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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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UNITED SAFEGUARD )  
DISTRIBUTORS ASSOCIATION, )  
INC., a Georgia )  
corporation; GREG SCHOB, an )  
individual; VICKI SCHOB, an )  
individual; and SCHOB AND )  
SCHOB, INC., a California )  
corporation, )

Plaintiffs, )

v. )

SAFEGUARD BUSINESS SYSTEMS, )  
INC., a Delaware )  
corporation; SAFEGUARD )  
ACQUISITIONS, INC., a )  
Delaware corporation; )  
DELUXE CORPORATION, a )  
Minnesota corporation; and )  
DOES 1-10, )

Defendants. )

2:15-CV-03998 RSWL (AJW)

**ORDER re: UNITED  
SAFEGUARD DISTRIBUTORS  
ASSOCIATION, INC.'S  
MOTION FOR  
RECONSIDERATION OF THE  
COURT'S NOVEMBER 17,  
2015 ORDER [49]**

Currently before the Court is Plaintiff United  
Safeguard Distributors Association, Inc.'s ("Plaintiff"  
or "USDA") Motion for Reconsideration of the Court's  
November 17, 2015 Order ("Motion") [49]. Plaintiff

1 seeks reconsideration of this Court's November 17, 2015  
2 Order (hereinafter "November 17 Order") [41] pursuant  
3 to Federal Rules of Civil Procedure Rule 60(a), 60(b),  
4 and Local Rule 7-18.

5 Plaintiff is correct in arguing that this Court's  
6 previous Order dismissing Plaintiff's declaratory  
7 judgment claim was erroneously predicated on the  
8 misunderstanding that Plaintiff joined with the  
9 remaining Plaintiffs in a breach of contract claim in  
10 their First Amended Complaint. However, for reasons  
11 discussed below, the Court **DENIES** Plaintiff's Motion  
12 for Reconsideration [49].

## 13 I. BACKGROUND

### 14 A. Factual Background

#### 15 1. The Parties

16 Plaintiff USDA is incorporated in Georgia and has  
17 an office in La Mirada, California. FAC ¶ 27. USDA is  
18 a membership organization composed of Safeguard  
19 franchises and distributors, founded in April 1997.  
20 FAC ¶ 27. Plaintiff Schob & Schob, Inc. is  
21 incorporated in California with its principal office in  
22 Fresno, California. Id. at ¶ 29. Plaintiffs Vicki and  
23 Greg Schob are individuals residing in or near Fresno,  
24 California. Id. at ¶¶ 30-31.

25 Defendant SBS is a Delaware corporation with its  
26 principal place of business in Dallas, Texas. Id. at ¶  
27 32. Defendant SAI is a Delaware corporation with its  
28 principal place of business in Dallas, Texas. Id. at ¶

1 33. Defendant Deluxe is a Minnesota corporation with  
2 its principal place of business in Shoreview,  
3 Minnesota. Id. at ¶ 34. Deluxe, SBS, and SAI are  
4 sellers of Safeguard products, including business forms  
5 and systems, apparel, and other business services to  
6 small businesses. Id. at ¶ 1. Deluxe acquired SBS in  
7 2004. Id. at ¶ 6. SAI is a wholly-owned subsidiary of  
8 Deluxe. Id. at ¶ 12.

9 2. The SBS Distributor Agreements

10 Since 1972, various distributors ("SBS  
11 Distributors") such as the Schobs have engaged in the  
12 sale of Safeguard products and thereby entered into SBS  
13 Distributor Agreements with SBS. Id. at ¶ 2. The SBS  
14 Distributor Agreements are uniform with respect to  
15 many, but not all, of their provisions. Id. The  
16 material provisions of the SBS Distributor Agreements  
17 that are uniform throughout are those provisions that  
18 grant the SBS Distributors protection against  
19 competition for sales of Safeguard products to prior  
20 customers by "(1) Safeguard itself, (2) all Safeguard  
21 Distributors and franchisees, and (3) any other third  
22 party engaged in the offer and sale of Safeguard  
23 products." Id. at ¶ 3. Specifically, pursuant to the  
24 SBS Distributor Agreements, SBS Distributors are  
25 granted thirty-six months of exclusive rights to all  
26 commissions from customers they solicit. Id.  
27 Additionally, when an SBS Distributor solicits a  
28 subsequent order from that customer, the Distributor

1 has an additional thirty-six months of exclusive rights  
2 to commissions from that customer. Id. Further, SBS  
3 Distributors have the "unqualified right" to  
4 participate in commissions generated through sales to  
5 that customer for up to five years after the  
6 termination of their contracts with SBS - whether they  
7 have been terminated with or without cause. Id. at ¶  
8 4. These rights (referred to by Plaintiffs throughout  
9 their First Amended Complaint and their Opposition to  
10 Defendants' Motion to Dismiss as "Customer Protection")  
11 apply to all of the SBS Distributors' customers for  
12 Safeguard products ("the Protected Customers"). Id.

