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4 UNITED STATES BANKRUPTCY COURT
5 EASTERN DISTRICT OF CALIFORNIA
6 FRESNO DIVISION

7 In re) Case No. 05-19558-B-7
8 Rogelio A. Casimiro and)
9 Belen T. Casimiro,) DC No. HAR-2
10 Debtors.)
11 _____)

12 **AMENDED MEMORANDUM DECISION REGARDING MOTION FOR**
13 **APPROVAL OF STIPULATION FOR RELIEF FROM THE AUTOMATIC**
14 **STAY AND FOR COMPROMISE OF A DISPUTED CLAIM**
15 **(AMENDED AS TO DATE SIGNED)**

16 This memorandum decision is not approved for publication and may not be cited except
17 when relevant under the doctrine of law of the case or the rules of res judicata and claim
18 preclusion.

19 Patrick Kavanagh, the chapter 7 trustee (the “Trustee”), asks this court to approve
20 a stipulation (the “Stipulation”) entered into between the Trustee, the Debtors, and a
21 group of creditors (Arnaldo Lara and ten others) (the “Lara Claimants”) who filed a proof
22 of claim in excess of \$3.5 million (the “Lara Claim”). The Stipulation provides for relief
23 from the automatic stay and it purports to compromise a dispute over the Lara Claim. For
24 the reasons set forth below, relief requested in the Stipulation will be granted in part and
25 denied in part.

26 This memorandum decision contains the court’s findings of fact and conclusions of
27 law as required by Federal Rule of Civil Procedure 52(a), made applicable to this
28 contested matter by Federal Rule of Bankruptcy Procedure 7052. The bankruptcy court
29 has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 362¹ and

30 _____
31 ¹Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy
32 Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-
33 9036, as enacted and promulgated *prior* to October 17, 2005, the effective date of The
34 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20,
35 2005, 119 Stat. 23.

1 General Orders 182 and 330 of the U.S. District Court for the Eastern District of
2 California. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(G).

3 **Background.**

4 **The Litigation.**

5 Prior to the bankruptcy, Debtor Rogelio Casimiro (“Casimiro”) operated a
6 business known as Golden Grain Farm Labor. Casimiro contracted to provide farm labor
7 services to various third-party entities that grew primarily table grapes (the “Growers”).
8 The Lara Claimants were employed by Casimiro as farm laborers.

9 On March 5, 2004, the Lara Claimants filed a civil action against Casimiro in the
10 Kern County superior court (case number S-1500-CV-252445 SPC) for damages based,
11 *inter alia*, on allegations of unpaid wages, and violations of various state laws, including
12 the California Business and Professions Code and the Labor Code, relating to the
13 employment of migrant farm workers (the “Civil Action”). The Civil Action was filed as
14 a class action on behalf of the Lara Claimants and approximately 650 other people who
15 had worked for Casimiro. The Civil Action was amended to include a number of the
16 Growers as defendants, many of whom were subsequently dismissed. A second amended
17 complaint was filed in the Civil Action in September 2005.

18 This bankruptcy began with the filing of a voluntary petition on October 12,
19 2005.² Commencement of the bankruptcy automatically stayed further prosecution of the
20 Civil Action as to Casimiro. The record does not show that the state court certified a
21 plaintiff class in the Civil Action before the petition was filed.

22 In December 2005, Casimiro filed a petition in the superior court to remove the
23 Civil Action to the bankruptcy court pursuant to 28 U.S.C. § 1452(a). On June 5, 2006,
24 the U.S. district court granted Casimiro’s motion to withdraw the reference of the Civil
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26 ²The petition was originally filed under chapter 13. The Debtors were unable to confirm
27 a chapter 13 plan, based in part on a substantial tax claim filed by the Internal Revenue Service
28 (“IRS”). (See footnote 7, *infra*.) The Debtors voluntarily converted the case to chapter 7, and
the Trustee was appointed on December 29, 2005.

