

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; and TARGET CORPORATION, a
Minnesota Corporation,

Defendants.

Case No.: 11 CV 07972

CLASS ACTION

Judge John Robert Blakey

FILED UNDER SEAL

DEFENDANTS' FILING OF AGREEMENTS WITH APPELLANTS-OBJECTORS

Pursuant to the Court's Minute Entry on September 12, 2018, Defendant NBTY, Inc. hereby files the following attachments:

- Exhibit 1: Confidential General Release and Settlement Agreement between Patrick Sweeney and NBTY, Inc., signed November 2, 2016
- Exhibit 2: Confidential General Release and Settlement Agreement between Steven Buckley and NBTY, Inc., dated November 2, 2016
- Exhibit 3: Confidential General Release and Settlement Agreement between Randy Nunez and NBTY, Inc., dated November 2, 2016
- Exhibit 4: Stipulation of Voluntary Dismissal with Prejudice Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) filed in the *Nunez v. NBTY, Inc., et al.*, No. 3:13-cv-0495 (S.D. Cal.), and Order Granting Stipulation of Voluntary Dismissal with Prejudice Pursuant to Federal Rule of Civil Procedure 41(A)(1)(A)(II), dated December 2, 2016

Defense counsel further states that they gave notice of this filing to Counsel for Mr. Buckley and counsel for Mr. Nunez on September 13. Defense counsel attempted to reach Mr. Sweeney by cell phone and email on September 13 and 14. Defense counsel also sent notice of this filing to Mr. Sweeney by federal express on September 13, but does not know if any of the communications actually reached Mr. Sweeney.

Dated: September 19, 2018

SIDLEY AUSTIN LLP

By: /s/ Kara L. McCall

Kara L. McCall
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7000

*Counsel for Defendants NBTY, Inc.;
Rexall Sundown, Inc.; and Target
Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2018, I caused a copy of the foregoing **DEFENDANTS' FILING OF AGREEMENTS WITH APPELLANTS-OBJECTORS** to be filed electronically with the Clerk of Court via the Court's CM/ECF system.

I also certify that the foregoing document is being served by email this day on all counsel of record identified below.

Peter N. Freiberg
DENLEA & CARTON LLP
2 Westchester Park Drive, Suite 410
White Plains, New York 10604
(914) 331-0100
pfreiberg@denleacarton.com

M. Frank Bednarz
COMPETITIVE ENTERPRISE INSTITUTE
CENTER FOR CLASS ACTION FAIRNESS
1145 E. Hyde Park Blvd. Unit 3A
Chicago, IL 60615
(202) 448-8742
frank.bednarz@cei.org

Elaine A. Ryan
BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.
2325 E. Camelback Rd., Suite 300
Phoenix, Arizona 85016
(602) 274-1100
eryan@bffb.com

Melissa A. Holyoak
COMPETITIVE ENTERPRISE INSTITUTE
CENTER FOR CLASS ACTION FAIRNESS
1310 L St., N.W., 7th Floor
Washington, D.C. 20005
(202) 331-2263
melissa.holyoak@cei.org

Stewart M. Weltman
SIPRUT PC
17 North State Street, Suite 1600
Chicago, Illinois 60602
(312) 236-0000
sweltman@siprut.com

Dated: September 19, 2018

SIDLEY AUSTIN LLP

By: /s/ Kara L. McCall
Kara L. McCall
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7000

Exhibit 1

CONFIDENTIAL GENERAL RELEASE AND SETTLEMENT AGREEMENT

This Confidential General Release and Settlement Agreement (the “Agreement”) is made, entered into, and effective as of this ___ day of November, 2016, by and between Patrick Sweeney on the one hand, and NBTY, Inc. on the other hand.

I. DEFINITIONS

The following terms shall have the following meanings:

A. “NBTY” means and includes NBTY, Inc., and Rexall Sundown, Inc., and their affiliates, parents, and subsidiaries, including without limitation past, present, and future agents, attorneys, consultants, contractors, directors, employees, insurers, and officers, and their direct and indirect assigns, distributors, parents, predecessors, retailers, subsidiaries, successors, and affiliated companies, corporations, legal persons, or entities. These terms are comprehensive and intended to relate to any and all individuals or entities as to whom Objector may have a claim or may assert a claim relating to Released Matters.

B. “Objector” means and includes Patrick Sweeney, his administrators, agents, assigns, attorneys, children, descendants, executors, experts, heirs, indemnitors, insurers, parents, predecessors, representatives, spouse, subrogees, and successors, and any and all others representing them or claiming by or through them. These terms are comprehensive and intended to relate to any and all individuals or entities who may have a claim or may assert a claim relating to Released Matters.

D. “Parties” means Objector and NBTY, together, as each is defined above.

E. “*Pearson* Action” means the putative nationwide class action captioned *Nick Pearson, et al. v. NBTY, Inc, et al.*, Case No. 1:11-cv-07972, before the Honorable Judge James B. Zagel in the Northern District of Illinois, as well as all appeals of decisions issued in same case filed in the Seventh Circuit, including but not limited to the appeal of Patrick Sweeney, filed on September 27, 2016, given case number 16-3541, and consolidated with case numbers 16-3507, 16-3519, and 16-3615.

