

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

In re

**HADAD DESIGN AND
CONSTRUCTION, INC.,**

Debtor.

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**No. 24-33277
Chapter 11**

**DEBTOR'S OPPOSITION TO HARRIS COUNTY, TEXAS' MOTION FOR
DETERMINATION THAT THE AUTOMATIC STAY DOES NOT APPLY**

TO THE HONORABLE CHRISTOPHER M. LOPEZ:

Hadad Design and Construction, Inc. (the "Debtor"), respectfully submits this Opposition to Harris County, Texas's Motion for Determination that the Automatic Stay Does Not Apply (the "Motion"), and would show the Court as follows:

I. INTRODUCTION

1. Harris County asks this Court to determine that the automatic stay does not apply to its state court lawsuit against the Debtor. While governmental units have certain exemptions from the automatic stay for legitimate regulatory enforcement actions, Harris County's case is primarily a pecuniary action seeking substantial monetary damages rather than an action to protect public safety or welfare. Under binding Fifth Circuit precedent, such pecuniary actions remain subject to the automatic stay. The Court should deny Harris County's motion and uphold the automatic stay.

II. FACTUAL BACKGROUND

2. On July 18, 2024¹, the Debtor filed a voluntary petition, for relief under Chapter 11 of the Bankruptcy Code, commencing the above-captioned case.
3. On February 7, 2025², Harris County and the State of Texas filed suit against the Debtor and other defendants in state court styled *State of Texas and Harris County, Texas v. Elias Haddad et al.*, No. 2025-08779, 334th Judicial District of Harris County, Texas (the "State Court Action").
4. The State Court Action alleges violations of the Texas Deceptive Trade Practices Consumer Protection Act ("DTPA") and Texas Property Code Chapter 41, relating to alleged home remodeling practices.
5. The relief sought by Harris County in the State Court Action includes:
 - a. Injunctive relief;
 - b. Civil penalties of up to \$10,000 per DTPA violation;
 - c. Enhanced civil penalties of up to \$250,000 per violation for elderly consumers;
 - d. Restitution to consumer victims; and
 - e. Other monetary damages.
6. The bulk of Harris County's petition focuses on obtaining monetary relief, including civil

¹ Corrected – Prior objection incorrectly stated the case was filed on March 14, 2025.

² Corrected – Prior objection incorrectly stated that case was filed before the Debtor-In-Possession filed for bankruptcy protection.

penalties and restitution for specific consumers, rather than forward-looking regulatory enforcement.

III. LEGAL ARGUMENT

A. Legal Framework: The Automatic Stay and Its Exceptions

7. The filing of a bankruptcy petition creates an automatic stay of most actions against the debtor under 11 U.S.C. § 362(a). This stay is "one of the fundamental debtor protections provided by the bankruptcy laws," designed to give the debtor a "breathing spell" from creditors. *In re Commonwealth Oil Refining Co.*, 805 F.2d 1175, 1182 (5th Cir. 1986).
8. While 11 U.S.C. § 362(b)(4) provides an exception for governmental units exercising their "police and regulatory power," this exception is narrowly construed. The Fifth Circuit has developed two tests to determine whether a governmental action falls within this exception: the "pecuniary purpose test" and the "public policy test." *In re Halo Wireless, Inc.*, 684 F.3d 581, 588 (5th Cir. 2012).
9. Under these tests, when a governmental unit's action is primarily designed to advance its financial interests rather than protect public welfare, the automatic stay applies and the exception does not. As explained below, Harris County's action fails both tests and remains subject to the automatic stay.

B. Harris County's Action Is Primarily Pecuniary, Not Regulatory

10. The Fifth Circuit has consistently held that the police power exception to the automatic

stay does not apply when the government's primary purpose is pecuniary. In *Commonwealth Oil*, the Fifth Circuit emphasized that the exception should be "narrowly construed" and is intended to allow governmental units to pursue actions that protect public health and safety, not actions primarily aimed at protecting a pecuniary interest in the debtor's property. 805 F.2d at 1184-86.