1 Action so it can be litigated in conjunction with another “related” civil proceeding
2 pending in the district court against some of the Growers. That “related” litigation is
3 based on claims arising under federal statutes, including the Agricultural Workers
4 Protection Act, 29 U.S.C. § 1801 et seq. The withdrawn Civil Action was assigned case
5 number 06-CV-00028-AWI SMS (hereinafter, the “District Court Litigation”).

6 **The Debtors’ Discharge.**

7 On February 2, 2006, the Debtors brought a motion for authority to publish notice
8 of commencement of the bankruptcy on the grounds that most of Casimiro’s former farm
9 worker employees were “unavailable” for the giving of actual notice, i.e., they did not
10 have permanent addresses, could not be properly listed in the bankruptcy schedules, and
11 could not be located for the giving of actual notice as required by the Bankruptcy Code.
12 Based on the pendency of the District Court Litigation, the Debtors were concerned that
13 some or all of Casimiro’s former employees may assert future claims which could be
14 excepted from the bankruptcy discharge, absent the giving of notice, pursuant to
15 § 523(a)(3). The Lara Claimants opposed the motion. At the hearing, the court declined
16 to grant the motion because, *inter alia*, the Debtors were unable to show that their plan for
17 publication of notice was reasonably likely to reach any of the “unavailable” employees.
18 The motion was withdrawn.³ Casimiro’s discharge was entered, without objection, in the
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21 ³On March 2, 2006, Debtors brought a motion to vacate the bar date for the filing of
22 nonpriority unsecured claims. The Ninth Circuit has held that the “no-notice” discharge
23 exception under § 523(a)(3) does not apply in cases where there are no assets and no bar date is
24 set for the filing of claims. *In re Beezley*, 994 F.2d 1433, 1436-37 (9th Cir. 1993). This is
25 technically not a “no-asset” case. However, the Debtors’ motion was supported by a declaration
26 from the Trustee stating that there are not enough assets to pay all of the administrative and
27 priority claims, and that there will not be any distribution to unsecured claims. Therefore, as to
28 the nonpriority unsecured claims, this does appear to be a “no-asset” case and the court granted
the Debtors’ motion. Granting of that motion does not directly adjudicate the dischargeability of
any claims against the Debtors. Questions of dischargeability must be resolved through an
adversary proceeding. Fed.R.Bankr.P. 7001(6). That, of course, would require an action
commenced by, or the giving of actual notice to, the same employees who the Debtors contend
are now “unavailable” for the giving of notice.

1 bankruptcy case on March 29, 2006.

2 **The Lara Claim Objection.**

3 On May 8, 2006, the Lara Claimants collectively filed a proof of claim in this
4 bankruptcy case (claim docket number 20) in the amount of \$3,561,000. The Lara Claim
5 purports to be an unsecured priority claim pursuant to § 507(a)(4)⁴ on behalf of the eleven
6 Lara Claimants and all members of a potential “claimant class” (all 650 of them).
7 Attached to the Lara Claim is a copy of the second amended complaint filed in the Civil
8 Action, and the “claimant class” in the Lara Claim appears to be the same group of
9 individuals which the Lara Claimants hope to certify as a plaintiff class in the District
10 Court Litigation (the “Plaintiff Class”).

11 In October 2006, the Debtors filed an objection to the Lara Claim based in part on
12 Casimiro’s contention (summarized in the discussion below), and supporting evidence to
13 suggest that the Lara Claimants are not eligible to assert a priority claim under §
14 507(a)(4) (the “Claim Objection”).⁵ Specifically, the Debtors contend that none of the
15 Lara Claimants worked for Casimiro within the 180-day period that defines a § 507(a)(4)
16 claim. The Debtors did not object to the amount of the Lara Claim. They simply asked
17 for a determination that the Lara Claim be reclassified as a general unsecured claim.
18 Since the general unsecured claims will not receive any distribution of assets (see
19 footnote 3, supra), a favorable ruling for the Debtors on the Claim Objection would, in
20 theory, enable the Trustee to distribute the assets to administrative and priority claims and
21 close the case.

