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8 TUSCANY INVESTMENTS LLC

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 TUSCANY INVESTMENTS LLC,

Case No. C 13-04185 HRL

12 Plaintiff,

NOTICE OF MOTION AND MOTION
FOR RELIEF FROM CASE
MANAGEMENT ORDER AND
13 ~~[PROPOSED]~~ ORDER (Re: Dkt. No. 46)

14 vs.

15 DAIMLER TRUCKS NORTH AMERICA
16 LLC, a limited liability company;
17 WINNEBAGO INDUSTRIES, INC.;
18 LIPPERT COMPONENTS, INC.,

Date: ~~May 6, 2014~~
Time: 10:00 a.m.
Courtroom: 2

19 Defendants.

20 _____
21 TO ALL APPEARING DEFENDANTS AND THEIR ATTORNEYS OF
22 RECORD:

23 NOTICE IS HEREBY THAT on May 6, 2014, at 10:00 a.m., or as soon thereafter
24 as may be heard by the above-entitled Court, located at 280 South First Street, San Jose
25 California 95113, in the courtroom of the Honorable Howard R. Lloyd, plaintiff will and
26 hereby does move the Court for relief from the case management order.

27 This motion is made on the grounds that plaintiff recently obtained leave to file a
28 First Amended Complaint ("FAC") which added a new party, Lippert Components, Inc.
("LCI"), to this action. LCI is an out of state defendant was served with the FAC by
certified mail on March 27, 2014. As a result, LCI has not appeared, nor has it been
defaulted. Currently, the fact discovery cutoff date is April 18, 2014, and is one day after

1 LCI's time to respond to the FAC has run.

2 This motion is based on this Notice of Motion and Motion, the Memorandum of
3 Points and Authorities filed herewith, the pleadings and papers on file herein, and upon
4 such other matters as may be presented to the Court at the time of the hearing.

5
6 Dated: March 30, 2014

Respectfully submitted,

7
8 /s/ Terry L. Baker
9 TERRY L. BAKER
Attorney for Plaintiff

10 **POINTS AND AUTHORITIES**

11 Plaintiff brings this motion for relief from the case management order pursuant to
12 Local Rule 16-2(d).

13 I. **Issue to Be Decided**

14 The issue to be decided herein is whether plaintiff, and appearing defendants for
15 that matter, should be relieved from the original case management order in this case.

16 II. **Facts Relevant to This Motion**

17 This action arises out of plaintiff's purchase of a recreational vehicle that was
18 manufactured and warranted by defendants respectively. Plaintiff alleges that the vehicle
19 has been, and is, defective. Defendants deny plaintiff's allegations.

20 Plaintiff originally brought this action against defendants Winnebago Industries
21 and Daimler Trucks North America alleging violations of various warranty laws. At the
22 Early Neutral Evaluation that occurred on March 3, 2014, plaintiff learned for the first
23 time that some of the issues it alleges the vehicle experienced were potentially warranted
24 by LCI separately, and not Winnebago or Daimler.

25 As a result, the parties entered into a stipulation granting plaintiff leave to file the
26 FAC and add LCI as a party. The Court issued an order granting plaintiff said leave and
27 the FAC was filed on March 18, 2014. The Clerk issued a Summons as to LCI on March
28

1 19, 2014, and service on LCI commenced shortly thereafter. LCI's response date, if
2 plaintiff's counsel's math is correct, is April 17, 2014. Currently, the fact discovery
3 cutoff date is April 18, 2014.

4 III. Argument

5 Pursuant to L.R. 16-2(d), plaintiff and defendants request relief from the original
6 case management order for the reasons set forth in the above statement of facts.

7 Plaintiff's counsel has conferred with counsel for Winnebago and Daimler and neither
8 defendant opposes this request.

9 Plaintiff's counsel apologizes to the Court in advance for not including in this
10 motion a revised case management schedule. The reason is simply because there was not
11 enough time given plaintiff's counsel's schedule to meet and confer on a revised plan.
12 Additionally, because LCI has not appeared in the case, attempting to coordinate a revised
13 case management schedule might result in a futile task.

14 Plaintiff requests that the Court set a further case management conference
15 sometime in early May so that LCI can appear and the parties can further discuss ADR
16 options and visit settlement discussions.

17 IV. Conclusion

18 For the foregoing reasons, plaintiff respectfully requests that the Court grant this
19 motion, relieve the parties from the case management order, and set a further case
20 management conference some time in May of 2014.

21 Dated: March 30, 2014

Respectfully submitted,

23 /s/ Terry L. Baker
24 TERRY L. BAKER
Attorney for Plaintiff

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PROPOSED ORDER

Good cause appearing, it is hereby ORDERED that plaintiff's motion is GRANTED. All prior ordered dates are hereby vacated and a further case management conference will be held on May 6, 2014 at 1:30 pm. The parties' joint case management statement will be due April 29, 2014.

This matter is deemed suitable for hearing without oral argument. Accordingly, the hearing set for April 15, 2015, is hereby vacated.

Dated: April 14, 2014



UNITED STATES MAGISTRATE JUDGE
HOWARD R. LLOYD