

TOTAL PAGES: 3  
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Attorneys for Peter L. Fear, Chapter 7 Successor Trustee

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

In re: Case No. 17-11365-B-7  
Chapter 7  
Debtor.  
DC No.: RWR-5  
Date: June 12, 2019  
Time: 9:30 a.m.  
Dept: B  
Ctroom: 13, Fifth Floor  
Location: 2500 Tulare Street  
Fresno, CA  
Judge: Honorable Rene Lastreto

NOTICE OF HEARING ON TRUSTEE'S MOTION  
TO EMPLOY SPECIAL COUNSEL

TO: THE DEBTOR, MARIO ALBERTO GUERRA AND HIS ATTORNEY OF  
RECORD, JERRY LOWE; AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on April 24, 2019, at 9:30 a.m. in Department B, Courtroom  
13 of the United States Bankruptcy Court located at 2500 Tulare Street, Fresno, California, the  
undersigned counsel for Peter L. Fear, Chapter 7 Successor Trustee, will seek an order from the court  
authorizing employment of special counsel with respect to the prosecution of a bad faith and/or  
tortious injury claim against Infinity Insurance, and its agents and attorneys, who insured Debtor  
Mario Guerra, Bankruptcy Case No. 17-11365, and his employee, Debtor Daniel Canchola,

NOT OF HRNG ON TEES' MTN TO EMP' SPC COUNSEL

Bankruptcy Case No. 17-11346.

PLEASE TAKE FURTHER NOTICE that the Motion to Special Counsel was  
previously filed on March 28, 2019 as Docket Control Numbers RWR-3, bearing document  
numbers 57 through 62. A Motion to Employ Special Counsel was also filed in the Daniel  
Canchola companion case. However, due to a clerical error the documents were not timely  
served to comply with Local Rule 9014-1(f)(1). To correct the prior error, the documents are  
being refiled and served in both this case and Canchola companion case to comply with the  
Local Rules.

The Chapter 7 Trustees seek an order employing Mr. Moeck as special counsel (effective  
March 27, 2019, the date of the Attorney-Client Contingent Fee Contract, and the day before filing  
of the first Motion to Employ Special Counsel), so he may prosecute the bad faith and/or tortious  
injury action on behalf of both estates. Filed concurrently herewith, as Docket Control No. RWR-4  
in both Debtors' bankruptcies referenced above, the Trustees of both estates also seek approval of  
a motion approve an agreement allowing the estates to share in any settlement pursuant to the terms  
set forth in the agreement. In the event that no settlement is reached and the action goes to trial then  
the estates agree that the verdict or decision shall dictate as to what monies shall go to which estate.

This motion is being filed pursuant to Local Rule 9014-1(f)(1). Opposition, if any, to the  
granting of the motion shall be in writing and shall be served and filed with the Clerk of the Court,  
on the undersigned, and the Chapter 7 Trustees and any other party requesting special notice by the  
responding party at least fourteen (14) calendar days preceding the date or continued date of the  
hearing. Opposition, if any, shall be served upon the following:

Russell W. Reynolds Peter L. Fear  
Attorneys for Peter L. Fear Chapter 7 Trustee  
499 W. Shaw Ave., Ste. 116 P.O. Box 28490  
Fresno, California 93704 Fresno, California 93729

Opposition shall be accompanied by evidence establishing its factual allegations. A  
responding party who has no opposition to the granting of the motion may serve and file a statement  
to that effect, specifically designating the motion in question. Without good cause, no party shall  
be heard in opposition to a motion at oral argument if written opposition to the motion has not been

NOT OF HRNG ON TEES' MTN TO EMP' SPC COUNSEL

1 timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver  
2 of any opposition to the granting of the motion or may result in the imposition of sanctions.

3 UNLESS WRITTEN OPPOSITION AND SUPPORTING EVIDENCE IS FILED WITH  
4 THE CLERK AND SERVED ON THE MOVING PARTY, THE COURT MAY RESOLVE THE  
5 MATTER WITHOUT ORAL ARGUMENT.

6 This motion will be based on this Notice of Motion, Declaration of Peter L. Fear and  
7 Declaration of David Moeck and accompanying exhibits, served and filed herewith, and on all of the  
8 records and documents filed in the above-entitled matter and on such oral and documentary evidence  
9 as may be presented at the hearing on the motion.

10 PLEASE TAKE NOTICE that you are able to review any tentative ruling or pre-hearing  
11 dispositions by checking the court's website at [www.casb.uscourts.gov](http://www.casb.uscourts.gov) after 4:00 p.m. the day before  
12 the hearing. Parties appearing telephonically must view the pre-hearing dispositions prior to the  
13 hearing.