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23 ⁴Prior section 507(a)(3) was amended by the Bankruptcy Abuse Prevention and
24 Consumer Protection Act of 2005 (BAPCPA) effective April 20, 2005. This bankruptcy was
25 filed on October 12, 2005.

26 ⁵The Debtors wrote letters to the Trustee in August 2006, and again in October 2006
27 asking the Trustee to object to the Lara Claim. The Trustee failed to do so. The Debtors have an
28 interest in getting this case closed as soon as possible so the assets in the estate can be used to
pay the IRS’ tax claim which is nondischargeable and remains a personal liability of the Debtors.
(See footnote 7, infra.)

1 The Trustee subsequently filed a “joinder” in the Claim Objection and the matter
2 was set for hearing in March 2007. For reasons that are unclear to the court, the Claim
3 Objection was withdrawn by Casimiro and the Trustee before the Lara Claimants filed
4 any response. It was replaced by the Stipulation which purports to be a compromise of
5 the Claim Objection. The Trustee contends in support of the Stipulation that the
6 bankruptcy case has been fully administered and that resolution of the Lara Claim is the
7 only obstacle to filing a final report and closing of case.

8 **Relief From the Automatic Stay.**

9 The Lara Claimants seek permission to let the district court certify the Plaintiff
10 Class pursuant to Fed.R.Civ.P. 23 for prosecution of the District Court Litigation. To the
11 extent that the automatic stay is applicable, and to the extent that relief is limited to
12 certification of a Plaintiff Class in the District Court Litigation, the Stipulation will be
13 approved.

14 The automatic stay arises upon commencement of the bankruptcy case to
15 temporarily prevent creditors from taking actions against property of the bankruptcy
16 estate. It also protects debtors and their property from collection efforts by creditors.
17 § 362(a). However, as noted above, the Debtors’ discharge has been entered. Upon entry
18 of the discharge, the automatic stay terminated automatically as to the Debtors and their
19 property by operation of law. § 362(c)(2)(C). The Debtors are now protected by the
20 discharge injunction under § 524(a). The scope of the discharge injunction is more
21 limited than the automatic stay. The discharge injunction applies only to a debtor’s
22 personal liability. It prevents creditors from attempting to collect a discharged debt from
23 a debtor or his/her personal assets. Subsection(e) makes clear that the discharge
24 injunction does not inhibit prosecution of the District Court Litigation, and subsequent
25 collection efforts against the nondischarged defendants. *Patronite v. Beeney (In re*
26 *Beeney)*, 142 B.R. 360, 362 (9th Cir. BAP 1992). However, Casimiro’s role is delegated
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1 to that of a witness who can still be compelled to appear at trial. *Id.* at 363.⁶

2 To the extent that the automatic stay may still operate to protect property of the
3 bankruptcy estate, it is not clear that the District Court Litigation affects the bankruptcy
4 estate in any way. The Trustee has opted not to intervene and participate in the District
5 Court Litigation and there appears to be little reason for him to do so. The Trustee has
6 stated that the bankruptcy case is ready to close once the questions regarding the Lara
7 Claim are resolved.

8 Theoretically, prosecution of the District Court Litigation may serve to liquidate
9 the amount of the Lara Claim, but liquidation of the Lara Claim is unnecessary. The Lara
10 Claim has been filed in excess of \$3.5 million. Pursuant to § 502(a), a properly filed
11 proof of claim is “deemed allowed” unless a party in interest files an objection. Nobody
12 has yet objected to the stated amount of the Lara Claim, only to its “priority”
13 classification. The Lara Claim is therefore effectively “liquidated” for purposes of
14 administration of this bankruptcy case.