13 Prior to Deluxe's acquisition of SBS, SBS  
14 Distributors took part in the "Sourced Products  
15 Program," in which SBS Distributors placed wholesale  
16 purchase orders for Safeguard products with vendors  
17 approved by SBS ("Approved Vendors") to supplement the  
18 Distributors' Safeguard product offerings to customers.  
19 Id. at ¶¶ 55-56. In 1997, SBS implemented the Billing  
20 Only Distributor Paid ("BODP") Program so that SBS  
21 Distributors would pay Approved Vendors directly,  
22 instead of SBS paying them. Id. at ¶¶ 61-62. In 2008,  
23 Deluxe, having acquired SBS, launched its Business  
24 Acquisitions and Mergers ("BAM") Program. Id. at ¶ 12.  
25 Under the BAM Program, Deluxe acquires independent non-  
26 SBS distributor businesses in the small business forms,  
27 supplies, and services product market. Id. at ¶ 13.  
28 The BAM program is "designed to maximize Deluxe

1 insourcing (the percentage of products sold or  
2 manufactured by Deluxe), [and thereby] increase the  
3 amount of revenue Deluxe obtains from rebates and  
4 cross-sell[ing] Deluxe products to new customers, who  
5 used to buy from Deluxe's competitors. The BAM Program  
6 is also designed to expand Deluxe's range of products."

7 Id.

8 3. Plaintiffs' Allegations in their FAC

9 a. *USDA's Standing*

10 Plaintiffs allege that USDA has standing to  
11 maintain this action because its members have suffered  
12 injury-in-fact by conduct of each of the Defendants.  
13 FAC ¶ 41. USDA asserts that neither its claim nor  
14 request for relief requires the participation of USDA's  
15 individual members. FAC ¶ 44.

16 b. *Plaintiffs' Declaratory Judgment Claim*  
17 *against all Defendants*

18 In their First Amended Complaint, Plaintiffs seek a  
19 declaratory judgment against all Defendants, while the  
20 remaining ten claims are brought specifically by the  
21 Schobs against various Defendants. Id. at ¶¶ 253-261.

22 Plaintiffs allege that Defendants implemented a  
23 "scheme" to drive SBS Distributors out of business by  
24 effectively eliminating Defendants' competition for the  
25 sale of Safeguard products. Id. at ¶¶ 1, 107.

26 Plaintiffs allege that Deluxe increased fees,  
27 threatened SBS Distributors, and implemented policies  
28 designed to reduce SBS Distributors' sales commissions.

1 Id. at ¶¶ 9-11, 72, 77, 91, 95, 101, 105-106, 110, 115.  
2 Plaintiffs allege that Deluxe forced SBS Distributors  
3 to implement a "percentage schedule" for the BODP  
4 Program which tripled fees for products sourced from  
5 Approved Vendors other than Deluxe, effectively  
6 discouraging SBS Distributors from using Approved  
7 Vendors. Id. at ¶¶ 6, 9. Plaintiffs allege that the  
8 increased fees are designed to encourage SBS  
9 Distributors to source products from Deluxe, or where  
10 Deluxe doesn't manufacture the product, to source from  
11 what Deluxe and SBS characterize as "Preferred  
12 Suppliers" or "Preferred Vendors." Id. Plaintiffs  
13 allege that the "Preferred Suppliers" pay Deluxe "kick-  
14 backs" or "rebates" which exceed 7% of the Preferred  
15 Suppliers gross sales. Id.

16 Additionally, Plaintiffs assert that Deluxe has  
17 recently implemented a new policy of revenue  
18 enhancement which gives Deluxe a 2% rebate from  
19 Distributors when Deluxe makes payments to "Approved  
20 Vendors" ("2% Net 30"), rather than "Preferred  
21 Suppliers." Id. at ¶¶ 160-166. Plaintiffs allege that  
22 the 2% rebate to Deluxe is unreasonable and not  
23 reflected in SBS Distributors' invoices. Plaintiffs  
24 argue that the rebate inflates the overall wholesale  
25 prices for the SBS Distributors, thereby making sales  
26 to Approved Vendors even more difficult. Id.

