

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE VTECH DATA BREACH
LITIGATION**

Master Case No. 15-cv-10889

Consolidated Case Nos. 15-cv-10889,
15-cv-10891, 15-cv-11280, 15-cv-
11620, 15-cv-11885

This document relates to all actions

The Honorable Manish S. Shah

**VTECH ELECTRONICS NORTH AMERICA, LLC’S MOTION TO DISMISS
PLAINTIFFS’ SECOND CONSOLIDATED AMENDED COMPLAINT**

Defendant VTech Electronics North America, LLC (“VTech”), pursuant to Fed. R. Civ. P. 12(b)(6), respectfully submits this Motion to Dismiss the Plaintiffs’ Second Consolidated Amended Complaint (“Motion”). In support of its Motion, VTech states as follows, submitting and incorporating by reference its Memorandum in Support of its Motion to Dismiss Complaint, which is filed herewith:

In their Second Consolidated Amended Complaint (“Complaint”), Plaintiffs have withdrawn their previous claims of typical “data breach” injuries (such as fear of future identity theft or diminished value of their personal information) to focus exclusively on arguments sounding in diminished value. Specifically, Plaintiffs claim that the devices they purchased from VTech are somehow less valuable than they originally thought as a result of a data breach that took place in November 2015.

While Plaintiffs have narrowed the scope of their Complaint significantly, they have taken more pages to assert the same claims that the Court previously dismissed. Yet, Plaintiffs’ arguments still rest on the fundamentally flawed premise that VTech’s alleged promises

regarding its “Online Services” (Learning Lodge and Kid Connect) were somehow relevant to the hardware devices that Plaintiffs purchased *before* they registered for the Online Services. As this Court definitively and correctly concluded in its Opinion on VTech’s previous motion to dismiss, the Plaintiffs’ “registration for online services is a separate and distinct event, unrelated to the purchase of the toys, and the online services agreements are likewise separate and distinct from the contract made at the point of purchase.” Dkt. 87, at 19. Nothing in the current Complaint gives the Court any reason to depart from this conclusion. The Complaint, like its predecessor, should be dismissed under Rule 12(b)(6), only this time with prejudice.

For the reasons set forth herein and in its Memorandum in Support of its Motion to Dismiss, VTech respectfully requests that this Court dismiss Plaintiffs’ claims with prejudice.

Dated: October 5, 2017

Respectfully submitted,

VTECH ELECTRONICS NORTH
AMERICA, LLC

By: /s/ Michael Dockterman
One of its attorneys

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CERTIFICATE OF SERVICE

I, Michael Dockterman, an attorney, hereby certify that on October 5, 2017, I caused a true and correct copy of the foregoing **VTECH ELECTRONICS NORTH AMERICA, LLC'S MOTION TO DISMISS THE SECOND CONSOLIDATED AMENDED COMPLAINT** be electronically filed with the Clerk of Court using CM/ECF, which will send electronic notification to the parties and registered attorneys of record that the document has been filed and is available for viewing and downloading.

/s/ Michael Dockterman

Michael Dockterman