

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

COLEY GASSAWAY,

Plaintiff,

v.

Case No. 12-2769-JTM

JARDEN CORP., SUNBEAM PRODUCTS, INC.  
d/b/a/ JARDEN CONSUMER SOLUTIONS,  
and WAL-MART STORES, INC., et al.,

Defendants.

MEMORANDUM AND ORDER

The court has before it defendants' Motion to Dismiss (Dkt. 7). In the motion, defendants' argument for dismissal based on *res judicata* is contingent upon the plaintiff's previously filed lawsuit in the District of Kansas, *Gassaway v. Jarden Corp., et al.* 11-CV-2496-RDR being dismissed with prejudice. The court dismissed that case without prejudice on March 21, 2012, but defendants filed a motion to convert the judgment into a dismissal *with* prejudice. On January 15, 2013, the court denied the motion. As the earlier suit was not dismissed with prejudice, defendants' arguments for dismissal of this case based on *res judicata* are moot. Accordingly, the court denies the motion.

IT IS THEREFORE ORDERED this 18<sup>th</sup> day of January 2013, that defendants' Motion to Dismiss (Dkt. 7) is denied as moot.

s/J. Thomas Marten  
J. THOMAS MARTEN, JUDGE