27 Plaintiffs further allege that Defendant Deluxe  
28 used Defendant SAI to acquire non-SBS Distributor

1 businesses through the BAM Program to compete with and  
2 take customers from SBS Distributors, in direct  
3 violation of the alleged Customer Protection policies.  
4 Id. at ¶¶ 12-16, 140-154, 156, 159, 180, 183, 187.  
5 Plaintiffs allege that these acquisitions were made in  
6 an effort to terminate their SBS Distributor  
7 Agreements. Id. Plaintiffs further allege that  
8 Defendants allow the newly acquired distributors to  
9 sell products at prices below what SBS Distributors are  
10 charged. Id. at ¶¶ 17, 189.

11 Next, Plaintiffs contend that Defendants will not  
12 allow SBS Distributors to acquire other distributors  
13 nor sell their business to another distributor without  
14 executing a general release of claims against Deluxe  
15 and its subsidiaries (the "General Release"). Id. at  
16 ¶¶ 19-22, 220, 223. Plaintiffs allege that as a result  
17 of Defendants' actions, SBS Distributors' customer  
18 relationships have been harmed and Plaintiffs have  
19 suffered losses of prospective contracts and  
20 prospective economic advantages. Id. at ¶¶ 23, 288-  
21 298, 308-314.

22 As a remedy for these alleged harms, Plaintiffs  
23 seek a judicial declaration as follows: (a) The BODP  
24 fees violate the SBS Distributor Agreements; (b) SBS  
25 Distributors can purchase from any otherwise qualified  
26 Approved Vendors and are not contractually mandated to  
27 purchase from Deluxe; (c) Deluxe and SBS have no right  
28 to inflate shipping and handling costs under the SBS

1 Distributor Agreements; (d) SBS Distributors are not  
2 required to purchase products from Preferred Suppliers;  
3 (e) SBS and Deluxe are required to enforce the Customer  
4 Protection provisions of the SBS Distributor  
5 Agreements; (f) SBS and Deluxe cannot require a general  
6 release as a condition to the transfer of a SBS  
7 Distributor franchise; (g) under the SBS Distributor  
8 Agreements, Deluxe and SBS have no right to retain  
9 "rebates" from the Preferred Supplier Program or demand  
10 payment terms of 2% Net 30. Id. at ¶¶ 97, 108, 128,  
11 152, 191, 225, 252; see also id. at ¶¶ 253-261.  
12 Plaintiffs Greg Schob, Vicki Schob, and Schob and  
13 Schob, Inc. ("the Schob Plaintiffs") brought a separate  
14 breach of contract claim against Defendants based on  
15 nearly identical grounds as those supporting  
16 Plaintiffs' declaratory judgment claim.<sup>1</sup>

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17  
18 <sup>1</sup>The Schob Plaintiffs claim SBS breached the Schobs'  
19 Agreement in the following nine ways: (1) Requiring the Schobs to  
20 purchase from Deluxe's Preferred Suppliers, including Deluxe  
21 itself; (2) Requiring Preferred Suppliers to pay rebates or  
22 "kickbacks" at the Schobs' expense; (3) Imposing 2% Net 30  
23 payment terms on non-preferred Approved Vendors at the Schobs'  
24 expense; (4) Charging BODP fees far in excess of actual  
25 administrative costs; (5) Arbitrarily increasing shipping and  
26 handling costs for its own profits; (6) Failing to take action to  
27 prohibit other SBS Distributors from selling to the Schobs'  
28 Protected Customers, pursuant to the alleged Customer Protection  
rights in the Schob Agreement; (7) Failing to pay the Schobs all  
commissions generated by sales to its Protected Customers  
pursuant to the alleged Customer Protection rights; (8) Failing  
to provide the Schobs with copies of all inquiries and other  
correspondence related to its Protected Customers, together with  
copies of SBS's reply to such inquiries or correspondence; and  
(9) Failing to notify the Schobs, with reasonable promptness, of  
any event that may reasonably be expected to have a material  
adverse effect upon the sale of Safeguard Systems to its



1 **B. Procedural History**

2 Plaintiff USDA filed its initial Complaint on May  
3 27, 2015 [1]. On July 2, 2015, USDA filed its First  
4 Amended Complaint including the Schob Plaintiffs [17].  
5 On July 20, 2015 Defendants filed two Motions to  
6 Dismiss as to Plaintiffs USDA and the Schob Plaintiffs,  
7 respectively [24, 26]. On July 28, 2015, Plaintiffs  
8 submitted their respective Oppositions to Defendants'  
9 Motions to Dismiss [30, 31]. On August 4, 2015,  
10 Defendants submitted their Replies in support of their  
11 Motions to Dismiss the First Amended Complaint [33,  
12 35].

