

1 **TOTAL PAGES: 3**
2 **RUSSELL W. REYNOLDS #138075**
3 **COLEMAN & HOROWITT, LLP**
4 Attorneys at Law
5 499 West Shaw, Suite 116
6 Fresno, California 93704
7 Telephone: (559) 248-4820
8 Facsimile: (559) 248-4830
9 E-Mail: rreynolds@ch-law.com

10 Attorneys for James Edward Salven, Chapter 7 Trustee
11 and Peter L. Fear, Chapter 7 Successor Trustee

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

14 In re:

15 DANIEL M. CANCHOLA,

16 Debtor.

Case No. 17-11346-B-7
Chapter 7

DC No.: RWR-2

Date: April 24, 2019
Time: 9:30 a.m.
Dept: B
Ctmm: 13, Fifth Floor
Location: 2500 Tulare Street
Fresno, CA
Judge: Honorable Rene Lastreto

17 In re:

18 MARIO ALBERTO GUERRA,

19 Debtor.

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

DC No.: RWR-2

Date: April 24, 2019
Time: 9:30 a.m.
Dept: B
Ctmm: 13, Fifth Floor
Location: 2500 Tulare Street
Fresno, CA
Judge: Honorable Rene Lastreto

20 **NOTICE OF HEARING ON TRUSTEES' MOTION**
21 **TO COMPROMISE A CONTROVERSY**

22 **TO: THE DEBTORS, DANIEL M. CANCHOLA AND MARIO ALBERTO**
23 **GUERRA; THEIR ATTORNEY OF RECORD, JERRY LOWE; AND ALL**
24 **INTERESTED PARTIES:**

25 **NOT OF HRNG ON TRUSTEES' MTN TO COMP A CONT**

1 PLEASE TAKE NOTICE that on April 24, 2019, at 9:30 a.m. in Department B,
2 Courtroom 13 of the United States Bankruptcy Court located at 2500 Tulare Street, Fresno,
3 California, the undersigned counsel for James Edward Salven, Chapter 7 Trustee and Peter L.
4 Fear, Chapter 7 Successor Trustee, will seek an order from the court authorizing them to
5 compromise a controversy pursuant to Federal Rule of Bankruptcy Procedure Rule 9019.
6 The Chapter 7 Trustees seek an order approving an agreement that allows the estates to
7 hire one attorney to prosecute the bad faith and/or tortious injury action on behalf of both estates
8 and share in any settlement pursuant to the terms set forth in the agreement. In the event that no
9 settlement is reached and the action goes to trial then the estates agree that the verdict or decision
10 shall dictate as to what monies shall go to which estate.

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

Russell W. Reynolds Attorneys for James E. Salven and Peter L. Fear 499 W. Shaw Ave., Ste. 116 Fresno, California 93704	James E. Salven Chapter 7 Trustee P.O. Box 25970 Fresno, California 93729	Peter L. Fear Chapter 7 Trustee PO Box 28490 Fresno, California 93729
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19 Opposition shall be accompanied by evidence establishing its factual allegations. A
20 responding party who has no opposition to the granting of the motion may serve and file a
21 statement to that effect, specifically designating the motion in question. Without good cause, no
22 party shall be heard in opposition to a motion at oral argument if written opposition to the motion
23 has not been timely filed. Failure of the responding party to timely file written opposition may be
24 deemed a waiver of any opposition to the granting of the motion or may result in the imposition
25 of sanctions.

26 **UNLESS WRITTEN OPPOSITION AND SUPPORTING EVIDENCE IS FILED WITH**
27 **THE CLERK AND SERVED ON THE MOVING PARTY, THE COURT MAY RESOLVE**
28 **THE MATTER WITHOUT ORAL ARGUMENT.**

29 **NOT OF HRNG ON TRUSTEES' MTN TO COMP A CONT**

1 This motion will be based on this Notice of Motion, the Memorandum of Points and
2 Authorities, Declaration of James E. Salven and Declaration of Peter L. Fear served and filed
3 herewith, and on all of the records and documents filed in the above-entitled matter and on such
4 oral and documentary evidence as may be presented at the hearing on the motion.

5 PLEASE TAKE NOTICE that you are able to review any tentative ruling or pre-hearing
6 dispositions by checking the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day
7 before the hearing. Parties appearing telephonically must view the pre-hearing dispositions prior
8 to the hearing.