F. “*Pearson* Class Action Settlement Agreement” means the global nationwide settlement agreement that was submitted in the *Pearson* Action, for which preliminary approval was granted on February 1, 2016, and for which final approval was granted on July 14, 2016, and the final judgment entered on August 25, 2016.

II. RECITALS, REPRESENTATIONS, AND WARRANTIES

This Agreement is made and entered into among the Parties for the following purposes and with reference to the following facts:

A. Objector filed an objection to the *Pearson* Class Action Settlement Agreement in the Northern District of Illinois on May 31, 2016. That objection was overruled by the N.D. Illinois in issuing final approval of the settlement.

B. Objector filed a Notice of Appeal of the final approval of the settlement in the Seventh Circuit on September 27, 2016, No. 16-3541 (“Objector’s Appeal”).

C. Without admission by NBTY of any liability or potential liability, and for the purpose of compromise and settlement only, the Parties desire to finally and completely resolve, compromise, and settle all controversies that exist, or that may exist, now or in the future, which in any way relate to, are based on, or arise out of the *Pearson* Action (including all claims that were filed or could have been filed therein), the *Pearson* Class Action Settlement Agreement, or Objector’s Appeal.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby warrant, represent, acknowledge, covenant, and agree as follows:

III. COVENANTS AND CONDITIONS

A. SETTLEMENT AMOUNT

NBTY shall pay the total sum of \$10,000 (the “Settlement Amount”) by wire transfer as directed by Objector within 48 hours after the entry of order of dismissal of Objector’s Appeal. Payment of the Settlement Amount is in full consideration for any attorneys’ fees, interests, costs, and expenses to which Objector could be entitled, or which he or his counsel have claimed or might claim, under any statute or common law principle. Objector will not make any further demand for attorneys’ fees, interests, costs, fees, or expenses of any kind.

B. GENERAL RELEASE and DISMISSAL OF CLAIMS

Objector hereby fully and irrevocably releases, acquits, and discharges NBTY from any and all appeals, claims, actions, demands, obligations, damages, causes of action, remedies, costs, expenses, compensation, debts, and liabilities, based on any theory, related to or arising out of the *Pearson* Action, the *Pearson* Class Action Settlement Agreement or preliminary or final approval thereof, or Objector’s Appeal (“Released Matters”). Objector agrees to move for dismissal of Objector’s Appeal within 24 hours of execution of this Agreement.

C. NO OPT-OUT FROM PEARSON SETTLEMENT CLASS

Objector acknowledges that he is a member of the *Pearson* Settlement Class as defined in the *Pearson* Final Approval Order and Settlement Agreement, and agrees that he will not object to, opt out, or otherwise attempt to exclude himself from the *Pearson* Settlement Class. Objector will therefore be subject to all provisions applicable to the *Pearson* Settlement Class, including

all releases. Should Objector opt out of the *Pearson* Settlement Class, this Settlement Agreement will be null and void. None of the terms of the *Pearson* Settlement Agreement are intended to, or shall be interpreted to, impact the enforceability of this Agreement.

D. NO ADMISSION OF LIABILITY

The Parties hereto agree that this Agreement is the result of a compromise and settlement, and that the execution and delivery of this Agreement by NBTY shall not constitute or be construed as an admission of any liability or wrongdoing on the part of any of them. The Parties hereto acknowledge that this Agreement is not, cannot be construed as, and will not be argued or contended to be an admission by NBTY that it acted in any deceptive, illegal, unlawful, tortious, or other improper or inappropriate manner with respect to the Released Matters.

E. CONFIDENTIALITY

It is a material inducement for NBTY to enter into this compromise and settlement of the Released Matters, that the settlement of this matter, the contents of the settlement agreement, and the amount of settlement, are and shall be, and shall remain, strictly confidential. Neither this Agreement, nor any of its terms, nor any information related to the Agreement, shall be disclosed to any person, and shall not be made the subject of discovery, referred to, argued, or introduced into evidence in any other action or proceeding, for any purpose. However, the terms of this Agreement may be disclosed: (1) as required by law; (2) as required by court order; (3) to the Parties' counsel, accountants, and/or tax and investment advisors; (4) in any action or proceeding between the Parties herein or their attorneys where the existence, enforcement, or terms of the Agreement are at issue; or (5) by written agreement of the Parties hereto. If this Agreement or its terms become the subject of potential disclosure pursuant to subparagraphs (1) or (2) above, the Party against whom the discovery is sought, and who will disclose such information, shall give sufficient prior written notice thereof of the circumstances in order to enable the other Party to file a motion to quash, seek a protective order, or take any other steps to protect the confidentiality of the matters or material to be disclosed.