11. Harris County's action is primarily pecuniary for several reasons: (1) The action seeks substantial monetary penalties of up to \$10,000 per violation and up to \$250,000 for elderly consumers; (2) The petition focuses heavily on obtaining restitution for specific consumers; and (3) The request for injunctive relief is secondary to and overshadowed by the monetary components.
12. The Southern District of Texas applied the same principles in *In re RGV Smiles by Rocky L. Salinas D.D.S. P.A.*, 626 B.R. 278 (Bankr. S.D. Tex. 2021), which Harris County itself cites. In that case, the court held that "when a governmental unit acts primarily to further its financial interests, rather than to protect public health and safety, the action is considered pecuniary and the automatic stay applies." *Id.* at 286. Notably, Harris County's action is even more pecuniary in nature than the action in *RGV Smiles* because Harris County is seeking extraordinarily high monetary penalties, focusing heavily on obtaining restitution for specific identified consumers, and treating the injunctive relief as secondary to the substantial monetary components.
13. Unlike the environmental enforcement action in *Commonwealth Oil* where the EPA sought to enforce compliance with hazardous waste regulations to prevent groundwater

contamination and environmental pollution, Harris County's action against Hadad Design and Construction—a home remodeling company—lacks any comparable imminent threat to public health. In *Commonwealth Oil*, the court found that the EPA's action was "an attempt to bring CORCO into compliance with state and federal environmental laws" and thus "falls squarely within the [government's] police and regulatory powers." 805 F.2d at 1186. By contrast, Harris County's action focuses heavily on past monetary damages and restitution rather than forward-looking regulatory enforcement to protect the public.

14. This case also differs substantially from *Gandy*, where the court found that governmental units were "pursuing a matter of public safety and welfare through injunctive relief" for violations of environmental laws like the Texas Solid Waste Disposal Act and the Texas Clean Air Act. 327 B.R. at 804. In that case, the government sought primarily to stop environmental violations through injunctive measures. Here, Harris County is primarily seeking monetary penalties and restitution for specific consumers, with the injunctive components being secondary. The bulk of Harris County's petition focuses on obtaining monetary relief, including civil penalties and restitution for specific consumers, rather than forward-looking regulatory enforcement.
15. The Fifth Circuit's decision in *Halo Wireless* further supports this distinction, as the court explicitly stated that governmental actions are exempted from the stay only when they are not "primarily seek[ing] to protect a pecuniary governmental interest in the debtor's property, as opposed to protecting the public safety and health." 684 F.3d at 591. In that case, the court found that none of the state PUC proceedings would give the states access

to the debtor's property, unlike here where Harris County expressly seeks substantial monetary relief that would drain the Debtor's estate. Harris County's action, with its focus on substantial monetary penalties and consumer restitution, is clearly within the pecuniary category that remains subject to the automatic stay.

C. Harris County's Reliance on Gandy Is Misplaced

16. Harris County relies heavily on *In re Gandy*, 327 B.R. 796 (Bankr. S.D. Tex. 2005), but that case actually supports the Debtor's position. The *Gandy* court emphasized that the police power exception is based on the need for the government to protect the public, not to advance its own financial interests. *Id.* at 803-04.
17. Unlike in *Gandy*, Harris County's action is primarily seeking monetary penalties and restitution for past alleged violations, not preventing future public harm. The substantial civil penalties and restitution sought demonstrate that the primary purpose is pecuniary, not regulatory.
18. As the court noted in *Gandy*, "if the government action is motivated by a desire to protect the government's pecuniary interest in the debtor's property, it is not excepted from the stay." *Id.* at 803. That is precisely the case here.
19. The stark contrast between the facts in *Gandy* and the present case is instructive. In *Gandy*, governmental units were pursuing "a matter of public safety and welfare through injunctive relief" for violations of environmental laws like the Texas Solid Waste Disposal Act and the Texas Clean Air Act. *Id.* at 804. Those laws directly addressed immediate

public health concerns from environmental contamination.

