the status of any
 25 physical ailments or injuries, and all medical records related to them.

26
 27 _____
 28 ⁵ Class Counsel does not seek reimbursement, such as photocopying, working (non-travel)
 meals, legal research, and PACER charges.