13 On November 17, 2015, this Court granted in part  
14 and denied in part Defendants' Motion to Dismiss as to  
15 the Schob Plaintiffs [41]. Also on November 17, 2015,  
16 this Court granted in part and denied in part  
17 Defendants' Motion to Dismiss as to Plaintiff USDA  
18 [42]. On January 22, 2016, Plaintiff USDA and the  
19 Schob Plaintiffs filed their respective Motions for  
20 Reconsideration [49, 50]. On February 2, 2016  
21 Defendants filed their Oppositions to Plaintiffs'  
22 Motions [51, 52]. On February 9, 2016, Plaintiffs  
23 filed their Replies [54, 55].

24 On February 22, this Court granted the parties'  
25 Stipulation to Stay Further Proceedings Regarding the  
26 Schob Plaintiffs' Claims [57]. On April 5, 2016 this  
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28 \_\_\_\_\_  
Protected Customers. FAC ¶ 265.

1 Court granted a Stipulation to Dismiss the Schob  
2 Plaintiffs' claims with prejudice [60]. The Schob  
3 Plaintiffs were thus dismissed from the matter, and  
4 accordingly, the Schob Plaintiffs' Motion for  
5 Reconsideration was terminated. USDA's Motion for  
6 Reconsideration remains.

## 7 II. DISCUSSION

### 8 A. Legal Standards

#### 9 1. Motion for Reconsideration

10 Local Rule 7-18 provides the basis for bringing a  
11 motion for reconsideration in the Central District of  
12 California. The Local Rule provides, in relevant part:  
13 "[a] motion for reconsideration of the decision on any  
14 motion may be made only on the grounds of (a) a  
15 material difference in the fact or law form that  
16 presented to the Court before such decision that in the  
17 exercise of reasonable diligence could not have been  
18 known to the party moving for reconsideration at the  
19 time of such decision, or (b) the emergence of new  
20 material facts or a change of law occurring after the  
21 time of such decision, or (c) a manifest showing of a  
22 failure to consider material facts presented to the  
23 Court before such decision. No motion for  
24 reconsideration shall in any manner repeat any oral or  
25 written argument made in support of or in opposition to  
26 the original motion." L.R. 7-18.

27 "Whether to grant a motion for reconsideration  
28 under Local Rule 7-18 is a matter within the court's

1 discretion." Daghlian v. Devry Univ., Inc., 582  
2 F.Supp.2d 1231, 1251 (C.D. Cal. Oct. 10, 2007). "A  
3 motion for reconsideration should not be granted,  
4 absent highly unusual circumstances." 389 Orange St.  
5 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999).  
6 Motions for reconsideration "are disfavored and are  
7 rarely granted." Resolution Trust Corp v. Aetna  
8 Casualty & Sur. Co., 873 F.Supp. 1386, 1393 (D. Ariz.  
9 1994).

10 Pursuant to Federal Rule of Civil Procedure 60(a),  
11 "[t]he court may correct a clerical mistake or a  
12 mistake arising from oversight or omission whenever one  
13 is found in a judgment, order, or other part of the  
14 record." Fed. R. Civ. P. 60(a).

15 2. Motion to Dismiss Pursuant to F.R.C.P. 12(b)(1)

16 Federal Rule of Civil Procedure 12(b)(1) authorizes  
17 a court to dismiss claims over which it lacks proper  
18 subject matter jurisdiction. A court is free to  
19 determine jurisdiction on a motion to dismiss for lack  
20 of jurisdiction under Rule 12(b)(1) "unless the  
21 jurisdictional issue is inextricable from the merits of  
22 a case." Kingman Reef Atoll Invs., L.L.C. v. United  
23 States, 541 F.3d 1189, 1195 (9th Cir. 2008) (citing  
24 Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir.  
25 1987)).

26 Article III requires a case or controversy in order  
27 for federal courts to have subject matter jurisdiction.  
28 U.S. Const. Art. 3, § 2. The standing doctrine

1 eliminates claims that fail to create a case or  
2 controversy. Summers v. Earth Island Inst., 555 U.S.  
3 488, 493 (2009); Cetacean Cmty. v. Bush, 386 F.3d 1169,  
4 1174 (9th Cir. 2004). A defendant may challenge a  
5 plaintiff's standing in a motion to dismiss under  
6 F.R.C.P. 12(b)(1) for "lack of subject-matter  
7 jurisdiction." White v. Lee, 227 F.3d 1214, 1242 (9th  
8 Cir. 2000).