9 To appear at the hearing by telephone, contact Court Call Conference Service at (866)
10 582-6878. See also CourtCall.com. The telephone appearance must be arranged twenty-four
11 (24) hours in advance. A Court Call fee applies. Individuals using Court Call are cautioned they
12 do so at their own risk. The hearing will not be rescheduled due to a missed connection.

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

15 Respectfully submitted,

16 COLEMAN & HOROWITT, LLP

17 Dated: March 28, 2019.

18 By: /s/ Russell W. Reynolds
19 RUSSELL W. REYNOLDS
20 Attorneys for James E. Salven, Chapter 7
21 Trustee and for Peter L. Fear, Chapter 7
22 Successor Trustee
23
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NOT OF HEING ON TEES' MTN TO COMP A CONT

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10 Attorneys for James Edward Salven, Chapter 7 Trustee
11 and Peter Fear, Chapter 7 Successor Trustee

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

14 In re:

15 DANIEL M. CANCHOLA,
16 Debtor.

17 In re:

18 MARIO ALBERTO GUERRA,
19 Debtor.

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24 TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY

25 JAMES E. SALVEN, the Chapter 7 Trustee ("Trustee") of the bankruptcy estate of
26 Daniel M. Canchola ("Debtor Canchola") and PETER L. FEAR, the Chapter 7 Successor Trustee
27 ("Trustee") of the bankruptcy estate of Mario Alberto Guerra ("Debtor Guerra"); respectfully
28 moves this Court for an order authorizing them to compromise a controversy pursuant to Federal

TEES' MTN TO COMP A CONT

1 Rule of Bankruptcy Procedure Rule 9019 (the "Motion") as follows:

2 1. James E. Salven is the duly appointed Chapter 7 Trustee in the bankruptcy case of
3 Daniel M. Canchola. Debtor Canchola filed a petition for relief under Chapter 7 of the
4 Bankruptcy Code on April 11, 2017, bearing Case No. 17-11346-B-7.

5 2. Peter L. Fear is the qualified and acting Chapter 7 Successor Trustee following the
6 resignation of previous acting Trustee, Trudi G. Manfredo, of the bankruptcy estate of Mario
7 Alberto Guerra. Debtor Guerra filed a petition for relief under Chapter 7 of the Bankruptcy Code
8 on April 12, 2017, bearing Case No. 17-11365-B-7.

9 3. This motion to compromise involves the compromise of a potential recovery of
10 money to be divided between two separate bankruptcy estates.

11 4. Mr. Guerra is or was the owner of Guerra Produce. Mr. Guerra hired Mr.
12 Canchola to drive a truck to make deliveries. A traffic accident occurred involving the truck
13 driven by Mr. Canchola. On December 11, 2013, a Complaint was filed in the Fresno County
14 Superior Court that alleged Mr. Canchola and Mr. Guerra (along with other Defendants)
15 negligently caused a traffic accident resulting in the wrongful death and serious injuries of
16 several persons.

17 5. A trial was set to begin on April 24, 2017, in the Fresno County Superior Court.
18 A Good Faith Settlement Hearing was set for April 13, 2017. On April 11 and 12, 2017,
19 Canchola and Guerra filed their respective Chapter 7 bankruptcy petitions. The Plaintiffs sought
20 and obtained relief from stay in both bankruptcy cases so that they could pursue and recover from
21 the Debtors' insurance carrier.

22 6. One of the major issues in the case was the proper insurance policy limits that was
23 or should have been applicable to the vehicle owned by Guerra and driven by Canchola. The
24 policy that was issued had limits of \$25,000/\$50,000. The vehicle was being used, and was
25 alleged to have always been used as a commercial vehicle. In California the minimum limits for
26 a commercial vehicle is \$750,000. The Plaintiffs made a demand for the commercial policy
27 limits which was ignored and Infinity offered the consumer policy limits. Early on it was
28 anticipated that a bad faith claim would be brought and the issue eventually decided in the bad

1 faith case. Eventually the underlying case was settled by means of an unusual agreement
2 whereby Infinity paid the lower policy limits, the Plaintiffs dismissed the underlying lawsuit yet
3 preserved their rights to bring a direct action for bad faith against Infinity. The Debtors were not
4 a party to this agreement as they had filed bankruptcy and Infinity did not contact either trustee
5 concerning the lawsuit. The agreement makes no reference to the Debtors and does not attempt
6 to limit the rights of the Debtors or their Estates. The Debtor's, through their respective estates
7 will pursue their claims, including but not limited to emotional distress damages and punitive
8 damages.

