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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re
ROSIE S. CRUZ,

Debtor.

Case No. 2:11-bk-29312-RK
Chapter 7

**MEMORANDUM DECISION ON MOTION
OF CHAPTER 7 TRUSTEE TO
APPROVE COMPROMISE OF
CONTROVERSIES WITH MARY JEAN
WILSON, CONSERVATOR OF THE
PERSON AND THE ESTATE OF
JOANNE S. WIEDEY, MARY JEAN
WILSON, TRUSTEE OF THE JOANNE S.
WIEDEY TRUST DATED JULY 25, 1995,
AS AMENDED, MARY JEAN WILSON
AND JOANNE M. GIBSON**

Hearing: July 22, 2013
Time: 10:30 a.m.
Courtroom: 1675

On July 22, 2013, the above-captioned bankruptcy case came on for hearing before the undersigned United States Bankruptcy Court on the motion of Alfred H. Siegel, Chapter 7 Trustee in this case ("Trustee"), to approve compromise of controversies with Mary Jean Wilson, Conservator of the Person and Estate of Joanne S. Wiedey, Mary Jean Wilson, Trustee of the Joanne S. Wiedey Trust dated July 25, 1995, as amended ("Trust"), Mary Jean Wilson and Joanne M. Gibson, who are claimed representatives and

1 beneficiaries of a conservatorship and trust of Joanne S. Wiedey, who is now deceased
2 (these parties are collectively referred to herein as “Wilson Parties”). Anthony A.
3 Friedman, of the law firm of Levene, Neale, Bender, Yoo & Brill, L.L.P., appeared for
4 Trustee. Alan T. Yoshitake, of the law firm of Seyfarth Shaw LLP, appeared for Wilson
5 Parties. Frank O. Fox, of the Law Firm of Fox and Fox, appeared for objecting creditor
6 Law Firm of Fox and Fox (“Creditor”).

7 **PROCEDURAL HISTORY**

8 On April 23, 2013, Trustee filed the instant motion to approve compromise of
9 controversies with the Wilson Parties. *Motion of Chapter 7 Trustee to Approve*
10 *Compromise of Controversies with Mary Jean Wilson, Conservator of the Person and*
11 *Estate of Joanne S. Wiedey, Mary Jean Wilson, Trustee of the Joanne S. Wiedey Trust*
12 *dated July 25, 1995, as Amended, Mary Jean Wilson and Joanne M. Gibson; Declaration*
13 *of Alfred H. Siegel in Support thereof (“Motion”),* filed on April 23, 2013.

14 The Motion was heard before the undersigned United States Bankruptcy Judge on
15 May 14, 2013, June 4, 2013, July 9, 2013 and July 22, 2013. The Motion seeks this
16 court’s approval of a written settlement agreement between Trustee and the Wilson
17 Parties to compromise various disputes between them regarding the claims of the Wilson
18 Parties in this bankruptcy case and the claims of the bankruptcy estate in probate
19 litigation involving the probate estate of Joanne S. Wiedey (“Wiedey”), deceased,
20 pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (“FRBP”).

21 Trustee contends that the compromise is reasonable, fair and equitable and
22 should be approved based on his determination that it is in the best interests of the estate
23 to settle with the Wilson Parties. *Motion* at 17. In the moving papers, Trustee submitted
24 his declaration setting forth his rationale for seeking approval of the compromise with a
25 copy of the written settlement agreement, i.e., the settlement will “fully and finally resolve
26 any and all of the claims and potential claims of the Debtor and the bankruptcy estate to
27 the Trust and its proceeds given the risks and expense associated with litigation” and
28 “eliminates or reduces me, my professionals and the estat[e] having to incur further

1 administrative expense in (1) enforcing the validity of the Purported Second [Trust]
2 Amendment, (2) litigating the 17200 Petition, the 850 Petition and the Elder Abuse
3 Petition, (3) defending against the currently pending Motion for Summary Judgment on
4 the 17200 Petition, resolves the 850 Petition Claim and the 17200/Elder Abuse Petitions
5 Claim, (5) objecting to the Fox [and Fox] Proof of Claim (as said objection and expense
6 will be borne by the Trustee of the Revocable Trust and (6) will provide a recovery to
7 creditors with allowed claims.” *Trustee’s Declaration attached to Motion at 23-24; Exhibit*
8 *1 to Motion, Settlement Agreement and Release.*

9 The Law Firm of Fox and Fox (“Fox and Fox”), a creditor of Debtor, filed an
10 opposition to the Motion, arguing that the compromise should not be approved on
11 grounds that it is not fair and reasonable as it detrimentally affects the secured claim of
12 creditor Fox and Fox and Debtor’s interest in the assets of the Joanne S. Wiedey Trust.
13 *Opposition to Motion of Chapter 7 Trustee re Compromise of Controversies;*
14 *Memorandum of Points and Authorities (“Opposition”),* filed on April 30, 2013. In support
15 of the opposition, Fox and Fox submitted a copy of its trial brief in the conservatorship
16 proceedings for Joanne S. Wiedey, describing detailed evidence why Debtor is entitled to
17 claim assets of the Joanne S. Wiedey Trust as a trust beneficiary named in a 2008 trust
18 amendment as a 10-year primary caregiver to Wiedey. *Exhibit A to Opposition, Trial*
19 *Brief, In re The Conservatorship of Joanne S. Wiedey, Conservatee,* filed on March 8,
20 2011.

21 Trustee filed a reply to the opposition of Fox and Fox to the Motion and submitted
22 14 documents as exhibits to the reply in support of the Motion, including copies of the
23 original trust instrument of the Joanne S. Wiedey Trust, the 2006 trust amendment, the
24 2008 trust amendment, medical records for Wiedey, declarations of an attending
25 physician for Wiedey, transcripts of depositions of Debtor, Mary Jean Wilson, attorneys
26 for Wiedey, the attending physician, and declarations of two other caregivers for Wiedey.
27 *Reply of Chapter 7 Trustee to Opposition of Frank O. Fox of the Law Firm of Fox and Fox*
28 *to the Motion of Chapter 7 Trustee to Approve Compromise of Controversies with Mary*

1 *Jean Wilson, Conservator of the Person and Estate of Joanne S. Wiedey, Mary Jean*
2 *Wilson, Trustee of the Joanne S. Wiedey Trust dated July 25, 1995, as Amended, Mary*
3 *Jean Wilson and Joanne M. Gibson (“Trustee’s Reply to Opposition”),* filed on May 7,
4 2013, and Exhibits 1-14 attached thereto. Because the evidence in the Trustee’s Reply
5 to Opposition was extensive and was not submitted with the original Motion, the court at
6 the hearing on May 22, 2013 granted leave for Fox and Fox to file a surreply to the
7 Motion and to submit other evidence pertaining to the Motion for the court to consider,
8 and the court set a further hearing for June 4, 2013. Fox and Fox filed a surreply as
9 permitted by the court and with it, submitted 19 documents as exhibits in opposition to the
10 motion, including counterdeclarations of other witnesses, excerpts of deposition
11 transcripts of other witnesses and copies of pleadings filed in the conservatorship
12 proceedings in state court. *Sur-Reply [Court-Ordered] to Reply on Motion of Chapter 7*
13 *Trustee re Compromise of Controversies; Memorandum of Points and Authorities; and*
14 *Exhibits (“Sur-Reply”),* filed on May 21, 2013. On May 28, 2013, Trustee filed a
15 supplemental reply responding to Fox and Fox’s sur-reply with additional evidence
16 regarding possible elder abuse. *Supplemental Reply of Chapter 7 Trustee to Opposition*
17 *of Frank O. Fox of the Law Firm of Fox and Fox to the Motion of Chapter 7 Trustee to*
18 *Approve Compromise of Controversies with Mary Jean Wilson, Conservator of the*
19 *Person and Estate of Joanne S. Wiedey, Mary Jean Wilson, Trustee of the Joanne S.*
20 *Wiedey Trust dated July 25, 1995, as Amended, Mary Jean Wilson and Joanne M.*
21 *Gibson (“Trustee’s Supplemental Reply to Opposition”),* filed on May 28, 2013, and
22 Exhibits A-C attached thereto

23 At the hearing on June 4, 2013, the court announced a tentative ruling that it was
24 inclined not to approve the settlement and grant the motion because the settlement fell
25 below the range of reasonableness and continued the hearing so Trustee and the Wilson
26 Parties could consider submitting a revised settlement offer. The court set a further
27 hearing for July 9, 2013.

28

1 On July 8, 2013, Trustee filed a further supplemental brief in support of the Motion,
2 which set forth a new and amended settlement between Trustee and the Wilson Parties.
3 *Further Supplemental Brief Regarding Motion of Chapter 7 Trustee to Approve*
4 *Compromise of Controversies with Mary Jean Wilson, Conservator of the Person and*
5 *Estate of Joanne S. Wiedey, Mary Jean Wilson, Trustee of the Joanne S. Wiedey Trust*
6 *dated July 25, 1995, as Amended, Mary Jean Wilson and Joanne M. Gibson; Declaration*
7 *of Alan T. Yoshitake in Support thereof ("Trustee's Further Supplemental Brief")*, filed on
8 July 8, 2013. The revised offer increased the distribution to the bankruptcy estate from
9 \$280,000 to \$365,000. *Id.* At the hearing on July 9, 2013, Fox and Fox objected to
10 consideration of the new and amended settlement offer submitted the day before the
11 hearing, and the court granted leave to Fox and Fox to file a response to Trustee's further
12 supplemental brief with the revised settlement offer and set a further hearing on July 22,
13 2013.

14 On July 22, 2013, the court heard argument from the parties on the revised
15 settlement offer and took the matter under submission. A further hearing on the motion
16 is set for September 17, 2013.

17 After considering the oral and written arguments of the parties, as well as the
18 supplemental briefing, the court hereby takes the Motion under submission, vacates the
19 further hearing on September 17, 2013 and now issues this memorandum decision on
20 the Motion.

21 **FACTUAL BACKGROUND**

22 On May 3, 2011, debtor Rosie Cruz ("Debtor") commenced this bankruptcy case
23 by filing a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C.
24 *Petition*, filed on May 3, 2011. When Debtor filed her Chapter 7 bankruptcy petition, she
25 filed schedules of assets and liabilities, on which she did not disclose any probate claims
26 or any litigation claims or causes of action as property of the bankruptcy estate. See
27 *Schedule B (Personal Property) to Petition*, filed on May 3, 2011 (Item 20. "Contingent
28 and noncontingent interests in estate of a decedent, death benefit plan, life insurance

1 policy, or trust.” – “NONE”; Item 21. “Other contingent and unliquidated claims of every
2 nature, including tax refunds, counterclaims of debtor, and rights to setoff claims. Give
3 estimated value of each.” – “NONE.”)

4 On June 14, 2011, Trustee filed a report of no distribution of assets. See
5 *Declaration of Alfred H. Siegel attached to Motion at 19-24* (summary of procedural
6 history of bankruptcy case and probate litigation). On August 19, 2011, the court entered
7 a discharge of debts of Debtor in this case. *Id.* On March 22, 2012, the Trustee learned
8 that Debtor may have inherited some property from a trust prior to filing her bankruptcy
9 case. *Id.* Upon Trustee’s motion, the court reopened Debtor’s bankruptcy case on April
10 5, 2012 to allow Trustee to investigate and administer potential assets. *Id.*

