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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In Re:
City of Stockton, California
City Hall, 425 North El Dorado St., Stockton, CA 95202
TIN: 94-6000436

Case No.: 12-32118-C-9
DC No.: DD-01
Date: November 6, 2012
Time: 9:30 AM
Judge: Klein
Courtroom: 35; Dept. C
Place: 501 I Street, 6th Floor
Sacramento CA 95814

Debtor(s).

MOTION BY SALVADOR BENAVIDES,
BY AND THROUGH HIS GUARDIAN AD LITEM PATRICIA SOLTERO-MORFIN,
FOR RELIEF FROM AUTOMATIC STAY TO
ALLOW CONTINUATION OF PRE-PETITION LITIGATION
[11 U.S.C. §§ 362; Fed. R. Bankr. P. 4001, 9014]

Salvador Benavides, by and through his Guardian Ad Litem Patricia Soltero-Morfin, ("Movant"),
a creditor of City of Stockton, California ("Debtor"), hereby moves for relief from the automatic stay to
allow continuation of pre-petition litigation and respectfully represents as follows:

1. This court has jurisdiction of this motion pursuant to 11 U.S.C. Section 362, and 28 U.S.C.
Sections 1334 and 157(b)(2)(G).

1 2. On or about June 28, 2012, Debtor filed a petition for relief under Chapter 9 of Title 11 of the
2 United States Bankruptcy Code ("Code").

3 3. Prior to the filing of the bankruptcy petition, Movant filed a lawsuit against Debtor in the
4 Superior Court of California, County of San Joaquin ("the Lawsuit"). The Lawsuit is pending as Case
5 No. 39-2012-00275791-CU-PA-STK.

6 4. The Lawsuit asserts claims against Debtor for including, but not limited to, negligence
7 causing a dangerous condition at the intersection of Martin Luther King Boulevard (Charter Way) and
8 Sutter Street which caused personal injuries and damages to Movant. Movant seeks recovery for his
9 personal injuries and damages.

10 5. The incident that is the subject of the Lawsuit occurred on or about April 12, 2011. Movant
11 suffered substantial injuries as a result of a motor vehicle collision. Movant has a severe brain injury
12 that is permanent that affects his short term and long term memory, causes slurred speech and has made
13 his maturity level that of a 12 year old child or younger. He has right side paralysis with continuing pain
14 in his right shoulder and knee and is also legally blind as a result of the accident.

15 6. Movant has incurred significant medical and incidental expenses. Movant has already accrued
16 more than \$750,000 in medical bills as a result of the accident. He should continue to receive medical
17 treatment, physical therapy, speech therapy and occupational therapy. Movant will need medical
18 treatment for his injuries indefinitely.

19 7. Movant's income is minimal. He currently receives only \$784 per month for SSI disability.
20 His mother receives a limited amount for providing home support services. He is on MediCal and
21 receives very little medical treatment. The amount of treatment he does receive is not enough to improve
22 his condition nor even prevent his condition from getting worse. His mother cannot continue to take
23 care of him. His family has no money and is barely surviving.

24 8. A true and correct copy of Movant's Complaint for Personal Injuries and Damages as filed
25 within the Lawsuit accompanies this motion as Exhibit "A".

26 9. Movant is entitled to, and reserves the right to request, a jury trial of the Lawsuit.

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1 A. Cause Exists to Grant Relief From the Automatic Stay.

2 10. A court shall grant relief from the stay for cause. 11 U.S.C. § 362(d)(1). A Court may use
3 its discretion when determining cause to grant relief from the automatic stay. "Cause" has no clear
4 definition and is determined on a case-by-case basis. *In re MacDonald*, 755 F.2d 715, 717 (9th Cir.
5 1985). Cause exists in this case because any harm to Debtor is substantially outweighed by harm to the
6 Movant in denying him relief from the automatic stay.

7 11. If the automatic stay of Debtor's bankruptcy case is not modified to allow continuing
8 prosecution of the Lawsuit, Movant will be significantly prejudiced. As more fully set forth in the
9 Declaration of Movant which accompanies this motion, the Lawsuit seeks compensation for significant,
10 and permanent, personal injuries suffered by Movant. As a consequence of such injuries, Movant is
11 unable to pursue his career in the U.S. Marine Corps as a certified mechanic, unable to pay his ongoing
12 medical expenses, and unable to pay for enough medical treatment to prevent his condition from further
13 deteriorating. Movant desperately needs for this lawsuit to continue so that a prompt resolution can take
14 place. Delay in the prosecution of the Lawsuit is materially prejudicial to Movant.

15 12. In addition, the automatic stay has ceased all activity in the Lawsuit, with the consequence
16 that the ultimate trial may be further delayed.

17 13. Modification of the automatic stay of Debtor's case will not result in material prejudice to
18 Debtor. Prior to the commencement of Debtor's bankruptcy case, Debtor had filed an answer in the
19 Lawsuit, utilizing as counsel its own attorney-employees from the City Attorney's office. Movant
20 believes Debtor continues to employ one or more attorneys in its City Attorney's office. The Lawsuit
21 will be prosecuted within the County of San Joaquin, and so Debtor will not be inconvenienced or put
22 to additional expense by defending litigation in a court other than its "home" superior court.

23 14. Movant seeks modification of the stay to allow continuing prosecution of the Lawsuit,
24 through and including entry of judgment, but collection -- if Movant should prevail -- only from any
25 excess coverage pool insurance and further collection against Debtor would be subject to the terms of
26 the anticipated Chapter 9 plan.

27 15. Good cause therefore exists pursuant to Section 362(d)(1) of the Code to grant to Movant
28 relief from the automatic stay of Section 362(a) of the Code.

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WHEREFORE, Movant prays:

1. For an order granting relief from the automatic stay of 11 U.S.C. § 362(a) to allow continuing prosecution of the Lawsuit, through and including entry of judgment, and for collection of any damages awarded to Movant from any excess coverage pool insurance and further collection against Debtor would be subject to the terms of the anticipated Chapter 9 plan; and,
2. For such other and further relief as the court deems proper.

Dated: October 9, 2012

DAHL & DAHL,
ATTORNEYS AT LAW

By: /s/ Andrew Brian Reisinger
Andrew Brian Reisinger
Attorneys for Salvador Benavides, by and through
his Guardian Ad Litem Patricia Soltero-Morfin