14 To appear at the hearing by telephone, contact Court Call Conference Service at (866) 582-  
15 6878. *See also* CourtCall.com. The telephone appearance must be arranged twenty-four (24) hours  
16 in advance. A Court Call fee applies. Individuals using Court Call are cautioned they do so at their  
17 own risk. The hearing will not be rescheduled due to a missed connection.

18 Requests for further information or for copies of the motion and supporting papers should  
19 be directed to the undersigned.

20  
21 Respectfully submitted,

22 COLEMAN & HOROWITT, LLP

23  
24 Dated: May 8, 2019.

25 By: /s/ Russell W. Reynolds  
26 RUSSELL W. REYNOLDS  
27 Attorneys for Peter L. Fear, Chapter 7 Trustee  
28

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Attorneys for Peter L. Fear, Chapter 7 Successor Trustee

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

In re:

MARIO ALBERTO GUERRA,

Debtor.

Case No. 17-11365-B-7  
Chapter 7

DC No.: RWR-5

Date: June 12, 2019

Time: 9:30 a.m.

Dept: B

Crm: 13, Fifth Floor

Location: 2500 Tulare Street  
Fresno, CA

Judge: Honorable Rene Lastrero II

TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL

Comes now Peter L. Fear, Chapter 7 Successor Trustee, respectfully represents as follows:

I. INTRODUCTION

Peter L. Fear is the qualified and acting Chapter 7 Successor Trustee following the resignation of previous acting Trustee, Trudi G. Manfredo, of the bankruptcy estate of Mario Alberto Guerra. For purposes of this motion there is a related case, In re: Daniel Canchola, Case number 17-11346. James Edward Salven is the duly appointed, qualified and acting Trustee of the Canchola case.

Mr. Fear is now performing his duties as set forth in 11 U.S.C. § 704.

Among the assets in this case which need to be administered is a bad faith claim and

related tortious injuries suffered as a result of said bad faith held by the Debtor. The claim of bad faith and related tortious injuries arises out of a traffic accident and the Debtor's insurance company's alleged failure to tender the proper policy limits. This situation arose prior to the Debtor filing for bankruptcy protection. At the present time, Trustee is in need of the assistance of legal counsel to prosecute the above-referenced claims.

II. BACKGROUND

This Motion to Employ Special Counsel involves two separate bankruptcy proceedings. Debtor Mario Alberto Guerra is the owner of Guerra Produce. Mr. Guerra had in his employ an individual by the name of Daniel M. Canchola. On December 11, 2013, a complaint was filed in the Fresno County Superior Court that alleges Canchola and Guerra (along with other Defendants) negligently caused a traffic accident resulting in the wrongful death and serious injuries of several persons. The Debtors, Guerra and Canchola, had insurance coverage but a dispute arose over the amount of coverage. It is contended that Infinity Insurance under-insured the Guerra vehicle as a matter of law and that Infinity Insurance may be obligated to honor a policy limit of \$750,000.

A trial was set to begin on April 24, 2017, in the Fresno County Superior Court. A Good Faith Settlement Hearing was set for April 13, 2017. On April 12, 2017, Mario Alberto Guerra filed a Chapter 7 bankruptcy in this court bearing case number 17-11365. Peter L. Fear serves as the acting Chapter 7 Successor Trustee in the Guerra case. On April 11, 2017, Daniel M. Canchola filed a Chapter 7 bankruptcy case in this court bearing case number 17-11346. James E. Salven serves as the acting Chapter 7 Trustee in the Canchola case. The Plaintiffs in the state court litigation sought and obtained relief from stay. Trustee is informed that the Plaintiffs reached an agreement with Debtor's insurance company that paid to Plaintiffs the lower policy limits without restricting Plaintiffs' future recovery should they successfully bring a bad faith claim to recover the full amount of the alleged policy limits. The unusual agreement regarding a potential future bad faith claim was facilitated by the insurance company. Given the nature of the unusual agreement, the Debtors' claims against the insurance company will more than likely be a bifurcated claim, separate from the bad faith claim that the Plaintiffs may have, and will seek

1 recovery for injuries suffered by the Debtors and not the Plaintiffs. Thus, by virtue of this  
2 agreement, Infinity Insurance paid the Plaintiff's the lower policy limit, dismissed the lawsuit and  
3 preserved the rights of the parties to bring their perceived bad faith claims.

