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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

Ctmm: 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

Ctmm: 13, Fifth Floor

Location: 2500 Tulare Street

Fresno, CA

Judge: Honorable Rene Lastreto

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

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

1. I am an adult person over the age of eighteen (18), competent to testify about the 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 22nd day of March, 2019, at Fresno, California.

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17 JAMES EDWARD SALVEN
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