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

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

13 In re

14 MARIO A. GUERRA,

15 Debtor.

CASE NO. 17-11365

Chapter 7

DC NO. WW-1

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

20 Movants.

21 v.

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

24 Respondents.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF 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

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF FACTS.....	1
A. THE FACTUAL BACKGROUND PERTAINING TO THE CAR CRASH.....	1
B. THE CAR CRASH LITIGATION.....	2
1. Movants' Claims In The Car Crash Litigation.	2
2. The Good Faith Settlement Hearing.....	2
II. IMPACT OF BANKRUPTCY	2
III. ARGUMENT.....	5
A. RELIEF FROM STAY SHOULD BE GRANTED FOR CAUSE SHOWN.....	5
B. THERE IS CAUSE FOR RELIEF FROM STAY TO PERMIT THE GARDNER LEASE LITIGATION TO PROCEED THROUGH JUDGMENT	6
1. The Status of the Car Crash Litigation and Principles of Comity and Judicial Economy Show Cause	6
2. Grounds for Abstention Show Cause	11
3. Personal Injury Torts and Wrongful Death Claims are Non-Core Matters	13
IV. RELIEF REQUESTED	13

TABLE OF AUTHORITIES

Cases

<i>In re Aquarius Disk Servs., Inc.</i> , 254 B.R. 253, 260 (Bankr. N.D. Cal. 2000).....	5
<i>In re Castlerock Properties</i> , 781 F.2d 159 (9th Cir. 1986).....	12
<i>In re Cini</i> , 2012 Bankr. LEXIS 2865, at 22 (Bankr. D. Mont. 2012)	11
<i>In re Conejo Enters., Inc.</i> , 96 F.3d 346, 351 (9th Cir. 1996)	5
<i>In re Eastport Assocs.</i> , 935 F.2d 1071, 1075 (9th Cir. 1991)	12
<i>In re Gibson</i> , 349 B.R. 54 (Bankr. D. Idaho 2006)	6, 12
<i>In re Hakim</i> , 212 B.R. 632, 640 (Bankr. N.D. Cal. 1997).....	13
<i>In re Kemble</i> , 776 F.2d 802, 807 (9th Cir. 1985).....	7, 11
<i>In re Pac. Gas * Elec. Co.</i> , 279 B.R. 561, 572 (Bankr. N.D. Cal. 2002)	12
<i>In re Plumberex Specialty Prods., Inc.</i> , 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004)	6, 13
<i>In re Santa Clara County Fair Ass'n, Inc.</i> , 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995)	5, 6
<i>In re Sonnox Indus., Inc.</i> , 907 F. 2d 1280, 1286 (2 nd Cir. 1990).....	7, 13
<i>In re Sun Valley Ranches, Inc.</i> , 823 F.2d 1373, 1376 (9th Cir. 1987).....	6
<i>In re Tucson Estates, Inc.</i> , 912 F.2d 1162, 1166 (9th Cir. 1990)	5, 11, 12
<i>In re Universal Life Church, Inc.</i> , 127 B.R. 453, 455 (ED Ca 1991)	5

Statutes

11 U.S.C. § 362(d)(1).....	5
11 U.S.C. § 362(g).....	6
28 U.S.C. § 1334(c)	11, 13
28 U.S.C. § 1334(c)(2).....	11
28 U.S.C. § 157(b)(2).....	13

00145055-MPB-05.30.2017

1 TO THE HONORABLE RENÉ LASTRETO II, UNITED STATES BANKRUPTCY
2 JUDGE:

3 CAL LeDUC; TORI ABBY; MILEY ABBY, a Minor, by and through her Guardian
4 ad Litem TORI ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC
5 as successor In interest to the estate of Marsha Kay LeDUC ("Movants"), parties in
6 interest in the Chapter 7 proceeding of Mario A. Guerra (the "Debtor"), submit this
7 Memorandum and Points and Authorities in support of their Motion for an Order
8 Granting Relief From the Automatic Stay (the "Motion") granting Movants relief from
9 stay to proceed to final adjudication of all matters involved in a non-bankruptcy action
10 brought by Movants in the Fresno County Superior Court ("Superior Court") as Case
11 No. 13CECG03811 (the "Car Crash Litigation"). Movants are not seeking relief to
12 enforce judgment, if any, against the Debtor. Any further action against Debtor would
13 remain subject to the automatic stay. Movants respectfully represent as follows:

14 **I. STATEMENT OF FACTS**

15
16 **A. THE FACTUAL BACKGROUND PERTAINING TO THE CAR CRASH**

17 All of the Movants are family members of one another. On June 12, 2013, Tori
18 Abby was driving her car southbound on Alta Avenue in the County of Fresno. Her
19 mother, Marsha Kay LeDuc and her daughter Miley Abby, a minor, were passengers in
20 the vehicle.

21 Daniel M. Canchola ("Canchola"), in the course and scope of his employment to
22 Mario A. Guerra ("Guerra"), was driving a Dodge Ram 3500 pickup truck to make a
23 delivery at the direction of Guerra. The pickup truck was owned by Guerra. While Tori
24 Abby's car was stopped at the intersection of Alta and Manning Avenues, Canchola,
25 driving at excessive speed, failed to break in time resulting in the Dodge Ram 3500
26 slamming into the back of Tori Abby's car. The crash injured both Tori Abby and Miley
27 Abby and killed Marsha Kay LeDuc.

28 Canchola was driving without a license and informed Guerra that he didn't have

1 a driver's license. Separate criminal proceedings have been resolved over these
2 issues.

3
4 **B. THE CAR CRASH LITIGATION**

5 This accident occurred four years ago and litigation has been going on about
6 that same length of time. (Cornwell Dec., ¶4 and 15.) All discovery and pretrial work
7 has been concluded. (Cornwell Dec., ¶8.) This matter is trial ready. (Cornwell Dec.,
8 ¶9.)

9 **1. Movants' Claims In The Car Crash Litigation.**

10 Movants filed their original complaint on December 11, 2013 and have amended
11 that complaint several times. (Cornwell Dec., ¶4.) Movants allege causes of action for
12 wrongful death, personal injury, emotional distress, and punitive damages. (Cornwell
13 Dec., ¶5.) In general, Movants claim that Canchola and Guerra both negligently
14 caused the accident resulting in the injuries to the three in Tori Abby's car. (Cornwell
15 Dec., ¶6.)

16 **2. The Good Faith Settlement Hearing.**

17 A Good Faith Settlement Hearing was set for April 13, 2017. (Cornwell Dec.,
18 ¶10.) At this hearing, it would be decided if the remaining defendants other than
19 Canchola, Guerra, and Guerra Produce were settling in good faith with Movants.
20 (Cornwell Dec., ¶11.) If these remaining defendants (Toyota Motor Corporation,
21 General Motors, LLC, and New United Motor Manufacturing, Inc. settled, Canchola,
22 Guerra, and Guerra Produce would be the only defendants left in the case when it
23 proceeded to trial. (Cornwell Dec., ¶11.)

24 **II. IMPACT OF BANKRUPTCY**

25 The Car Crash Litigation has been pending since it was initiated on December
26 11, 2013. It was initiated by Movants against Canchola, Guerra, Guerra Produce (a
27 corporation with Guerra as the principal), General Motors LLC, Toyota Motor
28 Corporation, New United Motor Manufacturing, Inc, TRQSS, Inc., and TRW Automotive

1 GMBH. All other defendants except for Canchola, Guerra, and Guerra Produce were
2 either dropped from the case or are attempting to settle out of the case.

3 There was a good faith settlement hearing set for April 13, 2017 to determine
4 whether the settlement entered into between Movants and Defendants Toyota Motor
5 Corporation, New United Motor Manufacturing, Inc. and General Motors LLC was
6 entered into in good faith. (Cornwell Dec., ¶10 and 11.) If the court ruled that
7 settlement was in good faith, this would have left only Canchola, Guerra, and Guerra
8 Produce as the final three defendants ready to stand trial. (Cornwell Dec., ¶11.)

