

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

Civil Action No. 08-cv-02616-MSK-MEH

MOLLY ELVIG, on behalf of herself and all others similarly situated,

Plaintiffs,

v.

NINTENDO OF AMERICA, INC.,

Defendant.

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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 Defendant's Motion to Dismiss (**#15**) regarding certain 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"). This motion was fully briefed including a response from Plaintiff (**#25**) and a reply by Defendant (**#27**). Plaintiff subsequently, however, filed an Amended Complaint (**#39**). Accordingly, Defendant filed an another Motion to Dismiss (**#41**) regarding the claims asserted in the Amended Complaint. Therefore, the first Motion to Dismiss (**#15**) is superseded by the second Motion to Dismiss (**#41**).

**IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss (#15) is  
**DENIED AS MOOT.**

Dated this 28th day of September, 2009

**BY THE COURT:**

A handwritten signature in black ink, reading "Marcia S. Krieger", is written over a horizontal line.

Marcia S. Krieger  
United States District Judge