

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.

THEODORE H. FRANK,

Objector.

Case No. 11-CV-07972

CLASS ACTION

Hon. James B. Zagel

**OBJECTOR THEODORE H. FRANK'S MOTION
TO INTERVENE AND DISGORGE SIDE-PAYMENTS**

Objector Theodore H. Frank moves to intervene as a matter of right in this action pursuant to Fed. R. Civ. P. 24(a)(2), or alternatively for permissive intervention under Rule 24(b)(1), so that he may act as guardian ad litem on behalf of absent class members and seek disgorgement funds improperly expropriated by objector-appellants Randy Nunez, Steven Buckley, and Patrick Sweeney. The objector-appellants sought and received payment in order to drop their respective appeals (“objector blackmail”), and so misused appellate procedure for private gain. As shown by the accompanying Proposed Complaint against objector-appellants (Ex. A), Frank seeks to disgorge the improper objector blackmail on behalf of the entire class.

As set forth in the accompanying memorandum of law (Ex. B), Objector Frank is a class member under the approved settlement, so stands to directly benefit from the disgorgement of objector blackmail paid by defendants to objector-appellants. Frank satisfies all the requirements for intervention of right because: (1) the motion is timely, being filed within weeks of objector-appellants' dismissal of their appeals, (2) Frank and absent class members have a direct pecuniary interest in disgorging funds from the objector-appellants, (3) disposition of this action without intervention risks foreclosing relief to Frank and class members like him, and (4) no existing party adequately represents Frank's interest, nor evinces any inclination to disgorge the objector blackmail.

For the reasons expressed in the accompanying memorandum of law, Objector Frank respectfully urges this Court to GRANT his motion to intervene in an expeditious fashion, or alternatively order disgorgement from objector-appellants under the Court's inherent authority to equitably enforce the settlement and otherwise prevent abuse of the judicial process.

Dated: December 7, 2016

/s/ M.Frank Bednarz

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CERTIFICATE OF SERVICE

The undersigned certifies he electronically filed the foregoing Objector Theodore H. Frank's Motion to Intervene and Disgorge Side-Payments via the ECF system for the Northern District of Illinois, thus effecting service on all attorneys registered for electronic filing. Additionally, he caused to be served via First-Class mail a copy of this Objection upon the following:

Peggy Thomas Simone Thomas 2109 N.W. 12th Avenue Ft. Lauderdale, FL 33311	Melissa Rachel Pavely Stein, Ray & Harris LLP 222 West Adams Street Suite 1800 Chicago IL 60606
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Dated: December 7, 2016

/s/ M. Frank Bednarz