

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

NICK PEARSON, FRANCISCO PADILLA,  
CECILIA LINARES, AUGUSTINA BLANCO,  
ABEL GONZALEZ, and RICHARD  
JENNINGS,  
On Behalf of Themselves and All Others  
Similarly Situated,

Plaintiffs,

v.

NBTY, INC., a Delaware corporation; and  
REXALL SUNDOWN, INC., a Florida  
corporation; TARGET CORPORATION, a  
Minnesota Corporation

Defendants.

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THEODORE H. FRANK,

Objector/Intervenor.

Case No. 11-CV-07972

CLASS ACTION

Hon. Elaine E. Bucklo

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**OBJECTOR/INTERVENOR THEODORE H. FRANK'S  
MOTION TO ADMINISTER THE CONSTRUCTIVE TRUST**

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Pursuant to the Court's briefing schedule (Dkt. 437), Intervenor Theodore H. Frank moves to disgorge funds improperly expropriated by objectors Steven Buckley, Randy Nunez, and Patrick Sweeney (the "Buckley objectors") and to administer these disgorged funds for class benefit.

The Buckley objectors sought and received payments simply to dismiss their respective appeals concerning objections to the underlying class settlement, but did not provide any benefit to the class from their selfish side-deals. The Buckley objectors thus misused appellate procedure for private gain, and the Seventh Circuit reversed denial of Frank's previous motion to disgorge. *Pearson v. Target Corp.*, 968 F.3d 827, 837 (7th Cir. 2020) (*Pearson III*).

The Seventh Circuit remanded this case so that disgorged funds could be applied toward a constructive trust for the benefit of class members. For the reasons expressed in the accompanying memorandum of law, and pursuant to the Court's inherent authority to equitably enforce the settlement and otherwise prevent abuse of the judicial process, Frank respectfully urges this Court to GRANT this Motion to Administer the Constructive Trust, and order:

(a) repayment of \$10,000 from objector Patrick Sweeney, plus interest from the date of Sweeney's receipt of \$10,000, set forth in the agreement dated November 2, 2016, *see* Dkt. 377 at Exhibit 1, to be deposited with the Clerk of Court;

(b) disgorgement of \$60,000 from all attorneys and law firms who represented objector Steven Buckley, plus interest from the date of each attorneys' receipt of any portion of the \$60,000 payment, set forth in the agreement dated November 2, 2016, *see* Dkt. 377 at Exhibit 2, to be deposited with the Clerk of Court;

(c) disgorgement of \$60,000 from all attorneys and law firms who represented objector Randy Nunez, plus interest from the date of each attorneys' receipt of any portion of the \$60,000 payment, set forth in the agreement dated November 2, 2016, *see* Dkt. 377 at Exhibit 3, to be deposited with the Clerk of Court;

(d) following an opportunity for Intervenor Frank to apply for an award of attorneys' fees from the constructive trust held by the Clerk of Court, disbursement of the funds to either:

(1) the settlement administrator, for direct distribution to class members based on random selection of valid claims previously paid from the underlying settlement, *or alternatively*

(2) lump-sum payment to the Orthopedic Research and Education Foundation as a *cy pres* award on behalf of class members allegedly misled by conduct address in the underlying class action settlement.

Dated: September 15, 2022.

By: /s/ M. Frank Bednarz

M. Frank Bednarz (IL ARDC No. 6299073)

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*Attorneys for Intervenor Theodore H. Frank*

## CERTIFICATE OF SERVICE

The undersigned certifies he electronically filed the foregoing Motion to Administer Trust via the ECF system for the Northern District of Illinois. Additionally, he caused to be served via email and prepaid first-class mail upon the following attorneys:

James Richard Patterson Patterson Law Group, Apc 402 West Broadway, 29th Floor San Diego, CA 92101 jim@pattersonlawgroup.com	John J. Pentz 19 Widow Rites Lane Sudbury, MA 01776 Jjpentz3@gmail.com
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Additionally, he caused to be served via email and certified mail upon the following person at his last known contact addresses:

Patrick S. Sweeney Sweeney Legal Group 2672 Mutchler Rd Madison WI 53711-7013	Patrick S. Sweeney 6666 Odana Road, Suite 116 Madison, WI 53711 patrick@sweeneylegalgroup.com
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Dated: September 15, 2022

/s/ M. Frank Bednarz