

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JOHN F. HUTCHINS, Individually and On Behalf of All  
Others Similarly Situated,

Plaintiff,

vs.

NBTY, INC., et al.,

Defendants.

Civil Action No. 2:10-cv-02159-LDW-WDW

CLASS ACTION

NOTICE OF PENDENCY AND PROPOSED  
SETTLEMENT OF CLASS ACTION

TO: ALL PERSONS WHO PURCHASED THE COMMON STOCK OF NBTY, INC. ("NBTY" OR THE "COMPANY")  
BETWEEN NOVEMBER 9, 2009 AND APRIL 26, 2010, INCLUSIVE (THE "CLASS PERIOD")

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS ACTION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM POSTMARKED ON OR BEFORE JUNE 5, 2013.

This Notice has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of New York (the "Court"). The purpose of this Notice is to inform you of the proposed settlement (the "Settlement") of this securities class action litigation and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement. The Settlement resolves the Class's claims asserted against all the Defendants. This Notice describes the rights you may have in connection with the Settlement and what steps you may take in relation to the Settlement and this class action litigation.

The Settlement creates a fund in the amount of Six Million Dollars (\$6,000,000.00) in cash and will include interest that accrues on the fund prior to distribution. Based on the information currently available to Lead Plaintiff and the analysis performed by his damage consultants, it is estimated that if Class Members submit claims for 100% of the shares eligible for distribution, the estimated average distribution per share will be approximately \$0.35 before deduction of Court-approved fees and expenses. Historically, actual claims rates are less than 100%, which result in higher distributions per share. Your actual recovery from this fund will depend on a number of variables, including the number of claimants, the number of shares of NBTY common stock you and they purchased, the number of shares of NBTY common stock you and they sold, the expense of administering the claims process, and the timing of your purchases and sales, if any (see the Plan of Distribution below for a more detailed description of how the settlement proceeds will be allocated among Class Members).

Defendants have denied and continue to deny specifically each and all of the claims and contentions alleged in the Action. The issues on which the parties disagree include: (1) whether the statements made or facts allegedly omitted were false, material, or otherwise actionable under the federal securities laws; (2) the extent to which the various matters that Lead Plaintiff alleged were materially false or misleading influenced (if at all) the trading price of NBTY common stock at various times during the Class Period; (3) the extent to which the various allegedly adverse material facts that Lead Plaintiff alleged were omitted influenced (if at all) the trading price of NBTY common stock at various times during the Class Period; (4) the extent to which external factors, such as general market conditions, influenced the trading prices of NBTY common stock at various times during the Class Period; (5) the effect of various market forces influencing the trading price of NBTY common stock at various times during the Class Period; (6) the amount by which NBTY common stock was allegedly artificially inflated (if at all) during the Class Period; and (7) the appropriate economic model for determining the amount by which NBTY common stock was allegedly artificially inflated (if at all) during the Class Period. Lead Plaintiff and Defendants do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff were to have prevailed on each claim asserted. Defendants deny that they have violated the federal securities laws or any laws.

Lead Plaintiff believes that the proposed Settlement is a very good recovery and is in the best interests of the Class. There were significant risks associated with continuing to litigate and proceeding to summary judgment and trial, and if Defendants prevailed at either of those stages, the Class would receive nothing. In addition, the amount of damages recoverable by the Class was and is challenged by Defendants. Recoverable damages in this case are limited to losses caused by conduct actionable under applicable law and, had the Action gone to trial, Defendants intended to assert that all of the losses of Class Members were caused by non-actionable market, industry, or general economic factors. Defendants would also assert that throughout the Class Period, the uncertainties and risks associated with NBTY's business and financial condition were fully and adequately disclosed.

Plaintiff's Counsel have not received any payment for their services in conducting this Action on behalf of Lead Plaintiff and the members of the Class, nor have they been paid for their litigation expenses. If the Settlement is approved by the Court, Lead Counsel will apply to the Court for attorneys' fees of 30% of the settlement proceeds plus expenses not to exceed \$150,000.00, both to be paid from the Settlement Fund. If the amount requested by counsel is approved by the Court, the average cost per share would be approximately \$0.11.