F. AGREEMENT VOLUNTARILY ENTERED

This Agreement is executed voluntarily by Objector without any duress or undue influence. The Objector represents and warrants that he has read and fully understands each of the provisions of this Agreement and has had the opportunity to discuss the same with his attorney. Objector further warrants and represents that NBTY has not rendered to Objector any advice or made any representations in connection with this Agreement or this settlement, and that in entering into this Agreement, Objector has relied solely upon his own independent investigation and legal counsel received from his own attorney.

G. INTERPRETATION

This Agreement has been negotiated at arm's length and between and among persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, none of the Parties hereto shall be presumptively entitled to have any provisions of the Agreement construed against any of the other Parties hereto in accordance with any rule of law, legal decision, or doctrine that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it. The Parties expressly waive the benefit of any law, statute, ordinance, or regulation that provides that in cases of uncertainty, language of a contract should be interpreted most strongly against the drafter of the contract. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties hereto and this Agreement.

H. ATTORNEYS' FEES, COSTS AND EXPENSES

Except as otherwise expressly provided herein, each of the Parties hereto shall bear its own costs, attorneys' fees, and expenses in connection with the matters set forth in this Agreement, including, but not limited to the negotiations for, and preparation of, this Agreement.

I. ENTIRE AND INTEGRATED AGREEMENT

This Agreement is intended by the Parties hereto as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties hereto with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, draft agreements, agreements, understandings, and undertakings between or among the Parties hereto with respect to such subject matters and there are no other or further promises, representations, warranties, agreements, understandings, or undertakings with respect to such subject matters.

J. AMENDMENTS and WAIVER

Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated orally or in writing, except by a writing signed by the Parties hereto. The observance of any such term may be waived (either generally or in a particular instance either retroactively or prospectively) by a writing signed by the Parties hereto against whom such waiver is to be asserted.

K. NO THIRD-PARTY BENEFICIARIES

Except as expressly provided herein, nothing in this Agreement is intended or shall be construed to give any person other than the Parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein. This Agreement and any conditions and provisions hereof are and are intended to be for the sole and exclusive benefit of the Parties hereto, and for the benefit of no other person or persons.

L. NO RESCISSION ON GROUNDS OF MISTAKE

The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake.

M. SEVERABILITY

If any provision of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in effect and be interpreted so as to reasonably effect the intent of the Parties hereto. Notwithstanding the foregoing, if the releases set forth herein are found to be unenforceable, invalid, or narrower in scope than intended by the Parties, then it shall be the intent of the Parties hereto that each Party shall be required to execute such other documents, instruments, releases, or agreements as each may reasonably and in good faith require to give legal effect to the expressed mutual intent of the Parties to this Agreement; that is, to fully and finally settle the dispute defined as the Released Matters, for the consideration specified herein, and all potential past, present and/or future disputes that exist, have existed, or may exist in the future between the Parties.

N. HEADINGS

The section titles, captions, and headings contained in this Agreement are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

O. AUTHORIZATION

Each of the Parties hereto represents and warrants that (1) it is fully authorized to enter into this Agreement; (2) it has read and fully understands each of the provisions of this Agreement; (3) it has relied on the advice and representation of legal counsel of its own choosing with respect to the matters set forth herein, to the extent said Party has determined that legal counsel is necessary or advisable; (4) it has signed the Agreement voluntarily, without any duress or undue influence on the part, or on behalf, of any party; and (5) the terms of this Agreement are contractual and binding, and not merely recitals.

Objector and NBTY hereby acknowledge that they are aware that they, or their attorneys, may hereafter discover facts different from or in addition to those which they or their attorneys now know or believe to be true with respect to the claims, actions, causes of action, rights, remedies, debts, demands, liabilities, obligations, and defenses of every kind herein released, and they each agree that this instrument shall be and remain in effect as a full and complete release, notwithstanding the discovery or existence of any such different or additional facts.

P. EXECUTION IN COUNTERPARTS and FACSIMILE OR EMAIL SIGNATURES

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement. This Agreement may be executed and delivered via email with the same force and effect as if it were executed and delivered by the Parties simultaneously in the presence of one another.

Q. NOTICES

Any Notices required under this Agreement shall be sent to the following:

For NBTY:



and

Kara L. McCall
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
Fax: (312) 853-7036
kmccall@sidley.com

For Objector Patrick Sweeney:

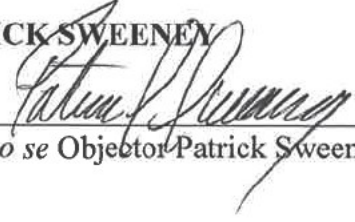
Patrick S. Sweeney, Pro Se
6666 Odana Road, Suite 116
Madison, WI 53716
Tel: (310) 339-0548
Fax: (561) 395-9093
patrick@sweenylegalgroup.com

by both express overnight mail and email.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth opposite the respective signatures below.

DATED: 11-2-16

PATRICK SWEENEY

By: 
Pro se Objector Patrick Sweeney

NBTY, INC.

DATED: _____

By: _____
Kara L. McCall
Attorney for NBTY

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth opposite the respective signatures below.

PATRICK SWEENEY

DATED: _____

By: _____
Pro se Objector Patrick Sweeney

NBTY, INC.