4 The Debtors, Guerra and Canchola had insurance coverage but a dispute arose over the  
5 amount of coverage. It is contended that Infinity Insurance under-insured the Guerra vehicle as a  
6 matter of law and that Infinity Insurance may be obligated to honor a policy limit of \$750,000.00.  
7 It is believed that Guerra and Canchola have a bad faith claim and related claims for tortious  
8 injuries suffered as a result of such bad faith against the insurance carrier, its agents and  
9 attorneys, and special counsel is necessary to prosecute that action. Special Counsel is willing to  
10 represent both Debtors' estates in one action. An application to employ special counsel is being  
11 filed concurrently in both bankruptcy cases. Prior to her resignation as Trustee, Ms. Manfredo as  
12 the acting Trustee of this estate and Mr. Salven, on behalf of the Conchola bankruptcy estate,  
13 reached an agreement to share any proceeds from the bad faith litigation. Mr. Fear, as the  
14 Successor Trustee and Mr. Salven will be seeking approval of that agreement by separate motion.

### 15 16 III. APPLICATION TO EMPLOY SPECIAL COUNSEL

17 Trustee wishes to employ David M. Moeck, Esq., who is duly admitted to practice law in  
18 the California courts. Trustee seeks to have said firm represent the him as special counsel in this  
19 case with respect to the prosecution of the above-described claim. Trustee has selected David M.  
20 Moeck, Esq., for the reason that he has experience in these types of litigation matters, and is  
21 willing to represent Trustee on a contingency-fee basis with respect to the prosecution of the  
22 above claim. Trustee believes that the employment of David M. Moeck, Esq., is in the best  
23 interest of the bankruptcy estate in that prosecution of the claims is likely to involve significant  
24 attorney time and effort. Moreover, the outcome of the case is very uncertain; Trustee has no  
25 funds with which he can employ an attorney at an hourly rate; Trustee is unsure of whether any  
26 benefit to Debtor's bankruptcy estate will ultimately be derived, and employment of counsel on a  
27 contingency-fee basis is a way in which the downside risk of such litigation may be minimized,  
28 while allowing the bankruptcy estate to pursue claims, which at the present time Debtor believes

1 are valid and substantial, and, in the event of a recovery, simply share the benefit of such  
2 recovery with the attorney(s) who are willing to prosecute the claim.

3 Trustee previously filed a Motion to Employ Special Counsel and supporting  
4 documents, bearing docket control number RW/R-3, on March 28, 2019 at Docket 57  
5 through 62. However, due to a clerical error, the documents were not timely served.

6 Trustee respectfully requests that should the Court approve Special Counsel's employment,  
7 that it approve his employment as of the date of the Attorney-Client Contingent Fee  
8 Contract, which was executed on March 27, 2019.

9 The professional services that David M. Moeck, Esq., is to render are fully described in  
10 the Attorney-Client Contingent Fee Contract, a copy of which is included in the accompanying  
11 Exhibit Documents as Exhibit "A".

12 To the best of the Trustee's knowledge, David M. Moeck, Esq., did not represent either  
13 Debtor Guerra or Debtor Conchola, or any creditor or other party in the bankruptcy case. David  
14 M. Moeck, Esq., has no connection with any of the Debtor's other creditors, or any other party in  
15 interest, or their respective attorneys or accountants, or the United States Trustee, or any person  
16 employed in the office of the United States Trustee, except as disclosed in the declaration of  
17 David M. Moeck, Esq., submitted in support thereof, and is disinterested as that term is defined  
18 in 11 U.S.C. § 327 and Rule 2014 of the Federal Rules of Bankruptcy Procedure.

19 WHEREFORE, Trustee prays that the employment of David M. Moeck, Esq., under the  
20 terms specified to represent him as special counsel in this Chapter 7 bankruptcy proceeding be  
21 approved and for such other and further relief as is just and proper.

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COLEMAN & HOROWITT, LLP

Dated: May 8, 2019.  
By: /s/ Russell W. Reynolds  
RUSSELL W. REYNOLDS  
Attorneys for Peter L. Fear, Chapter 7  
Trustee

1 TOTAL PAGES: 3

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10 Attorneys for Peter L. Fear, Chapter 7 Successor Trustee

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

14 In re:

15 MARIO ALBERTO GUERRA,

16 Debtor.

Case No. 17-11365-B-7  
Chapter 7

DC No.: RWR-5

Date: June 12, 2019  
Time: 9:30 a.m.  
Dept: B  
Crm: 13, Fifth Floor  
Location: 2500 Tulare Street  
Fresno, CA

Judge: Honorable Rene Lastrero II

17 **DECLARATION OF PETER L. FEAR IN SUPPORT OF**  
18 **TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL**

19 I, Peter L. Fear, hereby declare as follows:

20 1. I am an adult person over the age of eighteen (18), competent to testify about the  
21 matter set forth herein. I am the duly appointed, qualified and acting Successor Trustee of the  
22 estate of Mario Alberto Guerra. If called upon to testify to the facts set forth in this declaration, I  
23 can and would do so. Prior to my appointment as Successor Trustee, Trudi Manfredo served as  
24 the acting trustee until her resignation on or about December 26, 2018.