9 7. The Trustees of the two Debtors respective estates seek approval of an agreement
10 that allows the estates to hire one attorney to prosecute the bad faith and/or tortious injury action
11 on behalf of both estates and share in any settlement pursuant to the terms set forth in the
12 agreement. In the event that no settlement is reached and the action goes to trial then the estates
13 agree that the verdict or decision shall dictate as to what monies shall go to which estate.

14 8. The Court should approve the settlement as the results are very favorable to the
15 two estates and the Trustees believe it is in the best interest of the creditors and the two estates
16 for the settlement to be approved.

17
18 Respectfully submitted,

19 COLEMAN & HOROWITT, LLP

20
21 Dated: March 28, 2019.

22 By: /s/ Russell W. Reynolds
23 RUSSELL W. REYNOLDS
24 Attorneys for James E. Salven, Chapter 7
25 Trustee and for Peter L. Fear, Chapter 7
26 Successor Trustee
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10 Attorneys for James Edward Salven, Chapter 7 Trustee
11 and Peter Fear, Chapter 7 Successor Trustee

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

15 In re:
16 DANIEL M. CANCHOLA,
17 Debtor.

18 Case No. 17-11346-B-7
19 Chapter 7

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29 MARIO ALBERTO GUERRA,
30 Debtor.

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

33 DC No.: RWR-2

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40 Judge: Honorable Rene Lastreto

41 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
42 **TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY**

43 JAMES E. SALVEN, the Chapter 7 Trustee ("Trustee") of the bankruptcy estate of
44 Daniel M. Canchola ("Debtor Canchola") and PETER L. FEAR, the Chapter 7 Successor
45 Trustee ("Trustee") of the bankruptcy estate of Mario Alberto Guerra ("Debtor Guerra"), have

46 MEMO OF PS&AS IN SUP OF TEES' MTN TO COMP A CONT

1 moved this Court for an order authorizing them to compromise a controversy pursuant to Federal
2 Rule of Bankruptcy Procedure Rule 9019 (the "Motion") as follows:

3 In support of the Motion, Trustees respectfully represent as follows:

4 I.

5 JURISDICTION

6 This Court has jurisdiction to consider this Motion under 28 U.S.C. Sections 157 and
7 1334. Venue is proper pursuant to 28 U.S.C. Sections 1408 and 1409. This is a core proceeding
8 pursuant to 28 U.S.C. Sections 157(a) and 157(b)(2). The parties have consented to entry of a
9 final judgment by the Bankruptcy Court.

10 II.

11 BACKGROUND

12 This motion to compromise involves the compromise of a potential recovery of money to
13 be divided between two separate bankruptcy estates. The first estate is that of Daniel M.
14 Canchola (Case Number 17-11346). James E. Salven is the duly appointed and acting Chapter 7
15 Trustee of the Canchola estate. The second estate is that of Mario Alberto Guerra (Case Number
16 17-11365). Peter L. Fear is the qualified and acting Chapter 7 Successor Trustee following the
17 resignation of previous acting Trustee, Trudi G. Manfredo, for the Guerra estate. The Debtors
18 filed their respective chapter 7 bankruptcy petitions on April 12, 2017.

19 Mr. Guerra is or was the owner of Guerra Produce. Mr. Guerra hired Mr. Canchola to
20 drive a truck to make deliveries. Unfortunately, a traffic accident occurred involving the truck
21 driven by Mr. Canchola. On December 11, 2013, a Complaint was filed in the Fresno County
22 Superior Court that alleged Mr. Canchola and Mr. Guerra (along with other Defendants)
23 negligently caused a traffic accident resulting in the wrongful death and serious injuries of
24 several persons.

25 A trial was set to begin on April 24, 2017, in the Fresno County Superior Court. A Good
26 Faith Settlement Hearing was set for April 13, 2017. On April 11, 2017, Debtor Canchola filed a
27 Chapter 7 bankruptcy petition. Debtor Guerra filed a Chapter 7 bankruptcy petition on April 12,
28 2017. The Plaintiffs sought and obtained relief from stay in both bankruptcy cases so that they

2

MEMO OF PS&AS IN SUP OF TEES' MTN TO COMP A CONT

1 could pursue and recover from the Debtors' insurance carrier.