DATED: 11/7/16

By: 

Kara L. McCall
Attorney for NBTY

Exhibit 2

CONFIDENTIAL GENERAL RELEASE AND SETTLEMENT AGREEMENT

This Confidential General Release and Settlement Agreement (the “Agreement”) is made, entered into, and effective as of this 2nd day of November, 2016, by and between Steven Buckley on the one hand, and NBTY, Inc. and Rexall Sundown, Inc., on the other hand.

I. DEFINITIONS

The following terms shall have the following meanings:

A. “NBTY” means and includes NBTY, Inc., and Rexall Sundown, Inc., and their affiliates, parents, and subsidiaries, including without limitation past, present, and future agents, attorneys, consultants, contractors, directors, employees, insurers, and officers, and their direct and indirect assigns, distributors, parents, predecessors, retailers, subsidiaries, successors, and affiliated companies, corporations, legal persons, or entities. These terms are comprehensive and intended to relate to any and all individuals or entities as to whom Objector may have a claim or may assert a claim relating to Released Matters.

B. “Objector” means and includes Steven Buckley, his administrators, agents, assigns, attorneys, children, descendents, executors, experts, heirs, indemnitors, insurers, parents, predecessors, representatives, spouse, subrogees, and successors, and any and all others representing them or claiming by or through them. These terms are comprehensive and intended to relate to any and all individuals or entities who may have a claim or may assert a claim relating to Released Matters.

D. “Parties” means Objector and NBTY, together, as each is defined above.

E. “*Pearson Action*” means the putative nationwide class action captioned *Nick Pearson, et al. v. NBTY, Inc, et al.*, Case No. 1:11-cv-07972, before the Honorable Judge James B. Zagel in the Northern District of Illinois, as well as all appeals of decisions issued in same case filed in the Seventh Circuit, including but not limited to the appeal of Steven Buckley, filed on September 23, 2016, given case number 16-3507, and consolidated with case numbers 16-3519, 16-3541 and 16-3615.

F. “*Pearson Class Action Settlement Agreement*” means the global nationwide settlement agreement that was submitted in the *Pearson Action*, for which preliminary approval was granted on February 1, 2016, and for which final approval was granted on July 14, 2016, and the final judgment was entered on August 25, 2016.

II. RECITALS, REPRESENTATIONS, AND WARRANTIES

This Agreement is made and entered into among the Parties for the following purposes and with reference to the following facts:

A. Objector filed an objection to the *Pearson* Class Action Settlement Agreement in the Northern District of Illinois on May 26, 2016. That objection was overruled by the N.D. Illinois in issuing final approval of the settlement.

B. Objector filed a Notice of Appeal of the final approval of the settlement in the Seventh Circuit on September 23, 2016, No. 16-3507 (“Objector’s Appeal”).

C. Without admission by NBTY of any liability or potential liability, and for the purpose of compromise and settlement only, the Parties desire to finally and completely resolve, compromise, and settle all controversies that exist, or that may exist, now or in the future, which in any way relate to, are based on, or arise out of the *Pearson* Action (including all claims that were filed or could have been filed therein), the *Pearson* Class Action Settlement Agreement, or Objector’s Appeal.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby warrant, represent, acknowledge, covenant, and agree as follows:

III. COVENANTS AND CONDITIONS

A. SETTLEMENT AMOUNT

NBTY shall pay the total sum of \$60,000 (the “Settlement Amount”) by wire transfer as directed by Objector within 48 hours after the entry of order of dismissal of Objector’s Appeal. Payment of the Settlement Amount is in full consideration for any attorneys’ fees, interests, costs, and expenses to which Objector could be entitled, or which he or his counsel have claimed or might claim, under any statute or common law principle. Objector will not make any further demand for attorneys’ fees, interests, costs, fees, or expenses of any kind.

B. GENERAL RELEASE and DISMISSAL OF CLAIMS

Objector hereby fully and irrevocably releases, acquits, and discharges NBTY from any and all appeals, claims, actions, demands, obligations, damages, causes of action, remedies, costs, expenses, compensation, debts, and liabilities, based on any theory, related to or arising out of the *Pearson* Action, the *Pearson* Class Action Settlement Agreement or preliminary or final approval thereof, or Objector’s Appeal (“Released Matters”). Objector agrees to move for dismissal of Objector’s Appeal within 24 hours of execution of this Agreement.

C. NO OPT-OUT FROM PEARSON SETTLEMENT CLASS

Objector acknowledges that he is a member of the *Pearson* Settlement Class as defined in the *Pearson* Final Approval Order and Settlement Agreement, and agrees that he will not object to, opt out, or otherwise attempt to exclude himself from the *Pearson* Settlement Class. Objector will therefore be subject to all provisions applicable to the *Pearson* Settlement Class, including all releases. Should Objector opt out of the *Pearson* Settlement Class, this Settlement

Agreement will be null and void. None of the terms of the *Pearson* Settlement Agreement are intended to, or shall be interpreted to, impact the enforceability of this Agreement.