20. The stark contrast between the facts in *Gandy* and the present case is instructive. In *Gandy*, governmental units were pursuing "a matter of public safety and welfare through injunctive relief" for violations of environmental laws like the Texas Solid Waste Disposal Act and the Texas Clean Air Act. *Id.* at 804. Those laws directly addressed immediate public health concerns from environmental contamination.
21. Here, Harris County's action against a design and remodeling company involves no comparable immediate threat to public health or safety. The DTPA claims primarily involve restitution for specific consumers and punitive monetary penalties, not forward-looking protection of the general public from an ongoing health or safety threat.
22. The focus of Harris County's action on obtaining restitution for specific individuals further distinguishes it from *Gandy*. Though Harris County presents its action as primarily regulatory in nature, the bulk of its requested relief is monetary and pecuniary in nature—with civil penalties up to \$10,000 per violation and enhanced penalties of up to \$250,000 per violation for elderly consumers.
23. Notably, the *Gandy* court itself emphasized that courts should not engage in "artifice" when determining whether a governmental unit is genuinely exercising its police and regulatory powers. *Id.* at 807. Here, Harris County's attempt to characterize its action as primarily regulatory rather than pecuniary appears to be just such an artifice, given the substantial monetary penalties and restitution that form the core of the requested relief.

D. The Public Policy Test Also Supports Application of the Stay

24. Under the public policy test, courts examine whether the action is designed to effectuate public policy rather than to adjudicate private rights. *In re Halo Wireless*, 684 F.3d at 588.
25. Here, Harris County is primarily seeking to adjudicate private rights of specific consumers rather than effectuating broad public policy. The focus on obtaining restitution for individual consumers and penalties for past actions demonstrates that the State Court Action is not primarily a regulatory proceeding designed to protect the public.
26. The Southern District of Texas recognized this distinction in *RGV Smiles*, noting that when a governmental unit acts to recover from the debtor's property based on claims of private parties, rather than to protect public health and safety, the automatic stay applies. 626 B.R. at 288-89.
27. In *EEOC v. Shepherd*, the court carefully analyzed whether a governmental unit's action was "designed to effectuate public policy" versus "adjudicate private rights." Civil Action No. 3:17-CV-02569-L (N.D. Tex. Oct 11, 2018). The court explained that for the exception to apply, the governmental unit must be "acting to vindicate something more than a pecuniary interest." *Id.* While the court found that EEOC enforcement actions generally fall within the exception because they vindicate "the public interest in preventing employment discrimination," this reasoning underscores why Harris County's action does not qualify – it primarily vindicates specific consumers' monetary interests rather than forward-looking public protection.

28. The Fifth Circuit's analysis in *Halo Wireless* provides further guidance, instructing courts to examine "the totality of the circumstances" to determine "whether the particular regulatory proceeding at issue is designed primarily to protect the public safety and welfare, or represents a governmental attempt to recover from property of the debtor estate, whether on its own claim, or on the nongovernmental debts of private parties." 684 F.3d at 588-89. Harris County's action clearly falls into the latter category.
29. As the court noted in *In re D.M. Barber*, while some regulatory proceedings have "characteristics of private litigation," they may nonetheless fall within the exception if they "are not to adjudicate private rights but to effectuate public policy." 13 B.R. at 963. The crucial distinction is whether the proceeding is primarily focused on vindication of private monetary interests versus public protection. Here, Harris County's action—with its focus on monetary relief for specific consumers—unmistakably prioritizes private monetary interests.
30. The Fifth Circuit in *Commonwealth Oil* recognized that when a governmental unit's action "concerns only the parties who are immediately affected the debtor is entitled to the same protection under § 362(a)(1) it would receive under the automatic stay if the proceeding were pending instead in a judicial forum." 805 F.2d at 1182-86. The present case, which primarily seeks to recover monetary damages for specific consumers, meets this description precisely.
31. Additionally, as recognized in *In re Gandy*, "if the government action is motivated by a desire to protect the government's pecuniary interest in the debtor's property, it is not

excepted from the stay." 327 B.R. at 803. Harris County's emphasis on substantial monetary penalties and consumer restitution demonstrates that pecuniary interests drive this action, not genuine public protection.