2 One of the major issues in the case was the proper insurance policy limits that was or
3 should have been applicable to the vehicle owned by Guerra and driven by Canchola. The policy
4 that was issued had limits of \$25,000/\$50,000. The vehicle was being used, and was alleged to
5 have always been used, as a commercial vehicle. In California the minimum limits for a
6 commercial vehicle is \$750,000. The Plaintiffs made a demand for the commercial policy limits
7 which was ignored and Infinity offered the consumer policy limits. Early on it was anticipated
8 that a bad faith claim would be brought and the issue eventually decided in the bad faith case.
9 Eventually the underlying case was settled by means of an unusual agreement whereby Infinity
10 paid the lower policy limits, the Plaintiffs dismissed the underlaying lawsuit yet preserved their
11 rights to bring a direct action for bad faith against Infinity. The Debtors were not a party to this
12 agreement as they had filed bankruptcy and Infinity did not contact either trustee concerning the
13 lawsuit. The agreement makes no reference to the Debtors and does not attempt to limit the
14 rights of the Debtors or their Estates. The Debtor's, through their respective estates will pursue
15 their claims, including but not limited to emotional distress damages and punitive damages.

16 The Trustees of the two Debtors respective estates seek approval of an agreement that
17 allows the estates to hire one attorney to prosecute the bad faith and/or tortious injury action on
18 behalf of both estates and share in any settlement pursuant to the terms set forth in the agreement.
19 In the event that no settlement is reached and the action goes to trial then the estates agree that
20 the verdict or decision shall dictate as to what monies shall go to which estate.

21 III.

22 POINTS AND AUTHORITIES

23 Federal Rule of Bankruptcy Procedure 9019(a) provides as follows:

24 "On motion by the trustee and after notice and a hearing, the court
25 may approve a compromise or settlement."

26 A. The Court has Discretion to Approve or Deny Motions to Compromise.

27 Motions to compromise are addressed to the sound discretion of the bankruptcy judge
28 based on the particular circumstances of the case. (See *Matter of Walsh Const., Inc.*, (9th Cir.

MEMO OF PS&AS IN SUP OF TEES' MTN TO COMP A CONT

1 1982) 669 F.2d. 1325.) In order to approve a compromise or settlement under Rule 9019(a), the
2 settlement must be in the best interest of the estate. (See *In Re: A&C Properties*, (9th Cir. 1986)
3 784 F.2d. 1377, 1382.) To determine that the settlement is in the best interest of the estate, the
4 court must find the proposed compromise to be (1) negotiated in good faith and (2) fair and
5 equitable considering the (i) probability of success in the litigation; (ii) difficulties to be
6 encountered in collecting on the judgment; (iii) complexity of the litigation involved; and (iv)
7 paramount interest of the creditors and a proper deference to their reasonable views. (See *In Re:*
8 *A&C Properties*, *supra*, 784 F.2d. at 1381.)

9 The Movant has the burden of proving (by a preponderance of the evidence) that the
10 motion to compromise is in the estate's best interest. (See *In Re: A&C Properties*, *supra*, 784
11 F.2d. at 1381.) The court is not required to decide disputed questions of fact and law raised by
12 the litigation, but to canvas the issues to see whether the "settlement falls below the lowest point
13 in a range of reasonableness." (See *In Re: Tectonics Services, Inc.*, (2nd Cir. 1985) 762 F.2d. 185,
14 189.)

15 B. The Factors to be Considered in this Case Favor Approval.

16 In this particular case, the court should approve the settlement as the results are
17 very favorable to the estate. Movant submits the settlement is fair and equitable under the
18 standard set forth in *A&C Properties* as follows:

19 (1) Probability of Success.

20 The Trustees acknowledge that bad faith litigation is always difficult as the
21 Plaintiff bears the burden of proof against a well funded and experienced adversary. In this case,
22 experienced trial counsel and bad faith litigation counsel have opined that they believe the facts
23 give rise to such a claim. There are undisputed facts in evidence that weigh in favor of Debtors'
24 success against Infinity.

25 (2) Difficulty in Collection.

26 The Trustees do not anticipate any difficulty in collection. The action to
27 be pursued is against an insurance company and if the matter goes to trial and the estates prevail,
28 it is presumed the insurance company has the assets to satisfy the judgment. Naturally, if the

MEMO OF PS&AS IN SUP OF TEES' MTN TO COMP A CONT

1 matter were to settle the settlement amount will be deposited into a trust account prior to any
2 dismissal of the action.

3 (3) Complexity of Litigation.

4 This litigation is very complex. It requires the employment of counsel that
5 has knowledge and experience in bad faith litigation. In this case it requires the knowledge of
6 insurance contract law and insurance coverage law as well as one who can identify and put on
7 evidence of the damages the Debtors have suffered.

