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5 Attorneys for Plaintiff  
 6 RAYMOND P. MARIOLLE

7  
 8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 RAYMOND P. MARIOLLE,  
 11 Plaintiff,

12 vs.

13 VOLVO GROUP NORTH AMERICA,  
 14 INC.; CONSOLIDATED METCO, INC.;  
 15 AMSTED INDUSTRIES, INC.; and  
 16 DOES 1 through 25, inclusive,  
 Defendants.

) No. C-09-1209 MMC  
 )  
 ) ASSIGNED FOR ALL PURPOSES TO  
 ) THE HONORABLE MAXINE M. CHESNEY  
 )  
 )  
 ) **MOTION FOR LEAVE TO FILE FIRST**  
 ) **AMENDED COMPLAINT; AND ORDER**

17  
 18 NOW INTO COURT, through undersigned counsel, comes Raymond Mariolle, plaintiff herein,  
 19 who moves this Honorable Court for an order permitting plaintiff to file an Amended Complaint to name  
 20 Labrie Environmental Group (Labrie) and Wittke Waste Equipment (Wittke) as additional defendants  
 21 in this action.

22 This personal injury action has been instituted to recover damages sustained by Raymond P.  
 23 Mariolle as a consequence of two single-vehicle collisions which were caused by the failure of the  
 24 vehicle's wheel hubs. The wheel hubs are the point on the vehicle where the tire and rim are attached  
 25 to the vehicle. The Volvo vehicle operated by Mr. Mariolle at the time of the collision sustained hub  
 26 failures on September 17, 2007 and October 29, 2007, causing a tire and rim of the vehicle to detach and  
 27 the vehicle to lose control.

28

1 Upon information and belief, the vehicle was designed, manufactured, distributed and sold by  
2 Volvo Trucks North America, Inc. (VTNA) with component parts which were manufactured by  
3 Consolidated Metco, Inc. and/or Amsted Industries, Inc. VTNA and Consolidated Metco, Inc. have  
4 alleged that Labrie and Wittke were responsible for the alleged defects in the vehicle.

5 Plaintiff seeks to amend the complaint pursuant to Rule 15(a)(2) of the Federal Rules of Civil  
6 Procedure. The proposed Amended Complaint is attached as Exhibit "1" and is incorporated herein as  
7 if copied *in extenso*.

8 Counsel for plaintiff has contacted Matt F. Cohen, counsel for VTNA and Anthony E. Sonnett,  
9 counsel for Amsted Industries, Inc. and Consolidated Metco, Inc. regarding this motion. Counsel for  
10 VTNA has advised that his client will not oppose the motion. Counsel for Amstead Industries, Inc. and  
11 Consolidated Metco, Inc. has advised that his clients will not oppose the motion.

12  
13 Dated: May 20, 2010

BOXER & GERSON, LLP

14 By: 

15 GARY B. ROTH  
16 Attorneys for Plaintiff  
RAYMOND P. MARIOLLE

17 **ORDER**

18 IT IS ORDERED that Raymond Mariolle may file the Amended Complaint, on the condition  
19 that plaintiff file the Amended Complaint no later than May 21, 2010, and serve it on the newly-  
named defendants no later than June 18, 2010.

20 Dated: May 20, 2010

21   
22 THE HONORABLE MAXINE M. CHESNEY  
23 Judge of the United States District Court