

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 11-cv-00165-REB-KMT

JOHN WOLFE, individually and on behalf of all others similarly situated,
MIKE MARNHOUT, individually and on behalf of all others similarly situated, and
SHAZI IQBAL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ASPENBIO PHARMA, INC., a Colorado corporation,
RICHARD G. DONNELLY,
DAVID FAULKER,
GREGORY PUSEY,
JEFFREY G. McGONEGAL,
MARK COLGIN, and
ROBERT CASPARI,

Defendants.

ORDER DENYING AS MOOT MOTION TO DISMISS

Blackburn, J.

The matter before me is defendants' **Notice of Motion and Motion To Dismiss; Memorandum of Points and Authorities** [#4 (text available at #1-29)] filed December 1, 2010. After the motion was filed, plaintiffs filed their **Unopposed Motion for Leave To File Amended Complaint and Establishing Briefing Schedule** [#24] on August 22, 2011. The magistrate judge subsequently granted leave to file the amended complaint (**Minute Order** [#28] filed August 23, 2011), which has now been docketed (**Amended Class Action Complaint for Violation of the Securities Laws** [#29] filed August 24, 2011).

The filing of an amended complaint moots a motion to dismiss directed at the

superceded complaint. **See *Griggs v. Jornayvaz***, 2009 WL 1464408 at *1 (D. Colo. May 22, 2009); ***United States ex rel. Babb v. Northrop Grumman Corp.***, 2007 WL 1793795 at *1 (D. Colo. June 19, 2007). Therefore, the motion to dismiss is moot and will be denied without prejudice on that basis.

THEREFORE, IT IS ORDERED that defendants' **Notice of Motion and Motion To Dismiss; Memorandum of Points and Authorities** [#4 (text available at #1-29)] filed December 1, 2010, is **DENIED WITHOUT PREJUDICE** as moot.

Dated August 24, 2011, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge