

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALINA BOYDEN and
SHANNON ANDREWS,

Plaintiffs,

v.

Case No. 17-CV-0264

STATE OF WISCONSIN DEPARTMENT
OF EMPLOYEE TRUST FUNDS, et al.,

Defendants.

**STATE DEFENDANTS' MOTION TO AMEND THE PRELIMINARY
PRETRIAL SCHEDULING ORDER**

State Defendants, by their undersigned counsel, hereby move the Court for an order amending the Preliminary Pretrial Conference Order, dated August 3, 2017 (Dkt. 37), to confirm their right to a jury trial.

It has come to the attention of State Defendants that this order states that the case will be tried to the court. (Dkt. 37:5.) This portion of the order, and the other portions that flow from it, should be amended to reference a trial to a jury. In the event this Court does not grant State Defendants' summary judgment, they are entitled to a jury trial because Plaintiffs' claims seek compensatory damages and State Defendants demanded a jury trial in their answer to Plaintiffs' amended complaint (Dkt. 73:20), in accordance with Rule 38(b).¹

¹ Rule 38 requires that a party serves and files a written demand for a jury trial within 14 days of the last pleading. *See* Fed.R.Civ.P. 38(b).

The reason the preliminary pretrial conference order likely references a bench trial, rather than a jury trial, is because the only pleading filed at the time of the conference was Plaintiffs' complaint, which did not demand a jury trial. (Dkt. 1.) At that time, State Defendants had not filed their answer, but rather a Rule 12(b)(6) motion to dismiss. (Dkt. 28.) Only after this Court issued its order granting in part and denying in part (Dkt. 67) State Defendants' motion to dismiss did State Defendants file their answer with the jury demand.

For these reasons, State Defendants seek an order amending the Preliminary Pretrial Order confirming their right to a jury trial and setting forth deadlines by which Plaintiffs' and State Defendants' pre-trial submissions—to a jury—are due.

Dated this 13th day of August, 2018.

Respectfully submitted,

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