8 (4) Paramount Interest of Creditors.

9 This factor heavily favors approval of the agreement. The Trustees,
10 through counsel, have met with trial counsel in the underlying action and have reviewed certain
11 pleadings and orders in the underlying State Court case. Based on the facts of the case it seems
12 that the interests of the two Debtors are not adverse to one another and both may have a right to
13 damages associated with their bad faith and/or tortious injuries against Infinity, which includes
14 among other things emotional distress and punitive damages. Permitting one attorney to
15 maintain this action on behalf of both estates maximizes the return to the creditors.

16 V.

17 CONCLUSION

18 For the foregoing reasons and authorities, James E. Salven, Chapter 7 Trustee of the
19 bankruptcy estate of Daniel M. Canchola and Peter L. Fear, Chapter 7 Successor Trustee of the
20 bankruptcy estate of Mario Alberto Guerra, request the court enter an order approving the
21 agreement.

22 Respectfully submitted,

23 COLEMAN & HOROWITT, LLP

24 Dated: March 28, 2019.

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

MEMO OF PS&AS IN SUP OF TRUSTEES' MOTN TO COMP A CONT

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20 DECLARATION OF JAMES E. SALVEN IN SUPPORT OF TRUSTEES'
21 MOTION TO COMPROMISE A CONTROVERSY

22 I, James E. Salven, hereby declare as follows:

23 1. I am an adult person over the age of eighteen (18), competent to testify about the
24 matter set forth herein. I am the duly appointed, qualified and acting Trustee of the estate of

1 Daniel M Canchola. If called upon to testify to the facts set forth in this declaration, I can and
2 would do so.

3 2. Daniel M. Canchola filed a petition for relief under Chapter 7 of the United States
4 Bankruptcy Code on April 12, 2017. I am the duly appointed Chapter 7 Trustee. I have
5 reviewed and analyzed the Debtor's petition, schedules, Statement of Financial Affairs and
6 numerous other documents filed as part of the Debtor's Chapter 7 case. I also questioned the
7 Debtor at the First Meeting of Creditors. I have used the information learned from these
8 documents and my conversations with the Debtor and with my counsel to justify the exercise of
9 my business judgment.

10 3. I learned that prior to filing his petition, Mr. Canchola worked for Mr. Guerra and
11 at least on one occasion drove a truck to deliver produce for Mr. Guerra's produce business.
12 There was a terrible accident that involved the death of one individual and at least two other
13 individuals were injured.

14 4. Following the automobile accident, a lawsuit was filed against Mr. Guerra and
15 Mr. Canchola. It was learned that the insurance policy on the vehicle had a \$25,000 per
16 occurrence limit. It is believed that a commercial vehicle in California is required to have a
17 \$750,000 minimum liability coverage.

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

25 6. It is my belief that Mr. Canchola has a bad faith and/or tortious injury claim
26 against the insurance carrier and similarly, Mr. Fear believes that Mr. Guerra has a bad faith
27 and/or tortious injury claim against the insurance carrier. These claims arise out of the same set
28 of facts and the same legal issues apply to both Debtors. We have consulted with counsel

1 familiar and experienced in handling bad-faith and tortious injury cases and have confirmed that
2 Mr. Canchola and Mr. Guerra do not have claims that are adverse to one another and their claims
3 against the insurance company are similarly situated. It is my belief that this claim can be
4 pursued most efficiently by allowing one attorney to handle the bad faith claim on behalf of both
5 the estates. Prior to Ms. Manfredo's resignation as acting Trustee in the Guerra case, she and I
6 entered into an agreement regarding the sharing of any litigation proceeds between the two
7 bankruptcy estates. Following her resignation, I have reviewed the terms of the agreement with
8 Mr. Fear, who has also agreed to the terms of said agreement. Accompanying this motion is a
9 true and correct copy of the Settlement Agreement and Mutual Release as Exhibit "A".

10 7. It is anticipated that this motion will be heard at the same time as a motion to
11 employ special counsel filed in both Debtor's cases and that all three motions will be approved.