9 Standing is a jurisdictional requirement that  
10 precedes analysis of the merits. Krottner v. Starbucks  
11 Corp., 628 F.3d 1139, 1141 (9th Cir. 2010). The party  
12 seeking to invoke the jurisdiction of the federal  
13 courts has the burden of alleging specific facts to  
14 satisfy the three elements of constitutional standing.  
15 Schmier v. U.S. Court of Appeals for the Ninth Cir.,  
16 279 F.3d 817, 821 (9th Cir. 2002). The plaintiff must  
17 establish (1) a legally recognized injury, (2) caused  
18 by the named defendant that is (3) capable of legal or  
19 equitable redress. Id. "Injury in fact," as required  
20 for federal standing, is an invasion of a legally  
21 protected interest which is (a) concrete and  
22 particularized, and (b) actual or imminent, not  
23 "conjectural" or "hypothetical," where "particularized"  
24 means simply that the injury must affect the plaintiff  
25 in a personal and individual way. U.S. Const. Art. 3,  
26 § 2, cl. 1.

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1 **B. Analysis**

2 1. The Court Lacks Subject Matter Jurisdiction  
3 Over Plaintiff's Claim

4 a. *USDA Lacks Standing to Bring its Claim*

5 The standing doctrine eliminates claims that fail  
6 to create a case or controversy. Summer v. Earth  
7 Island Inst., 555 U.S. 488, 493 (2009); Cetacean Cmty.  
8 v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004) (citation  
9 omitted). A defendant may challenge a plaintiff's  
10 standing in a motion to dismiss under Federal Rule of  
11 Civil Procedure 12(b)(1) for "lack of subject-matter  
12 jurisdiction." White v. Lee, 227 F.3d 1214, 1242 (9th  
13 Cir. 2000).

14 A plaintiff has the burden of alleging specific  
15 facts sufficient to establish standing. Schmier v.  
16 U.S. Court of Appeals for the Ninth Cir., 279 F.3d 817,  
17 821 (9th Cir. 2002). The Plaintiff bears the burden of  
18 establishing standing at each and every stage of the  
19 litigation. Krottner, 628 F.3d at 1141. Additionally,  
20 a plaintiff is required to establish "'standing for  
21 each claim he seeks to press' and 'for each form of  
22 relief that is sought.'" Davis v. Fed. Elec. Comm'n,  
23 554 U.S. 724, 734 (2008). This analysis requires  
24 "careful judicial examination of a complaint's  
25 allegations." Allen v. Wright, 468 U.S. 737, 752  
26 (1984).

27 //

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1           i. *Plaintiff no longer has standing as a*  
2           *co-party of the Schob Plaintiffs.*

3           This Court finds, as it did in its November 17  
4 Order [41], that Plaintiff lacks standing to bring its  
5 declaratory judgment claim. In its original Opposition  
6 [30] to Defendants' Motion to Dismiss, Plaintiff argues  
7 that it need not have independent standing to pursue  
8 its claim because the Schob Plaintiffs had standing to  
9 pursue their claims. Opp'n 3:12-4:2, ECF No. 30.

10          Plaintiff is correct in asserting that if "the  
11 Court finds one of the named plaintiffs has standing to  
12 pursue all of the asserted claims, it need not find  
13 that the other plaintiffs also have standing for those  
14 plaintiffs to remain in the suit." Opp'n 3:14-17, ECF  
15 No. 30 (citing Public Citizen, Inc. v. Miller, 992 F.2d  
16 1548 (11th Cir. 1993)). However, the Schob Plaintiffs  
17 have since settled and dismissed all of their claims  
18 against Defendants in this matter, and are no longer  
19 parties to this action [60]. Consequently, Plaintiff  
20 can no longer establish standing through the Schob  
21 Plaintiffs to bring its declaratory judgment claim  
22 against Defendants. Rather, in order to proceed with  
23 its declaratory judgment claim, Plaintiff must  
24 sufficiently show that it has associational standing.  
25 This Court finds Plaintiff has not met its burden, in  
26 either its prior filings or the present Motion, to  
27 proffer specific facts to establish standing.

28 //

1           ii. *Plaintiff does not meet its burden to*  
2                 *allege specific facts establishing*  
3                 *associational standing.*

4           Associational standing is a narrow and limited  
5 exception to the general rule that litigants must  
6 assert their own rights in order to have standing.  
7 Black Faculty Ass'n of Mesa Coll. v. San Diego Cmty.  
8 Coll. Dist., 664 F.2d 1153, 1156 (9th Cir. 1981). In  
9 order for an association to have standing, (1) its  
10 members must otherwise have standing to sue in their  
11 own right, (2) the interests the association seeks to  
12 protect are germane to its purpose, and (3) neither the  
13 claim asserted nor the relief requested require the  
14 participation of individual members in the lawsuit.  
15 Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333,  
16 343 (1977). A plaintiff must establish that it has  
17 satisfied *each* of the elements of standing and mere  
18 "labels and conclusions" are insufficient. Bell Atl.  
19 Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007).

