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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Kim Cramton,

10 Plaintiff,

11 v.

12 Grabbagreen Franchising LLC, et al.,

13 Defendants.  
14

No. CV-17-04663-PHX-DWL

**ORDER**

15 During the Final Pretrial Conference on May 27, 2020, the Court ruled on several  
16 motions *in limine* but declined to issue a merits ruling on Cramton’s motion *in limine* to  
17 exclude Defendants’ damages defense. (Doc. 309.) Instead, the Court solicited additional  
18 briefing from the parties, “permit[ting] each side to file a motion to exclude the other side’s  
19 theories and/or evidence bearing on damages no later than June 17, 2020.” (*Id.* at 2.) The  
20 Court also solicited additional briefing concerning Defendants’ contention that Cramton  
21 waived her right to a jury trial, set a tentative trial date of October 13, 2020, and referred  
22 the parties to a magistrate judge for a settlement conference. (*Id.* at 1-3.)

23 Much has occurred since the Final Pretrial Conference. On the briefing front,  
24 Defendants filed their motion to strike Cramton’s jury demand, which is now fully briefed  
25 (Docs. 322, 324, 331), and each side filed a motion to exclude the other side’s damages  
26 theories and evidence (Docs. 320, 321). Each side also filed a response to the other side’s  
27 damages-related motion (Docs. 325, 327), but only Defendants filed a reply (Doc. 330).  
28 This prompted Cramton to move to strike Defendants’ reply (Doc. 333) and Defendants to

1 respond to the motion to strike (Doc. 334). Meanwhile, on the trial front, the parties' efforts  
2 to settle the case proved unsuccessful (Doc. 336) and the COVID-19 pandemic has,  
3 unfortunately, not eased to the point that the current trial date is viable.

4 The Court is in the process of reviewing the pending motions, but it is necessary to  
5 address a few preliminary matters before those motions are resolved. First, as noted, the  
6 current trial date of October 13, 2020 is unrealistic in light of current conditions.  
7 Accordingly, it will be vacated. (*See* Doc. 323 at 22 [explanation during Final Pretrial  
8 Conference that “we should get something on the calendar for this Fall, with the notion that  
9 if the situation has stabilized we’ll proceed” but “if COVID-19 is still interfering with jury  
10 trial efforts, we can then as the trial date gets closer talk about a further extension”].) After  
11 the pending motions are resolved, the Court will hold a status conference to solicit the  
12 parties' views on rescheduling.

13 Second, Cramton's motion to strike (Doc. 333) will be denied. Although Cramton  
14 is correct that a party ordinarily may not file a reply in support of a motion *in limine*, the  
15 Court didn't intend for the damages-related motions it solicited during the Final Pretrial  
16 Conference to function as motions *in limine*—instead, it viewed them as Rule 37 motions  
17 to exclude. This is why the minute entry from the May 27, 2020 hearing authorized the  
18 parties “to file a motion to exclude the other side's theories and/or evidence bearing on  
19 damages” (Doc. 309 at 2) and why the Court clarified during the hearing that a 17-page  
20 limit would apply (Doc. 323 at 94)—motions *in limine* are ordinarily subject to much  
21 shorter page limits.


22 In any event, even though Defendants correctly understood these instructions as  
23 implicitly authorizing a reply, it is understandable that Cramton could have reached a  
24 different interpretation. Thus, although the Court will not strike Defendants' reply, it will  
25 permit Cramton, if she so chooses, to file a reply in support of her damages-related motion.  
26 That reply must not exceed 11 pages and must be filed by September 10, 2020. No  
27 extensions will be granted because, as noted, the Court is in the process of reviewing the  
28 remaining pending motions (Docs. 308, 320, 321, 322) and hopes to rule soon.

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Accordingly, **IT IS ORDERED** that:

- (1) The current trial date of October 13, 2020 is **vacated**.
- (2) Cramton's motion to strike (Doc. 333) is **denied**.
- (3) Cramton may file a reply in support of her damages-related motion (Doc. 320) by September 10, 2020. The reply shall not exceed 11 pages.

Dated this 3rd day of September, 2020.

  
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Dominic W. Lanza  
United States District Judge