25 2. Mario Alberto Guerra filed a petition for relief under Chapter 7 of the United  
26 States Bankruptcy Code on April 12, 2017. I have reviewed and analyzed the Debtor's petition,  
27 schedules, Statement of Financial Affairs and numerous other documents filed as part of the  
28 Debtor's Chapter 7 case. I have used the information learned from these documents and my

DEC OF PETER L. FEAR

1 conversations with my counsel to justify the exercise of my business judgment.

2 3. I learned that prior to filing his petition, Mr. Guerra employed Daniel Canchola  
3 who on at least on one occasion drove a truck to deliver produce for Mr. Guerra's produce  
4 business. There was a terrible accident that involved the death of one individual and injuries to at  
5 least two other individuals.

6 4. Following the automobile accident, a lawsuit was filed against Mr. Guerra and  
7 Mr. Canchola. It was learned that the insurance policy on the vehicle had a \$25,000 per  
8 occurrence limit. It is believed that a commercial vehicle in California is required to have a  
9 \$750,000 minimum liability coverage.

10 5. Prior to the case going to trial, both Mr. Guerra and Mr. Canchola filed  
11 bankruptcy. The Plaintiffs in the state court litigation filed motions for relief from stay to pursue  
12 the case limiting any recovery to the Debtor's insurance. I have been informed and I believe that  
13 Plaintiffs' counsel demanded the commercial liability limit but the carrier offered only the  
14 consumer limit as stated in the policy. Thereafter the insurance carrier entered into an agreement  
15 with the Plaintiffs that in the event a bad faith claim was brought and the Plaintiffs prevailed,  
16 certain assumptions would be made as to what damage verdicts would be made.

17 6. I have consulted with an attorney familiar with insurance bad faith claims. After  
18 this consultation, I have formed the belief that Mr. Guerra may have a bad faith and/or tortious  
19 injury claim stemming from any such bad faith against the insurance carrier. I have discussed  
20 this matter with Mr. Salven, the Trustee in the Canchola case, and he believes that Mr. Canchola  
21 may also have a bad faith and/or tortious injury claim against the insurance carrier, its agents and  
22 attorneys. These bad faith and/or tortious injury claims arise out of the same set of facts and the  
23 same legal issues apply to both Debtors. The Debtors do not have claims that are adverse to one  
24 another and their claims against the insurance company are similarly situated.

25 7. I wish to employ David Moeck as Special Counsel in this case to prosecute a bad  
26 faith and/or tortious injury claim against the Debtor's insurance carrier. I have chosen Mr.  
27 Moeck for this case because he has experience in bad faith litigation and has tried over fifteen  
28 (15) cases to verdict. He has taken the time to familiarize himself with the facts in this case and

DEC OF PETER L. FEAR

1 he is willing to represent the estate on a contingency-fee basis to prosecute this bad faith claim.

2 8. It is my belief that the employment of Mr. Moeck is in the best interest of the  
3 bankruptcy estate in that the prosecution of the claim is likely to involve significant time and  
4 effort. Further, the outcome of the case is uncertain and the estate has no funds with which to  
5 pay an attorney an hourly rate. While I believe that a bad faith and/or tortious injury claim exists,  
6 I cannot be sure that any benefit to the bankruptcy estate will eventually be derived. The  
7 employment of counsel on a contingency-fee basis is a way in which the downside risk of such  
8 litigation may be minimized, while allowing the bankruptcy estate to pursue claims that are  
9 believed to be valid and substantial. In the event there is a recovery, the estate is willing to share  
10 the recovery with the attorney who was willing to take the case on a contingency and advance the  
11 necessary costs.

12 9. The professional services that Mr. Moeck is to render is fully described in the  
13 Attorney-Client Contingent Fee Contract that is included in the accompanying exhibit documents  
14 as Exhibit "A". Mr. Salven, the trustee in the Canchola case, is also seeking the employment of  
15 Mr. Moeck so that the two Debtors' cases can be pursued together. Prior to her resignation as  
16 acting Trustee, Ms. Manfredo entered into an agreement with Mr. Salven regarding the sharing of  
17 any litigation proceeds between the two bankruptcy estates. I have reviewed the terms of the  
18 agreement with Mr. Salven and believe that the agreement is in the best interest of the estate. It is  
19 anticipated that this motion to employ special counsel will be heard at the same time as Mr.  
20 Salven's motion to employ special counsel and the motion to compromise the settlement between  
21 the two bankruptcy estates.