9 All the pre-trial litigation work was completed and the case was fully prepared
10 and ready to start trial on April 24, 2017 (Cornwell Dec., ¶8 and 9.). As a result of a
11 coordinated bankruptcies of Canchola and Guerra, within 2 weeks of trial, (Canchola
12 filed bankruptcy on April 11, 2017 and Guerra filed bankruptcy on April 12, 2017) the
13 trial was stayed and dropped from calendar. (Cornwell Dec., ¶13.) Further, the good
14 faith settlement hearing was also dropped from calendar due to concerns over the
15 automatic stay. (Cornwell Dec., ¶13.)

16 1. This bankruptcy matter is not the typical situation where a debtor is faced
17 with multiple problems and creditor pressure and requires a stay to sort out its
18 problems. As shown by the factual recitation below, in this matter the only substantive
19 obligation of the Debtor or his estate is this potential judgment from the Car Crash
20 Litigation.

21 On one hand, Movants are seeking redress for their damages suffered in the car
22 crash. On the other hand, Canchola and Guerra are seeking to discharge their
23 personal liability for the accident. In the middle is an insurance company that will still
24 be liable for the judgment if the trial is allowed to proceed. The applicable balancing
25 factors weigh in favor of allowing the Car Crash Litigation to proceed in the appropriate
26 forum so that the Movants' claims can be liquidated. This way the Movants' rights can
27 be vindicated, the Debtor can proceed with his bankruptcy, and the insurance company
28 will have whatever rights and duties it has.

1 2. On Canchola's schedules, he indicates that he only has \$270 worth of
2 assets. As far as liabilities, Canchola only has scheduled debt of \$2,660 other than his
3 estimated liability resulting from the Car Crash Litigation. Canchola estimates a
4 potential judgment from the Car Crash Litigation as a debt of \$1.5 million on his
5 schedules pending a final verdict from the Superior Court.

6 3. On Guerra's schedules, the same basic principle is at play. All of
7 Guerra's property is exempt. Guerra's only debts (other than the Car Crash Litigation)
8 amount to \$17,728. Of this amount, \$14,201 is a car loan on a vehicle that the debtor
9 is presumably going to reaffirm due to equity in the vehicle. Thus, Guerra is essentially
10 filing bankruptcy over \$3,527 of debt and the Car Crash Litigation.

11 4. The real issue behind the Car Crash Litigation is whether Infinity
12 Insurance underinsured the Guerra vehicle as a matter of law. (Cornwell Dec., ¶16.) If
13 this is the case, it would subject Infinity Insurance to a claim for \$750,000 of coverage
14 rather than the present \$25,000 which Infinity Insurance claims is the extent of its
15 exposure. (Cornwell Dec., ¶17.) This is a legal issue to eventually be sorted out by the
16 Superior Court.

17 5. Movants are simultaneously moving for motions for relief from stay to
18 continue the Car Crash Litigation against Guerra and Canchola and expects that both
19 motions will be heard at the same time.

20 6. This litigation must be resolved in some forum. The Honorable Mark
21 Snauffer presides over the Car Crash Litigation and has since the suit was filed (since
22 December 11, 2013). This is an action under state law for which the state court is well
23 equipped to hear and decide.

24 7. Movants demanded a jury trial, a right which would be lost if forced to
25 proceed with this case in the bankruptcy court.

26 8. In preparation for the trial on April 24, 2017, Judge Snauffer has read and
27 decided issues pertaining to punitive damages and an order to compromise the claim
28 of a minor.

1 9. By reason of the completion of discovery, the very late stage of the
2 litigation, the state law claims, judicial economy, and the underlying facts of this
3 dispute, cause for relief from stay exists.

4 10. The stay should be lifted to allow the litigation to proceed in state court to
5 final adjudication (but not enforcement).

6 **III. ARGUMENT**

7 **A. RELIEF FROM STAY SHOULD BE GRANTED FOR CAUSE SHOWN**

8 Section 362(d)(1) of the Bankruptcy Code provides, in relevant part:

9 On request of a party in interest and after notice and a hearing, the court
10 shall grant relief from the stay provided under subsection (a) of this
11 section, such as by terminating, annulling, modifying, or conditioning such
stay-

12 (1) for cause, including the lack of adequate protection of an interest in
13 the property of such party in interest. 11 U.S.C. § 362(d)(1).

