

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Marcia S. Krieger

Civil Action No. 08-cv-01381-MSK-CBS

THE CASCADE FUND, LLP, on behalf of itself and a class of similarly situated persons,

Plaintiff,

v.

ABSOLUTE CAPITAL MANAGEMENT HOLDINGS LIMITED,  
ABSOLUTE GENERAL PARTNER LIMITED,  
FLORIAN HOMM,  
SEAN EWING,  
JOHN A. FLEMING,  
RONALD E. TOMPKINS, and  
ULLRICH ANGERSBACH,

Defendants.

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**ORDER DENYING AS MOOT MOTION TO DISMISS**

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THIS MATTER comes before the Court *sua sponte*.

Pending before the Court is a Motion to Dismiss (#26) regarding the claims asserted in the original Complaint (#1) filed by Defendants Absolute Capital Management Holdings Limited, Absolute General Partner Limited, John A. Fleming, and Ronald E. Tompkins (“Defendants”). Plaintiffs did not respond to this motion. Plaintiffs did, however, file an Amended Complaint (#41). Accordingly, Defendants filed an Amended Motion to Dismiss (#46) regarding the claims asserted in the Amended Complaint. Therefore, the first Motion to Dismiss (#26) is superseded by the Amended Motion to Dismiss (#46).

**IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss (#26) is  
**DENIED AS MOOT.**

Dated this 28th day of September, 2009

**BY THE COURT:**



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Marcia S. Krieger  
United States District Judge