22 I declare under penalty of perjury under the laws of the United States of America that the  
23 foregoing is true and correct.

24 Executed this 8th day of May, 2019, at Fresno, California.

25  
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28  
  
PETER L. FEAR

\_\_\_\_\_  
DECORPETER L. FEAR

TOTAL PAGES: 3  
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Attorneys for Peter L. Fear, Chapter 7 Successor Trustee

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

In re: Case No. 17-11365-B-7  
Chapter 7

MARIO ALBERTO GUERRA,  
Debtor.

DC No.: RWR-5

Date: June 12, 2019  
Time: 9:30 a.m.  
Dept: B  
Chrm: 13, Fifth Floor  
Location: 2500 Tulare Street  
Fresno, CA

Judge: Honorable Rene Lastrreto II

DECLARATION OF DAVID MOECK IN SUPPORT OF  
TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL

I am an adult person over the age of 18 and competent to testify about the matters set forth herein. If called upon to testify to the facts set forth in this declaration I can and would do so. I am an attorney at law, licensed to practice law within the state of California. I was admitted to the California State Bar in 1999. During that time, I have tried over 15 cases to verdict and am a member of ABOTA and currently serve as the ABOTA Membership Chair.

The proposed lawsuit, which is the subject of this motion, would be an action for tortious injuries suffered as result of bad faith by Infinity Insurance Company. Infinity provided Commercial Liability Insurance for Debtor, Mario Alberto Guerra ("Debtor Guerra") and by reason of additional insured provisions in the policy, provided coverage for Debtor, Daniel M.

DEC OF DAVID MOECK

Canchola ("Debtor Canchola").

I am fully familiar with bad faith litigation and the issues raised by the instant action, regarding the refusal of the Debtor's insurer, Infinity, to resolve the underlying litigation in an amount that would have resulted in a dismissal with prejudice of the underlying action against the Mr. Canchola and Mr. Guerra and eliminated any threat of judgment against them.

After my review of the facts and discussion with general counsel, it is my belief that the Debtor has a valid claim for tortious injuries and potentially contractual damages suffered as a result of bad faith by the insurer. It is my understanding that the trustees of the respective bankruptcy estates have formed an agreement to split the net recovered proceeds between the bankruptcy estates.

I have not represented any creditor or other party in either the bankruptcy cases of Debtor Guerra or Debtor Canchola.

I have reviewed the list of creditors of both Debtors and confirm I have no business, professional or personal relationship or connection in any manner to the Debtors, any listed creditors, or any other party in interest, their respective attorneys or accountants, or the United States Trustee, or any person employed in the office of the United States Trustee.

I have reviewed the provisions of 11 U.S.C. § 327 and Rule 2014 of the Federal Rules of Bankruptcy Procedure and confirm I am a disinterested person as that term is defined therein.

I have reviewed the Attorney-Client Contingent Fee Contract ("Agreement") attached as Exhibit "A" to the Exhibit Documents and confirm it is a true and correct copy of the Agreement for my professional services as requested by this motion and confirm it accurately represents the terms and conditions for my employment.

I understand and acknowledge that payment of my fees following settlement or verdict, of any claims pertaining to the bankruptcy estate will be subject to Bankruptcy Court approval.

I am not aware of nor do I anticipate any conflict of interest between my simultaneous representation of Debtor Canchola and Debtor Guerra. This evaluation is based upon the following:

///

DEC OF DAVID MOECK

1. There will be unlimited insurance proceeds available in light of the allegation that Infinity's alleged bad faith "opens up" the policy thus not limiting it to the stated policy limits. Accordingly, Debtor Canchola and Debtor Guerra will not be competing for a certain "share" of available proceeds at trial.

2. The claims of Debtor Canchola and Debtor Guerra are not adverse to one another.

3. The interests of Debtor Canchola and Debtor Guerra were aligned as to the underlying accident and are aligned as to the insurer's conduct giving rise to the action.

4. The claims of Debtor Canchola and Debtor Guerra are personal as to each and are not dependent on the viability or credibility of other claim.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of May, 2019, at Fresno, California.