14 11 U.S.C. § 362(d)(1).

15 The Court has broad discretion to determine whether "cause" exists to lift the
16 stay. *In re Santa Clara County Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir.
17 1995), "Cause" is not statutorily defined, but is determined on a case-by-case basis. *In*
18 *re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990); *In re Conejo Enters., Inc.*,
19 96 F.3d 346, 351 (9th Cir. 1996) (The decision to grant or deny relief from the
20 automatic stay is committed to the sound discretion of the bankruptcy court...). See,
21 also, *In re Universal Life Church, Inc.*, 127 B.R. 453, 455 (ED Ca 1991).

22 "Cause, based on a balancing of factors, may warrant allowing a litigant to
23 continue to pursue state court litigation against a debtor." *In re Aquarius Disk Servs.,*
24 *Inc.*, 254 B.R. 253, 260 (Bankr. N.D. Cal. 2000) (granting creditor relief from the
25 automatic stay to liquidate its claim). Although a bankruptcy court has broad discretion
26 to determine whether cause for relief exists, that discretion is not unfettered where
27 there is pre-bankruptcy litigation involving non-bankruptcy law claims between the
28 movant and the debtor. See *In re Tucson Estates, Inc.*, 912 F.2d at 1169. Reversing a

1 bankruptcy court's ruling that denied relief from stay to permit a pre-bankruptcy lawsuit
2 to proceed to judgment, the Ninth Circuit Court of Appeals in *Tucson Estates*
3 concluded: "The circumstances of this case viewed as a whole... lead us to conclude
4 that the bankruptcy court abused its discretion by not abstaining and entirely lifting the
5 stay." The issue here is the balancing of the pertinent factors.

6 A party opposing relief from the automatic stay has the ultimate burden of proof
7 on all issues except the existence of equity, which is not at issue here. See 11 U.S.C.
8 § 362(g); see also *In re Sun Valley Ranches, Inc.*, 823 F.2d 1373, 1376 (9th Cir. 1987).
9 Once the moving party establishes that a prima facie case that "cause" exists for stay
10 relief, "the burden shifts to the debtor to show that relief from the stay is unwarranted."
11 See *In re Plumberex Specialty Prods., Inc.*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004).

12
13 **B. THERE IS CAUSE FOR RELIEF FROM STAY TO PERMIT THE GARDNER**
14 **LEASE LITIGATION TO PROCEED THROUGH JUDGMENT**

15 **1. The Status of the Car Crash Litigation and Principles of Comity and**
16 **Judicial Economy Show Cause**

17 Two and one (respectively for Canchola and Guerra) days prior to a good faith
18 settlement Canchola and Guella filed coordinated bankruptcy cases. This also caused
19 the state court case to miss the trial date of April 24, 2017 which was less than two
20 weeks away. This is a scenario where a bankruptcy court should grant relief from stay
21 for the limited purpose of permitting the liquidation of the claims for relief arising solely
22 under state law in the non-bankruptcy forum where they are ready for trial before a
23 jury:

24 [I]t will often be more appropriate to permit proceedings to continue in their place
25 of origin, when no great prejudice to the bankruptcy estate would result, in order
26 to leave the parties to their chosen forum and to relieve the bankruptcy court
27 from many duties that will be handled elsewhere.

28 //

1 *In re Santa Clara County Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir.
2 1995) (citing judicial economy); *see In re Gibson*, 349 B.R. 54 (Bankr. D. Idaho 2006)
3 (granting creditor's joint motion for relief from stay and permissive abstention to permit
4 pre-bankruptcy litigation against debtor to proceed in federal district court); *In re*
5 *Kemble*, 776 F.2d 802, 807 (9th Cir. 1985) (affirming order lifting automatic stay; Ninth
6 Circuit stated: "Many cases have held that a district court may properly consider the
7 factor of judicial economy in deciding whether to lift the automatic stay.")

