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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Herbal Care Systems, Inc., et al.,

No. cv-06-2698-PHX-ROS

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Plaintiffs,

**ORDER**

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vs.

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James Plaza, et al.,

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Defendants.

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Before the Court is Defendant’s Motion for Reconsideration (Doc. 101). For the reasons stated herein, Defendant’s Motion will be denied.

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Herbal Care Systems, Inc. (“HCS”) sold Paraben-Glycol Free (“PG Free”), a product used in personal hygiene products such as deodorants. Body Blue, Inc. was a Canadian company that originally developed the formula for PG Free at the request of HCS. The two companies had an arrangement by which HCS would forward purchase orders to Body Blue, which would then ship the orders to HCS’s customers.<sup>1</sup> HCS would be paid directly by the customers, and then, in turn, pay Body Blue.

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In July of 2004, Plaintiffs William Grundemann and the Oak Leaf Family Trust entered into a Stock Redemption Agreement with HCS and Body Blue. The agreement was

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<sup>1</sup> Plaza states that this happened only sometimes; sometimes purchase orders were routed directly through Body Blue.

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1 executed by Defendant James Plaza on behalf of HCS and by David Elliott as president of  
2 Body Blue. In that agreement, HCS and Body Blue agreed that, in exchange for purchasing  
3 the stock of the Plaintiffs in question, Body Blue would:

4 continue to license its PG Free technology to [HCS] and to manufacture all  
5 products it currently manufactures and use best efforts to offer to manufacture  
6 all new products for [HCS] and its customers for a period of at least 64 months  
after the Closing Date and on substantially the same terms as Body Blue, Inc.  
currently provides to [HCS].

7 The parties also agreed that HCS and its principals would not participate in any business that  
8 competes with the business of HCS.

9 After execution of the Stock Redemption Agreement Plaintiffs allege that Plaza  
10 coordinated with Body Blue to transfer HCS's purchase orders to a new company owned by  
11 Plaza (though none of these negotiations came to fruition). In 2005, Plaza allegedly  
12 instructed HCS's customers to pay money directly to Body Blue instead of HCS; Plaza states  
13 those companies had come under new management and preferred to deal with Body Blue  
14 directly. Either way, HCS was owed royalties from Body Blue pursuant to a Royalty  
15 Agreement between the two companies. Body Blue continued to pay royalties in 2005 but  
16 ceased in 2006, strangling HCS's cash flow. Plaza received a salary from Body Blue  
17 throughout this period.

18 Shortly thereafter, Body Blue entered receivership in Canada. HCS was not termed  
19 a creditor able to recover any money from Body Blue. The Ontario Superior Court of Justice  
20 ordered that:

21 Body Blue 2006 and any successors in title to PG Free are not bound by any  
22 contractual obligations or liabilities of any kind related to PG Free in existence  
23 at or prior to the date the Approval and Vesting Order was made, including any  
24 of the claims asserted in the action commenced by Herbal Care Systems, Inc.  
et al against Body Blue 2006 et al in the Superior Court of the State of Arizona  
in and for the county of Maricopa.

25 It also ordered that:

26 Herbal Care is not entitled to rely upon any agreement or contract it had with  
27 Old Body Blue in existence at or prior to the date of the Approval and Vesting  
28 Order related to PG Free and, in particular, in accordance with the Approval  
and Vesting Order and as from its date, Herbal Care has and had no further  
right to manufacture, sell or claim commissions, royalties or payments of any

1 kind in relation to PG Free and has no interest of any type whatsoever in PG  
2 Free.

3 In its March 17, 2009 Order, this Court considered the applicability of the Ontario decision  
4 to the present case. It concluded:

5 While this Court does indeed respect the comity due the Ontario Superior  
6 Court of Justice, that opinion focuses on the rights and liabilities of HCS and  
7 Body Blue relating to PG Free. It was not attempting to determine the rights  
8 and liabilities of Plaza vis-à-vis the shareholder plaintiffs here, nor did the  
9 Ontario court make factual findings concerning those issues.

10 Defendant now moves for reconsideration of that decision and asks the Court to enter  
11 summary judgment in his favor.

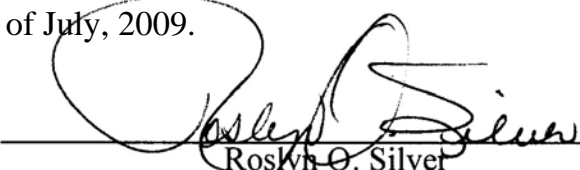
12 Defendant argues that because HCS lost all rights to manufacture, sell or claim  
13 commissions, royalties or payments of any kind in relation to PG Free, it cannot seek to hold  
14 Plaza liable for lost revenues from those products after the date Body Blue entered  
15 receivership on May 19, 2006. Plaintiffs respond that HCS did not lose its cash flow as a  
16 direct result of the court order in Ontario; rather, it lost the right to sue Body Blue for breach  
17 of the licensing agreement, something that would have been irrelevant if HCS had kept its  
18 own customers.

19 Plaintiffs are correct. They are alleging that Defendant wrongly took control over  
20 purchase orders that should have continued to flow through HCS. Had those purchase orders  
21 continued to flow through HCS, it would have been paid directly and would, in theory, not  
22 have lost money when Body Blue entered receivership. The fact that Herbal Care cannot  
23 recover against Body Blue does not mitigate its case against Defendant; if anything, it  
24 strengthens it.

25 Accordingly,

26 **IT IS ORDERED** Defendant Plaza's Motion (Doc. 101) is **DENIED**.

27 DATED this 23rd day of July, 2009.

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Roslyn O. Silver  
United States District Judge