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Guardian Ad Litem Patricia Soltero-Morfin

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).

**EXHIBIT IN SUPPORT OF 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]**

The following exhibit is filed in support of 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 [Docket Control No. DD-01]:

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| <u>Exhibit</u> | <u>Title / Description</u> | <u>Starting Page No.</u> |
|----------------|--|--------------------------|
| A | Movant's Complaint for Personal Injuries and Damages | 3 |

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

FILED
SUPERIOR COURT

2012 JAN 26 PM 12:17

ROSA JUNQUEIRO, CLERK

BY _____
DEPUTY

1 R. LEWIS VAN BLOIS sbn 38912
2 THOMAS C. KNOWLES sbn 40899
3 VAN BLOIS & ASSOCIATES
4 Airport Corporate Centre
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6 Oakland, CA 94621
7 Telephone: (510) 635-1284
8 Facsimile: (510) 635-1516

9 Attorneys for Plaintiff

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

11 UNLIMITED CIVIL ACTION

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13
14
15 SALVADOR BENAVIDES, by and through
16 his Guardian ad Litem, PATRICIA
17 SOLTERO-MORFIN,

Case No. 39-2012-00275791-CU-PA-STK

18 Plaintiff,

Complaint for Personal Injuries and Damages

19 vs.

20 CITY OF STOCKTON, STATE OF
21 CALIFORNIA, and DOES 1 through 100,
22 inclusive,

23 Defendants.

24 COMES NOW plaintiff SALVADOR BENAVIDES, by and through his Guardian ad
25 Litem, Patricia Soltero-Morfin, and for cause of action against defendants, and each of them,
26 alleges:

THIS CASE HAS BEEN ASSIGNED TO
JUDGE LESLEY D. HOLLAND IN DEPARTMENT 1A
FOR ALL PURPOSES, INCLUDING TRIAL

FIRST COUNT

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1. Plaintiff SALVADOR BENAVIDES is now an incompetent adult as a result of the injuries received on April 12, 2011. Prior to the issuance of summons in this action, the above-entitled Court, by its order regularly made and entered, appointed his mother PATRICIA SOLTERO-MORFIN the Guardian ad Litem of said plaintiff, for the purpose of prosecuting this action on behalf of said plaintiff, and said PATRICIA SOLTERO-MORFIN at the time of issuance of summons in this action, was and ever since has been the regularly appointed, duly qualified and acting Guardian ad Litem of said incompetent plaintiff.

2. The true names or capacities, whether individual, corporate, associate or otherwise, of the defendants sued herein as DOES, are unknown to plaintiffs, who therefore sue said defendants by such fictitious names, pursuant to Section 474 of the Code of Civil Procedure. Plaintiff is informed and believes, and thereon alleges, that each of said defendants designated by such fictitious names is responsible and legally obligated to plaintiff in contract, in tort, or by statute, for the events and happenings herein referred to, and for the injuries and damages legally caused to plaintiff, all as hereinafter alleged. Plaintiff therefore prays leave to amend this complaint to insert herein the true names and capacities of said defendants when the same have been ascertained.

3. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, each of the defendants named herein, including each defendant sued herein under a fictitious name, was the duly authorized agent, servant, employee and/or independent contractor of each and every other defendant with respect to the events, happenings,

1 transactions, occurrences and/or conduct herein alleged, and in acting or omitting to act
2 with respect thereto as hereinafter alleged, was within the course, scope and authority of
3 such agency, service, employment, and/or contract, and conducting himself, herself, or
4 itself pursuant to the consent, permission, authorization, and/or ratification of and by
5 each and every other defendant, and further that, each and every defendant, as aforesaid,
6 when acting as a principal, was negligent in the selection, hiring, supervision and/or
7 control of each and every other defendant as an agent, servant, employee, and/or
8 independent contractor.

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10 4. At all times herein mentioned, defendant CITY OF STOCKTON was and now is a
11 municipal corporation existing within the jurisdictional confines of the County of San
12 Joaquin, State of California, and within the jurisdictional confines of the above-entitled
13 court.

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15 5. Prior to the filing of this complaint, on September 28, 2011, a claim on behalf of the
16 plaintiff was duly filed against defendant CITY OF STOCKTON for the injuries and
17 damages alleged herein, all as required by law. Thereafter, within six months prior to
18 the filing of this complaint, and specifically, on November 15, 2011, said defendant gave
19 notice that said claim was rejected on November 15, 2011.

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21 6. At all times herein mentioned, defendant STATE OF CALIFORNIA was and now is a
22 sovereign state of the United State of America.

23
24 7. Prior to the filing of this complaint, and on September 28, 2011, a written claim on
25 behalf of the plaintiff was duly filed against defendant STATE OF CALIFORNIA for
26 the damages alleged herein. Thereafter, within six months prior to the filing of this
complaint, and specifically on November 30, 2011, said defendant gave notice that it had

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rejected said claims on November 17, 2011.