8 Here the factor of judicial economy has singular and common sense importance.
9 In *In re Kemble, supra*, 776 F.2d 802, 807, suit was filed against Kemble for conversion
10 and conspiracy to commit a fraudulent conveyance. Shortly before the district court
11 commenced trial on the damages issue, Kemble filed bankruptcy. The district court
12 withdrew the reference from the bankruptcy court, lifted the automatic stay, and
13 conducted the trial. The Ninth Circuit affirmed the district court's actions on judicial
14 economy grounds:

15 Many cases have held that a district court may properly consider the factor of
16 judicial economy in deciding whether to lift the automatic stay. ... The prior
17 extensive preparation for the damages retrial made proceeding with the trial
18 efficient. The decision to lift the stay could be upheld on this ground alone.

19 The principle of judicial economy is squarely at the issue here given the previous
20 decisions of the Honorable Mark Snauffer in regards to punitive damages and the
21 compromise regarding the minor.

22 The principle of comity is at issue here. The Superior Court has jurisdiction to
23 hear and decide the remaining issues and Movants assert the stay should be lifted to
24 allow the matter to be tried to final judgment with the result being returned to this Court
25 for further proceedings, if any. The Superior Court has expertise in personal injury,
26 wrongful death, and emotional distress claims. Judge Snauffer has particular
27 experience and knowledge about this particular case.

28 //

Perhaps the most useful analysis stems from *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2nd Cir. 1990) wherein the Second Circuit identified the following twelve factors to consider in determining whether to grant relief from stay:

1. Whether the relief will result in a complete or only a partial resolution of the issues;
2. The degree of connection or interference with the bankruptcy case;
3. Whether the case involves the debtor as a fiduciary;
4. Whether the case is before a specialized tribunal with necessary expertise to determine the issues;
5. Whether the debtor's defense and potential liability is covered by insurance;
6. Whether the action involves primarily third parties;
7. Whether the case would prejudice other creditors' interests;
8. Whether a resulting judgment would be subject to equitable subordination;
9. Whether a resulting judgment would result in a judicial lien avoidable by the debtor;
10. The interests of judicial economy and the expeditious and economical resolution of litigation;
11. Whether the parties are ready for trial; and
12. The impact of the stay on the parties and the balance of harms.

Applying these Sonnax factors to the case at hand, factors 3, 4, 6, 8, 9 are not at issue here.

Applying the remaining factors demonstrate cause for relief from stay:

1. Whether the relief will result in a complete or only a partial resolution of the issues.

The issues to be tried are those raised by Movant's state court complaint so all remaining issues will be resolved.

2. The degree of connection or interference with the bankruptcy case.

This is, essentially, a two party Chapter 7 proceeding, no rights of other creditors will be abridged by allowing the Superior Court to hear the dispute. In fact, other creditors may be benefitted due to the undisclosed potential asset of the right to sue Infinity Insurance for their failure to defend.

1
2 Movants have a right to a jury trial. Absent consent of Movants
3 which is not given this Honorable Court cannot hear and rule on
the subject dispute.

4 The trial was ready to go and set to begin in two weeks. The
5 witnesses were prepared and on standby. The Superior Court had
6 ruled on the issues of punitive damages and would have ruled on
the good faith settlement agreement. The issues for trial have
been narrowed. The parties are ready for trial.

7 Here it will be remembered that at the conclusion of the trial there
8 will still be a right to appeal. If the stay is lifted and the Superior
9 Court enters judgment in favor of Movants, the appeal will be
10 heard by a California Appellate Court ruling on a decision by a
11 California Superior Court. This would be much more practical and
logical than having a trial ruling from this Honorable Court that
would be appealed to the Bankruptcy Appellate Panel or District
Court.

12 This is yet another reason to lift the stay now so the Superior Court
13 trial can be concluded and the appeal process, which will take 12-
14 14 months, can be underway. Both Movants and the Debtor would
benefit from a final order fixing and liquidating the claims of
Movants.

16 Further, if a judgment is taken against Canchola and Guerra in
17 excess of \$750,000, this will generate a claim against Infinity
18 Insurance for failure to defend. This may cause their no asset
bankruptcy cases to turn into asset cases which in turn must be
administered by the Chapter 7 Trustee.

19 4. Whether the case is before a *specialized tribunal* with *necessary*
20 *expertise* to determine the issues.

