

1 **WO**

2

3

4

5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

6

7

8 Steven C. Simon, M.D., an individual and)
9 S.C. Simon, M.D., P.L.L.C., an Arizona)
professional limited liability company,)

No. CV-07-1405-PHX-LOA

**NOTICE OF ASSIGNMENT
AND ORDER**

10

Plaintiff,)

11

vs.)

12

Alan Y. Newhoff, M.D., and Jane Doe)
Newhoff, husband and wife; Alan Yale)
13 Newhoff, Ltd., a dissolved Arizona)
corporation; Arizona Bariatric Surgeons,)
14 Inc., an Arizona corporation; and the Alan)
Y. Newhoff, Ltd. Pension Plan,)

15

Defendants.)

16

17

Pursuant to Local Rule ("LRCiv") 3.8(a), Rules of Practice, effective
18 December 1, 2006, all civil cases are, and will be, randomly assigned to a U.S. district
19 judge or to a U.S. magistrate judge. This matter has been assigned to the undersigned U.S.
20 Magistrate Judge.

21

As a result of the aforesaid Local Rule, if all parties consent in writing, the
22 case will remain with the assigned magistrate judge pursuant to 28 U.S.C. 636(c)(1) for
23 all purposes, including trial and final entry of judgment. If any party chooses the district
24 judge option, the case will be randomly reassigned to a U.S. district judge. To either
25 consent to the assigned magistrate judge or to elect to have the case heard before a
26 district judge, the appropriate section of the form, entitled Consent To Exercise Of
27

28

1 Jurisdiction By United States Magistrate Judge¹, must be completed, signed and filed.
2 The party filing the case or removing it to this Court is responsible for serving all parties
3 with the consent forms. Each party must file a completed consent form and certificate of
4 service with the Clerk of the Court not later than 20 days after entry of appearance, and
5 must serve a copy by mail or hand delivery upon all parties of record in the case.

6 Any party is free to withhold consent to magistrate judge jurisdiction
7 without adverse consequences. 28 U.S.C. 636(c)(2); Rule 73(b), Fed.R.Civ.P.; *Anderson*
8 *v. Woodcreek Venture Ltd.*, 351 F.3d 911, 913-14 (9th Cir. 2003) (pointing out that
9 consent is the "touchstone of magistrate judge jurisdiction" under 28 U.S.C. §636(c). "A
10 party to a federal civil case has, subject to some exceptions, a constitutional right to
11 proceed before an Article III judge." *Dixon v. Ylst*, 990 F.2d 478, 479 (9th Cir. 1993)
12 (citing *Pacemaker Diagnostic Clinic of Am. Inc. v. Instromedix, Inc.*, 725 F.2d 537, 541
13 (9th Cir. 1984) (*en banc*)).

14 A review of the Court's file indicates that Defendants Alan Y. Newhoff,
15 M.D. and Jane Doe Newhoff, Alan Yale Newhoff, Ltd., Arizona Bariatric Surgeons, Inc.
16 And the Alan Y. Newhoff, Ltd. Pension Plan filed a Notice of Removal on July 20, 2007.

17 Defendants Alan Y. Newhoff, M.D. and Jane Doe Newhoff, Alan Yale
18 Newhoff, Ltd., Arizona Bariatric Surgeons, Inc. And the Alan Y. Newhoff, Ltd. Pension
19 Plan shall have until **August 17, 2007**, within which to make their selections to either
20 consent to magistrate judge jurisdiction or elect to proceed before a U. S. district judge.
21 The Court's docket reflects the appropriate consent form was electronically transmitted to
22 all counsel on July 20, 2007 by the Clerk's office.

23 Accordingly,
24

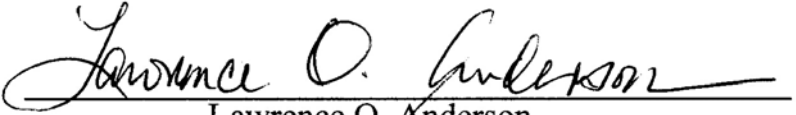
25 ¹The consent/election form may be obtained directly from the Clerk of the Court or
26 by accessing the District of Arizona's web site at www.azd.uscourts.gov. To find the
27 consent/election form on the District's web site, click on "Local Rules" at the top of the page,
28 then click on "forms" on the left side of the page and then click on and print the appropriate
form.

1 **IT IS ORDERED** that the Defendants Alan Y. Newhoff, M.D. and Jane
2 Doe Newhoff, Alan Yale Newhoff, Ltd., Arizona Bariatric Surgeons, Inc. and the Alan Y.
3 Newhoff, Ltd. Pension Plan shall file on or before **August 17, 2007** their written elections
4 to either consent to magistrate judge jurisdiction or elect to proceed before a United States
5 district judge.

6 **IT IS FURTHER ORDERED** that Plaintiffs Steven C. Simon, M.D., and
7 S. C. Simon M.D., P.L.L.C., shall either consent to proceed before a magistrate judge or
8 elect to proceed before a district judge by **August 17, 2007**.

9 **IT IS FURTHER ORDERED** that counsel and any party, if
10 unrepresented, shall hereinafter comply with the Rules of Practice for the United States
11 District Court for the District of Arizona, as amended on December 1, 2006. The
12 District's Rules of Practice may be found on the District Court's internet web page at
13 www.azd.uscourts.gov/. All other rules may be found as www.uscourts.gov/rules/. The
14 fact that a party is acting pro se does not discharge this party's duties to "abide by the
15 rules of the court in which he litigates." *Carter v. Commissioner of Internal Revenue*, 784
16 F.2d 1006, 1008 (9th Cir. 1986).

17 DATED this 2nd day of August, 2007.

18
19 
20 Lawrence O. Anderson
21 United States Magistrate Judge
22
23
24
25
26
27
28