

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MARTHA BRUNZOS, :
Plaintiff, :
 :
v. : C.A. No. 15-558S
 :
NATIONSTAR MORTGAGE, LLC, :
Defendant. :

MEMORANDUM AND ORDER

PATRICIA A. SULLIVAN, United States Magistrate Judge.

This matter is before the Court on the motion of Defendant Nationstar Mortgage, LLC, (“Nationstar”) to strike the jury demand of Plaintiff Brunzos (ECF No. 32). The basis for Nationstar’s motion is that the demand (ECF No. 25) was filed on August 25, 2016, more than nine months after Plaintiff filed this action. Nationstar contends that Fed. R. Civ. P. 38(b) and 5(d) require that a jury demand must both be served within fourteen days after the last pleading directed to the issue, and be filed within a “reasonable” time after it is served. Plaintiff counters that she made a timely request for a jury when, on November 15, 2015, five days after filing her complaint *pro se*, she sent an email to Nationstar’s attorney advising that “I will be adding a jury demand.” ECF No. 25-1.

In its motion to strike Plaintiff’s jury demand, Nationstar contends that the email did not constitute viable service because Nationstar had not previously consented to be served by email, and none of the recipients of the email was authorized to accept service on its behalf. Moreover, it argues, the email cannot constitute a viable jury demand because it was not thereafter filed within a reasonable time. In support of this argument, Nationstar cites cases holding that a short delay of a few days may pass muster but a delay of two months is not reasonable. See Palmquist v. Consec Med. Ins. Co., 128 F. Supp. 2d 618, 622 (D.S.D. 2000); Clifford v. Bundy, 747 N.W.

2d 363, 367 (Minn. Ct. App. 208). Nationstar does not claim that the delayed jury demand has caused it any prejudice nor does it argue that the claims set out in the complaint do not provide the federal right to a jury trial. See Fed. R. Civ. P. 39(a)(2).

The record in this case establishes that initially Plaintiff filed, and for months thereafter prosecuted, her lawsuit *pro se*. She sent the email by which she attempted to make a jury demand while acting without the benefit of counsel. Ultimately, on June 13, 2016, an attorney entered on her behalf. On August 25, 2016, acting with the assistance of counsel, she served and filed a procedurally-compliant jury demand; on the same day, through counsel, she filed a motion to amend her complaint. The proposed amended complaint added a jury demand. The motion to amend was granted and the amended complaint was filed on October 26, 2016 (ECF No. 36). Plaintiff asks this Court to preserve her Seventh Amendment right to trial by jury, based on two alternative arguments: because her first jury demand is sufficient despite its failure to conform to the strictures of Fed. R. Civ. P. 38(b) and 5(d); or because Defendant's motion to strike was made moot by the filing of her amended complaint.

The right to trial by jury in civil cases, embedded in the Seventh Amendment of the United States Constitution, is the overarching legal principle that must guide the Court in this matter. The operative procedural rule echoes the centrality of this principle in its first subsection: “the right of trial by jury as declared by the Seventh Amendment to the Constitution . . . is preserved to the parties inviolate.” Fed. R. Civ. P. 38(a); Washington v. N.Y. City Bd. of Estimate, 709 F.2d 792, 799 (2d Cir. 1983) (Oakes, J., dissenting) (addressing waiver of jury trial by *pro se* plaintiff, “the emphasis of Rule 38(a) should be maintained on its last five words”). Consistently and repeatedly, the Supreme Court has emphasized that the right is fundamental and that courts should indulge every reasonable presumption against finding that the right has

inadvertently been waived. Aetna v. Kennedy, 301 U.S. 389, 393 (1937). Thus, “[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.” Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry, 494 U.S. 558, 565 (1990) (quoting Dimick v. Schiedt, 293 U.S. 474, 486 (1935)).

The other lodestar proposition is the important principle that a *pro se* plaintiff’s filings must be read with leniency. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Instituto de Educacion Universal Corp. v. U.S. Dep’t of Educ., 209 F.3d 18, 23 (1st Cir. 2000). While Nationstar is correct that a *pro se* litigant is not absolved from compliance with the Federal Rules of Civil Procedure, F.D.I.C. v. Anchor Properties, 13 F.3d 27, 31 (1st Cir. 1994), Plaintiff did not utterly fail to comply. To the contrary, her email may be deemed to constitute approximate compliance – certainly, despite her *pro se* status, she succeeded in timely putting Nationstar on notice of her intent to invoke her Seventh Amendment rights.

Mindful of the fundamental nature of the Seventh Amendment right to trial by jury in civil cases, as well as the liberality required for reading *pro se* filings, I find that these tandem principles operate to excuse the deficiencies of Plaintiff’s attempt to invoke her right to trial by jury. This conclusion is particularly apt where Nationstar has made no attempt to demonstrate that it has been prejudiced by the delay. Lundy v. Nestle Waters N. Am., Inc., No. CIV 09-318-P-S, 2009 WL 2767715, at *2 (D. Me. Aug. 28, 2009) (“unduly harsh to hold the plaintiffs” to a waiver of right to jury trial when no prejudice to other party). Alternatively, I find that the motion to strike the jury demand is mooted by the filing of the amended complaint.

Based on the foregoing, Nationstar’s motion to strike (ECF No. 32) is denied.

So ordered.

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
November 4, 2016