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

14 Executed this 28th day of March, 2019, at Fresno, California.

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JAMES EDWARD SALVEN

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28 In re:

29 **MARIO ALBERTO GUERRA,**

30 Debtor.

31 **Case No. 17-11365-B-7**
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40 **Judge:** Honorable Rene Lastreto

41 **DECLARATION OF PETER L. FEAR IN SUPPORT OF TRUSTEES'**
42 **MOTION TO COMPROMISE A CONTROVERSY**

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

44 1. I am an adult person over the age of eighteen (18), competent to testify about the
45 matter set forth herein. I am the duly appointed, qualified and acting Successor Trustee of the

46 **DEC OF PETER L. FEAR**

1 estate of Mario Alberto Guerra. If called upon to testify to the facts set forth in this declaration, I
2 can and would do so. Prior to my appointment as Successor Trustee, Trudi Manfredo served as
3 the acting trustee until her resignation on or about December 26, 2018.

4 2. Mario Alberto Guerra filed a petition for relief under Chapter 7 of the United
5 States Bankruptcy Code on April 12, 2017. I am the duly appointed Chapter 7 Trustee. I have
6 reviewed and analyzed the Debtor's petition, schedules, Statement of Financial Affairs and
7 numerous other documents filed as part of the Debtor's Chapter 7 case. I have used the
8 information learned from these documents and my conversations with my counsel to justify the
9 exercise of my business judgment.

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

14 4. Following the automobile accident, a lawsuit was filed against Mr. Guerra and
15 Mr. Canchola. It was learned that the insurance policy on the vehicle had a \$25,000 per
16 occurrence limit. It is believed that a commercial vehicle in California is required to have a
17 \$750,000 minimum liability coverage.

18 5. Prior to the case going to trial, Mr. Guerra and Mr. Canchola filed bankruptcy.
19 The Plaintiffs in the state court litigation filed motions for relief from stay to pursue the case
20 limiting any recovery to the Debtor's insurance. I have been informed and I believe that
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22 consumer limit as stated in the policy. Thereafter the insurance carrier entered into an agreement
23 with the Plaintiffs that in the event a bad faith claim was brought and the Plaintiffs prevailed,
24 certain assumptions would be made as to what damage verdicts would be made.

25 6. It is my belief that Mr. Guerra has a bad faith and/or tortious injury claim against
26 the insurance carrier and similarly, Mr. Salven believes that Mr. Canchola has a bad faith and/or
27 tortious injury claim against the insurance carrier. These claims arise out of the same set of facts
28 and the same legal issues apply to both Debtors. We have consulted with counsel familiar and


29 **DEC OF PETER L. FEAR**

experienced in handling bad-faith and tortious injury cases and have confirmed that Mr. Canchola and Mr. Guerra do not have claims that are adverse to one another and their claims against the insurance company are similarly situated. It is my belief that this claim can be pursued most efficiently by allowing one attorney to handle the bad faith and/or tortious injury claim on behalf of both the estates. Prior to her resignation as acting Trustee, Ms. Manfredo entered into an agreement with Mr. Salven regarding the sharing of any litigation proceeds between the two bankruptcy estates. I have reviewed the terms of the agreement with Mr. Salven and believe that the agreement is in the best interest of the estate.

7. It is anticipated that this motion will be heard at the same time as a motion to employ special counsel filed in both Debtors' cases and that all three motions will be approved.

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

Executed this 27th day of March, 2019, at Fresno, California.


PETER L. FEAR

DEC OF PETER L. FEAR

TOTAL PAGES: 5
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 James Edward Salven, Chapter 7 Trustee
and Peter Fear, Chapter 7 Successor Trustee

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

In re:
DANIEL M. CANCHOLA,
Debtor.

Case No. 17-11346-B-7
Chapter 7

DC No.: RWR-2

Date: April 24, 2019
Time: 9:30 a.m.
Dept: B
Cttrm: 13, Fifth Floor
Location: 2500 Tulare Street
Fresno, CA
Judge: Honorable Rene Lastreto

In re:
MARIO ALBERTO GUERRA,
Debtor.

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

DC No.: RWR-2

Date: April 24, 2019
Time: 9:30 a.m.
Dept: B
Cttrm: 13, Fifth Floor
Location: 2500 Tulare Street
Fresno, CA
Judge: Honorable Rene Lastreto

EXHIBIT "A" IN SUPPORT OF TRUSTEES'
MOTION TO COMPROMISE A CONTROVERSY

EXHIBIT

TITLE

PAGE

A

Settlement Agreement and Mutual Release 3

///

EXH DOC

LP0000448

Executed this 28th day of March, 2019, at Fresno, California.

COLEMAN & HOROWITT, LLP

Dated: March 28, 2019.