This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses asserted by any party in this Action or the fairness or adequacy of the proposed Settlement.

For further information regarding this Settlement you may contact: Rick Nelson, c/o Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, California 92101, Telephone: 1-800-449-4900. Please do not call any representative of the Defendants or the Court.

## **I. NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A hearing (the "Settlement Hearing") will be held on June 5, 2013, at 11:00 a.m., before the Honorable Leonard D. Wexler, United States District Judge, at the United States Courthouse, Courtroom 940, 100 Federal Plaza, Central Islip, New York 11722. The purpose of the Settlement Hearing will be to determine: (1) whether the Settlement consisting of Six Million Dollars (\$6,000,000.00) in cash plus accrued interest on the Settlement Fund should be approved as fair, reasonable, and adequate to the Class; (2) whether the proposed plan to distribute the settlement proceeds (the "Plan of Distribution") is fair, reasonable, and adequate; (3) whether the application by Lead Counsel for an award of attorneys' fees and expenses should be approved; and (4) whether the Action should be dismissed with prejudice. The Court may adjourn or continue the Settlement Hearing without further notice to the Class.

## **II. DEFINITIONS USED IN THIS NOTICE**

1. "Authorized Claimant" means any member of the Class who submits a timely and valid Proof of Claim and Release form and whose claim for recovery has been allowed pursuant to the terms of the Settlement Agreement.
2. "Claims Administrator" means the firm of The Garden City Group, Inc.
3. "Class" means all Persons who purchased NBTY common stock between November 9, 2009 and April 26, 2010, inclusive. Excluded from the Class are:
  - (a) Persons or entities who submit valid and timely requests for exclusion from the Class; and
  - (b) Defendants, members of the immediate family of any such Defendant, the officers and directors of NBTY during the Class Period, and legal representatives, agents, executors, heirs, successors or assigns of any such excluded Person.
4. "Class Action" means the action *John F. Hutchins, Individually and On Behalf of All Others Similarly Situated v. NBTY, Inc., Scott Rudolph and Harvey Kamil*, Civil Action No. 2:10-cv-2159-LDW-WDW.
5. "Class Member" means a Person who falls within the definition of the Class as set forth above.
6. "Class Period" means the period November 9, 2009 through April 26, 2010, inclusive.
7. "Defendants" means NBTY, Inc., Scott Rudolph and Harvey Kamil.
8. "Effective Date" means the first date by which all of the events and conditions specified in ¶7.1 of the Settlement Agreement have been met and have occurred.
9. "Escrow Agent" means Robbins Geller Rudman & Dowd LLP or its successor(s).
10. "Final" means when the last of the following with respect to the Judgment approving the Settlement, substantially in the form of Exhibit B attached to the Settlement Agreement, shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of the time in which to appeal the Judgment has passed without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an appeal is taken, the determination of that motion or appeal in such a manner as to permit the consummation of the Settlement, in accordance with the terms and conditions of the Settlement Agreement. For purposes of this paragraph, an "appeal" shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this Settlement, but shall not include any appeal which concerns only the issue of attorneys' fees and expenses or any Plan of Distribution of the Settlement Fund.

11. "Judgment" means the judgment and order of dismissal with prejudice to be rendered by the Court upon approval of the Settlement, substantially in the form attached to the Settlement Agreement as Exhibit B.

12. "Lead Counsel" means Robbins Geller Rudman & Dowd LLP and Holzer Holzer & Fistel LLC or their successor(s).

13. "Lead Plaintiff" means John F. Hutchins.

14. "Net Settlement Fund" means the portion of the Settlement Fund that shall be distributed to Authorized Claimants as allowed by the Settlement Agreement, the Plan of Distribution, or the Court.

15. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and his, her or its spouses, heirs, predecessors, successors, representatives, or assignees.

16. "Plaintiffs' Counsel" means any counsel who have appeared on behalf of any plaintiff in the Class Action.

17. "Plan of Distribution" means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants. Any Plan of Distribution is not part of the Settlement Agreement and the Released Persons shall have no responsibility or liability with respect thereto.

