

# PHYSICIANS FORMULA HOLDINGS, INC.

## **FORM 8-K** (Current report filing)

Filed 10/20/09 for the Period Ending 10/19/09

Address	1055 WEST 8TH STREET AZUSA, CA, 91702
Telephone	626-334-3395
CIK	0001269871
SIC Code	2844 - Perfumes, Cosmetics and Other Toilet Preparations
Industry	Personal Products
Sector	Consumer Non-Cyclicals
Fiscal Year	12/31

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, DC 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): October 19, 2009

**PHYSICIANS FORMULA HOLDINGS, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation)

**001-33142**  
(Commission File Number)

**23-0340099**  
(IRS Employer Identification No.)

**1055 West 8 th Street**  
**Azusa, California 91702**  
(Address of principal executive offices, including Zip Code)

**(626) 334-3395**  
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Effective October 19, 2009, the Board of Directors of Physicians Formula Holdings, Inc. (the "Company") appointed Mr. Charles J. Hinkaty as a director of the Company to fill the vacancy resulting from Mr. Jeff Berry's resignation on May 29, 2009 to become the Company's Interim Chief Financial Officer. Mr. Hinkaty was also appointed to the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee of the Company's Board of Directors, effective October 19, 2009.

As previously announced, on June 1, 2009, the Company received a NASDAQ Staff Deficiency Letter from the NASDAQ Stock Market LLC ("NASDAQ") indicating that, due to the resignation of Mr. Berry from the Board of Directors, the Company no longer complied with NASDAQ's independent director requirement for continued listing set forth in NASDAQ Listing Rule 5605(b)(1) and NASDAQ's audit committee requirement for continued listing set forth in NASDAQ Listing Rule 5605(c)(2)(A). Mr. Hinkaty's appointment to the Company's Board of Directors and Audit Committee restores the Company's compliance with the independent director and audit committee requirements of the NASDAQ Listing Rules within the applicable grace period.

Mr. Hinkaty was the President and Chief Executive Officer of Del Laboratories, Inc. from August 2005 through his retirement in January 2008. Prior to that, Mr. Hinkaty was the Chief Operating Officer of Del Laboratories, Inc. from January 2005 to August 2005, and Vice President of Del Laboratories, Inc. and President of its subsidiary Del Pharmaceuticals, Inc. from 1985 to January 2005. Mr. Hinkaty served as a director of Del Laboratories, Inc. until December 2007 and has also been a member of the Board of Directors of FGX International since September 2008.

There are no arrangements or understandings between Mr. Hinkaty and any other person pursuant to which he was selected to serve on the Board of Directors, and there are no relationships between Mr. Hinkaty and the Company that would require disclosure under Item 404(a) of Regulation S-K. Mr. Hinkaty will be entitled to the Company's standard non-employee director cash compensation arrangements as described in the Company's 2009 proxy statement filed with the Securities and Exchange Commission on April 27, 2009 and has entered into the Company's standard indemnification agreement for directors, which has been filed as an exhibit to the Company's registration statement on Form S-1 (File No. 333-136913). In addition, on October 19, 2009, the Compensation Committee approved the grant of options to purchase 25,000 shares of the Company's common stock to Mr. Hinkaty on October 19, 2009 under the Company's Amended and Restated 2006 Equity Incentive Plan. Of these options, 6,250 will vest immediately upon grant and the remainder will vest in equal monthly installments of approximately 391 shares, beginning on November 19, 2009, and all of these options will become fully vested and exercisable automatically upon a Change in Control (as defined in the Amended and Restated 2006 Equity Incentive Plan).

A copy of the Company's press release announcing the appointment of Mr. Hinkaty to the Board of Directors is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press Release issued October 20, 2009.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PHYSICIANS FORMULA HOLDINGS, INC.

/s/ Jeff Berry

Date: October 20, 2009

Name: Jeff Berry

Title: Interim Chief Financial Officer

# PHYSICIANS FORMULA

Your beauty. Our passion. We promise.