15 Further proceedings in any court to liquidate the Lara Claim would be a futile
16 exercise unless there are assets to distribute to the Lara Claimants, or unless liquidation of
17 the Lara Claim otherwise affects the Trustee’s ability to administer and close the
18 bankruptcy case. In that regard, the Trustee has represented that there are not enough
19 assets to make any distribution to general unsecured creditors.⁷ Therefore, liquidation of
20 the Lara Claim is only relevant to the extent that the Lara Claimants may have a priority
21 claim, as opposed to a general unsecured claim, which leads us to the second part of the
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23 ⁶Having received his discharge, one must ask why Casimiro has not moved for dismissal
24 from the District Court Litigation. While Casimiro is not barred from defending the claims
25 against him in the District Court Litigation, he is not required to, and it is not clear to this court
that he is even a necessary party to the District Court Litigation.

26 ⁷The Trustee has represented that the estimated administrative and priority claims will
27 exceed the assets he has collected through administration of the estate. The IRS has filed a proof
28 of claim in the amount of \$258,446. The IRS’ claim appears to be entitled to “priority” under
§ 507(a)(8).

1 Stipulation.

2 **Compromise of the Lara Claim.**

3 The Stipulation purports to compromise a dispute over the classification and
4 amount of the Lara Claim. For the reasons set forth above, compromise over the amount
5 of the Lara Claim is only necessary if the Lara Claimants are entitled to assert a priority
6 claim as defined in § 507(a)(4). As to the “priority” issue, the court is not persuaded that
7 there is a real and substantial dispute to be compromised. The Debtors’ filed the Claim
8 Objection contesting the Lara Claim’s “priority” status on grounds which appear to the
9 court to be well taken. However, the Claim Objection was withdrawn, and the parties
10 negotiated the Stipulation before the Lara Claimants filed any response to show that there
11 are disputed, factual or legal issues to consider.

12 Federal Rule of Bankruptcy Procedure 9019 gives the Trustee the express
13 authority to compromise a controversy or settle a dispute affecting administration of the
14 estate, subject to court approval. While the opinion of the Trustee is entitled to great
15 weight, the bankruptcy court has a duty to make an informed, independent judgment as to
16 the reasonableness of the proposed compromise. *In re Churchfield*, 277 B.R. 769, 773-74
17 (Bankr.E.D.Cal. 2002), citing *Protective Committee for Independent Stockholders of TMT*
18 *Trailer Ferry, Inc. v. Anderson (TMT Trailer Ferry)*, 390 U.S. 414, 424, 88 S.Ct. 1157,
19 20 L.Ed.2d 1 (1968). The burden of persuasion is on the Trustee. *In re A & C*
20 *Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

21 While the court has no reason to question the good faith of the Trustee, when
22 property of the estate is involved, there must be more than mere good faith negotiation of
23 a settlement.⁸ The factors which guide the courts of this Circuit in approving a
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25 ⁸Some of the parties’ motivation behind the Stipulation appears to be based on economic
26 factors. Specifically, the Trustee has a desire to close the case as soon as possible, without the
27 delay and expense of having to participate in the District Court Litigation, and defend the estate
28 against a potentially large priority claim. The Debtors want the Trustee to distribute assets to
reduce the IRS’ nondischargeable tax claim. The Lara Claimants want the assurance that they
will receive some money from the estate to help fund their ongoing litigation in the district court.

1 compromise of controversy are set forth in *A & C Properties*—the court must examine the
2 nature of the dispute and find that the proposed compromise is reasonable, fair and
3 equitable. In determining the fairness, reasonableness and adequacy of a proposed
4 settlement agreement, the court must consider: (a) the probability of success in the
5 litigation; (b) the difficulties, if any, in the matter collection; (c) the complexity of the
6 litigation involved and the expense, inconvenience and delay necessarily attending it; and
7 (d) the paramount interest of the creditors and a proper deference to their reasonable
8 views. *In re A & C Properties*, 784 F.2d at 1381.