21 The issues to be tried arise solely under California law. While this
22 Court is clearly capable of dealing with state court legal issues,
23 one has to ask why it would do so if there is a court with
jurisdiction and familiarity with the underlying facts and law.

24 The currently assigned judge is already familiar with the facts and
25 background and has experience in state court claims of personal
injury and wrongful death.

26 Among the claims of the Movants are claims for punitive damages
27 and it is respectfully suggested that a jury is the best trier of fact on
28 these claims.

1
2 7. Whether the case would *prejudice other creditors' interests*
See this Memorandum above at factors 2 and 4.

3
4 10. The interests of *judicial economy* and the *expeditious and economical*
resolution of litigation
See this Memorandum above at factors 2, 4 and 7.

5
6 Movants recognize that in the usual case the automatic stay affords the Debtor
7 a "breathing spell" while it sorts out its problems and figures out how to go forward.

8 In the usual case the Debtor is faced with multiple problems and creditor
9 pressures and needs temporary protection from the court.

10 However, this is not the usual case where a Debtor is beleaguered by secured
11 creditor seeking to foreclose or repossess, or where there are multiple pending or
12 threatened suits by creditors seeking recovery on debts owed to them or where the
13 Debtor has fallen behind on taxes or rents.

14 No, this is not the usual case. Here we simply have what is litigation ready to go
15 to trial. Canchola nor Guerra claim that they have financial problems requiring
16 restructure. It is solely about the Car Crash Litigation. The schedules do not reveal
17 creditor pressures or collection suits. Neither lists any significant amount of debts
18 (other than the estimated amount of a judgment stemming from the Car Crash
Litigation).

19 The court must balance the fact that the Car Crash Litigation must be concluded
20 and this Honorable Court is not the right court to determine the claims, that Movants
21 have a right to a jury trial and that the Superior Court is the only forum equipped to
22 hear and determine the matter and is already familiar with the case.

23 Movants respectfully assert there is ample cause to lift the stay at this juncture
24 to fix the claims against the Debtor in the appropriate forum. This benefits the Debtor
25 and Movants.

26 11. Whether the parties are *ready for trial*
27 See the response above at factors 2, 4, 7 and 10.
28

12. The impact of the stay on the parties and the *balance of harms*.

So, at the end of the day, this Court must weigh and balance the impact of the stay and the balance of the harms.

In the eyes of the Movants there can be little doubt that the facts weigh heavily in favor of lifting the stay. Canchola nor Guerra have any colorable arguments against this.

All of this comes down to a balancing of one issue. Do the factors in favor of immediate relief from stay outweigh the likely asserted claim of interference with the bankruptcy process. Movants simply assert that the claims have to be tried, Canchola nor Guerra have un-exempt assets presently and further Guerra may have an undisclosed claims against Infinity Insurance for a failure to defend him. Also, the lawyers are fully ready, the Superior Court is ready and the matter is going to have to be tried anyway and doing it now simply saves all parties considerable money.

Finally, "...motions to modify stay seeking relief limited to insurance coverage routinely are granted, with the relief usually limited to the extent of insurance coverage..." *In re Cini*, 2012 Bankr. LEXIS 2865, at 22 (Bankr. D. Mont. 2012). This is precisely what Movants hope to accomplish with this relief from stay motion.

2. Grounds for Abstention Show Cause

The grounds for abstention under 28 U.S.C. § 1334(c) militate in favor of lifting the stay to permit the Car Crash Litigation to proceed. 28 U.S.C. § 1334(c)(2) states:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

"Cause" exists where the Court could abstain from deciding issues to permit litigation to be concluded in another forum, particularly if the suit involves multiple parties or is ready for trial. *In re Kemble*, 776 F.2d 802, 807 (9th Cir. 1985); *In re Tucson Estates*,

1 *Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990). There are clear grounds for mandatory and
2 discretionary abstention.

