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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Jason Walker,

9 Plaintiff,

10 vs.

11 Hertz Equipment Rental Corporation, a  
12 New Jersey corporation; and JLG  
13 Industries, Inc., a Pennsylvania corporation,

14 Defendants.

No. CV-11-1459-PHX-DGC

**ORDER**

15 On July 2, 2010, Plaintiff suffered severe injuries when a 32-foot “scissor lift” he  
16 was operating collapsed and fell. He filed a strict product liability and negligence action  
17 in state court on June 20, 2011. Doc. 1-1 at 5-14. Defendant JLG Industries, Inc.  
18 subsequently removed the action to this Court based on diversity jurisdiction. Doc. 1.

19 Plaintiff has filed a motion to remand (Doc. 10) on the ground that Defendant  
20 Hertz Equipment Rental Corporation has not consented to removal and the “rule of  
21 unanimity” therefore requires that the case be remanded. *See Chicago, Rock Island, &*  
22 *Pac. Ry. Co. v. Martin*, 178 U.S. 245, 248 (1900); *Aguon-Schulte v. Guam Election*  
23 *Comm’n*, 469 F.3d 1236, 1240 (9th Cir. 2006). Hertz has joined the motion (Doc. 14),  
24 and JLG does not oppose remand (Doc. 15). The motion to remand therefore will be  
25 granted.

26 Plaintiff, pursuant to 28 U.S.C. § 1447(c), requests an award of costs and actual  
27 expenses, including attorneys’ fees, incurred as a result of the improper removal. Doc. 10  
28 at 5. The request will be granted.

1 An award of fees and costs under § 1447(c) “is left to the district court’s  
2 discretion, with no heavy congressional thumb on either side of the scales[.]” *Martin v.*  
3 *Franklin*, 546 U.S. 132, 139 (2005). In enacting § 1447(c), however, “Congress thought  
4 fee shifting appropriate in some cases.” *Id.* at 140. “The process of removing a case to  
5 federal court and then having it remanded back to state court delays resolution of the  
6 case, imposes additional costs on both parties, and wastes judicial resources. Assessing  
7 costs and fees on remand reduces the attractiveness of removal as a method for delaying  
8 litigation and imposing costs on the plaintiff.” *Id.*

9 The sole excuse for having improperly removed the action is that JLG was  
10 “inadvertent” in its failure to confirm the consent to removal of its codefendant. Doc. 15  
11 at 2. The “unanimity requirement ha[s] been longstanding, dating back to the Supreme  
12 Court’s decision in *Chicago, Rock Island*[.]” *Westwood v. Contreras*, 644 F.3d 799, 804  
13 (9th Cir. 2011). JLG’s inadvertence has delayed resolution of the case and caused  
14 Plaintiff to incur attorneys’ fees in connection with the motion to remand. An award of  
15 fees and costs in this case is just. *See Spectrum Health v. Good Samaritan Ass’n, Inc.*,  
16 No. 1:04-CV-508, 2005 WL 2417668, at \*1 (W.D. Mich. Sept. 30, 2005) (awarding fees  
17 where there was no unanimous consent among the defendants when the action was  
18 removed).

19 The parties are directed to confer in good faith to resolve any disputes concerning  
20 the amount of reasonable attorneys’ fees and costs Plaintiff incurred as a result of the  
21 improper removal. *See* LRCiv 54.2(d)(1). If the parties are unable to agree, Plaintiff  
22 may file a motion pursuant to Local Rule 54.2. *See Moore v. Permanente Med. Group,*  
23 *Inc.*, 981 F.2d 443, 445 (1992) (district courts retain jurisdiction after remand to award  
24 fees under § 1447(c)). Any such motion shall be filed, with a supporting memorandum,  
25 on or before **September 16, 2011**, with the response and reply briefs due in accordance  
26 with the time periods provided in Local Rule 54.2(b)(3) and (4).

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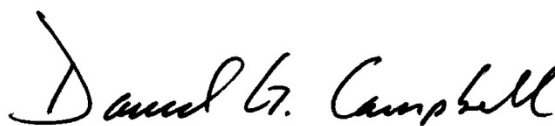
**IT IS ORDERED:**

1. Plaintiff's motion to remand and request for an award of attorneys' fees and costs (Doc. 10) are **granted**.

2. The parties are directed to confer in good faith to resolve any disputes concerning the amount of fees and costs. Any motion for fees and costs shall be filed, with a supporting memoranda, on or before **September 16, 2011**, with the response and reply briefs due in accordance with the time periods provided in Local Rule 54.2(b)(3) and (4).

3. The Clerk is directed to **remand** this case to state court.

Dated this 25th day of August, 2011.



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David G. Campbell  
United States District Judge