9 Implicit in the *A & C Properties* test is the foundational requirement that the
10 Trustee must make a *prima facie* showing of a real and substantial controversy over the
11 facts and/or the application of law. *In re Churchfield*, 277 B.R. at 774. Even in the
12 absence of an objection to the proposed compromise, the court must make an independent
13 analysis of the relevant factors. The court must identify the disputed issues and determine
14 both the burden upon the estate and the risks associated with resolution of those issues.
15 The court is not required to resolve the disputed issues, but the court must be able to
16 identify them so that the reasonableness of the settlement may be evaluated. “The
17 bankruptcy court must carefully weigh the value of the settled claim against the value to
18 the estate by the settlement.” *In re Hermitage Inn, Inc.*, 66 B.R. 71, 72 (Bankr.D.Colo.
19 1986). The court must be able to “compare the terms of the compromise with the likely
20 rewards of litigation.” *TMT Trailer Ferry* at 424-25, 88 S.Ct. 1157.

21 The Stipulation purportedly fixes the Lara Claim as a “class” priority claim under
22 § 507(a)(4) in the amount of \$75,000. Class claims are permitted in the Ninth Circuit. *In*
23 *re Birthing Fisheries, Inc.*, 939, 940 (9th Cir. 1996). However, the proposed “claimant
24 class” must be certified by the bankruptcy court as a proper “claimant class” pursuant to
25 Fed.R.Bankr.P. 9014 and 7023. The named claimants must timely move for certification
26 of the class. *In re Commonpoint Mortgage Co.*, 283 B.R. 469, 475-76 (Bankr.W.D.Mich.
27 1985), citing *Reid v. White Motor Corp.*, 886 F.2d 1462, 1471 (6th Cir. 1989), cert.
28 denied, 494 U.S. 1080, 110 S.Ct. 1809, 108 L.Ed.2d 939 (1990). “The individuals

1 seeking class certification have the burden of proving that they are entitled to class
2 certification.” *Id.*

3 The elements which must be satisfied for certification of a “class” are prescribed in
4 Fed.R.Civ.P. 23(a) (made applicable in adversary proceedings and contested matters by
5 Fed.R.Bankr.P. 7023) as follows:

6 (a) Prerequisites to a Class Action. One or more members of a class may sue or be
7 sued as representative parties on behalf of all only if (1) the class is so numerous
8 that joinder of all members is impracticable, (2) there are questions of law or fact
9 common to the class, (3) the claims or defenses of the representative parties are
10 typical of the claims or defenses of the class, and (4) the representative parties will
11 fairly and adequately protect the interests of the class.

12 These four elements are commonly referred to as numerosity, commonality,
13 typically, and adequacy of representation. *In re Commonpoint Mortgage Co.*, 283 B.R.
14 at 476.

15 The fundamental problem with the Stipulation is that it summarily equates
16 certification of a Plaintiff Class in the District Court Litigation with certification of a
17 “claimant class” for the Lara Claim in this bankruptcy case.⁹ Even if the Lara Claimants
18 successfully certify a Plaintiff Class for prosecution of the District Court Litigation, that
19 does not mean that the Plaintiff Class is automatically certified as a “claimant class,” or
20 that it would be entitled to “priority” status under § 507(a)(4) of the Bankruptcy Code.
21 That issue, certification of the Lara Claimants’ “priority” status, is not even before the

22 ⁹In support of the Stipulation, the Trustee states in a declaration:

23 7. I believe that the appropriate forum to determine the certification of the class is
24 in the pending Federal District Court case which action has been stayed because
25 of the Chapter 7 case of Debtor. The parties['] desire to allow the [District Court
26 Litigation] to go forward only as to Rogelio Casimiro (“Casimiro”) and only to
27 the extent necessary to *determine the certification of the claimant class in Claim*
28 *No. 20*, to appoint class counsel, and to approve class settlement with Casimiro
only. . . . (Emphasis added.)

29 It is clear from this statement that the Trustee fails to recognize any distinction between
30 certification of a Plaintiff Class that may be entitled to prosecute the District Court Litigation,
31 and certification of “claimant class” entitled to “priority” status in this bankruptcy case.