20           Plaintiff's sole claim in this matter, for  
21 declaratory judgment, asks the Court to declare the  
22 respective rights and duties of all individual members  
23 of Plaintiff USDA under the SBS Distributor Agreements.<sup>2</sup>

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25           <sup>2</sup>Specifically, Plaintiff seeks a judicial declaration  
26 regarding the following: "(a) Whether under the SBS Distributor  
27 Agreement, SBS can require the SBS Distributors to purchase from  
28 Deluxe's Preferred Suppliers, including Deluxe itself; (b)  
Whether under the SBS Distributor Agreement, SBS can require  
Preferred Suppliers to pay rebates or "kickbacks" at the expense  
of the SBS Distributors; (c) Whether under the SBS Distributor

1 See FAC ¶ 255. First and foremost, "SBS Distributor  
2 Agreements" is a broad label that Plaintiffs use to  
3 describe various contracts between SBS Distributors and  
4 SBS, all of which are individualized and signed by the  
5 specific Distributors to whom they apply. As is  
6 evident in comparison of the Schob Plaintiffs'  
7 Agreement with SBS [17-1] and another SBS Distributor  
8 Agreement between Distributor Stephen D. Venture and  
9 SBS ("Venture Agreement"), not all SBS Distributor  
10 Agreements are identical. Compare FAC Ex. A, ECF No.  
11 17-1, with FAC Ex. E, ECF No. 17-1. In fact, SBS  
12 Distributor Agreements contain differing addendums and  
13 amendments that affect the rights and the duties of  
14 those signatories / distributors regarding their  
15 contract with SBS. For this initial reason, it is  
16 clear to this Court that the participation of the  
17 Distributors is required to resolve the disputes at  
18 issue in Plaintiff's declaratory judgment claim.

19 Further, Plaintiff cannot establish associational  
20 standing because its declaratory judgment claim

21 \_\_\_\_\_  
22 Agreement, SBS can impose 2% Net 30 payment terms on  
23 non-preferred Approved Vendors at the expense of the  
24 SBS Distributors; (d) Whether under the SBS Distributor  
25 Agreement, the BODP fees charged by SBS violate the SBS  
26 Distributors Agreements; (e) Whether under the SBS Distributor  
27 Agreement, SBS can arbitrarily increase shipping and handling  
28 costs for its own profits unrelated to the expenses of shipping  
and handling; (f) Whether the BAM program, as implemented,  
violates the SBS Distributors' rights to Customer Protection; and  
(g) Whether under the SBS Distributor Agreement, SBS may require  
a general release from the purchasing SBS Distributor as a  
condition of transferring another SBS Distributor's Agreement."  
FAC ¶ 255, ECF No. 17.



1 requires fact-specific inquiries, which the Supreme  
2 Court has held cannot support an establishment of  
3 associational standing.<sup>3</sup> In fact, associational  
4 standing is not established unless "*neither the claim*  
5 *asserted* nor the relief requested requires the  
6 participation of individual members in the lawsuit."  
7 Hunt, 432 U.S. at 343 (emphasis in original); see, e.g.  
8 Rent Stabilization Association v. Dinkins, 5 F.3d 591  
9 (2d Cir. 1993). The Ninth Circuit has only permitted  
10 associational standing where an association seeks  
11 declaratory relief in cases that involve pure questions  
12 of law. See, e.g., Columbia Basin Apt. Ass'n v. City  
13 of Pasco, 268 F.3d 791, 799 (9th Cir. 2001) (addressing  
14 the constitutionality of a city ordinance); Associated  
15 Gen. Contractors of Am. v. Metro. Water Dist. of S.  
16 Cal., 159 F.3d 1178, 1181 (9th Cir. 1998) (same);  
17 Associated Gen. Contractors of Cal., Inc. v. Coal. for  
18 Econ. Equity, 950 F.2d 1401, 1408 (9th Cir. 1991)  
19 (seeking to enjoin enforcement of city ordinance). In  
20 cases where an association's declaratory relief claim  
21 involves more than just pure legal issues, requiring  
22 factual inquiry, the Ninth Circuit has held that the

23

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24 <sup>3</sup>In International Union, United Automotive, Aerospace &  
25 Agricultural Implement Workers of America v. Brock, the Supreme  
26 Court clarified that the application of the third Hunt  
27 requirement necessarily precluded associational standing unless  
28 the association's claim raises a pure question of law. 477 U.S.  
274, 287 (1986). The Court reasoned that where a complaint  
raises anything other than a pure legal question, the issues  
implicated individualized factual inquiries that Hunt prohibits.  
Id.

1 association lacked standing. See, e.g., Spinedex  
2 Physical Therapy USA Inc. V. United Healthcare of  
3 Arizona, Inc., 770 F.3d 1282, 1292 (9th Cir. 2014)  
4 (finding that the association lacks standing because  
5 the participation of the beneficiaries of a healthcare  
6 plan was required).