11 During further investigation of these potential assets, Trustee learned that Debtor
12 acted as a care guardian for the decedent, Wiedey. *Id.* During her life, Decedent
13 executed a trust instrument creating the Joanne S. Wiedey Trust dated July 25, 1995. *Id.*
14 The original trust instrument provided that her assets consisting of her residence in San
15 Marino, California, and cash would be left on her death to her family members, including
16 her sister, Mary Jean Wilson (“Wilson”). *Id.* In 2006, the trust instrument was amended
17 to designate Wilson as co-trustee of the trust with Wiedey. *Id.* In 2008, the trust
18 instrument was purportedly amended in a “Second Amendment” that changed the terms
19 of the trust, which would give Debtor the bulk of the trust’s assets upon Wiedey’s death,
20 including her residence as well as \$400,000 in cash. *Id.*; see also, *Exhibit 12 to Trustee’s*
21 *Reply to Opposition*, Petitioner Mary Jean Wilson’s Notice of Motion and Motion for
22 Summary Judgment, etc., filed on February 22, 2012, *In the Matter of Joanne S. Wiedey*
23 *Trust, dated July 25, 1995, as amended*, Case No. BP 129 503 (Superior Court of
24 California, County of Los Angeles) (copy of Second Trust Amendment attached to this
25 motion as Exhibit A). At that time, Wiedey was under the care of Debtor. *Declaration of*
26 *Alfred H. Siegel attached to Motion at 19-24*

27 In 2010, Wilson was appointed by the Superior Court of California for the County
28 of Los Angeles as the conservator for Wiedey. *Id.* After appointment, Wilson

1 investigated whether Debtor as Wiedey's primary caregiver engaged in physical, verbal,
2 and financial elder abuse of Weidey, apparently prompted by extensive changes in the
3 trust instrument in the Second Amendment. *Id.* As conservator, Wilson filed in the
4 Superior Court a Petition for Substituted Judgment, seeking to exclude Debtor as a
5 beneficiary under the trust due to her alleged wrongful treatment of Weidey. *Id.* While
6 the trial of this petition was pending in the Superior Court, Wiedey died on April 30, 2011.
7 The Superior Court declared a mistrial due to Wiedey's death and denied the Petition for
8 Substituted Judgment without prejudice. *Id.*

9 Wilson, acting as the trustee of the trust, filed a complaint for elder abuse in the
10 Superior Court on July 7, 2011, seeking to have the Second Amendment of the trust
11 instrument invalidated based on Wiedey's lack of capacity among other things (the
12 "17200 Petition," referencing the applicable California Probate Code provision). *Id.*
13 Wilson filed a related action in the Superior Court, alleging that Debtor wrongfully
14 obtained \$156,800 from Wiedey during her lifetime and seeks return of these funds from
15 Debtor (the "850 Action," again referencing the applicable California Probate Code
16 provision). *Id.* The Law Firm of Fox and Fox has represented Debtor in these state court
17 proceedings. *Id.* These state court probate proceedings are still pending, and are stayed
18 based on the automatic stay arising in this bankruptcy case with respect to property of
19 the bankruptcy estate, including Debtor's claims to assets of Wiedey. *Id.*

20 On April 10, 2012, Debtor amended her bankruptcy schedules, disclosing her
21 claimed interest in Wiedey's residence, but not the \$400,000 in cash which may be a gift
22 under the Second Amendment or other personal property she received from the trust
23 during Weidey's lifetime, such as the \$156,000 paid to Debtor from the trust. *Id.*

24 On June 1, 2012, Trustee filed a notice of possible assets in the bankruptcy case,
25 which set a bar date for filing claims of September 4, 2012. On August 22, 2012,
26 Creditor Fox and Fox filed a proof of claim for \$1,120,000 (the "Fox proof of claim"). On
27 August 31, 2012, Wilson filed on behalf of the Wilson Parties two proofs of claim based
28 on their claims pending in state court.

1 **DISCUSSION**

2 Trustee has reached a settlement with the Wilson Parties, and by the instant
3 motion seeks approval of the settlement pursuant to Rule 9019 of the Federal Rules of
4 Bankruptcy Procedure ("FRBP"). This salient terms of the settlement as amended by
5 Trustee's supplemental brief filed on July 8, 2013 are:

- 6 - Payment by the trust to Debtor's bankruptcy estate of \$365,000 to settle
7 Debtor's claims against the trust;
- 8 - Allowance of the claim of the Wilson Parties based on the 850 Action as a
9 general unsecured claim;
- 10 - Withdrawal of the Wilson Parties of any claim based on the 17200 Petition and
11 dismissal of that petition;
- 12 - Counsel for the trust, Seyfarth Shaw LLP, will serve as special litigation
13 counsel to Trustee in litigation objecting to the Fox and Fox proof of claim at no
14 cost to the bankruptcy estate.

