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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STATE FARM GENERAL INSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
)
FRANKE CONSUMER PRODUCTS,)
INC.,)
)
Defendant.)
_____)

Case No.: C 09 -3555 PVT

**ORDER TO SHOW CAUSE WHY DEMAND
FOR TRIAL BY JURY SHOULD NOT BE
STRICKEN AND THE CASE SET FOR BENCH
TRIAL**

Defendant removed this court on August 4, 2009. Over 2 months later, on October 6, 2009, Defendant filed a Demand for Trial by Jury. Based on the file herein,

IT IS HEREBY ORDERED that no later than April 13, 2010, Defendant shall file a declaration showing cause, if any, why the Demand for Trial by Jury should not be stricken and the case set for bench trial.

Rule 38 of the Federal Rules of Civil Procedure provides that a party may demand a jury trial by serving and filing a written demand “no later than 14 days after the last pleading directed to the issue is served.” Where an action is removed from state court and all necessary pleadings have already been served at the time of removal, and no jury demand was made in the state court, then, pursuant to Rule 81(c)(3)(B):

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“ a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:

“(i) it files a notice of removal; or

“(ii) it is served with a notice of removal filed by another party.”

Absent some showing beyond inadvertence, failure to timely file a demand for jury trial waives the parties’ right to a jury. See FED.R.CIV.PRO. 38 and 81(c)(3): see also, *Pac. Fisheries Corp. v. HIH Cas. & Gen. Ins., Ltd.*, 239 F.3d 1000, 1002-03 (9th Cir. 2001) (“An untimely request for a jury trial must be denied unless some cause beyond mere inadvertence is shown”); see also, e.g., *Mastec North America, Inc. v. Comcast Cable Communications Management, LLC*, 2009 WL 1690519 (N.D.Cal. 2009) (striking jury demand where it was not made within the statutory time limit after removal from state court).

Dated: *March 23, 2010*


PATRICIA V. TRUMBULL
United States Magistrate Judge