7 The Court finds the present case is similar to  
8 Spinedex in that the declaratory relief sought by the  
9 Spinedex plaintiffs required the court to consider the  
10 "individual situations of ACS members." Id. at 1293.  
11 The Ninth Circuit reasoned: "Because of [the] multiple  
12 variations, specific to individual members of ACS, we  
13 conclude that the violations of which ACS complains are  
14 not susceptible to judicial treatment as 'systematic  
15 policy violations that . . . make extensive individual  
16 participation necessary,'" and thus plaintiffs did not  
17 establish associational standing. Id. at 1292.

18 Similarly, in the present case (as we have seen in  
19 comparison of the Schobs' Agreement with the Venture  
20 Agreement above), each SBS Distributor Agreement  
21 contains amendments and addendums producing multiple  
22 variations specific to the individual Distributors.  
23 This makes judicial determination of Plaintiffs'  
24 declaratory relief claim on the Distributors' behalf  
25 inappropriate and unwarranted. The Schob Plaintiffs'  
26 claims may not be common to the entire association  
27 membership, and in any event, this Court finds  
28 Plaintiff did not meet its burden in establishing as

1 such with factual specificity. Associational standing  
2 has not been established. The Court will not intervene  
3 at this juncture to declare the rights of all  
4 Plaintiff's members as they arise from differing,  
5 independent contracts.

6           iii.       *Plaintiff has not shown sufficient*  
7                       *immediacy to establish an "injury-*  
8                       *in-fact."*

9       Finally, this Court finds Plaintiff has not met its  
10 burden to establish immediacy. Specifically, Plaintiff  
11 has not shown it suffered an "injury-in-fact" that is  
12 imminent. To plausibly allege an "injury-in-fact"  
13 establishing Article III standing, a plaintiff must  
14 proffer specific facts showing "a credible threat of  
15 harm," and that the harm is "both real and immediate,  
16 not conjectural or hypothetical." Krottner, 628 F.3d  
17 at 1143 (internal citations omitted). It is  
18 Plaintiff's burden to allege specific facts  
19 establishing standing at each and every stage of the  
20 litigation. Id. at 1141.

21       As discussed in this Court's previous Order  
22 addressing Plaintiffs' declaratory judgment claim [41],  
23 "Plaintiffs have not alleged any facts showing that  
24 Plaintiffs require the immediacy of a judicial  
25 declaration. Plaintiffs appear to seek judicial  
26 declaration not as a preventative measure, but as a  
27 remedial measure to address previously alleged breach  
28 of contract claims." Order dated 11/17/15, 55:24-56:1.

1           Although Plaintiffs were made aware of the  
2 deficiency in their declaratory judgment claim in this  
3 Court's prior Order [41], which Plaintiff concedes in  
4 the present Motion for Reconsideration, see Mot. for  
5 Reconsideration 9:15-10:4, ECF No. 49, Plaintiff  
6 nonetheless proffers no additional facts in support of  
7 its contention that it will imminently suffer an injury  
8 to warrant standing. Furthermore, Plaintiff makes no  
9 showing of how it would remedy the deficiency in its  
10 Reply. For this additional reason, the Court finds  
11 that Plaintiff lacks standing to bring its declaratory  
12 judgment claim. Accordingly, this Court lacks subject  
13 matter jurisdiction over Plaintiff's claim. The Court  
14 **DENIES** Defendant's Motion for Reconsideration [49] for  
15 this additional reason.

16           2. Declaratory Relief under Rule 57 is not  
17           Warranted.

18           Federal Rules of Civil Procedure Rule 57 "govern[s]  
19 the procedure for obtaining a declaratory judgment  
20 under 28 U.S.C. §§ 2201." Fed. R. Civ. P. 57. "When  
21 declaratory relief will not be effective in settling  
22 the controversy, the court may decline to grant it."  
23 Id.; McGraw-Edison Co. v. Preformed Line Products Co.,  
24 362 F.2d 339 (9th Cir. 1966). "A declaratory judgment  
25 is appropriate when it will 'terminate the controversy'  
26 giving rise to the proceeding. Inasmuch as it often  
27 involves only an issue of law on undisputed or  
28 relatively undisputed facts, it operates frequently as

1 a summary proceeding, justifying docketing the case for  
2 early hearing as on a motion." Fed R. Civ. P. 57,  
3 "Notes of Advisory Committee on Rules."

