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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

TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY

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

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 underlaying 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
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21 Dated: March 28, 2019.

By: /s/ Russell W. Reynolds

22 RUSSELL W. REYNOLDS
23 Attorneys for James E. Salven, Chapter 7
24 Trustee and for Peter L. Fear, Chapter 7
25 Successor Trustee
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