

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
Ctrm: 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
Ctrm: 13, Fifth Floor
Location: 2500 Tulare Street
Fresno, CA
Judge: Honorable Rene Lastreto

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

<u>EXHIBIT</u>	<u>TITLE</u>	<u>PAGE</u>
A	Settlement Agreement and Mutual Release	3
///		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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.

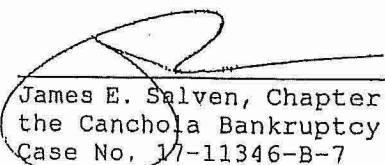
This Agreement may be signed in counterpart.

10. Jurisdiction.

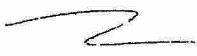
In the event of any disputes over the interpretation, consummation or enforcement of any provision of this Agreement, jurisdiction to determine such dispute shall be solely in the U.S. Bankruptcy Court presiding over the pending case so long as said Court otherwise has jurisdiction.

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

Dated: 2/21/18


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

Dated: 2/9/18


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