32. The fact that Harris County characterizes its action as protecting Texas consumers generally is insufficient to transform what is primarily a collection action into a true regulatory proceeding. The substantial monetary remedies sought by Harris County demonstrate that the action primarily serves a pecuniary purpose rather than effectuating public policy.

E. At Minimum, The Monetary Components Should Be Stayed

33. Even if this Court finds that some aspects of Harris County's action qualify under the police power exception, Fifth Circuit precedent requires that the exception be narrowly construed. The Fifth Circuit has drawn a clear distinction between regulatory proceedings (which may proceed) and enforcement of monetary judgments (which must be stayed).
34. In *NLRB v. Evans Plumbing Co.*, 639 F.2d 291, 293 (5th Cir. 1981), the Fifth Circuit held that while a regulatory proceeding could continue, "the enforcement of any resulting money judgment would be stayed." Similarly, in *SEC v. Brennan*, 230 F.3d 65, 71 (2d Cir. 2000), the court distinguished between obtaining a money judgment (which may be exempt from the stay) and enforcing that judgment (which is not exempt).
35. This distinction was further elaborated in *Commonwealth Oil*, where the Fifth Circuit explained: "Quite separate from the entry of a money judgment... is a proceeding to enforce

that money judgment. The paradigm for such a proceeding is when, having obtained a judgment for a sum certain, a plaintiff attempts to seize property of the defendant in order to satisfy that judgment. It is this seizure of a Defendant-Debtor's property... which is proscribed by subsection 362(b)(5)." 805 F.2d at 1186.

36. The proceedings at issue in this case go far beyond merely liquidating a claim. Harris County is seeking extraordinary monetary penalties that would substantially deplete the Debtor's estate and impair this Court's ability to oversee an equitable distribution of assets to all creditors.

37. As the court in *EEOC v. Shepherd* recognized, while governmental units may be permitted to proceed with certain regulatory actions, this permission extends only to "the entry of a money judgment" but "cannot be used to enforce a money judgment." Civil Action No. 3:17-CV-02569-L (N.D. Tex. Oct 11, 2018). The court specifically noted that governmental units may not use the exception from the automatic stay to gain "preferential treatment to the detriment of all other creditors." *Id.*

38. Therefore, at minimum, any monetary components of Harris County's action should remain subject to the automatic stay, while only purely injunctive components, if any, might be permitted to proceed.

IV. CONCLUSION

39. For the foregoing reasons, the automatic stay should apply to Harris County's action against the Debtor. Under the Fifth Circuit's two-part test, Harris County's action fails both

the pecuniary purpose test, as it primarily seeks substantial monetary penalties and restitution rather than protecting public welfare, and the public policy test, as it focuses on adjudicating private rights of specific consumers rather than effectuating broad public policy. Even if certain aspects of Harris County's action could qualify under the police power exception, Fifth Circuit precedent clearly establishes that monetary components should still be stayed.

40. Therefore, Hadad Design and Construction, Inc. respectfully requests that this Court deny Harris County's Motion, or in the alternative, grant the Motion only as to purely injunctive relief while maintaining the stay as to all monetary components of the State Court Action, and grant such other relief to which the Debtor may be justly entitled.

Respectfully Submitted,

/s/ Jeremy T. Wood

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2025, a true and correct copy of the foregoing Debtor's Opposition to Harris County, Texas' Motion for Determination that the Automatic Stay Does Not Apply was served electronically via the Court's Electronic Case Filing System on all parties registered to receive electronic notices in this case, including the Office of the United States Trustee and counsel for Harris County, Texas.

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