18. "Released Claims" means all claims (including Unknown Claims), whether direct, indirect, or derivative, that were asserted or could have been asserted in this Class Action by Lead Plaintiff or members of the Class, against Released Persons based upon, arising out of, or relating to both (i) the claims or facts and circumstances asserted in this Class Action and (ii) the purchase of NBTY common stock during the Class Period by Class Members.

19. "Released Persons" means each and all of Defendants and each and all of their present or former parents, subsidiaries, affiliates (as defined in 17 C.F.R. §210.1-02(b)), successors and assigns, and each and all of the present or former officers, directors, employees, employers, attorneys, accountants, financial advisors, lenders, insurers, investment bankers, representatives, general and limited partners and partnerships, heirs, executors, administrators, successors, affiliates, and assigns of each of them.

20. "Settlement Fund" means Six Million Dollars (\$6,000,000.00) in cash, together with all interest and income earned thereon.

21. "Settling Parties" means, collectively, Defendants and Lead Plaintiff on behalf of himself and the Class Members.

22. "Unknown Claims" means any Released Claims which Lead Plaintiff or any Class Members do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived to the fullest extent permitted by law the provisions, rights, and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Lead Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. Lead Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, whether direct, indirect, or derivative, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

### **III. THE LITIGATION**

On May 11, 2010, a class action complaint was filed against Defendants in the United States District Court for the Eastern District of New York (the "Court") alleging violations of federal securities laws. On November 19, 2010, the Court appointed John F. Hutchins as Lead Plaintiff and Robbins Geller Rudman & Dowd LLP and Holzer Holzer & Fistel LLC, as lead counsel. Lead Plaintiff filed an amended complaint (the "Complaint") on February 1, 2011. The Complaint asserts claims under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

On June 1, 2011, Defendants moved to dismiss the Complaint. Lead Plaintiff opposed the motion. On March 30, 2012, the Court issued its Memorandum and Order denying Defendants' motion.

The Court entered an Order scheduling discovery in the Action. Pursuant to that schedule, the parties served discovery demands on each other and non-parties. Pursuant to these discovery demands, Lead Plaintiff received and reviewed more than 130,000 pages of documents.

Thereafter, the parties agreed to attempt to resolve the dispute through mediated settlement discussion. On November 12, 2012, the parties attended a mediation session with Jed Melnick, Esq., an experienced mediator with substantial experience in the area of securities litigation. At the conclusion of the November 12, 2012 mediation, following a full day of negotiations, the parties reached an agreement-in-principle to resolve the Action.

### **IV. CLAIMS OF THE LEAD PLAINTIFF AND BENEFITS OF SETTLEMENT**

Lead Plaintiff and Lead Counsel believe that the claims asserted in the Action have merit. However, Lead Plaintiff and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through discovery and trial. Lead Plaintiff and Lead Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Action, as well as the risks posed by the difficulties and delays inherent in such litigation. Lead Plaintiff and Lead Counsel also are aware of the defenses to the securities law violations asserted in the Action. Lead Plaintiff and Lead Counsel believe that the Settlement set forth in the Settlement Agreement confers substantial benefits upon the Class in light of the circumstances present here. Based on their evaluation, Lead Plaintiff and Lead Counsel have determined that the Settlement set forth in the Settlement Agreement is in the best interests of Lead Plaintiff and the Class.

### **V. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

Defendants have denied and continue to deny that they have violated the federal securities laws or any laws. Defendants have denied and continue to deny specifically each and all of the claims and contentions alleged in the Action, along with all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendants also have denied and continue to deny, *inter alia*, the allegations that any of the Defendants made any material misstatements or omissions; that any member of the Class has suffered damages; that the prices of NBTY common stock was artificially inflated by reason of the alleged misrepresentations, omissions, or otherwise; that the members of the Class were harmed by the conduct alleged in the Action; or that Defendants knew of or were reckless with respect to the alleged misconduct. In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Action.

