

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 12-cv-01953-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

BRIAN BATZ, TARA W. CAMERON, JOHN DOES 7, 9-11, 15-31, 33-36, and 39,

Defendants.

ORDER

This matter is before the Court in connection with “Tara W. Cameron’s Motion to Dismiss Second Amended Complaint [Doc#: 82], Pursuant to F.R.C.P. 12(b)(6), with Incorporated Authority” filed December 27, 2012. Plaintiff’s Memorandum in Opposition to the Motion filed on January 17, 2013, attaches matters outside the pleadings.

Pursuant to the Federal Rules, if a court does not exclude the matters presented that are outside the pleadings, a motion to dismiss pursuant to Rule 12(b)(6) shall be treated as a motion for summary judgment. Fed. R. Civ. P. 12(b); *see also Whitesel v. Sengenberger*, 222 F.3d 861, 866 (10th Cir. 2000) (noting that conversion may be proper when non-movant appends materials to opposition brief and court considers them). Plaintiff did not, however, address whether the material attached to the response requires the conversion of the motion to dismiss to a motion for summary judgment, and I believe briefing is required on the issue. I also find that briefing is appropriate as to whether the matters attached to the response should be considered.

Accordingly, it is

ORDERED that the parties file statements with the Court on or before **Monday, February 11, 2013**, advising whether the Court should consider the materials attached by Plaintiff to its response brief and whether Defendant Cameron's motion to dismiss should be converted to a motion for summary judgment.

Dated: January 31, 2013

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior United States District Judge