

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Case No. 20-33163
CEC Entertainment, Inc., et al.	§	
	§	Chapter 11
Debtors¹	§	
	§	Jointly Administered

MOTION OF JAVIER ZARATE FOR RELIEF FROM THE AUTOMATIC STAY

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST 7 DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THERE WILL BE A HEARING ON THIS MATTER ON OCTOBER 9, 2020 AT 9:00 AM IN COURTROOM 404, 515 RUSK, HOUSTON, TEXAS 77002.

TO THE HONORABLE U.S. BANKRUPTCY JUDGE MARVIN ISGUR:

COMES NOW, Javier Zarate (“Movant”), in the above-captioned bankruptcy, through his counsel of record, Attorney Donald Wyatt, PC, and respectfully files this, his Motion for Relief from the Automatic Stay pursuant to 11 U.S.C. §362(d) and respectfully states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are BHC Acquisition Corporation (0947); CEC Entertainment Concepts, L.P. (3011); CEC Entertainment Holdings, LLC (9147); CEC Entertainment, Inc. (5805); CEC Entertainment International, LLC (8177); CEC Entertainment Leasing Company (4517); CEC Leaseholder, LLC (N/A); CEC Leaseholder #2, LLC (N/A); Hospitality Distribution Incorporated (5502); Peter Piper Holdings, Inc. (6453); Peter Piper, Inc. (3407); Peter Piper Texas, LLC (6904); Peter Piper Mexico, LLC (1883); Queso Holdings, Inc. (1569); SB Hospitality Corporation (4736); SPT Distribution Company (8656); and Texas PP Beverage, Inc. (6895). The Debtors’ corporate headquarters and service address is 1707 Market Place Boulevard #200, Irving, TX 75063.

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and § 1334 and 11 U.S.C. § 362.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper pursuant to 28 U.S.C. § 1408 and § 1409.

II. BACKGROUND

4. On July 8, 2018, Movant filed a Civil Case in the Superior Court of California, County of Solano against CEC Entertainment, Inc. seeking an award of damages for personal injury.
5. On May 21, 2020, a Case Management Order Upon Jury Trial Setting in the above case was signed.
6. Debtor is entitled to indemnification, and is being provided defense, by Anders R. Morrison of Hartsuyker, Stratman & Williams-Abrego for Farmers Insurance Company.
7. On June 24, 2020, CEC Entertainment, Inc. *et al* (“Debtor”) commenced a case under Chapter 11 of Title 11 of the United States Code Bankruptcy Code.

III. RELIEF REQUESTED

8. On request of a party in interest and after notice and a hearing, the court shall grant relief from the automatic stay provided by 11 U.S.C. § 362(a) such as by terminating, annulling, modifying, or conditioning such stay for cause.
9. “Cause” for lifting the stay is not defined in the Bankruptcy Code. Whether cause exists must be determined on a case by case basis based on an examination of the totality of the circumstances. *In re Reitnauer*, 152 F.2d 341, 343, n. 4 (5th Cir. 1998); *In re Mendoza*, 111 F.3d 1264 (5th Cir. 1997).

10. The Fifth Circuit has previously held that so long as costs of defense and any resulting judgment are borne by the insurer and there is no judgment against the debtor personally, claimants are not barred from proceeding to establish liability. *In re Edgeworth*, 993 F.2d 51,56 (5th Cir. 1993).
11. Movant is not seeking to obtain a judgment for which the Debtor would be personally liable and proceeding against Debtor's insurance will not require Debtor to incur related costs.
12. Movant requests that the Court terminate the automatic stay pursuant to the applicable provisions of the Bankruptcy Code to allow Movant to exercise all available rights and remedies against Debtor and to pursue the litigation free from the automatic stay imposed under 11 U.S.C. § 362 but solely in pursuit of applicable insurance proceeds related to the personal injury cause of action.
13. Movant requests that an Order granting this Motion, if entered, will be effective immediately upon entry and, pursuant to Fed. R. Bankr. P. 4001(a)(3), enforcement of such Order will not be stayed until the expiration of fourteen days after entry of the Order.

WHEREFORE, PREMISES CONSIDERED, Movant Javier Zarate respectfully requests that upon final hearing of this Motion the stay imposed pursuant to 11 U.S.C. § 362 be lifted to permit Movant to proceed with his personal injury cause of action under the conditions and constraints set forth in the attached Proposed Order and for such other and further relief as may be just and proper.

Dated: September 15, 2020

Respectfully Submitted,

ATTORNEY DONALD WYATT, PC

/s/ Don Wyatt

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COUNSEL FOR THE DEBTOR

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:	§	Case No. 20-33163
CEC Entertainment, Inc., <i>et al.</i>	§	
	§	Chapter 11
<i>Debtors</i> ¹	§	
	§	Jointly Administered

**ORDER GRANTING MOTION OF JAVIER ZARATE
FOR RELIEF FROM THE AUTOMATIC STAY**

CAME ON for consideration the Motion of Javier Zarate for Relief from the Automatic Stay (“Motion”) and the Court having considered the same, evidence and arguments of counsel, if any, is of the opinion the Motion should be **GRANTED**.

It is **ORDERED** that the automatic stay pursuant to 11 U.S.C. § 362 is terminated and Movant is allowed to exercise all available rights and remedies against Debtor related to his personal injury cause of action and free to pursue the litigation in the Superior Court of California, County of Solano against Debtor.

It is further **ORDERED** that upon settlement or judgement in favor of the Movant, the Movant shall be restricted to collection of that judgement from proceeds of applicable insurance alone and not from the estate of the Debtor.

Signed: _____

Marvin Isgur
United States Bankruptcy Judge

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