Nonetheless, taking into account the uncertainty, risks, and costs inherent in any litigation, especially in complex cases such as this Action, Defendants have concluded that further conduct of the Action could be protracted and distracting. Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in the Settlement Agreement. The Settlement Agreement shall in no event be construed as or deemed to be evidence of an admission or concession by Defendants with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

### **VI. TERMS OF THE PROPOSED SETTLEMENT**

The sum of Six Million Dollars (\$6,000,000.00) has been transferred to the Escrow Agent. The principal amount of Six Million Dollars (\$6,000,000.00), plus any accrued interest, constitutes the Settlement Fund. A portion of the settlement proceeds will be used for certain administrative expenses, including costs of printing and mailing this Notice, the cost of publishing a newspaper notice, payment of any taxes assessed against the Settlement Fund, and costs associated with the processing of claims submitted. In addition, as explained below, a portion of the Settlement Fund may be awarded by the Court to Lead Counsel as attorneys' fees and for expenses in litigating the case. The balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the Plan of Distribution described below to Class Members who submit valid and timely Proofs of Claim and Release.

## VII. PLAN OF DISTRIBUTION

The Net Settlement Fund will be distributed to Class Members who submit valid, timely Proofs of Claim and Release (“Authorized Claimants”) under the Plan of Distribution described below. The Plan of Distribution provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if you have a net loss arising out of all transactions in NBTY common stock during the Class Period.

No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than ten dollars.

For purposes of determining the amount an Authorized Claimant may recover under the Plan of Distribution, Lead Plaintiff’s counsel have consulted with their damage consultant. The Plan of Distribution reflects an assessment of the damages that could have been recovered as well as Lead Plaintiff’s counsel’s assessment of the likelihood of establishing liability for various periods of the Class.

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant’s claim, as defined below. If, however, and as is more likely, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant’s claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

The total of all profits shall be subtracted from the total of all losses from transactions during the Class Period to determine if a Class Member has a claim. A Class Member will be eligible to receive a distribution from the Net Settlement Fund only if such Class Member had a net loss after all profits from transactions in NBTY common stock during the Class Period are subtracted from all losses.

For shares of NBTY common stock that were purchased from November 9, 2009 through April 26, 2010, inclusive, and

1. sold prior to April 27, 2010, the claim per share is \$0.
2. sold from April 27, 2010 through July 25, 2010, the claim per share is the lesser of:
  - a. \$8.69 per share (April 27, 2010 market adjusted price decline), or
  - b. the difference between (i) the purchase price per share, and (ii) the average closing price per share from April 27, 2010 through the date of sale (as set forth in Table 1 below).
3. retained at the end of July 25, 2010, the claim per share is the lesser of:
  - a. \$8.69 per share (April 27, 2010 market adjusted price decline), or
  - b. the difference between (i) the purchase price per share, and (ii) \$37.53 per share (90-day average closing price following the Class Period).

TABLE 1

Date	Closing Price	Average Closing Price	Date	Closing Price	Average Closing Price
4/27/2010	\$37.24	\$37.24	5/14/2010	\$33.88	\$37.89
4/28/2010	\$39.04	\$38.14	5/17/2010	\$34.60	\$37.67
4/29/2010	\$40.35	\$38.88	5/18/2010	\$34.91	\$37.50
4/30/2010	\$40.68	\$39.33	5/19/2010	\$34.13	\$37.30
5/3/2010	\$41.38	\$39.74	5/20/2010	\$32.83	\$37.05
5/4/2010	\$39.80	\$39.75	5/21/2010	\$33.57	\$36.87
5/5/2010	\$39.52	\$39.72	5/24/2010	\$33.26	\$36.69
5/6/2010	\$38.38	\$39.55	5/25/2010	\$33.14	\$36.52
5/7/2010	\$37.90	\$39.37	5/26/2010	\$32.94	\$36.36
5/10/2010	\$38.65	\$39.29	5/27/2010	\$34.80	\$36.29
5/11/2010	\$34.85	\$38.89	5/28/2010	\$34.24	\$36.20
5/12/2010	\$35.10	\$38.57	6/1/2010	\$33.37	\$36.09
5/13/2010	\$33.72	\$38.20	6/2/2010	\$33.70	\$36.00

