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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VALGENE SUTHERLAND,
Plaintiff,
vs.
RED BULL DISTRIBUTION
COMPANY, INC.,
Defendant.

2:12-CV-00718-PMP-CWH

ORDER

Before the Court for consideration is Defendant's Motion to Dismiss Plaintiff's Amended Complaint (Doc. #9) filed May 25, 2012. Defendant's Motion was fully briefed by the Parties as of June 27, 2012. However, as a result of a docketing error with respect to a companion stipulation for dismissal of a single claim in Plaintiff's complaint, the entire case was docketed as closed. Hence, the undersigned did not become aware of the pendency of Defendant's Motion until recently. During the interim, Plaintiff and Defendant continued to conduct discovery on the merits. Discovery is currently scheduled to close on February 19, 2013.

Having considered the arguments presented on the papers, and at the hearing conducted February 7, 2013, the Court concludes that although Defendant presents strong arguments in support of its motion to dismiss, evidence discovered by the Parties over the past seven months persuades the Court that the arguments raised by Defendant in support of dismissal are more properly adjudicated on summary judgment. As the

1 close of discovery is near, the Court finds the appropriate course is to deny Defendant's
2 Motion to Dismiss, and to instead permit Defendant to file an appropriate motion for
3 summary judgment on the two claims remaining in Plaintiff's Amended Complaint
4 within the time frame set forth in the Court's Discovery Plan and Scheduling Order.

5 **IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss
6 Plaintiff's Amended Complaint (Doc. #9) is **DENIED** without prejudice to Defendant
7 to renew the arguments set forth therein in an appropriate motion for summary
8 judgment.

9 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Further Amend the
10 Complaint is **DENIED**.

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12 DATED this 8th day of February, 2013.

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16 PHILIP M. PRO
17 United States District Judge
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