3 Factors to consider in determining whether the Court would abstain include:

4 (1) the effect or lack thereof on the efficient administration of the estate if the
5 court abstains; (2) the extent to which state law issues predominate over
6 bankruptcy issues; (3) the difficulty or unsettled nature of the applicable law; (4)
7 the presence of a related proceeding commenced in state court or other non-
8 bankruptcy forum; (5) the jurisdictional basis, if any, other than 28 U.S.C. §
9 1334; (6) the degree of relatedness or remoteness of the suit to the bankruptcy;
10 (7) the substance of the "core" proceeding¹; (8) the feasibility of severing state
11 law claims from core bankruptcy matters to allow judgments to be entered in
12 state court with enforcement left to the bankruptcy court; (9) the burden on the
13 bankruptcy court's docket; (10) the likelihood that the proceeding in the
14 bankruptcy court involves forum shopping by one of the parties; (11) the
15 existence of a right to a jury trial; and (12) the presence of non-debtor parties to
16 the proceeding.

17 *In re Eastport Assocs.*, 935 F.2d 1071, 1075 (9th Cir. 1991) (quoting *In re*
18 *Tucson Estates, Inc.*, 912 F.2d at 1167); see *In re Gibson*, supra, 349 B.R. 54 (granting
19 joint motion of creditor for stay and permissive abstention to permit pre-bankruptcy
20 litigation against debtor to proceed in federal district court); see also *In re Pac. Gas &*
21 *Elec. Co.*, 279 B.R. 561, 572 (Bankr. N.D. Cal. 2002) (granting stay relief to permit
22 litigation in non-bankruptcy forum).

23 Here, it is painfully obvious that this matter falls under the category of mandatory
24 abstention due to:

25 (1.) Abstention will not hinder efficient administration of the estate, but rather
26 may enhance it.

27 (2.) All of the claims to be raised in the Car Crash Litigation involve state law
28 and there are no bankruptcy issues.

(3.) There is no jurisdictional basis for this litigation to be resolved in a federal
bankruptcy court.

¹ The claims in the Car Crash Litigation involve personal injury and wrongful death which are non core. *In re*
Castlerock Properties, 781 F.2d 159 (9th Cir. 1986)

1 (4.) The Car Crash Litigation isn't related to a bankruptcy court issue.

2 (5.) Personal injury claims are wrongful death claims are not a core proceeding.

3 (6.) There are no core bankruptcy matters to sever the state court claims from.

4 (7.) The decision of Canchola and Guerra to file bankruptcy just before the
5 good faith settlement hearing and trial date hints at forum-shopping.

6 (8.) The Movants have demanded the right to a jury trial.

7 (9.) There are non-debtor parties waiting in limbo to see if the state court will
8 allow the good faith settlement.

9 Discretionary abstention would be appropriate for the same reasons that stay
10 relief is appropriate under the factors as set forth in *Plumberex* and *Sonnax*. See *In re*
11 *Hakim*, 212 B.R. 632, 640 (Bankr. N.D. Cal. 1997). Namely, the administration of this
12 bankruptcy case would be more efficient if the Superior Court concludes the Car Crash
13 Litigation.

14 **3. Personal Injury Torts and Wrongful Death Claims are Non-Core Matters**

15 28 U.S.C. § 157(b)(2) states:

16 Core proceedings include, but are not limited to—

17 ...

18 (O) other proceedings affecting the liquidation of the assets of the
19 estate or the adjustment of the debtor-creditor or the equity security
20 holder relationship, **except personal injury tort or wrongful
21 death claims**; [Emphasis added]

22 **IV. RELIEF REQUESTED**

23 Based on the arguments and authorities set forth above, Movants respectfully
24 request that this Court enter an Order:

25 1. Granting the Motion;

26 2. Modifying the automatic stay to permit the Car Crash Litigation to proceed in
27 all aspects to judgment on all pending claims for relief but not to enforcement
28 against the Debtor;

3. Waiving the 14 day stay imposed by FRBP 4001(a)(3);

1 4. Determining that the relief from stay order is binding and effective despite the
2 conversion of the bankruptcy case to any other chapter of Title 11 of the
3 United States Code; and

4 5. For such other and further relief as the Court deems just and proper.
5

6 Dated: June 7, 2017

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a Professional Corporation

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8
9 By: 

Michael L. Wilhelm,
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.