Date	Closing Price	Average Closing Price	Date	Closing Price	Average Closing Price
6/3/2010	\$33.89	\$35.92	6/29/2010	\$34.00	\$35.53
6/4/2010	\$32.76	\$35.81	6/30/2010	\$34.01	\$35.50
6/7/2010	\$32.24	\$35.69	7/1/2010	\$34.01	\$35.47
6/8/2010	\$32.81	\$35.59	7/2/2010	\$33.98	\$35.44
6/9/2010	\$33.53	\$35.52	7/6/2010	\$33.42	\$35.40
6/10/2010	\$34.73	\$35.50	7/7/2010	\$34.65	\$35.38
6/11/2010	\$34.44	\$35.47	7/8/2010	\$35.34	\$35.38
6/14/2010	\$35.11	\$35.46	7/9/2010	\$35.50	\$35.38
6/15/2010	\$37.25	\$35.51	7/12/2010	\$36.18	\$35.40
6/16/2010	\$36.18	\$35.53	7/13/2010	\$37.01	\$35.43
6/17/2010	\$36.39	\$35.55	7/14/2010	\$37.47	\$35.46
6/18/2010	\$36.53	\$35.57	7/15/2010	\$53.74	\$35.79
6/21/2010	\$36.42	\$35.60	7/16/2010	\$53.45	\$36.10
6/22/2010	\$35.47	\$35.59	7/19/2010	\$53.45	\$36.40
6/23/2010	\$35.72	\$35.60	7/20/2010	\$53.65	\$36.69
6/24/2010	\$34.65	\$35.57	7/21/2010	\$53.65	\$36.97
6/25/2010	\$35.53	\$35.57	7/22/2010	\$53.93	\$37.25
6/28/2010	\$35.32	\$35.57	7/23/2010	\$54.19	\$37.53

The date of purchase or sale is the “contract” or “trade” date as distinguished from the “settlement” date. The determination of the price paid per share, and the price received per share, shall be exclusive of all commissions, taxes, fees, and charges.

For Class Members who made multiple acquisitions, purchases or sales during the Class Period, the first-in, first-out (“FIFO”) method will be applied to such holdings, purchases, and sales for purposes of calculating a claim. Under the FIFO method, sales of shares during the Class Period will be matched, in chronological order, first against shares held at the beginning of the Class Period. The remaining sales of shares during the Class Period will then be matched, in chronological order, against shares purchased during the Class Period.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

## VIII. PARTICIPATION IN THE CLASS

If you fall within the definition of the Class, you are a Class Member unless you elect to be excluded from the Class pursuant to this Notice. If you do not request to be excluded from the Class, you will be bound by any judgment entered with respect to the Settlement in the litigation against Defendants whether or not you file a Proof of Claim and Release form.

***If you are a Class Member, you need do nothing (other than timely file a Proof of Claim and Release if you wish to participate in the distribution of the Net Settlement Fund). Your interests will be represented by Lead Counsel.*** If you choose, you may enter an appearance individually or through your own counsel at your own expense.

TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE THAT ACCOMPANIES THIS NOTICE. The Proof of Claim and Release must be postmarked on or before June 5, 2013, and be delivered to the Claims Administrator at: *NBTY Securities Litigation*, Claims Administrator, c/o GCG, P.O. Box 9349, Dublin, OH 43017-4249. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim and Release, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Settlement Agreement and the Final Judgment.

## **IX. EXCLUSION FROM THE CLASS**

You may request to be excluded from the Class. To do so, you must mail a written request stating that you wish to be excluded from the Class to:

*NBTY Securities Litigation*  
EXCLUSION REQUEST  
Claims Administrator  
c/o GCG  
P.O. Box 9349  
Dublin, OH 43017-4249

The request for exclusion must state: (1) your name, address, and telephone number; and (2) all acquisitions, purchases and sales of NBTY common stock made during the Class Period, including the dates and prices of each acquisition, purchase, or sale, and the number of shares acquired, purchased, or sold. **YOUR EXCLUSION REQUEST MUST BE POSTMARKED ON OR BEFORE MAY 1, 2013.** If you submit a valid and timely request for exclusion, you shall have no rights under the Settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Agreement or the Judgment.

## **X. DISMISSAL AND RELEASES**

If the proposed Settlement is approved, the Court will enter a final Judgment. The Judgment will dismiss the Released Claims with prejudice as to all Defendants as provided in the Settlement Agreement.