  
DAVID MOBERK

DEC OF DAVID MOBERK

Number of Pages: 4  
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Attorneys for Peter L. Fear, Chapter 7 Successor Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
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Debtor. Date: June 12, 2019  
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Judge: Honorable Rene Lastreito II

EXHIBIT "A" SUPPORT OF TRUSTEE'S MOTION TO  
EMPLOY SPECIAL COUNSEL

EXHIBIT	TITLE	PAGE
A	Attorney-Client Contingent Fee Contract	2

Respectfully submitted,  
COLEMAN & HOROWITT, LLP

Dated: May 8, 2019. By: /s/ Russell W. Reynolds  
RUSSELL W. REYNOLDS  
Attorneys for Peter L. Fear, Chapter 7  
Successor Trustee

EXH DOC

QUINLAN, KERSHAW & FANUCCHI, LLP  
2125 Merced Street, Fresno, California 93721  
(559) 268-8771

ATTORNEY-CLIENT CONTINGENT FEE CONTRACT

This ATTORNEY-CLIENT CONTINGENT FEE CONTRACT (the "Agreement") is between DAVID M. MOECK, ESQ. and QUINLAN, KERSHAW & FANUCCHI, LLP, ("Attorney") and JAMES E. SALVERN, CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATE OF DANIEL M. CANCHOLA and PETER FEAR, CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATE OF MARIO ALBERTO GUERRA ("Clients").

1. **CONDITIONS.** This Agreement will not take effect, and Attorney will have no obligation to provide legal services, until Clients and Attorney sign this Agreement.
2. **SCOPE AND DUTIES.** Clients are hiring Attorney to represent Clients regarding an action for bad faith against Infinity Insurance Company. Infinity provided Commercial Liability Insurance for Debtor Mario Alberto Guerra ("Guerra") and by reason of additional insured provisions in the policy, provided coverage for Guerra's employees, Debtor Daniel M. Cancchola ("Canchola"). The bad faith action arises out of Infinity's bad faith in relation to its failure to settle a lawsuit filed against Guerra and Cancchola arising out of a motor vehicle accident which occurred on June 12, 2013, and in particular, Fresno County Superior Court Action No. 13CS0003811. In that action it was alleged the negligence of Cancchola and Guerra caused a motor vehicle accident which resulted in death and serious personal injuries. On April 12, 2017 both Guerra and Cancchola filed for bankruptcy.
3. The state court case was thereafter settled by way of a stipulated agreement in October 2017, wherein Infinity agreed that if a court later found breach of contract and bad faith, it agreed to pay the underlying plaintiffs damages in the amount of \$2,778,698.44 plus court awarded costs. The Agreement also purported to, in essence, assign the contractual rights of Guerra and Cancchola to the underlying Plaintiffs. Guerra and Cancchola were not parties to the agreement and did not consent to any of its terms. Cancchola and Guerra have personal claims (emotional distress and punitive damages) against Infinity, arising in part over their having to file bankruptcy to protect their interests as a result of Infinity's unreasonable refusal to settle. The underlying Plaintiffs have asserted claims against both estates. As such, Guerra and Cancchola may also have contractual rights against Infinity, with regard to the claims now pending within the bankruptcy estates, depending upon the interpretation and application of the agreement reached between Infinity and the underlying Plaintiffs regarding contractual claims. It is understood and agreed, that this agreement will pertain to all claims pertaining to the bankruptcy estates of the debtors.
4. Claims may also be brought against the insurance broker who sold the subject policy to Debtor Guerra as well as potential claims against Attorney Joseph Cooper, and the Law Firm of Cooper & Cooper, LLP, arising out of his conduct in conjunction with the defense of the debtors in the underlying action.
5. Attorney and Clients hereby acknowledge that they are not extremely aware of any conflicts of interests involved with the simultaneous representation of claims on behalf of Cancchola and Guerra. If at any point any party to this agreement determines that any such conflict of interest exists or a potential for such conflict exists, full disclosure and appropriate waivers will be obtained or retention of separate counsel will be pursued.
6. Attorney will provide those legal services reasonably required to represent Clients, and will take reasonable steps to inform Clients of progress and to respond to Clients' inquiries. Attorney will represent Clients in any court action until a settlement or judgment, by arbitration or trial, is reached, and in connection with any appropriate post trial motions.

