

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

PHYLLIS LATHAM

PLAINTIFF

VS.

NO. 2:08CV00190 JMM

**CRACKER BARREL OLD
COUNTRY STORE, INC.,
JOHN DOE I, JOHN DOE II,
AND JOHN DOE III**

DEFENDANTS

ORDER

Pending is Plaintiff's demand for a jury trial. Plaintiff's initial complaint filed August 1, 2008 in the Circuit Court of Cross County, Arkansas, did not make such a request. Defendant removed this action to federal court on September 4, 2008. Defendant opposes the Plaintiff's request for a jury trial contending that Plaintiff waived her right to a jury when she failed to make a jury demand in writing no later than 10 days after the service of the answer to Plaintiff's complaint. *See Fed. R. Civ. P. 38.*

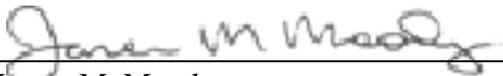
Federal Rule of Civil Procedure 39(b) permits the Court, in the exercise of its discretion, to order a trial by jury upon motion. *See Fed. R. Civ. P. 39(b).* While plaintiff has not specifically filed a Rule 39(b) motion, her pending demand for a jury trial will be construed to include such a request.

"[J]ury trials ought to be liberally granted when no prejudice results." *Littlefield v. Fort Dodge Messenger*, 614 F.2d 581, 585 (8th Cir.1980). There is no evidence that prejudice will

result from the granting of Plaintiff's request as the initial complaint was filed less four months ago and there is adequate time to prepare for a jury trial.

Based upon the above, this matter will be set for a jury trial and an amended scheduling order will be issued forthwith.

IT IS SO ORDERED this 12th day of November, 2008.



James M. Moody
United States District Judge