1 district court. Further, the Trustee seems to make this assumption without any
2 consideration of the (questionable) merits of the “priority” class certification process.
3 The Trustee has failed to offer any evidence or analysis in support of the Stipulation to
4 show, or even suggest, that there is a “real and substantial controversy over the facts
5 and/or the application of law” with regard to the core issue here: the Lara Claimants’ right
6 to assert a priority claim under § 507(a)(4), or their ability to certify a “class” of priority
7 claimants similarly situated. *In re Churchfield*, 277 B.R. at 777.

8 This court has reviewed the Debtors’ Claim Objection, and the analysis set forth
9 therein. Based thereon, this court is not satisfied that the Lara Claimants have the right to
10 a priority claim under § 507(a)(4). The problem is readily apparent when one looks at the
11 second and third elements for class certification - commonality and typically. The Lara
12 Claimants are seeking damages in the District Court Litigation pursuant to various state
13 and federal statutes, including the California Business and Professional Code, the
14 California Labor Code, and the federal Agricultural Workers Protection Act. By contrast,
15 the right of any Lara Claimant to assert a priority claim in this bankruptcy case is defined
16 by the Bankruptcy Code, specifically § 507(a)(4). Not everybody who may be eligible to
17 plead claims under the theories advanced in the District Court Litigation will necessarily
18 qualify to have a priority claim under § 507(a)(4) of the Bankruptcy Code. The statutes at
19 issue in the Bankruptcy Code and in the District Court Litigation involve substantially
20 different questions of law and fact. The “commonality” factor under Rule 23 is simply
21 not present.

22 Further, the Lara Claimants’ own pleadings tend to suggest that none of the Lara
23 Claimants even qualify to have a priority claim under § 507(a)(4).¹⁰ As such, the Lara

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25 ¹⁰The following analysis is adopted from the Claim Objection which was filed by the
26 Debtors and then withdrawn in favor of the proposed Settlement. Based on the court’s own
27 review of the dates and the various pleadings referenced in the Claim Objection, the points raised
28 in the Claim Objection appear to be well taken. The Lara Claimants did not file a response to the
Claim Objection before it was withdrawn and this discussion is not intended to be a final
adjudication of those issues. The Claim Objection issues are offered here merely to illustrate

1 Claimants would not hold claims which are “typical” of other potential priority claimants.
2 Pursuant to § 507(a)(4), a priority claim may be filed by an individual for unpaid wages,
3 salaries, or commissions, up to the amount of \$10,000, earned within 180 days prior to
4 commencement of the bankruptcy case, or cessation of the debtor’s business, whichever
5 occurs first. The Debtors filed the Claim Objection contesting the priority status of the
6 Lara Claim on the grounds that the named claimants were not employed by Casimiro
7 within 180 days prior to the bankruptcy. This bankruptcy was filed on October 12, 2005.
8 Casimiro filed a declaration in support of the Claim Objection stating that he ceased
9 doing business as a farm labor contractor in January 2005. The Lara Claim alleges that
10 the Debtors ceased doing business on an earlier date, November 30, 2004. The actual
11 date of cessation is obviously a factual issue, but giving the Lara Claimants the benefit of
12 the doubt, and working from the earlier date, they would only be entitled to assert priority
13 claims for wages, salaries, or commissions earned **after** June 3, 2004 (180 days prior to
14 November 30, 2004). Any claim for wages, salaries, or commissions earned **before** June
15 3, 2004, would not appear to be entitled to “priority” status and would therefore be
16 classified as “general unsecured.”¹¹

17 The Lara Claim states on its face that the “debt” was incurred in April 2001, over
18 three years **before** the eligible “priority” period. The Lara Claimants commenced the
19 Civil Action against Casimiro in March 2004, approximately three months **before** the
20 eligible “priority” period. It is not unreasonable to infer that the Lara Claimants did not
21 work for Casimiro and accrue any claim for unpaid wages after the Civil Action was
22 filed. Looking to the pleadings filed in the Civil Action itself, specifically the Second
23 Amended Complaint, seven of the Lara Claimants allege that their employment ended in

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25 why the court is not willing to approve the Stipulation.

