

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Magistrate Judge Kathleen M. Tafoya**

Civil Action No. 13-cv-00747-WYD-KMT

JOHN FERRUGIA,

Plaintiff,

v.

CITY OF STEAMBOAT SPRINGS, COLORADO,  
RICHARD BROWN, in his official capacity as a City of Steamboat Springs police officer and  
in his individual capacity,  
EVAN DRISCOLE, in his official capacity as a City of Steamboat Springs police officer and  
in his individual capacity,  
GERARD GEIS, in his official capacity as a City of Steamboat Springs police officer and in  
his individual capacity, and  
ROSS BLANK, in his official capacity as a City of Steamboat Springs police officer and in  
his individual capacity,

Defendants.

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**ORDER**

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This matter is before the court on “Defendants’ Motion to Designate Rebuttal  
Non-Retained Expert Disclosures Out of Time” [Doc. No. 76].

On December 16, 2013, Plaintiff disclosed former detective David Kleiber, as a  
non-retained expert pursuant to Fed. R. Civ. P. 26(a)(2)(C). Defendants opposed the disclosure  
based on their allegations that the description of Mr. Kleiber’s anticipated testimony was deficient  
and because the disclosure was late. [Doc. No. 36]. Plaintiff filed a Reply to Defendants’  
opposition which included an amended description of Mr. Kleiber’s anticipated testimony. [Doc.  
No. 37]. On February 24, 2014, this Court granted Plaintiff’s motion for leave to disclose expert

David Kleiber out of time. [Doc. No. 43].

Fed. R. Civ. P. 26(a)(2)(D)(ii) provides “Absent a stipulation or a court order, the [expert] disclosures must be made: . . . (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party’s disclosure.” At the latest, Plaintiff’s disclosure of David Kleiber could be deemed to have occurred on February 24, 2014, the day the court overruled Defendants’ objections and allowed the disclosure of David Kleiber as Plaintiff’s affirmative, non-retained expert. Therefore, at the latest, the time for Defendants to have disclosed rebuttal experts to David Kleiber’s proposed testimony was on or before March 26, 2014.

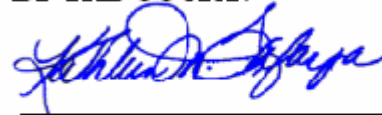
There has been no explanation why Defendants waited ninety-four days, sixty-four days past their deadline, to disclose that three non-retained experts – each an officer with the Steamboat Springs Police Department – would be called as rebuttal experts to David Kleiber. The fact that Defendants did not take Mr. Kleiber’s deposition until April 21, 2014, thirty-eight days before the motion was filed, is not substantial justification for their request, especially since discovery in the case has long been closed.

It is **ORDERED**

“Defendants’ Motion to Designate Rebuttal Non-Retained Expert Disclosures Out of Time” [Doc. No. 76] is **DENIED**.

Dated this 29th day of May, 2014.

BY THE COURT:



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Kathleen M. Tafoya  
United States Magistrate Judge