8. At all times herein mentioned Martin Luther King Boulevard (formerly known as Charter Way) and Sutter Street are intersecting public streets and highways running in a generally east/west and north/south direction respectively in the City of Stockton, County of San Joaquin, State of California.

9. On or about April 12, 2011, and prior thereto, defendants, and each of them, designed, constructed, owned, possessed, operated, maintained, and controlled said Martin Luther King Boulevard and said Sutter Street, the intersection thereof, the approaches thereto, and the various traffic control and traffic warning devices and instrumentalities appurtenant thereto.

10. On or about April 12, 2011, and for some time prior thereto, the defendants, and each of them, by and through their agents, servants, employees and independent contractors, so negligently designed, constructed, owned, operated, controlled, maintained, repaired, and equipped the intersection of Martin Luther King Boulevard (Charter Way) and Sutter Street and the appurtenances thereon, in Stockton, California, such that the same was caused and allowed to be, and was, in a dangerous and defective condition, and constituted a concealed trap for the users thereof, in that, among other things there were uncontrolled, unwarranted, unsuitable, unsafe and inadequate left turn lanes at a congested uncontrolled intersection where traffic volumes, traffic speeds, and a history of a high number of accidents determined that said left turn lanes should not be maintained and left turns should be prohibited; there was a failure to provide adequate time for vehicles to safely turn on or cross said intersection; there was a failure to block off turning movements and straight-through traffic by extending the raised median through

1 the intersection to prevent and eliminate the high number of right-of-way violations, right
2 angle and broadside collisions; visual obstructions including signs and objects in the
3 median, on the sidewalks, and on the approaches to the intersection were allowed, thereby
4 causing unsafe and reduced sight distances for traffic; there were sight distance
5 limitations for traffic proceeding through the intersection or turning in the intersection
6 and there was a failure to install controlled left turn lanes and traffic signals, a failure to
7 prevent vehicles from making left turns, a failure to warn traffic of turning vehicles, a
8 failure to install adequate signs, pavement markings, delineations, flashing lights,
9 beacons, warnings and traffic controls so as to allow traffic to safely pass through said
10 intersection.
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13 Said intersection and roadway constituted a concealed trap for motorists and
14 pedestrians thereon and there were inadequate signs, warnings and other devices to
15 safely control the movement of traffic and pedestrians at said location. Other conditions
16 as yet unknown may have contributed to the dangerous and defective character of said
17 public property and claimant will pray leave to assert same as they become known. By
18 reason of the foregoing, said public property was in a dangerous and defective condition,
19 creating a substantial risk of harm to persons using same with due care in a manner in
20 which it was reasonably foreseeable said public property would be used; that said public
21 entity was further negligent in that, by and through its agents, servants, employees and
22 independent contractors, it knew, or in the exercise of ordinary care should have known,
23 of the dangerous condition of said public property, and of the risk of injury created
24 thereby, and nevertheless failed to remedy said condition, although having a reasonable
25 opportunity to do so.
26

1 By reason of the foregoing, said public property was in a dangerous and
2 defective condition, constituting, in various respects, a concealed trap for motorists using
3 same, and creating a substantial risk of harm to persons using same, and the property
4 adjacent thereto, with due care in a manner in which it was reasonably foreseeable said
5 public property would be used. Further, said dangerous and defective condition of said
6 public property created a reasonably foreseeable risk of the kind of injury which is herein
7 alleged.
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9 11. At the time and place hereinabove set forth, a 1998 Kawasaki 750 motorcycle, California
10 license 17W4024, driven by plaintiff, was being operated in an eastbound direction
11 along and upon said Martin Luther King Boulevard.
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13 12. As a direct and legal result of the negligence and carelessness of said defendants, and
14 each of them, and the dangerous and defective condition of public property and the
15 concealed trap, as aforesaid, the said 1998 Kawasaki 750 motorcycle collided with an
16 unknown vehicle identified as a Toyota Camry automobile making a left turn from
17 westbound Martin Luther King Boulevard to southbound Sutter Street in the City of
18 Stockton, California, causing plaintiff to sustain the severe and permanent personal
19 injuries hereinafter alleged.
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21 13. As a direct and legal result of the negligence and carelessness of said defendants, and
22 each of them, and the dangerous and defective condition of public property and the
23 concealed trap, as aforesaid, and the collision thereby caused as hereinabove set forth,
24 plaintiff was injured in his health, strength and activity, sustaining injury to his body and
25 shock and injury to his nervous system and person, all of which injuries have caused and
26 continue to cause each plaintiff great mental, physical and nervous pain and suffering.