D. NO ADMISSION OF LIABILITY

The Parties hereto agree that this Agreement is the result of a compromise and settlement, and that the execution and delivery of this Agreement by NBTY shall not constitute or be construed as an admission of any liability or wrongdoing on the part of any of them. The Parties hereto acknowledge that this Agreement is not, cannot be construed as, and will not be argued or contended to be an admission by NBTY that it acted in any deceptive, illegal, unlawful, tortious, or other improper or inappropriate manner with respect to the Released Matters.

E. CONFIDENTIALITY

It is a material inducement for NBTY to enter into this compromise and settlement of the Released Matters, that the settlement of this matter, the contents of the settlement agreement, and the amount of settlement, are and shall be, and shall remain, strictly confidential. Neither this Agreement, nor any of its terms, nor any information related to the Agreement, shall be disclosed to any person, and shall not be made the subject of discovery, referred to, argued, or introduced into evidence in any other action or proceeding, for any purpose. However, the terms of this Agreement may be disclosed: (1) as required by law; (2) as required by court order; (3) to the Parties' counsel, accountants, and/or tax and investment advisors; (4) in any action or proceeding between the Parties herein or their attorneys where the existence, enforcement, or terms of the Agreement are at issue; or (5) by written agreement of the Parties hereto. If this Agreement or its terms become the subject of potential disclosure pursuant to subparagraphs (1) or (2) above, the Party against whom the discovery is sought, and who will disclose such information, shall give sufficient prior written notice thereof of the circumstances in order to enable the other Party to file a motion to quash, seek a protective order, or take any other steps to protect the confidentiality of the matters or material to be disclosed.

F. AGREEMENT VOLUNTARILY ENTERED

This Agreement is executed voluntarily by Objector without any duress or undue influence. The Objector represents and warrants that he has read and fully understands each of the provisions of this Agreement and has had the opportunity to discuss the same with his attorney. Objector further warrants and represents that NBTY has not rendered to Objector any advice or made any representations in connection with this Agreement or this settlement, and that in entering into this Agreement, Objector has relied solely upon his own independent investigation and legal counsel received from his own attorney.

G. INTERPRETATION

This Agreement has been negotiated at arm's length and between and among persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, none of the Parties hereto shall be presumptively entitled to have any provisions of the Agreement

construed against any of the other Parties hereto in accordance with any rule of law, legal decision, or doctrine that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it. The Parties expressly waive the benefit of any law, statute, ordinance, or regulation that provides that in cases of uncertainty, language of a contract should be interpreted most strongly against the drafter of the contract. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties hereto and this Agreement.

H. ATTORNEYS' FEES, COSTS AND EXPENSES

Except as otherwise expressly provided herein, each of the Parties hereto shall bear its own costs, attorneys' fees, and expenses in connection with the matters set forth in this Agreement, including, but not limited to the negotiations for, and preparation of, this Agreement.

I. ENTIRE AND INTEGRATED AGREEMENT

This Agreement is intended by the Parties hereto as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties hereto with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, draft agreements, agreements, understandings, and undertakings between or among the Parties hereto with respect to such subject matters and there are no other or further promises, representations, warranties, agreements, understandings, or undertakings with respect to such subject matters.

J. AMENDMENTS and WAIVER

Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated orally or in writing, except by a writing signed by the Parties hereto. The observance of any such term may be waived (either generally or in a particular instance either retroactively or prospectively) by a writing signed by the Parties hereto against whom such waiver is to be asserted.

K. NO THIRD-PARTY BENEFICIARIES

Except as expressly provided herein, nothing in this Agreement is intended or shall be construed to give any person other than the Parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein. This Agreement and any conditions and provisions hereof are and are intended to be for the sole and exclusive benefit of the Parties hereto, and for the benefit of no other person or persons.

L. NO RESCISSION ON GROUNDS OF MISTAKE

The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so.

Therefore, the Parties agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake.

M. SEVERABILITY

If any provision of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in effect and be interpreted so as to reasonably effect the intent of the Parties hereto. Notwithstanding the foregoing, if the releases set forth herein are found to be unenforceable, invalid, or narrower in scope than intended by the Parties, then it shall be the intent of the Parties hereto that each Party shall be required to execute such other documents, instruments, releases, or agreements as each may reasonably and in good faith require to give legal effect to the expressed mutual intent of the Parties to this Agreement; that is, to fully and finally settle the dispute defined as the Released Matters, for the consideration specified herein, and all potential past, present and/or future disputes that exist, have existed, or may exist in the future between the Parties.

N. HEADINGS

The section titles, captions, and headings contained in this Agreement are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

O. AUTHORIZATION

Each of the Parties hereto represents and warrants that (1) it is fully authorized to enter into this Agreement; (2) it has read and fully understands each of the provisions of this Agreement; (3) it has relied on the advice and representation of legal counsel of its own choosing with respect to the matters set forth herein, to the extent said Party has determined that legal counsel is necessary or advisable; (4) it has signed the Agreement voluntarily, without any duress or undue influence on the part, or on behalf, of any party; and (5) the terms of this Agreement are contractual and binding, and not merely recitals.

