

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAMONT SHEPARD,
Plaintiff,
v.
M. BORUM and J. ACEBEDO,
Defendants.

Case No. 1:18-cv-00277-ADA-HBK
ORDER DENYING PLAINTIFF’S MOTIONS
DEMANDING A BENCH TRIAL
(Doc. Nos. 113, 114)

Plaintiff filed two separate motions in which he states he waives his right to a jury trial and demands a bench jury. (Doc. Nos. 113, 114). In his first motion, Plaintiff requests a bench trial pursuant to Article VII of California’s constitution. (Doc. No. 113 at 1). In his second motion, Plaintiff requests a bench trial pursuant to the United States Constitution. (Doc. No. 114).¹

Under federal law, “[t]he right of trial by jury...is preserved to the parties inviolate.” Fed. R. Civ. P. 38(a). “A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.” Rule 38(d). Unless all parties consent, a jury trial demand cannot be withdrawn. *United States SEC v. Jensen*, 853 F.3d 1100,

¹ Although Defendants have twenty-one (21) days to respond to Plaintiff motions, Local Rule 230(l), given Defendants earlier demand for a jury trial the Court does not find a response from Defendants necessary to rule on the pending motions. (Doc. Nos. 108 at 2, 19 at 5).

1 1107 (9th Cir. 2016).

2 As a court of federal jurisdiction, the state constitution of California has no bearing on this
3 Court. Further, Defendants have not withdrawn their earlier demands to a jury trial. (*See*
4 Defendants' Answer at Doc. No. 19 at 5; Defendants' Pretrial Statement at 108 at 2). Further, at
5 the recent telephonic trial confirmation hearing held on October 11, 2022, Plaintiff stated his
6 intent to waive his right to a jury trial and proceed to a bench trial, but Defendants unequivocally
7 stated that they will not waive their demand to a jury trial.

8 Accordingly, it is **ORDERED**:

9 Plaintiff's motions demanding a bench trial (Doc. Nos. 113, 114) are DENIED. Unless
10 Defendants consent to withdraw their earlier demands, this case will proceed to a jury trial.

11 Dated: November 28, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28