1 Plaintiff is informed and believes, and on such information and belief alleges, that said
2 injuries will result in some permanent disability to him. By reason of the foregoing, said
3 plaintiff has sustained general damages in a sum in excess of the jurisdictional minimum
4 of the Superior Court.

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6 14. As a further direct and legal result of the negligence and carelessness of said defendants,
7 and each of them, of the dangerous and defective condition of public property and the
8 concealed trap, as aforesaid, and the collision and resulting injuries thereby caused to
9 plaintiff, as hereinabove set forth, said plaintiff has been required to and has employed
10 physicians, surgeons, hospitals, and various other health care practitioners to examine,
11 care for, and treat him, and has thereby necessarily incurred medical and incidental
12 expenses. Plaintiff is informed and believes, and thereon alleges, that he will continue to
13 incur such expenses for an indefinite period of time in the future. The various amounts
14 of such medical and incidental expenses are unknown to plaintiff at this time, wherefore
15 said plaintiff will ask leave to amend this pleading to set forth said amounts when the
16 same have been ascertained, or upon proof thereof at trial.

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19 15. As a further direct and legal result of the negligence and carelessness of said defendants,
20 and each of them, of the dangerous and defective condition of public property and the
21 concealed trap, as aforesaid, and the collision and resulting injuries thereby caused to
22 plaintiff as hereinabove set forth, said plaintiff has sustained injury and damage to his
23 earnings and/or earning capacity, and said plaintiff is informed and believes, and thereon
24 alleges, that he will continue to sustain such damage in the future, all to his further
25 damage in an amount presently unknown, wherefore plaintiff will each pray leave to
26 amend this complaint to insert the amount of said damage when the same has been ascer-

1 tained, or upon proof thereof at trial.

2 WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as
3 hereinafter set forth.

4
5 SECOND COUNT

- 6 16. Plaintiff refers to the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11 of this
7 Complaint, and incorporate the same herein by reference as if fully set forth at this point.
- 8 17. On or about April 12, 2011, and for some time prior thereto, the defendants, and each of
9 them, by and through their agents, servants, employees and independent contractors, so
10 negligently designed, constructed, owned, operated, controlled, maintained, repaired, and
11 equipped the intersection of Martin Luther King Boulevard (Charter Way) and Sutter
12 Street and the appurtenances thereon, in Stockton, California, such that the same was
13 caused and allowed to be, and was, in a dangerous and defective condition, and
14 constituted a concealed trap for the users thereof, in that, among other things there were
15 uncontrolled, unwarranted, unsuitable, unsafe and inadequate left turn lanes at a
16 congested uncontrolled intersection where traffic volumes, traffic speeds, and a history
17 of a high number of accidents determined that said left turn lanes should not be
18 maintained and left turns should be prohibited; there was a failure to provide adequate
19 time for vehicles to safely turn on or cross said intersection; there was a failure to block
20 off turning movements and straight-through traffic by extending the raised median
21 through the intersection to prevent and eliminate the high number of right-of-way
22 violations, right angle and broadside collisions; visual obstructions including signs and
23 objects in the median, on the sidewalks, and on the approaches to the intersection were
24 allowed, thereby causing unsafe and reduced sight distances for traffic; there were sight
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1 distance limitations for traffic proceeding through the intersection or turning in the
2 intersection and there was a failure to install controlled left turn lanes and traffic signals,
3 a failure to prevent vehicles from making left turns, a failure to warn traffic of turning
4 vehicles, a failure to install adequate signs, pavement markings, delineations, flashing
5 lights, beacons, warnings and traffic controls so as to allow traffic to safely pass through
6 said intersection.
7

8 Said intersection and roadway constituted a concealed trap for motorists and
9 pedestrians thereon and there were inadequate signs, warnings and other devices to
10 safely control the movement of traffic and pedestrians at said location. Other conditions
11 as yet unknown may have contributed to the dangerous and defective character of said
12 public property and claimant will pray leave to assert same as they become known. By
13 reason of the foregoing, said public property was in a dangerous and defective condition,
14 creating a substantial risk of harm to persons using same with due care in a manner in
15 which it was reasonably foreseeable said public property would be used; that said public
16 entity was further negligent in that, by and through its agents, servants, employees and
17 independent contractors, it knew, or in the exercise of ordinary care should have known,
18 of the dangerous condition of said public property, and of the risk of injury created
19 thereby, and nevertheless failed to remedy said condition, although having a reasonable
20 opportunity to do so.
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23 By reason of the foregoing, said public property was in a dangerous and
24 defective condition, constituting, in various respects, a concealed trap for motorists using
25 same, and creating a substantial risk of harm to persons using same, and the property
26 adjacent thereto, with due care in a manner in which it was reasonably foreseeable said

1 public property would be used. Further, said dangerous and defective condition of said
2 public property created a reasonably foreseeable risk of the kind of injury which is herein
3 alleged.