## **Physicians Formula Appoints Charles Hinkaty to the Company's Board**

AZUSA, Calif., October 20, 2009 -- Physicians Formula Holdings, Inc. (NASDAQ: FACE) ("Physicians Formula" or the "Company") today announced that it has appointed Charles Hinkaty to join the Company's Board of Directors effective October 19, 2009. Mr. Hinkaty will be replacing Jeff Berry who resigned as a director on May 29, 2009 to become Interim Chief Financial Officer of Physicians Formula.

The Board of Directors determined that Mr. Hinkaty qualifies as an independent director under the Nasdaq listing rules. In addition to his general appointment to the Board of Directors, Mr. Hinkaty will also join the Company's Audit, Compensation, and Nominating and Corporate Governance Committees of the Board of Directors.

Mr. Hinkaty was the President and Chief Executive Officer of Del Laboratories, Inc. from August 2005 through his retirement in January 2008. Prior to that, Mr. Hinkaty was the Chief Operating Officer of Del Laboratories, Inc. from January 2005 to August 2005, and Vice President of Del Laboratories, Inc. and President of its subsidiary Del Pharmaceuticals, Inc. from 1985 to January 2005. Mr. Hinkaty served as a director of Del Laboratories, Inc. until December 2007 and has also been a member of the Board of Directors of FGX International since September 2008. He also led the Consumer Healthcare Products Association from 1999 to 2001.

"Charlie's long and impressive background in the cosmetics industry will further augment the expertise of our existing Board members," said Ingrid Jackel, Chief Executive Officer. "Charlie's advice and counsel will be particularly relevant as we streamline our business model, expand our channel presence, pursue international opportunities and leverage our leadership in complementary face make-up."

"I am very pleased to be joining the Board of Directors of Physicians Formula," stated Mr. Hinkaty. "The Company's passion and success in developing innovative solutions for everyday skin and beauty problems is abundantly clear in the creativity and dedication I see permeating throughout the organization."

### **About Physicians Formula Holdings, Inc.**

Physicians Formula is an innovative cosmetics company operating in the mass market prestige, or "masstige", market. Under its Physicians Formula brand name, created in 1937, the Company develops, markets and distributes innovative, premium-priced products for the mass market channel. Physicians Formula differentiates itself by addressing skin imperfections through a problem-solving approach, rather than focusing on changing fashion trends. Currently, Physicians Formula products are sold in approximately 29,500 stores including stores operated by Wal-Mart, Target, CVS and RiteAid. After the discontinuation by a major customer takes full effect in 2010, the Company's products will be sold in approximately 23,700 stores.

### **Safe Harbor Statement**

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. In some cases, forward-looking statements can be identified by words such as "anticipates," "estimates," "expects," "believes," "plans," "predicts," and similar terms. In particular, this press release may include forward-looking statements about management's expectations regarding the Company's strategy. These forward-looking statements are based on current expectations and strategies for the Company's business and its industry, based on management's beliefs and assumptions. Forward-looking statements are not guarantees of future performance and the Company's actual results may differ significantly from the expectations discussed in the forward-looking statements. Factors that might cause such differences include, but are not limited to: the loss of any additional retailer customers; the demand for the Company's products; the Company's ability to expand its product offerings; the competitive environment in the Company's business; the Company's operations and ability to achieve cost savings; the effect of technological and regulatory changes; the Company's cash needs and financial performance; the Company's ability to comply with the covenants in its debt agreement and its ability to successfully refinance its senior credit agreement; changes in general economic or market conditions; and other factors discussed in the Company's filings with the Securities and Exchange Commission (the "SEC"), including the Risk Factors contained in the Company's filings with the SEC, and available at [www.physiciansformula.com](http://www.physiciansformula.com) and the SEC's website at [www.sec.gov](http://www.sec.gov). You are urged to consider these factors carefully in evaluating the forward-looking statements in this release and are cautioned not to place undue reliance on such forward-looking statements, which are qualified in their entirety by this cautionary statement. Unless otherwise required by law, the Company expressly disclaims any obligation to update publicly any forward-looking statements, whether as result of new information, future events or otherwise.

(FACE/F)

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