EXHIBIT "A"

7. After judgment, Attorney will not represent Clients on any appeal, or in any proceedings designed to execute on the judgment, without such additional compensation as Attorney and Clients may agree on in a separate Agreement.
8. **INSURANCE DISCLOSURE.** Attorney maintains errors and omissions coverage. Attorney is insured for legal malpractice.
9. **CLIENT'S DUTIES.** Clients agree to be truthful with Attorney, to cooperate and assist Attorney in the prosecution of the case, and to keep Attorney informed of developments, to abide by this Agreement.
10. **LEGAL FEES, COSTS, AND BILLING PRACTICES.** Attorney will be compensated for legal services rendered only if a recovery is obtained for Clients. If no recovery is obtained, Clients will not be obligated to pay costs, or expenses, as described below.
  11. The fees to be paid by Clients to Attorney for all recovery, whether in the form of settlement, arbitration award or judgment, will be (40 %) Forty percent of the net recovery. (The term "net recovery" means the total of all amounts received by settlement, arbitration award, or judgment, from which will be subtracted all costs and disbursements.)
  12. In the event of discharge or withdrawal of Attorney, Clients agree that Attorney shall be entitled to be paid by Clients, on payment of the settlement, arbitration award, or judgment in favor of Clients, a reasonable fee for the legal services provided by Attorney to Clients and costs advanced by Attorney.
13. **NEGOTIABILITY OFFERS.** The fees set forth above are not set by law, but are negotiable between Attorney and Clients.
14. **COSTS AND EXPENSES.** It is agreed and understood that all costs, disbursements, and litigation expenses will advance by attorney. Clients will reimburse Attorney for such advance of costs and expenses on settlement, arbitration award, or judgment, to be paid back out of any recovery. These items include, but are not limited to, court fees, service of process charges, photocopying services, rotary fees, computer-assisted legal research, long distance telephone charges, messenger and delivery fees, postage, in-office photocopying, fax/mobile charges, parking, mileage, investigation expenses, consultant's fees, expert witness fees, and other similar items. Clients authorize Attorney to incur all reasonable costs and to hire any investigators, consultants, or expert witnesses reasonably necessary in Attorney's judgment.
15. **DISCHARGE AND WITHDRAWAL.** Clients may discharge Attorney at any time, on written notice and Attorney will immediately, after receiving such notice cease to render additional services. Such a discharge does not, however, relieve Clients of the obligation to pay any costs incurred prior to such termination, and Attorney has the right to recover from you the reasonable value of Attorney's legal services rendered from the effective date of the Agreement to the date of discharge.
16. Attorney may withdraw from representation of Clients (a) with Client's consent, (b) on court approval, or (c) if no court action has been filed, on reasonable notice to the Clients.
17. **CONCLUSION OF SERVICES.** When Attorney's services conclude, other than by discharge or withdrawal, all unpaid charges will immediately become due and payable. After Attorney's services conclude, Attorney will, on Client's request, deliver Client's file to Clients, along with any Client funds or property in Attorney's possession. Attorney will render an accounting of the recovery as to its disbursements.

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18. **DISCLAIMER OF GUARANTEE.** Nothing in this Agreement entitling in Attorney's statements to Clients will be construed as a promise or guarantee about the outcome of the Clients' matter. Attorney makes no such promises or guarantees. There can be no assurance that Clients will recover any sum or sums in this matter. Attorney's comments about the outcome of Clients' matter are expressions of opinion only.
19. **ARBITRATION OF DISPUTES.** In the event of a dispute between the parties with respect to any provision of this agreement including but not limited to, the amount of fees and costs due Attorney, Clients and Attorney agree to arbitrate any such dispute. Arbitration shall be conducted by an arbitrator mutually selected by the parties.
20. **APPROVAL OF BANKRUPTCY COURT.** Attorney understands and acknowledges that any settlement and payment of fees under this agreement is subject to approval of the Bankruptcy Court.

QUINNAN, KERSHAW & PANUCCHI, LLP

By   
David M. Moock, Esq.

We have read and understood the foregoing terms and agree to them, as of the date QUINNAN, KERSHAW & PANUCCHI, LLP first provide services. If more than one party signs below, we agree to be liable, each and both, for all obligations under this Agreement. By signing this Agreement, we acknowledge receipt of a fully executed duplicate of this Agreement.

Dated: 3/20/19

  
James Edward Sator, Chapter 7 Trustee  
of the bankruptcy estate of Daniel M. Canicola

Dated: 3/21/19

  
Peter L. Bear, Chapter 7 Trustee  
of the bankruptcy estate of Mario A. Guerra

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LP0000253

5. EXHIBIT TO TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL  
on the interested parties as follows:

David M. Moeck Esq.  
QUINLAN KERSHAW & FANUCCHI  
2125 Merced Street  
Fresno, CA 93721

PLEASE SEE ATTACHED MAIL MATRIX

☒ BY MAIL - by placing a true and correct copy in a sealed envelope with postage thereon fully prepaid in the firm's outgoing mail. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. It is deposited with United States Postal Service on that same day in the ordinary course of business.

☐ BY CALIFORNIA OVERNIGHT - by placing ☐ a true and correct copy ☐ the original thereof enclosed in a sealed envelope for delivery via California Overnight next day delivery to the addressee noted above.