Objector and NBTY hereby acknowledge that they are aware that they, or their attorneys, may hereafter discover facts different from or in addition to those which they or their attorneys now know or believe to be true with respect to the claims, actions, causes of action, rights, remedies, debts, demands, liabilities, obligations, and defenses of every kind herein released, and they each agree that this instrument shall be and remain in effect as a full and complete release, notwithstanding the discovery or existence of any such different or additional facts.

P. EXECUTION IN COUNTERPARTS and FACSIMILE OR EMAIL SIGNATURES

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement. This

Agreement may be executed and delivered via email with the same force and effect as if it were executed and delivered by the Parties simultaneously in the presence of one another.

Q. NOTICES

Any Notices required under this Agreement shall be sent to the following:

For NBTY:



and

Kara L. McCall
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
Fax: (312) 853-7036
kmccall@sidley.com

For Objector Steven Buckley:

John J. Pentz
19 Widow Rites Lane
Sudbury, MA 01776
Tel: (978) 261-5725
jjpentz3@gmail.com

Arthur J. Howe
Howe Law LLC
155 N. Wacker Dr. Suite 4250
Chicago, IL 60606
Tel: (312) 600-8336
howe@howe-llc.com

by both express overnight mail and email.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth opposite the respective signatures below.

STEVEN BUCKLEY

DATED: _____

By:

Steven Buckley

By:

John J. Pentz
Attorney for Steven Buckley

By:



Arthur J. Howe
Attorney for Steven Buckley

NBTY, INC.

DATED: _____

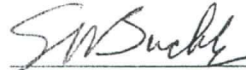
By:

Kara L. McCall
Attorney for NBTY


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth opposite the respective signatures below.

STEVEN BUCKLEY

DATED: 11/3/16

By: 

Steven Buckley

By: 

John J. Pentz
Attorney for Steven Buckley

By: _____
Arthur J. Howe
Attorney for Steven Buckley

NBTY, INC.

DATED: _____

By: _____
Kara L. McCall
Attorney for NBTY

Tel: (312) 600-8336
howe@howe-llc.com

by both express overnight mail and email.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth opposite the respective signatures below.

STEVEN BUCKLEY

DATED: _____


By: _____
Steven Buckley

By: _____
John J. Pentz
Attorney for Steven Buckley

By: _____
Arthur J. Howe
Attorney for Steven Buckley

NBTY, INC.

DATED: 11/7/16

By: 

Kara L. McCall
Attorney for NBTY

Exhibit 3

CONFIDENTIAL GENERAL RELEASE AND SETTLEMENT AGREEMENT

This Confidential General Release and Settlement Agreement (the “Agreement”) is made, entered into, and effective as of this 2nd day of November, 2016, by and between Randy Nunez on the one hand, and NBTY, Inc. on the other hand.

I. DEFINITIONS

The following terms shall have the following meanings:

A. “NBTY” means and includes NBTY, Inc., and Rexall Sundown, Inc., and their affiliates, parents, and subsidiaries, including without limitation past, present, and future agents, attorneys, consultants, contractors, directors, employees, insurers, and officers, and their direct and indirect assigns, parents, predecessors, subsidiaries, successors, and affiliated companies, corporations, legal persons, or entities. These terms are comprehensive and intended to relate to any and all individuals or entities as to whom Objector may have a claim or may assert a claim relating to Released Matters.

B. “Objector” means and includes Randy Nunez, his administrators, agents, assigns, attorneys, children, descendants, executors, experts, heirs, indemnitors, insurers, parents, predecessors, representatives, spouse, subrogees, and successors, and any and all others representing them or claiming by or through them. These terms are comprehensive and intended to relate to any and all individuals or entities who may have a claim or may assert a claim relating to Released Matters.

D. “Parties” means Objector and NBTY, together, as each is defined above.

E. “*Pearson* Action” means the putative nationwide class action captioned *Nick Pearson, et al. v. NBTY, Inc, et al.*, Case No. 1:11-cv-07972, before the Honorable Judge James B. Zagel in the Northern District of Illinois, as well as all appeals of decisions issued in same case filed in the Seventh Circuit, including but not limited to the appeal of Randy Nunez, filed on September 26, 2016, given case number 16-3519, and consolidated with case numbers 16-3507, 16-3541, and 16-3615.

F. “*Pearson* Class Action Settlement Agreement” means the global nationwide settlement agreement that was submitted in the *Pearson* Action, for which preliminary approval was granted on February 1, 2016, and for which final approval was granted on July 14, 2016, and final judgment was entered on August 25, 2016.

II. RECITALS, REPRESENTATIONS, AND WARRANTIES

This Agreement is made and entered into among the Parties for the following purposes and with reference to the following facts:

A. Objector filed an objection to the *Pearson* Class Action Settlement Agreement in the Northern District of Illinois on May 26, 2016. That objection was overruled by the N.D. Illinois in issuing final approval of the settlement.

B. Objector filed a Notice of Appeal of the final approval of the settlement in the Seventh Circuit on September 26, 2016, No. 16-3519 (“Objector’s Appeal”).