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5 18. Defendants, and each of them, directly, and/or by and through their respective agents,
6 servants, employees, and/or independent contractors, had actual knowledge of the
7 existence of said condition, and knew or should have known of its dangerous character, a
8 sufficient period of time prior to April 12, 2011, to have taken measures to eliminate or
9 correct same prior to the occurrence of the accident herein described.

10
11 19. Plaintiff is informed and believes, and thereon alleges, that even if said dangerous and
12 defective condition of public property was not actually known to defendants, and to each
13 of them, defendants, and each of them, directly, and/or by and through their respective
14 agents, servants, employees, and/or independent contractors, had constructive notice of
15 said dangerous and defective condition of public property, in that said condition had
16 existed for such a period of time and was of such an obvious nature that the defendants,
17 and each of them, in the exercise of due care should have, and a reasonably adequate
18 inspection system maintained and operated with due care would have, discovered the
19 condition and its dangerous character a sufficient time prior to April 12, 2011, for
20 defendants, and each of them, to have taken measures to eliminate or correct same prior
21 to the occurrence of the accident herein described.

22
23 20. As a direct and legal result of the negligence and carelessness of said defendants, and
24 each of them, and the dangerous and defective condition of public property and the
25 concealed trap, as aforesaid, the said 1998 Kawasaki 750 motorcycle collided with an
26 unknown vehicle identified as a Toyota Camry automobile making a left turn from

1 westbound Martin Luther King Boulevard to southbound Sutter Street in the City of
2 Stockton, California, causing plaintiff to sustain the severe and permanent personal
3 injuries hereinafter alleged.

4
5 21. As a direct and legal result of the negligence and carelessness of said defendants, and
6 each of them, and the dangerous and defective condition of public property and the
7 concealed trap, as aforesaid, and the collision thereby caused as hereinabove set forth,
8 plaintiff was injured in his health, strength and activity, sustaining injury to his body and
9 shock and injury to his nervous system and person, all of which injuries have caused and
10 continue to cause each plaintiff great mental, physical and nervous pain and suffering.
11 Plaintiff is informed and believes, and on such information and belief alleges, that said
12 injuries will result in some permanent disability to him. By reason of the foregoing, said
13 plaintiff has sustained general damages in a sum in excess of the jurisdictional minimum
14 of the Superior Court.

15
16 22. As a further direct and legal result of the negligence and carelessness of said defendants,
17 and each of them, of the dangerous and defective condition of public property and the
18 concealed trap, as aforesaid, and the collision and resulting injuries thereby caused to
19 plaintiff, as hereinabove set forth, said plaintiff has been required to and has employed
20 physicians, surgeons, hospitals, and various other health care practitioners to examine,
21 care for, and treat him, and has thereby necessarily incurred medical and incidental
22 expenses. Plaintiff is informed and believes, and thereon alleges, that he will continue to
23 incur such expenses for an indefinite period of time in the future. The various amounts
24 of such medical and incidental expenses are unknown to plaintiff at this time, wherefore
25 said plaintiff will ask leave to amend this pleading to set forth said amounts when the
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same have been ascertained, or upon proof thereof at trial.

23. As a further direct and legal result of the negligence and carelessness of said defendants, and each of them, of the dangerous and defective condition of public property and the concealed trap, as aforesaid, and the collision and resulting injuries thereby caused to plaintiff as hereinabove set forth, said plaintiff has sustained injury and damage to his earnings and/or earning capacity, and said plaintiff is informed and believes, and thereon alleges, that he will continue to sustain such damage in the future, all to his further damage in an amount presently unknown, wherefore plaintiff will each pray leave to amend this complaint to insert the amount of said damage when the same has been ascertained, or upon proof thereof at trial.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as follows:

1. For general damages in favor of plaintiff in an amount in excess of the jurisdictional minimum of the Superior Court.
2. For special damages for medical and related expenses incurred for the care and treatment of plaintiff and for future medical, caretaking and related expenses in a sum according to proof.
3. For special damages for damage to earnings and earning capacity of plaintiff in a sum according to proof.
4. For prejudgment interest at ten percent (10%) per annum, pursuant to the provisions of Civil Code, Sections 3287, 3288 and 3291, or any of them.
5. For costs of suit incurred herein.

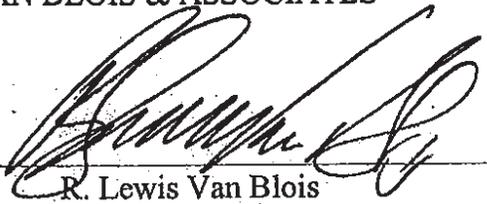
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6. For such other and further relief as this Court may deem proper.

Dated: January 20, 2012

VAN BLOIS & ASSOCIATES

By 
R. Lewis Van Blois
Attorneys for Plaintiffs