By: /s/ Russell W. Reynolds
RUSSELL W. REYNOLDS
Attorneys for James E. Salven, Chapter 7
Trustee and for Peter L. Fear, Chapter 7
Successor Trustee

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into by and between TRUDI G. MANFREDO, Chapter 7 Trustee ("Trustee Manfredo") of the bankruptcy estate of MARIO ALBERTO GUERRA, Bankruptcy Case No. 17-11365-B-7 and JAMES E. SALVEN, Chapter 7 Trustee of the bankruptcy estate of DANIEL M. CANCHOLA, Bankruptcy Case No. 17-11346-B-7.

RECITALS

A. On April 12, 2017, MARIO ALBERTO GUERRA ("GUERRA") filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code (Case No. 17-11365-B-7). Trudi G. Manfredo is the Chapter 7 Trustee of this bankruptcy estate.

B. On April 11, DANIEL M. CANCHOLA ("CANCHOLA") filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code (Case No. 17-11346-B-7). James E. Salven is the Chapter 7 Trustee of this bankruptcy estate.

C. One of the assets of each estate is an insurance bad faith claim arising out of wrongful death litigation in the Fresno County Superior Court, Case No. 13CDCG03811, Cal Le Duc et al vs. Mario Alberto Guerra, Daniel M. Canchola, et al.

D. At the time of the incident giving rise to the underlying wrongful death litigation, CANCHOLA was employed by GUERRA. CANCHOLA was driving a vehicle owned by GUERRA and collided with the Plaintiffs resulting in a death.

E. The two estates both have an interest in any proceeds resulting from this bad faith litigation ("Settlement Sum").

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual compromises and covenants contained herein, Trustee Manfredo and Trustee Salve agree as follows:

1. Settlement.

If the bad faith litigation case is settled prior to trial, the Settlement Sum shall be equally divided between the two bankruptcy estates. This settlement is not effective unless approved by the Bankruptcy Court in both bankruptcy estates.

In the event that the matter goes to trial, both trustees agree to be bound by the Judgment arising out of this litigation.

Exhibit "A"
Page 3 of 5

EXH DOC

LP0000449

2. Release.

Except as otherwise set forth herein, each party hereto forever releases, waives and relinquishes any and all claims, demands, actions, or causes of action against the other party hereto and his, her or its respective officers, agents, affiliates, successors and assigns. In connection with such waiver and relinquishment, each party hereto acknowledges that each party is aware that he, she or it may hereafter discover facts in addition to, or different from, those which that party now knows or believes to exist but that it is each party's intention hereby fully, finally and forever to settle and release all of the claims, disputes and differences, known or unknown, suspected or unsuspected, which now exist or may exist hereafter between the parties, except as otherwise expressly provided in this release. This release shall be, and shall remain in effect, as a full and complete release notwithstanding the discovery or existence of any such additional or different facts.

3. Waiver of Civil Code Section 1542.

Except as otherwise provided in this agreement, each party hereto acknowledges that they are familiar with and voluntarily waive any right or benefit arising from Section 1542 of the Civil Code of the State of California which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement."

4. Warranty.

Each party warrants and represents to the other that they are the sole lawful owner of all right, title and interest in and to all of the claims released hereby and that they have not heretofore voluntarily or involuntarily by operation of law or otherwise, assigned or transferred or purported to assign or transfer to any person any such claim or any portion thereof.

5. Defense.

Each party agrees not to sue the other or in any way assist any other person or entity in suing the other with respect to any claim released herein. This release may be pled as a full and complete defense to, and may be used as the basis for, an injunction against any action, suit or other proceeding that may be instituted, prosecuted, or attempted in breach of release contained herein.

6. No Admission.

Nothing contained herein shall be construed as an admission by any one of any liability of any kind.

7. Authority.

Each party hereto acknowledges that they have authority to enter into this agreement.

8. Parties Bound.

The parties agree that this settlement and release shall be binding upon their respective successors, heirs, representatives and assigns and shall inure to the benefit of the parties, their agents, successors, heirs, employees, representatives, attorneys, partners and personal representatives, past or present of the Parties.

9. Counterpart.

This Agreement may be signed in counterpart.

10. Jurisdiction.

In the event of any disputes over the interpretation, consummation or enforcement of any provision of this Agreement, jurisdiction to determine such dispute shall be solely in the U.S. Bankruptcy Court presiding over the pending case so long as said Court otherwise has jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Dated: 2/9/18

James E. Salven, Chapter 7 Trustee of
the Canchola Bankruptcy Estate,
Case No. 17-11346-B-7

Dated: 2/9/18

Trudi G. Manfreda, Chapter 7 Trustee
of the Guerra Bankruptcy,
Case No. 17-11365-B-7

TOTAL PAGES: 5
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 James Edward Salven, Chapter 7 Trustee
and Trudi G. Manfredo, Chapter 7 Trustee

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

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Debtor.