C. Without admission by NBTY of any liability or potential liability, and for the purpose of compromise and settlement only, the Parties desire to finally and completely resolve, compromise, and settle all controversies that exist, or that may exist, now or in the future, which in any way relate to, are based on, or arise out of the *Pearson* Action (including all claims that were filed or could have been filed therein), the *Pearson* Class Action Settlement Agreement, or Objector’s Appeal.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby warrant, represent, acknowledge, covenant, and agree as follows:

III. COVENANTS AND CONDITIONS

A. SETTLEMENT AMOUNT

NBTY shall pay the total sum of \$60,000 (the “Settlement Amount”) by wire transfer as directed by Objector within 48 hours after the entry of order of dismissal of Objector’s Appeal. Payment of the Settlement Amount is in full consideration for any attorneys’ fees, interests, costs, and expenses to which Objector could be entitled, or which he or his counsel have claimed or might claim, under any statute or common law principle. Objector will not make any further demand for attorneys’ fees, interests, costs, fees, or expenses of any kind.

B. GENERAL RELEASE and DISMISSAL OF CLAIMS

Objector hereby fully and irrevocably releases, acquits, and discharges NBTY from any and all appeals, claims, actions, demands, obligations, damages, causes of action, remedies, costs, expenses, compensation, debts, and liabilities, based on any theory, related to or arising out of the *Pearson* Action, the *Pearson* Class Action Settlement Agreement or preliminary or final approval thereof, or Objector’s Appeal (“Released Matters”). Objector agrees to move for dismissal of Objector’s Appeal within 24 hours of execution of this Agreement.

C. NO OPT-OUT FROM PEARSON SETTLEMENT CLASS

Objector acknowledges that he is a member of the *Pearson* Settlement Class as defined in the *Pearson* Final Approval Order and Settlement Agreement, and agrees that he will not object to, opt out, or otherwise attempt to exclude himself from the *Pearson* Settlement Class. Objector will therefore be subject to all provisions applicable to the *Pearson* Settlement Class, including all releases. Should Objector opt out of the *Pearson* Settlement Class, this Settlement

Agreement will be null and void. None of the terms of the *Pearson* Settlement Agreement are intended to, or shall be interpreted to, impact the enforceability of this Agreement.

D. NO ADMISSION OF LIABILITY

The Parties hereto agree that this Agreement is the result of a compromise and settlement, and that the execution and delivery of this Agreement by NBTY shall not constitute or be construed as an admission of any liability or wrongdoing on the part of any of them. The Parties hereto acknowledge that this Agreement is not, cannot be construed as, and will not be argued or contended to be an admission by NBTY that it acted in any deceptive, illegal, unlawful, tortious, or other improper or inappropriate manner with respect to the Released Matters.

E. CONFIDENTIALITY

It is a material inducement for NBTY to enter into this compromise and settlement of the Released Matters, that the settlement of this matter, the contents of the settlement agreement, and the amount of settlement, are and shall be, and shall remain, strictly confidential. Neither this Agreement, nor any of its terms, nor any information related to the Agreement, shall be disclosed to any person, and shall not be made the subject of discovery, referred to, argued, or introduced into evidence in any other action or proceeding, for any purpose. However, the terms of this Agreement may be disclosed: (1) as required by law; (2) as required by court order; (3) to the Parties' counsel, accountants, and/or tax and investment advisors; (4) in any action or proceeding between the Parties herein or their attorneys where the existence, enforcement, or terms of the Agreement are at issue; or (5) by written agreement of the Parties hereto. If this Agreement or its terms become the subject of potential disclosure pursuant to subparagraphs (1) or (2) above, the Party against whom the discovery is sought, and who will disclose such information, shall give sufficient prior written notice thereof of the circumstances in order to enable the other Party to file a motion to quash, seek a protective order, or take any other steps to protect the confidentiality of the matters or material to be disclosed.

F. AGREEMENT VOLUNTARILY ENTERED

This Agreement is executed voluntarily by Objector without any duress or undue influence. The Objector represents and warrants that he has read and fully understands each of the provisions of this Agreement and has had the opportunity to discuss the same with his attorney. Objector further warrants and represents that NBTY has not rendered to Objector any advice or made any representations in connection with this Agreement or this settlement, and that in entering into this Agreement, Objector has relied solely upon his own independent investigation and legal counsel received from his own attorney.

G. INTERPRETATION

This Agreement has been negotiated at arm's length and between and among persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, none

of the Parties hereto shall be presumptively entitled to have any provisions of the Agreement construed against any of the other Parties hereto in accordance with any rule of law, legal decision, or doctrine that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it. The Parties expressly waive the benefit of any law, statute, ordinance, or regulation that provides that in cases of uncertainty, language of a contract should be interpreted most strongly against the drafter of the contract. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties hereto and this Agreement.

H. ATTORNEYS' FEES, COSTS AND EXPENSES

Except as otherwise expressly provided herein, each of the Parties hereto shall bear its own costs, attorneys' fees, and expenses in connection with the matters set forth in this Agreement, including, but not limited to the negotiations for, and preparation of, this Agreement.

