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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-3

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 II

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

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

2. Mario Alberto Guerra filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on April 12, 2017. I have reviewed and analyzed the Debtor's petition, schedules, Statement of Financial Affairs and numerous other documents filed as part of the Debtor's Chapter 7 case. I also reviewed notes from the Debtor's First Meeting of Creditors. I

1 have used the information learned from these documents and my conversations with my counsel
2 to justify the exercise of my business judgment.

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

7 4. Following the automobile accident, a lawsuit was filed against Mr. Guerra and
8 Mr. Canchola. It was learned that the insurance policy on the vehicle had a \$25,000 per
9 occurrence limit. It is believed that a commercial vehicle in California is required to have a
10 \$750,000 minimum liability coverage.

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

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

26 7. I wish to employ David Moeck as Special Counsel in this case to prosecute a bad
27 faith and/or tortious injury claim against the Debtor's insurance carrier. I have chosen Mr.
28 Moeck for this case because he has experience in bad faith litigation and has tried over fifteen

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

25
26 
27 PETER L. FEAR
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