4 In the present case, this Court finds that granting  
5 Plaintiff's declaratory judgment claim against  
6 Defendants would not "terminate the controversy" that  
7 gave rise to this matter. This is evident by the Schob  
8 Plaintiffs' participation in this matter, and by the  
9 fact that "[Plaintiff's] Counsel is concurrently  
10 representing other Safeguard [D]istributors under the  
11 same legal theories as set forth in this action in both  
12 a state court proceeding (filed August 26, 2014) and a  
13 separate arbitration (Demand served February 19, 2015)  
14 in Idaho." See Declaration of Wesley W. Lew ¶ 19, ECF  
15 No. 53. In these proceedings, SBS Distributors are  
16 pursuing alleged individualized harm arising out of  
17 their specific SBS Distributor Agreements.

18 Furthermore, the present matter does not simply  
19 "involve[] only an issue of law on undisputed or  
20 relatively undisputed facts," but rather requires  
21 extensive factual determinations. Fed R. Civ. P. 57,  
22 "Notes of Advisory Committee on Rules." It is not  
23 apparent to this Court that the judicial declaration  
24 sought by Plaintiff would terminate the controversy at  
25 hand.

26 3. USDA should not be afforded leave to amend

27 "A district court need not grant leave to amend  
28 where the amendment: (1) prejudices the opposing party;

1 (2) is sought in bad faith; (3) produces an undue delay  
2 in litigation; or (4) is futile." AmerisourceBergen  
3 Corp. v. Dialysist West, Inc., 465 F.3d 946, 951 (9th  
4 Cir. 2006). "[L]eave to amend is addressed to the  
5 sound discretion of the court, and must be decided upon  
6 the facts and circumstances of each particular case."  
7 Caddy-Imler Creations, Inc. v. Caddy, 399 F.2d 79, 84  
8 (9th Cir. 1962).

9 While Plaintiff is correct in asserting that the  
10 Court's stated basis for dismissing its claim in its  
11 previous Order [42] was in error, additional grounds  
12 exist upon which this Court must dismiss Plaintiff's  
13 claim. Specifically, Plaintiff has not shown imminence  
14 of an "injury-in-fact," and thus it lacks standing to  
15 bring its claim. See Order dated 11/17/15, 55:24-56:1.

16 Plaintiff has already been given leave to amend  
17 this claim, see Order dated 07/1/15, ECF No. 16, and as  
18 such this Court finds further leave to amend would  
19 produce an undue delay in litigation. Additionally, as  
20 Plaintiff has previously been made aware of the  
21 deficiencies of its declaratory judgment claim, the  
22 Court finds Plaintiff's failure to remedy these  
23 deficiencies indicates that further leave to amend  
24 would be futile.<sup>4</sup> Further, Defendants have proffered

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25  
26 <sup>4</sup>Plaintiff argues that any defect in the First Amended  
27 Complaint "can easily be cured" by amendment. See Mot. 9:23-  
28 10:4. However, despite the fact that this Court pointed out  
specific deficiencies in its previous Order [41], Plaintiff's  
present Motion fails to provide any further factual support for  
its contention that it could cure its declaratory claim through a

1 evidence of the prejudice they would suffer if this  
2 case were reopened to allow Plaintiff to attempt for a  
3 third time to remedy their claim. See Opp'n 17:10-  
4 18:2, ECF No. 52.

5 Upon review of the parties' filings and upon  
6 consideration of the repeated deficiencies of  
7 Plaintiff's declaratory judgment claim, this Court  
8 declines to give Plaintiffs further leave to amend  
9 their claim. In doing so, this Court avoids further  
10 undue delay to this litigation and further prejudice to  
11 Defendants. See Eminence Capital, LLC v. Aspeon, Inc.,  
12 316 F.3d 1048, 1052 (9th Cir. 2003).

13 The Clerk shall close this action. All pending  
14 dates on the Court's calendar are VACATED.

15 **IT IS SO ORDERED.**

16 DATED: May 17, 2016

s/ RONALD S.W. LEW  
**HONORABLE RONALD S.W. LEW**  
Senior U.S. District Judge

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21 \_\_\_\_\_  
22 third opportunity to amend its Complaint. Id. Rather, Plaintiff  
23 simply argues that "in its Order addressing the Defendants'  
24 motion to dismiss the Schob Plaintiffs' claims, the Court found  
25 that the Schob Plaintiffs failed to plead the 'sufficient  
26 immediacy' element of their judicial declaration claim. Should  
27 the Court now find that the USDA's pleading is equally lacking,  
28 the USDA would be able to correct the deficiency by alleging a  
myriad of facts" to show that Plaintiff requires immediate  
relief. Id. Plaintiff states in a conclusory fashion,  
"[b]ecause Defendants continue to enforce the above-stated  
policies and programs the immediacy element of a declaratory  
judgment claims has been (and, if necessary, can be) satisfied."  
Id. at 11:21-12:1.