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In re:

MARIO ALBERTO GUERRA,

Debtor.

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

DC No.: RWR-2

Date:
Time: 9:30 a.m.
Dept: B
Ctmm: 13, Fifth Floor
Location: 2500 Tulare Street
Fresno, CA
Judge: Honorable Rene Lastreto

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 March 28, 2019, I served the following documents described as:

1. NOTICE OF HEARING ON TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY
2. TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY
3. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY
4. DECLARATION OF JAMES E. SALVEN IN SUPPORT OF TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY
5. DECLARATION OF PETER L. FEAR IN SUPPORT OF TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY
6. EXHIBIT "A" IN SUPPORT OF TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY

on the interested parties as follows:

Debtor Daniel M. Canchola 1005 3rd Street Orange Cove, CA 93646	Trustee for Canchola James Edward Salven P.O. Box 25970 Fresno, CA 93729
Debtor Mario Alberto Guerra 395 Gutierrez Street Orange Cove, CA 93646	Trustee for Guerra Jerry R. Lowe 2344 Tulare Street Suite 301 Fresno, CA 93721
U.S. Trustee Office of the U.S. Trustee United States Courthouse 2500 Tulare Street, Room 1401 Fresno, CA 93721	David M. Moeck Esq. QUINLAN KERSHAW & FANUCCHI 2125 Merced Street Fresno, CA 93721

ALSO, SEE THE ATTACHED MAILING 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.

[X] **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 March 28, 2019, at Fresno, California.

/s/ Kathy Imburgia
KATHY IMBURGIA

Label Matrix for local noticing
0972-1
Case 17-11365
Eastern District of California
Fresno
Thu Mar 28 11:59:44 PDT 2019

Stephen R Cornwell
7045 N. Fruit Avenue
Fresno, CA 93711-0761

Golden 1 Credit Union
Attn Bankruptcy
8945 Cal Center Dr
Sacramento CA 95826-3239

Jerry R. Lowe
2344 Tulare Street Suite 301
Fresno, CA 93721-2295

(p)PORTFOLIO RECOVERY ASSOCIATES LLC
PO BOX 41067
NORFOLK VA 23541-1067

Synchrony Bank
c/o FRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541-1021

Riley C. Walter
205 E. River Park Circle, Ste. 410
Fresno, CA 93720-1572

Afni Inc
Po Box 3097
Bloomington IL 61702-3097

Department Stores National Bank
c/o Quantum3 Group LLC
PO Box 657
Kirkland, WA 98083-0657

Mario Alberto Guerra
395 Gutierrez Street
Orange Cove, CA 93646-4011

Office of the U.S. Trustee
United States Courthouse
2500 Tulare Street, Room 1401
Fresno, CA 93721-1326

Russell W. Reynolds
499 W. Shaw Ave., Ste. 116
Fresno, CA 93704-2516

Thunderbird Collection
3200 N Hayden Rd Ste 110
Scottsdale AZ 85251-6766

Michael L. Wilhelm
205 E. River Park Circle, Suite 410
Fresno, CA 93720-1572

Cal Leduc; Tori Abby; Miley Abby
Mandy Jobe; Lukus Leduc; Jay Leduc
Cornwell & Sample, LLC
7045 N Fruit Ave
Fresno, CA 93711-0761

Peter L. Fear
PO Box 28490
Fresno, CA 93729-8490

LWV Funding LLC
c/o Resurgent Capital Services
PO Box 10587
Greenville, SC 29603-0587

Penn Credit Corporatio
916 S 14th St
Harrisburg PA 17104-3425

Symb Walmart
Po Box 965024
Orlando FL 32896-5024

WELLS FARGO BANK, N.A.
SMALL BUSINESS LENDING DIVISION
P O BOX 29482
PHOENIX, AZ 85038-9482

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Portfolio Recovery Associates, LLC
POB 41067
Norfolk VA 23541

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

CERT OF SERVICE

LP0000452

(u)Tori Abby

(u)Mandy Jobe

(u)Cal LeDuc

(u)Jay LeDuc

(u)Lukas LeDuc

(u)Tori Abby, Guardian ad Litem for Minor Mil

End of Label Matrix
Mailable recipients 19
Bypassed recipients 6
Total 25