

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CHERRIE LASHAWN MCCARTY,

Plaintiff,

v.

No. 2:18-cv-00168-KRS-CG

THE RIB CRIB, INC., and  
CHRISTOPHER PARKS,

Defendants.

**TRIAL SCHEDULING ORDER**

**THIS MATTER** comes before the Court following a telephonic trial scheduling conference held June 19, 2018. As reflected in the record, the Court hereby sets the following dates and deadlines:

A **Pretrial Conference** shall be held on **April 4, 2019 at 9:30 a.m.** in the Picacho Courtroom at the United States Courthouse, 100 N. Church St., Las Cruces, NM, 88001. All attorneys participating in the trial must be present for the pretrial conference unless permission for telephonic appearance has been obtained from the Court. The parties may, but need not, be present.

**Jury Selection and Jury Trial** will begin on **May 20, 2019 at 8:30 a.m.** in the Picacho Courtroom. Counsel are directed to submit a proposed consolidated final pretrial order (template pretrial order attached) as follows:

Plaintiff to Defendants: on or before **January 18, 2019**;

Defendants to the Court: on or before **February 11, 2019**.

The pretrial order shall provide that no witness, except rebuttal witnesses whose testimony cannot be anticipated, will be permitted to testify unless the witness is identified in a witness list filed no later than thirty (30) days prior to the date set for trial. Any exceptions thereto must be upon order of the Court for good cause shown.

**Motions in Limine:** All motions in limine<sup>1</sup> shall be filed on or before **December 13, 2018 in accordance with the Pretrial Scheduling Order (Doc. 20). Deadlines for responses and replies are governed by the Local Rules.**

**Witness Lists:** The parties shall file their witness lists on or before **February 25, 2019**. The lists must disclose witnesses that the parties “will call” as well as witnesses that they “may call” at trial. Any objections to a witness named by an opposing party must be filed by **March 4, 2019**.

**Designations and Counter-Designations of Deposition Testimony:** On or before **March 11, 2019**, counsel for each party shall file a pleading designating, by deposition transcript page(s) and line number(s), the deposition testimony that the party intends to offer into evidence at trial. In the event that a party designates deposition testimony that will or may be offered into evidence at trial, then on or before **March 18, 2019**, any other party may counter-designate, by deposition transcript page(s) and line number(s), any other portion of the deposition testimony that should be offered into evidence pursuant to Federal Rule of Evidence 106. The deposition designation requirement does not apply to the use of a deposition to impeach the testimony of a witness who testifies in person at the trial, or to rebuttal testimony offered through deposition testimony.

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<sup>1</sup> Motions challenging the admissibility of expert testimony under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) are not motions in limine. Daubert motions shall be filed no later than the dispositive motions deadline.

On or before **March 18, 2019**, counsel shall **jointly submit one physical copy** of each deposition transcript that contains testimony that will or may be offered into evidence at trial to the Court's chambers, with the parts of the deposition(s) that are to be offered into evidence highlighted. To this end, Plaintiff will use a yellow marker and Defendants will use a blue marker to highlight the portions of the deposition transcript that they each have designated. As an alternative to jointly submitting a physical copy of a deposition to the Court with the designated portions of the deposition highlighted, the parties may jointly submit the deposition to the Court in PDF format, with the respective portions of the deposition highlighted, by emailing the PDF document to [krsproposedtext@nmcourt.fed.us](mailto:krsproposedtext@nmcourt.fed.us). Any objections to deposition testimony designated or counter-designated by an opposing party shall be filed on or before **March 25, 2019**. In the event a party wishes to make further designations or counter-designations of deposition testimony, other than those designations made in conformance with the procedure set forth above, the party shall first seek permission from the Court.

**Exhibits:** On or before **March 4, 2019** the parties shall **jointly** file a list of exhibits that the parties stipulate may be admitted into evidence without objection. On or before **March 11, 2019** each party shall file a list containing the exhibits that the party will or may offer into evidence, other than those exhibits for which the parties have stipulated to the admission into evidence. On or before **March 11, 2019**, the parties shall **jointly** submit a physical copy of all exhibits to the Court's chambers. The exhibits shall be divided into two notebooks. One notebook shall include all exhibits, labeled consecutively, that the parties stipulate may be admitted into evidence without objection. The other notebook shall include all exhibits the parties have not stipulated may be admitted into evidence, labeled consecutively beginning with the next sequential number after the final stipulated exhibit designation. For instance, if there are fifty (50) stipulated exhibits, twenty (20) contested plaintiff's exhibits, and twenty (20) contested

defendants' exhibits, one notebook shall contain stipulated exhibits numbered 1 to 50. The other notebook shall contain plaintiffs' contested exhibits numbered 51 through 70 and defendants' contested exhibits numbered 71 through 90.

On or before **February 25, 2019** each party shall send a list of their proposed exhibits to the opposing party in order to allow sufficient time for a party to determine whether to object to the admission of an exhibit.

**Statement of the Case:** On or before **March 18, 2019** the parties shall file a consolidated clear, concise statement of the case to be read by the Court to the jury at the beginning of trial. If Counsel are unable to agree to a consolidated statement of the case, they shall file separate statements of the case. The parties shall meet on or before **March 11, 2018** and confer about the statement of the case.

**Jury Instructions:** On or before **March 18, 2019** the parties shall meet and confer to discuss proposed jury instructions. Plaintiff shall file a set of requested jury instructions upon which all of the parties agree. Requested instructions upon which the parties cannot agree must be filed separately by the requesting party. There shall be only one instruction per page and each instruction shall include a citation to supporting authority at the bottom of the page. On or before **March 25, 2019** all requested jury instructions shall be filed. On that same day, the parties shall also email a copy of the requested jury instructions in Word format, without citations, to [krsproposedtext@nmcourt.fed.us](mailto:krsproposedtext@nmcourt.fed.us). On or before **April 1, 2019** a party shall file a pleading setting forth any objections to an opposing party's requested instructions.

**IT IS SO ORDERED.**



KEVIN R. SWEAZEA  
UNITED STATES MAGISTRATE JUDGE