☐ BY HAND DELIVERY - by delivering by hand and leaving a true copy with the person and at the address shown above.

☐ BY ELECTRONIC TRANSMISSION - by causing a true copy thereof to be electronically transmitted to the parties indicated above, by using their e-mail address.

☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

Executed on May 8, 2019, at Fresno, California.

/s/ Stacey Johnson  
STACEY JOHNSON

CERT OF SERVICE

TOTAL PAGES: 4  
RUSSELL W. REYNOLDS #138075  
COLEMAN & HOROWITT, LLP  
Attorneys at Law  
499 West Shaw, Suite 116  
Fresno, California 93704  
Telephone: (559) 248-4820  
Facsimile: (559) 248-4830  
E-Mail: rreynolds@ch-law.com

Attorneys for Peter L. Fear, Chapter 7 Successor Trustee

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

In re: Case No. 17-11365-B-7  
Chapter 7

MARIO ALBERTO GUERRA,

Debtor.

Date: June 12, 2019  
Time: 9:30 a.m.  
Dept: B  
Cttn: 13, Fifth Floor  
Location: 2500 Tulare Street  
Fresno, CA

Judge: Honorable Rene Lastreto II

CERTIFICATE OF SERVICE

I declare that I am a citizen of the United States and a resident of the County of Fresno. I am over the age of eighteen (18) years and not a party to the within action. My business address is 499 West Shaw, Suite 116, Fresno, California 93704.

On May 8, 2019, I served the following documents described as:

1. NOTICE OF HEARING ON TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL;
2. TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL;
3. DECLARATION OF PETER L. FEAR IN SUPPORT OF TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL;
4. DECLARATION OF DAVID MOECK IN SUPPORT OF TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL; and

CERT OF SERVICE

Label Matrix for Local noticing

0972-1

Case 17-11365

Eastern District of California

Fresno

Wed May 8 13:40:23 PDT 2019

Stephen R. Cornwell

7045 N. Fruit Avenue

Fresno, CA 93711-0761

Department Stores National Bank

c/o Quantum3 Group LLC

PO Box 657

Kittland, WA 98083-0657

Golden 1 Credit Union

Attn: Bankruptcy

8945 Cal Center Dr

Sacramento CA 95826-3239

Golden 1 Credit Union

2344 Tulare Street Suite 301

Fresno, CA 93721-2235

Office of the U.S. Trustee

United States Courthouse

2500 Tulare Street, Room 1401

Fresno, CA 93721-1326

(P) PORTFOLIO RECOVERY ASSOCIATES LLC

PO BOX 41067

NORFOLK VA 23541-1067

Russell N. Reynolds

499 N. Shaw Ave., Ste. 116

Fresno, CA 93704-2516

Synchrocy Bank

c/o PRA Receivables Management, LLC

PO Box 41021

Norfolk, VA 23541-1021

Thunderbird Collection

3200 N Hayden Rd Ste 110

Scottsdale AZ 85251-6766

Michael L. Rihel

205 E. River Park Circle, Suite 410

Fresno, CA 93720-1572

Riley C. Walter

205 E. River Park Circle, Ste. 410

Fresno, CA 93720-1572

Portfolio Recovery Associates, LLC

POB 41067

Norfolk VA 23541

Portfolio Recovery Associates, LLC

POB 41067

Norfolk VA 23541

Cal Leduc; Tori Abby; Wiley Abby

Handy Jobs; Janku Leduc; Jay Leduc

Cornwell & Sample, LLC

7045 N Fruit Ave

Fresno, CA 93711-0761

Peter L. Fear

PO Box 28490

Fresno, CA 93729-8490

WNV Funding LLC

c/o Reurgent Capital Services

PO Box 10587

Greenville, SC 29603-0587

Penn Credit Corporate

916 S 14th St

Harrisburg PA 17104-3425

Synch walmart

PO Box 965024

Orlando FL 32896-5024

WELLS FARGO BANK, N.A.

SMALL BUSINESS LENDING DIVISION

P O BOX 29462

PHOENIX, AZ 85038-9462

(u) Tori Abby

(u) Mandy Jobs

(u) Cal Leduc

(u) Jay Leduc

(u) Janku Leduc

(u) Tori Abby, Guadalupe and Leticia for Minor Hill

End of Label Matrix  
Available recipients 23  
Bypassed recipients 7  
Total 30

The preferred mailing address (p) above has been substituted for the following entry/entries as no specified by said entry/entries in a notice of address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4) .

The following recipients may be/ have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

MAY - 9 2019