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WALTER WILHELM LAW GROUP
a Professional Corporation
Michael L. Wilhelm #101495
Matthew P. Bunting #306034
205 E. River Park Circle, Suite 410
Fresno, CA 93720

Telephone: (559) 435-9800
Facsimile: (559) 435-9868
E-mail: mwilhelm@W2LG.com
mbunting@W2LG.com

Attorneys for Movants
CAL LeDUC; TORI ABBY; MILEY ABBY, a
Minor, by and through her Guardian ad Litem
TORI ABBY; MANDY JOBE; LUKUS LeDUC;
JAY LeDUC; and CAL LeDUC as successor
In interest to the estate of Marsha Kay LeDUC,

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

MARIO A. GUERRA,

Debtor.

CASE NO. 17-11365

Chapter 7

DC NO. WW-1

CAL LeDUC; TORI ABBY; MILEY ABBY, a
Minor, by and through her Guardian ad
Litem TORI ABBY; MANDY JOBE; LUKUS
LeDUC; JAY LeDUC; and CAL LeDUC as
successor In interest to the estate of
Marsha Kay LeDUC,

Movants.

v.

MARIO A. GUERRA and TRUDI G.
MANFREDO, Chapter 7 Trustee,

Respondents.

**CAL LeDUC et. al's MOTION FOR AN
ORDER GRANTING RELIEF FROM
STAY TO PURSUE PENDING ACTION
IN NON-BANKRUPTCY FORUM
PURSUANT TO 11 U.S.C. 362(d)(1)**

Date: July 6, 2017

Time: 9:30 a.m.

Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13

Judge: Honorable René Lastreto II

TO THE HONORABLE RENÉ LASTRETO II, UNITED STATES BANKRUPTCY

JUDGE:

MOTION FOR AN ORDER GRANTING RELIEF FROM -1-
STAY TO PURSUE PENDING ACTION IN NON-
BANKRUPTCY FORUM PURSUANT TO 11 U.S.C.
362(d)(1)

00145608-MPB-06.05.2017

LP0000026

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2 CAL LeDUC; TORI ABBY; MILEY ABBY, aMinor, by and through her Guardian ad Litem
3 TORI ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as
4 successor In interest to the estate of Marsha Kay LeDUC, ("Movants"), parties in
5 interest in the Chapter 7 bankruptcy proceeding of MARIO A. GUERRA (the "Debtor"),
6
7 hereby move for entry of an order pursuant to Section 362(d)(1) of the Bankruptcy Code
8 granting Movants relief from stay to proceed with a non-bankruptcy action pending
9 against the Movants in the Fresno County Superior Court ("FCSC") as Case No.
10 13CECG03811 (the "Car Crash Litigation").

11 The Debtor filed Chapter 7 on April 12, 2017 only 1 day prior to a good faith
12 settlement hearing concerning other defendants and 12 days before trial was scheduled
13 to begin on April 24, 2017. All of the counsel were deep in final preparation and,
14 essentially, ready to proceed.
15

16 Judge Mark Snauffer has presided over this matter since the Car Crash
17 Litigation began on December 11, 2013. The Car Crash Litigation consists of wrongful
18 death, emotional distress, and personal injury claims stemming from a car crash on
19 June 12, 2013. Judge Snauffer is thoroughly familiar with the underlying issues and
20 procedural status of this case. He has made rulings already in this case regarding
21 punitive damages and compromising the claim of a minor. It will be most efficient for
22 this matter to be tried in the Superior Court before Judge Snauffer.

23 The trial must be conducted. The lawyers are ready. The issues involve only
24 state law issues. The FCSC is ideally equipped to hear matters involving personal
25 injury and wrongful death issues. Further, the parties involved in the Car Crash
26 Litigation were two days away a good faith settlement hearing that would determine
27 whether the settlement between the Movants and the settling defendants (Toyota
28

1 Motor Corporation, New United Motor Manufacturing, Inc., and General Motors LLC)
2 was in good faith and would have ended their involvement in the case.

3 Recreating a trial before this Court when the FCSC is already thoroughly familiar
4 with the case and has already tried many of the issues is an utter waste of judicial
5 economy.

6 Principles of judicial economy, abstention, comity, jury trial right, non-core
7 matter and just simple plain common sense support immediate stay relief. No matter
8 which view finder the Court uses, relief from stay should be granted for "cause"
9 pursuant to section 362(d)(1) of the Bankruptcy Code.

10 The Motion is supported by the Memorandum of Points and Authorities, the
11 Declaration of Stephen Cornwell, the Exhibits to the Motion, which are being filed
12 concurrently herewith, the record in this case, the arguments and representations of
13 counsel, and any oral or documentary evidence presented at or prior to the time of the
14 hearing on the Motion.

15 This Motion is brought pursuant to 11 U.S.C. 362(a)(1) seeking relief from stay
16 to continue on with a pending State Court action and to recover on claims that arose
17 pre-petition.

18 The Motion is also brought pursuant to 11 U.S.C. 362(a)(3) seeking relief from
19 stay to recover property from the estate that is rightfully property of Movants.

20 **WHEREFORE**, Movants respectfully request that this Court enter an Order: (a)
21 granting the Motion; (b) modifying the automatic stay to permit the Car Crash Litigation
22 to proceed to judgment (but not beyond) on all pending claims for relief; (c) waiving the
23 14 day imposed by FRBP 4001(a)(3); (d) determining that the order is binding and
24 effective despite the conversion of the bankruptcy case to any other chapter of Title 11
25 of the United States Code; and (e) for such other and further relief as the Court deems
26 just and proper.

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1 Dated: June 1, 2017

2 WALTER WILHELM LAW GROUP,
3 a Professional Corporation

4 By: 

5 Michael L. Wilhelm, Attorneys for Movants
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7 Minor, by and through her Guardian ad
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