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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Natalie Figueroa,

9 Plaintiff,

10 v.

11 Gannett Co. Inc., et al.,

12 Defendants.

No. CV-19-00022-CKJ

**ORDER**

13  
14 Pending before the Court is Plaintiff Natalie Figueroa's Request for Jury Trial,  
15 (Doc. 30). For the reasons that follow, Plaintiff's Request for Jury Trial is hereby  
16 GRANTED.

17 **BACKGROUND AND PROCEDURAL HISTORY**

18 Figueroa filed her complaint in the Pima County Superior Court on November 6,  
19 2018, alleging wrongful termination of employment and discrimination under the ADA.  
20 (Doc. 1-3 at 13-16) The Complaint did not include a request for a jury trial. (*Id.*) In fact,  
21 both the civil cover sheet, (Doc. 1-1), and the supplemental cover sheet (Doc. 1-2), noted  
22 this lack of a request for a jury trial.

23 Defendants removed the action to this Court on January 14, 2019. (Doc. 1)  
24 Defendants claim, and Figueroa does not deny, that at the time of the removal, the  
25 Complaint and Summons constituted all filings served upon Defendants. (*Id.* at 2)  
26 Defendants filed their Answer to Figueroa's Complaint on January 15, 2019. (Doc. 6)

27 Plaintiff's counsel mentioned an intent to request a jury trial in the Joint Case  
28 Management Report on April 23, 2019. (Doc. 22 at 11) Figueroa then filed her Request

1 for Jury Trial on December 12, 2019. (Doc. 30) Defendants filed their Response in  
2 Opposition to Plaintiff's Request for Jury Trial. (Doc. 88) An opposition, (Doc. 90), and  
3 sur-reply in opposition, (Doc. 100), were also filed.

#### 4 ANALYSIS

5 Figueroa did not waive her right to a jury trial. In federal courts, a party must serve  
6 her request for a jury trial on the other parties within 14 days "after the last pleading  
7 directed to the issue is served." Fed. R. Civ. P. 38(b)(1). The federal rules define pleadings  
8 as "a complaint; an answer to a complaint; an answer to a counterclaim designated as a  
9 counterclaim; an answer to a crossclaim; a third-party complaint; an answer to a third-party  
10 complaint; and if the court orders one, a reply to an answer." Fed. R. Civ. P. 7. "A party  
11 waives a jury trial unless its demand is properly served and filed." Fed. R. Civ. P. 38(d).

12 But, in removed actions, there are exceptions to this rule. *See* Fed. R. Civ. P.  
13 81(c)(3). Important to this case, "[a] party who, before removal, expressly demanded a  
14 jury trial in accordance with state law need not renew the demand after removal" and,  
15 alternatively, "if the state law did not require an express demand for a jury trial, a party  
16 need not make one after removal unless the court orders the parties to do so within a  
17 specified time." Fed. R. Civ. P. 81(c)(3)(A). Indeed, "the court must so order at a party's  
18 request and may so order on its own." *Id.* "Courts indulge every reasonable presumption  
19 against waiver" while also insisting "the jury demand be sufficiently clear to alert a careful  
20 reader that a jury trial is requested on an issue." *Lutz v. Glendale Union High Sch.*, 403  
21 F.3d 1061, 1064 (9th Cir. 2005).

22 The pertinent Arizona rule changed on January 1, 2019, which fell between when  
23 Figueroa filed the Complaint, November 6, 2018, and Defendants filed for removal on  
24 January 14, 2019. The version of Ariz. R. Civ. P. 38 in effect on the date of Figueroa's  
25 filing her Complaint required an express jury trial demand for non-medical malpractice  
26 actions saying, in part, in non-medical malpractice actions:

27 a party may obtain a jury trial by filing and serving a written demand at any  
28 time after the action is commenced, but no later than the date on which the  
court sets the trial date or 10 days after the date a Joint Report and Proposed

1 Scheduling Order under Rule 16(c) are filed, whichever occurs first.  
2 1 ARIZONA RULES OF COURT, 103 (Thompson Reuters, 2017). “[A] party waives a jury  
3 trial unless its demand is properly filed and served.” *Id.*

4 However, the amended rule, which went into effect on January 1, 2019, before the  
5 case’s removal does not require an express demand. The rule says, in part, “[t]he right of  
6 trial by jury is preserved to the parties inviolate. On any issue triable of right by a jury, a  
7 party need not file a written demand or take any other action in order to preserve its right  
8 to trial by jury.” Ariz. R. Civ. P. 38(a).

9 In a case that was removed from Arizona state court to federal court in 2017, another  
10 Arizona district court held a plaintiff “failed to make a timely jury trial demand” because  
11 “when the action was filed in 2017, the Arizona Rules required an express demand.” *See*  
12 *Ramos v. Wells Fargo Home Mortg.*, No. CV-17-00316-PHX-GMS, 2019 WL 2717095,  
13 at \*5, n. 1 (D. Ariz. June 28, 2019). “The latest amendments to Arizona Rule 38 do not  
14 resurrect a jury trial right that was waived more than two years ago.” *Id.*

15 Figueroa clearly did not meet the 14-day deadline in Federal Rule 38, serving her  
16 Request for Jury Trial on Defendants on December 12, 2019, (Doc. 30), almost a year after  
17 Defendants filed their answer on January 15, 2019, (Doc. 6). However, indulging the  
18 “every reasonable presumption against waiver” this Court finds the Fed. R. Civ. P.  
19 81(c)(3)(A) exception applies.

20 Had Defendants removed the action before the rule change, this case would be  
21 similar to *Ramos*. However, in reviewing Federal Rule 81(c)(3)(A), the Court finds the  
22 date of removal to be determinative rather than the date of the action being filed. No party  
23 should be required to play by federal rules before arriving in federal court. Thirteen days  
24 before Figueroa’s case arrived in federal court, the Arizona rule changed and did not  
25 require an “express demand.” Had she stayed in state court, Figueroa could have filed her  
26 jury trial request up until the earliest date between the date of setting a trial date or 10 days  
27 after a Joint Report and Proposed Scheduling order. Ariz. R. Civ. P. 38 (eff. in 2018). This  
28 puts her in a significantly different position than the *Ramos* plaintiff, who waived her right