26 ¹¹Casimiro filed a declaration in support of the Debtors’ claim objection stating that he
27 ceased doing business as a farm labor contractor in January 2005. If this is true, then the
28 “priority” period under § 507(a)(4) would date back to July 2004. None of the Lara Claimants
have alleged that they worked for Casimiro on or after July 2004.

1 September or October 2003. Two of the named Lara Claimants allege that their
2 employment with Casimiro ended “in or about” some unspecified date in April 2004.¹²
3 None of the Lara Claimants contend that they were employed by Casimiro after June 3,
4 2004.

5 Based on the foregoing, the Lara Claimants’ own pleadings strongly suggest that
6 none of the Lara Claimants are not entitled to assert a priority claim in this bankruptcy
7 case. If none of the Lara Claimants can assert a priority claim, then none of them would
8 be qualified to represent a priority “claimant class” in this bankruptcy.¹³ To the extent
9 that the Trustee wants to compromise a purported “dispute” over the Lara Claim by fixing
10 a priority claimant class through the Stipulation, the request must be denied. The court is
11 not persuaded that there is a real or substantial factual or legal dispute to be compromised
12 with regard to priority status of the Lara Claim. *In re Churchfield*, 277 B.R. at 777.
13 Unless the Lara Claim is entitled to priority status, any compromise regarding the amount
14 of the Lara Claim (\$3.5 million vs. \$75,000) is immaterial and will have no effect on the
15 Trustee’s ability to complete his duties, distribute the assets and close the case.

16 **Conclusion.**

17 Based on the foregoing, the automatic stay will be modified, to the extent
18 necessary, to permit the Lara Claimants to proceed with the District Court Litigation,
19 including certification of the Plaintiff Class and prosecution to settlement or judgment, so
20 long as the Lara Claimants do not seek to enforce a judgment against the Debtors in
21 violation of the discharge injunction under § 524(a). Prosecution of the District Court
22 Litigation does not appear to affect the Trustee’s ability to close this bankruptcy estate.

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24 ¹²Lara Claim, Exhibit 1; Second Amended Complaint, ¶s 20-28, 97 & 98.

25 ¹³In addition, it is not clear to this court that any motion to certify a claimant class for the
26 Lara Claim would be timely. The Lara Claim was filed on May 8, 2006, almost one year before
27 the hearing for approval of the Stipulation. The only parties in interest to raise the class
28 certification issue were the Debtors in their aborted Claim Objection. The Lara Claimants have
done nothing to get their Claim certified under Rule 7023 and the Trustee states that the
bankruptcy case is ready to close once classification of the Lara Claim is resolved.

1 The Trustee's request to compromise a purported "controversy" over the Lara
2 Claim by fixing and allowing the Lara Claim as a "class" priority claim under § 507(a)(4)
3 will be denied absent a showing that there is a bona fide factual and/or legal dispute over
4 the priority status of the Lara Claim. The Trustee shall file and serve an objection to the
5 Lara Claim within 30 days from entry of this Order. The Trustee shall prepare to file his
6 final report and close the case as soon as possible after the renewed claim objection is
7 resolved.

8 Notwithstanding the foregoing, if the Lara Claimants and the Trustee believe there
9 is a significant factual or legal controversy over the priority status of the Lara Claim, then
10 the Lara Claimants may file a motion to certify a priority "claimant class" and the Trustee
11 may renew his motion to compromise the controversy. The court will consider the
12 offered evidence and legal analysis, and determine if there is a dispute to be
13 compromised, in the context of the motion and the renewed claim objection.

14 Dated: June 4, 2007

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16 /s/ W. Richard Lee
17 W. Richard Lee
18 United States Bankruptcy Judge
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