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

RANDY NUNEZ, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

NBTY, INC., a Delaware Corporation;  
ARTHRITIS RESEARCH CORP., a  
Delaware Corporation; and NATURE’S  
BOUNTY, INC., a Delaware Corporation,

Defendants.

Case No. 13-cv-0495 MMA-BGS

**ORDER GRANTING MOTION TO  
STAY**

[Doc. No. 31]

Plaintiff Randy Nunez brings this putative class action alleging, *inter alia*, Breach of Express Warranty regarding the joint health benefits of the “Flex-amin” line of supplements. Doc. No. 1. Defendants NBTY, Inc., Arthritis Research Corp., and Nature’s Bounty, Inc. (“Defendants”) move for a stay of all proceedings in light of a second nationwide class action settlement in a related case. Doc. No. 31. Plaintiff opposes on grounds that a stay is not warranted. Doc. No. 33 (“Opposition”). For the reasons set forth below, the Court **GRANTS** Defendants’ motion to stay all proceedings.

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## BACKGROUND

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2 On March 1, 2013, Plaintiff Randy Nunez initiated this action by filing a Class  
3 Action Complaint for: (1) violation of California's Unfair Competition Law; (2) violation  
4 of California's Consumer Legal Remedies Act; and (3) Breach of Express Warranty. On  
5 June 28, 2013, the Court granted a joint motion to stay this litigation pending approval of  
6 a nationwide class action settlement in the related case of *Pearson v. NBTY, et al.*, Case  
7 No. 11-cv-07972 (N.D. Ill.), as the settlement class in *Pearson* encompassed the putative  
8 class in this case and involved the same claims.

9 Although the court in *Pearson* eventually granted final approval of the proposed  
10 settlement, three class members objected and appealed to the Seventh Circuit. On  
11 November 19, 2014, the Seventh Circuit entered an opinion rejecting the settlement and  
12 remanding the case for further proceedings. *See Pearson v. NBTY, et al.*, Case No. 14-  
13 1198 (7th Cir. Nov. 19, 2014). On March 4, 2015, the Court granted Plaintiff's motion to  
14 lift the stay in this case, and appointed interim class counsel. On April 10, 2015,  
15 Defendants executed a new global nationwide class action settlement in *Pearson*.  
16 Accordingly, Defendants now move the Court for a stay of all proceedings pending a  
17 ruling on the new settlement.

## LEGAL STANDARD

18  
19 “[T]he power to stay proceedings is incidental to the power inherent in every court  
20 to control the disposition of the causes on its docket with economy of time and effort for  
21 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see*  
22 *also CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (“A district court has inherent  
23 power to control the disposition of the causes on its docket in a manner which will  
24 promote economy of time and effort for itself, for counsel, and for litigants.”).

25 Although “[a] trial court may, with propriety, find it is efficient for its own docket  
26 and the fairest course for the parties to enter a stay of an action before it, pending  
27 resolution of independent proceedings which bear upon the case,” *Leyva v. Certified*  
28 *Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979), “case management

1 standing alone is not necessarily a sufficient ground to stay proceedings,” *Dependable*  
2 *Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). Instead,  
3 “if there is even a fair possibility that the stay for which he prays will work damage to  
4 some one else,” then the movant “must make out a clear case of hardship or inequity in  
5 being required to go forward.” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936).

6 Accordingly:

7 Where it is proposed that a pending proceeding be stayed, the competing  
8 interests which will be affected by the granting or refusal to grant a stay  
9 must be weighed. Among these competing interests are the possible damage  
10 which may result from the granting of a stay, the hardship or inequity which  
11 a party may suffer in being required to go forward, and the orderly course of  
12 justice measured in terms of the simplifying or complicating of issues, proof,  
13 and questions of law which could be expected to result from a stay.

14 *CMAX*, 300 F.2d at 268.

15 “A stay should not be granted unless it appears likely the other proceedings will be  
16 concluded within a reasonable time in relation to the urgency of the claims presented to  
17 the court.” *Leyva*, 593 F.2d at 864.

#### 18 DISCUSSION

19 Defendants move to stay this case as “the interests of the parties and the Court are  
20 best served by a stay of this action pending approval of the *Pearson* settlement,” which, if  
21 approved, “will resolve all of Plaintiff’s claims before this Court.” Doc. No. 31-1 at 4.  
22 Plaintiff opposes on grounds that a stay would prejudice Mr. Nunez and the putative class  
23 because “Nunez should not have to stand aside while others determine his rights when his  
24 attorney has been appointed interim class counsel,” and because Nunez and the putative  
25 class have been “unable to participate in proceedings that will decide key legal questions  
26 affecting [their] rights.” Opposition at 4.

27 If there were a fair possibility that a stay of this case would damage Plaintiff, then  
28 Defendants would be required make out a clear case of hardship or inequity to support a  
stay. *See Landis*, 299 U.S. at 255. However, it does not appear that there is a possibility

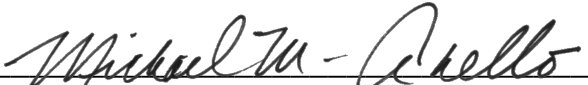
1 that Plaintiff will be harmed if this case is stayed pending approval of the second *Pearson*  
 2 settlement. Although Mr. Nunez is not a party in the *Pearson* case, as a Class Member he  
 3 is free to opt-out of any proposed settlement or to object to the proposed settlement as he  
 4 sees fit. This case was previously stayed for approximately one year and eight months  
 5 pursuant to the joint motion of the parties, and there is no evidence that any damage will  
 6 result from a stay pending approval of the latest *Pearson* settlement.<sup>1</sup> Although “case  
 7 management standing alone is not *necessarily* a sufficient ground to stay proceedings,”  
 8 *Dependable Highway*, 498 F.3d at 1066 (emphasis added), granting a stay here is “in the  
 9 best interests of the parties and the orderly course of justice” because it appears  
 10 undisputed that final approval of the *Pearson* settlement will render this class action moot,  
 11 *Nunez v. Supervalu, Inc.*, No. 13-CV-626-WQH-JMA, 2014 WL 2759077, at \*2 (S.D.  
 12 Cal. June 16, 2014).

### CONCLUSION

14 For the reasons set forth above, the Court **GRANTS** the motion to stay this matter  
 15 pending approval of the *Pearson* settlement, and this action is **STAYED** pending further  
 16 order of the Court. The parties shall file a joint status report within ninety (90) days of  
 17 this order detailing the status of the settlement approval process in *Pearson*.

18 **IT IS SO ORDERED.**

20 Dated: August 7, 2015

  
 Hon. Michael M. Anello  
 United States District Judge

28 <sup>1</sup> In his Opposition, Plaintiff asserts that “[a] stay would cause undue delay, and prejudice Nunez and his putative class,” but does not explain why this is so. Opposition at 5.