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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Linda Aguirre and Norma J. Garcia, as) No. CV-11-1907-PHX-LOA  
10 surviving children of Johnny Griego, )  
11 Plaintiffs, ) **ORDER**  
12 vs. )  
13 A.P. Green Industries, Inc., et al., )  
14 Defendants. )

15 This matter arises on the Court's review of the file.

16 Plaintiffs filed their Complaint on September 27, 2011. (Doc. 1) On  
17 September 30, 2011, the Court issued a Notice of Assignment and Order, giving Plaintiffs until  
18 October 11, 2011 within which to file their consent to the exercise of jurisdiction by a United  
19 States magistrate judge or elect to proceed before a United States district judge. (Doc. 6)

20 As of this date, Plaintiffs have failed to file their written election to either  
21 consent to magistrate judge jurisdiction nor elect to proceed before a United States district  
22 judge.

23 The Civil Justice Reform Act of 1990 ("CJRA"), 28 U.S.C. § 471 *et seq.*,  
24 mandates the early and on-going judicial management of the pretrial process. Under the CJRA  
25 mandate, "[f]ederal trial courts are now required, by statute, to implement techniques and  
26 strategies designed to dispose of cases in an efficient and inexpensive manner." See,  
27 *Schwarzkopf Technologies Corp. v. Ingersoll Cutting Tool Co.*, 142 F.R.D. 420, 423 (D.  
28 Del.1992). Additionally, federal judges "are subject to the injunction of Rule 1 [Federal Rules

1 of Civil Procedure] that [the Rules] ‘be construed to secure the just, *speedy* and inexpensive  
2 determination of every action.’” *Herbert v. Lando*, 441 U.S. 153, 177 (1979) (emphasis added).  
3 Plaintiffs’ failure to timely comply with the Court’s prior order is frustrating the speedy and  
4 inexpensive resolution of this case.

5           Absent the express consent of all the parties, a United States magistrate  
6 judge does not have the statutory or constitutional authority to try a civil case to judgment or  
7 rule upon a dispositive motion. 28 U.S.C. § 636(b)(1)(A). The Magistrates Act, however,  
8 permits magistrate judges to conduct all proceedings in civil cases if the parties expressly  
9 consent: "Upon consent of the parties, a . . . United States magistrate judge . . . may conduct any  
10 or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case,  
11 when specially designated to exercise such jurisdiction by the district court or courts he serves."  
12 *Hanson v. Mahoney*, 433 F.3d 1107, 1111 (9<sup>th</sup> Cir. 2006) (citing 28 U.S.C. § 636(c)(1)); *Gomez*  
13 *v. United States*, 490 U.S. 858, 865-872 (1989) (outlining the evolution of the Act). No precise  
14 written form is required to consent to a magistrate judge or to elect an assignment of a civil case  
15 to a district judge. *Kofoed v. IBEW, Local 48*, 237 F.3d 1001, 1004 (9th Cir. 2001); Fed. R. Civ.  
16 73(b), Advisory Committee note. The Clerk’s office electronically mailed to Plaintiffs’s counsel  
17 the the Consent to Exercise of Jurisdiction by United States Magistrate Judge or District Judge  
18 Option form on September 28, 2011. (Doc. 3)<sup>1</sup>

19           Any party is free to withhold consent to magistrate judge jurisdiction and elect to  
20 proceed before a district judge without adverse consequences. 28 U.S.C. 636(c)(2); Rule 73(b),  
21 Fed.R.Civ.P.; *Anderson v. Woodcreek Venture Ltd.*, 351 F.3d 911, 914 (9th Cir.2003) (pointing  
22 out that consent is the “touchstone of magistrate judge jurisdiction” under 28 U.S.C. § 636(c)).  
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25           <sup>1</sup> One may also find the consent/election form on the District’s web site, click on “Local  
26 Rules” at the top of the page, then click on “Forms” on the left side of the page and then click  
27 on and print the appropriate form. Consent/election forms are not to be e-filed; rather, they are  
28 to be filed in paper form with the Clerk’s Office. ECF Policies and Procedure Manual, II, ¶ N  
at p.24.

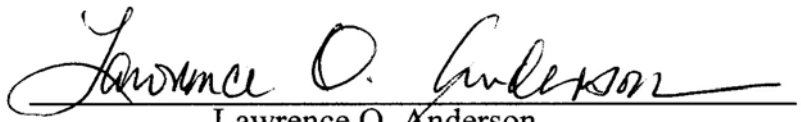
1 Pursuant to *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9<sup>th</sup> Cir. 1992) (trial courts  
2 have the inherent power to control their dockets and in the exercise of that power, they may  
3 impose or recommend sanctions including, where appropriate, dismissal of a case without  
4 prejudice).

5 Accordingly,

6 **IT IS ORDERED** that Plaintiffs show cause in writing on or before **5:00**  
7 **p.m. on Wednesday, October 26, 2011** why this lawsuit should not be dismissed without  
8 prejudice for failing to comply with the Court's prior orders. Absent good cause shown, the  
9 failure to timely file a pleading showing cause as set forth herein shall result in the dismissal  
10 without prejudice of this case in its entirety.

11 If Plaintiffs comply with the Court's September 30, 2011 Order **on or before**  
12 **5:00 p.m. on Wednesday, October 26, 2011** the undersigned will automatically discharge and  
13 vacate this OSC without imposing any sanctions.

14 DATED this 18<sup>th</sup> day of October, 2011.

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17 Lawrence O. Anderson  
18 United States Magistrate Judge  
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