I. ENTIRE AND INTEGRATED AGREEMENT

This Agreement is intended by the Parties hereto as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties hereto with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, draft agreements, agreements, understandings, and undertakings between or among the Parties hereto with respect to such subject matters and there are no other or further promises, representations, warranties, agreements, understandings, or undertakings with respect to such subject matters.

J. AMENDMENTS and WAIVER

Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated orally or in writing, except by a writing signed by the Parties hereto. The observance of any such term may be waived (either generally or in a particular instance either retroactively or prospectively) by a writing signed by the Parties hereto against whom such waiver is to be asserted.

K. NO THIRD-PARTY BENEFICIARIES

Except as expressly provided herein, nothing in this Agreement is intended or shall be construed to give any person other than the Parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein. This Agreement and any conditions and provisions hereof are and are intended to be for the sole and exclusive benefit of the Parties hereto, and for the benefit of no other person or persons.

L. NO RESCISSION ON GROUNDS OF MISTAKE

The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so.

Therefore, the Parties agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake.

M. SEVERABILITY

If any provision of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in effect and be interpreted so as to reasonably effect the intent of the Parties hereto. Notwithstanding the foregoing, if the releases set forth herein are found to be unenforceable, invalid, or narrower in scope than intended by the Parties, then it shall be the intent of the Parties hereto that each Party shall be required to execute such other documents, instruments, releases, or agreements as each may reasonably and in good faith require to give legal effect to the expressed mutual intent of the Parties to this Agreement; that is, to fully and finally settle the dispute defined as the Released Matters, for the consideration specified herein, and all potential past, present and/or future disputes that exist, have existed, or may exist in the future between the Parties.

N. HEADINGS

The section titles, captions, and headings contained in this Agreement are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

O. AUTHORIZATION

Each of the Parties hereto represents and warrants that (1) it is fully authorized to enter into this Agreement; (2) it has read and fully understands each of the provisions of this Agreement; (3) it has relied on the advice and representation of legal counsel of its own choosing with respect to the matters set forth herein, to the extent said Party has determined that legal counsel is necessary or advisable; (4) it has signed the Agreement voluntarily, without any duress or undue influence on the part, or on behalf, of any party; and (5) the terms of this Agreement are contractual and binding, and not merely recitals.

Objector and NBTY hereby acknowledge that they are aware that they, or their attorneys, may hereafter discover facts different from or in addition to those which they or their attorneys now know or believe to be true with respect to the claims, actions, causes of action, rights, remedies, debts, demands, liabilities, obligations, and defenses of every kind herein released, and they each agree that this instrument shall be and remain in effect as a full and complete release, notwithstanding the discovery or existence of any such different or additional facts.

P. EXECUTION IN COUNTERPARTS and FACSIMILE OR EMAIL SIGNATURES

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement. This

Agreement may be executed and delivered via email with the same force and effect as if it were executed and delivered by the Parties simultaneously in the presence of one another.

Q. NOTICES

Any Notices required under this Agreement shall be sent to the following:

For NBTY:



and

Kara L. McCall
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
Fax: (312) 853-7036
kmccall@sidley.com

For Objector Randy Nunez:

Todd D. Carpenter
CARLSON LYNCH SWEET
402 West Broadway, 29th Floor
San Diego, CA 92101
Tel: (619) 756-6990
Fax: (619) 756-6991
tcarpenter@carlsonlynch.com
[Attorney for Objector Randy Nunez]

James R. Patterson
PATTERSON LAW GROUP
402 West Broadway, 29th Floor
San Diego, CA 92101
Tel: (619) 756-6990
Fax: (619) 756-6991

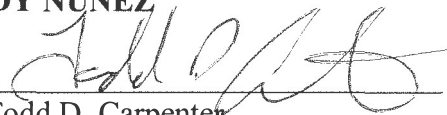
James R. Patterson
PATTERSON LAW GROUP
402 West Broadway, 29th Floor
San Diego, CA 92101
Tel: (619) 756-6990
Fax: (619) 756-6991
jim@pattersonlawgroup.com
[Attorney for Objector Randy Nunez]

by both express overnight mail and email.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth opposite the respective signatures below.

DATED: 11/4/2016

RANDY NUNEZ

By: 
Todd D. Carpenter
James R. Patterson
Attorneys for Randy Nunez

NBTY, INC.

DATED: _____

By: _____
Kara L. McCall
Attorney for NBTY

James R. Patterson
PATTERSON LAW GROUP
402 West Broadway, 29th Floor
San Diego, CA 92101
Tel: (619) 756-6990
Fax: (619) 756-6991
jim@pattersonlawgroup.com

[Attorney for Objector Randy Nunez]

by both express overnight mail and email.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth opposite the respective signatures below.

RANDY NUNEZ

DATED: _____

By: _____
Todd D. Carpenter
James R. Patterson
Attorneys for Randy Nunez

NBTY, INC.

DATED: 11/7/16

By: 

Kara L. McCall
Attorney for NBTY