The Judgment will provide that all Class Members who have not validly and timely requested to be excluded from the Class shall be deemed to have released and forever discharged all Released Claims (to the extent members of the Class have such claims) against all Released Persons as provided in the Settlement Agreement.

## **XI. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

At the Settlement Hearing, Lead Counsel will request the Court to award attorneys' fees of 30% of the Settlement Fund, plus litigation expenses not to exceed \$150,000.00, plus interest thereon. Class Members are not personally liable for any such fees, expenses, or compensation.

To date, Plaintiff's Counsel have not received any payment for their services in conducting this Action on behalf of Lead Plaintiff and the members of the Class, nor have counsel been reimbursed for their expenses. The fee requested by Lead Counsel would compensate counsel for their efforts in achieving the Settlement Fund for the benefit of the Class, and for their risk in undertaking this representation on a contingency basis. The fee requested is within the range of fees awarded to plaintiffs' counsel under similar circumstances in litigation of this type.

## **XII. CONDITIONS FOR SETTLEMENT**

The Settlement is conditioned upon the occurrence of certain events described in the Settlement Agreement. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Settlement Agreement; and (2) expiration of the time to appeal from or alter or amend the Judgment. Pending the Court's consideration of this Settlement, the Court has stayed all proceedings, and Class Members are precluded from bringing or pursuing any litigation that seeks to prosecute the Released Claims.

If, for any reason, any one of the conditions described in the Settlement Agreement is not met, the Settlement Agreement might be terminated and, if terminated, will become null and void, and the Settling Parties to the Settlement Agreement will be restored to their respective positions as of November 12, 2012.

## **XIII. THE RIGHT TO BE HEARD AT THE SETTLEMENT HEARING**

Any Class Member who has not validly and timely requested to be excluded from the Class, and who objects to any aspect of the Settlement, the Plan of Distribution, or the application for attorneys' fees and expenses may appear and be heard at the Settlement Hearing.<sup>1</sup>

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<sup>1</sup> Lead Counsel's pleadings in support of these matters will be filed with the Court on or before April 10, 2013.

Any such Person must submit and serve a written notice of objection, to be received on or before May 1, 2013, by each of the following:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
100 Federal Plaza  
Central Islip, NY 11722

ROBBINS GELLER RUDMAN  
& DOWD LLP  
ROBERT M. ROTHMAN  
58 South Service Road, Suite 200  
Melville, NY 11747

WILLKIE FARR & GALLAGHER LLP  
ANTONIO YANEZ, JR.  
787 Seventh Avenue  
New York, NY 10019

Counsel for Lead Plaintiff

Attorneys for Defendants

The notice of objection must demonstrate the objecting Person's membership in the Class, including the number of shares of NBTY common stock acquired, purchased and sold during the Class Period, and contain a statement of the reasons for objection. Only Class Members who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise.

#### **XIV. SPECIAL NOTICE TO BANKS, BROKERS AND OTHER NOMINEES**

If you hold or held any NBTY shares acquired or purchased during the Class Period as nominee for a beneficial owner, then, within ten (10) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice and the Proof of Claim and Release by First-Class Mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*NBTY Securities Litigation*  
Claims Administrator  
c/o GCG  
P.O. Box 9349  
Dublin, OH 43017-4249

If you choose to mail the Notice and Proof of Claim and Release yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and Proof of Claim and Release and which would not have been incurred but for the obligation to forward the Notice and Proof of Claim and Release, upon submission of appropriate documentation to the Claims Administrator.

#### **XV. EXAMINATION OF PAPERS**

This Notice is a summary and does not describe all of the details of the Settlement Agreement. For full details of the matters discussed in this Notice, you may review the Settlement Agreement filed with the Court, which may be inspected during business hours at the office of the Clerk of the Court, United States District Court, Eastern District of New York, 100 Federal Plaza, Central Islip, New York 11722. The motion papers, with exhibits, including the Settlement Agreement, are also available on the Court's ECF website (for a fee). Certain papers relating to the settlement, including the Settlement Agreement, are also available at the Claims Administrator's website [www.gcginc.com](http://www.gcginc.com).

If you have any questions about the settlement of the Action, you may contact a representative of Lead Counsel: Rick Nelson, c/o Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900.

**DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE**

DATED: February 13, 2013

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK