

United States District Court  
Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AUNDREA BATTE,  
Plaintiff,  
v.  
SOUTHWEST AIRLINES,  
Defendant.

Case No. 17-cv-06410-CRB

**ORDER GRANTING MOTION TO  
STRIKE REQUEST FOR JURY  
TRIAL [DKT. 11] AND DENYING  
MOTION FOR JURY TRIAL [DKT.  
13]**

The parties have filed two motions regarding a late-filed jury demand by Plaintiff Aundrea Batte (“Batte”). Defendant Southwest Airlines (“Southwest”) moves to strike the demand, while Batte moves the Court to, in its discretion, order a jury trial despite the late-filed demand. Because Batte’s failure to make a timely demand was based on a good-faith mistake of law, the Court lacks discretion to order a jury trial. Accordingly, it DENIES Batte’s motion and GRANTS Southwest’s.

In cases that have been removed from state court, a party demanding a jury trial must serve and file the demand within 14 days of serving or being served with the notice of removal. See Fed. R. Civ. P. 38(b) & 81(C)(3)(b). The district court has some discretion to order a jury trial even in the absence of a proper demand, Fed. R. Civ. P. 39(b), but this discretion is narrow, Pac. Fisheries Corp. v. HIH Cas. & Gen. Ins., Ltd., 239 F.3d 1000, 1002 (9th Cir. 2001). Where a party has failed to make a timely demand, the court may only order a jury trial if that failure was based on “some cause beyond mere inadvertence.” Id. The court has no discretion to do so where the failure was due to a party’s inadvertence, oversight, or good-faith mistake of law. Id. at 1002–03.

Batte concedes that she did not serve and file her demand within 14 days of being

1 served with Southwest’s notice of removal. Pl.’s Opp. (dkt. 12) at 4. She argues,  
2 however, that the Court has discretion to order a jury trial because she reasonably relied on  
3 Southwest’s representation that it would agree to “stay all discovery and case deadlines”  
4 for a time. See Eaton-May Decl. Ex. B (dkt. 13-2) at 16. It is unclear whether  
5 Southwest’s representation contemplated the deadline for demanding a jury trial. But this  
6 is of no moment, because the parties do not have the power to unilaterally extend the  
7 deadline for making a jury demand. See Fed. R. Civ. P. 38(b) & 81(C)(3)(b); Civ. L.R.  
8 6-1. In other words, Batte’s late demand was based on a good-faith mistake of law.  
9 Accordingly, the Court lacks discretion to order a jury trial. See Pac. Fisheries Corp., 239  
10 F.3d at 1002–03.

11 Southwest’s motion to strike the late-filed jury demand is **GRANTED**. Batte’s  
12 motion for jury trial is **DENIED**.

13 **IT IS SO ORDERED.**

14 Dated: Feb. 9, 2018



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15 CHARLES R. BREYER  
16 United States District Judge