15 *Trustee's Further Supplemental Brief* at 2; *see also, Motion* at 24; *Settlement Agreement*
16 *and Release attached as Exhibit 1 to Motion* at 26-43. The monetary recovery under the
17 revised settlement itself represents an approximately 22 percent recovery on the Debtor's
18 claim in the trust assets estimated by creditor Fox and Fox to be about \$1.6 million. For
19 the reasons discussed below, the court determines that the revised compromise may be
20 approved under Rule 9019 because it is reasonable, fair and equitable.

21 Rule 9019(a) provides that, "On motion by the trustee and after notice and a
22 hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).
23 "The bankruptcy court has great latitude in approving compromise agreements."
24 *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir.
25 1988), *citing, Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-1381 (9th Cir.
26 1986).

27 "The purpose of a compromise agreement is to allow the trustee and the creditors
28 to avoid the expenses and burdens associated with litigating sharply contested and

1 dubious claims.” *In re A & C Properties*, 784 F.2d at 1380-1381 (citations omitted). “The
2 law favors compromise and not litigation for its own sake.” *Id.* A compromise may be
3 approved if “the settlement entered into by the trustee was reasonable, given the
4 particular circumstances of the case.” *Id.* (citation omitted). Moreover, “[t]he court may
5 only approve a compromise if it is ‘fair and equitable.’” *Id.* “The trustee, as the party
6 proposing the compromise, has the burden of persuading the bankruptcy court that the
7 compromise is fair and equitable and should be approved.” *In re A & C Properties*, 784
8 F.2d at 1381 (citation omitted).

9 As the Ninth Circuit stated in *A & C Properties*, in determining whether the terms of
10 a compromise are fair, reasonable and equitable,” the court must consider: (a) the
11 probability of success in the litigation; (b) the difficulties, if any, to be encountered in the
12 matter of collection; (c) the complexity of the litigation involved, and the expense,
13 inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the
14 creditors and a proper deference to their reasonable views in the premises.” *Id.* at 1381.
15 The evidentiary record before this court indicates that Trustee has met his burden of
16 showing that the compromise is reasonable, fair and equitable under the factors
17 enumerated by the Ninth Circuit in *A & C Properties*.

18 As to the first *A & C Properties* factor, “the probability of success in the litigation,”
19 the court must evaluate the prospects of success of the bankruptcy estate in the litigation
20 between Trustee and the Wilson Parties, that is, how likely the estate standing in the
21 Debtor’s shoes will be able to defend Debtor’s claims to the assets of decedent Wiedey in
22 the state court probate action based on the Second Trust Amendment which provides for
23 distributions of these assets to Debtor, who was Wiedey’s caregiver, rather than
24 Wiedey’s sister, Wilson, and her niece and nephew, Wilson’s children.

25 According to Trustee, based on what he has read from transcripts and evidence
26 from the probate litigation—both the 17200 Judgment and 850 Action—Debtor faces
27 significant risks in defending against these actions, and the Second Trust Amendment—
28

1 purporting to give Debtor the decedent's residence as well as \$400,000 cash and
2 personal property. *See Motion* at 19-24.

3 The crux of the dispute in the state court probate litigation is whether Wiedey, the
4 decedent, was legally competent when she executed the Second Trust Amendment in
5 2008, designating Debtor as the primary beneficiary of the Trust with testamentary gifts of
6 her residence and \$400,000 in cash deposits. In the state court probate litigation, the
7 Wilson Parties argue that Weidey was not competent when she executed the Second
8 Trust Amendment, and Debtor represented by Fox and Fox argues that Weidey was
9 competent. In support of the compromise, Trustee has submitted evidence relied upon
10 by the Wilson Parties in the state court probate litigation to show that Weidey was not
11 competent, thus, to substantiate the litigation hazards that the estate has in the state
12 court litigation standing in the shoes of Debtor since Debtor's claim in the state court
13 litigation is a prepetition asset of the bankruptcy estate. This evidence submitted by
14 Trustee consists of declarations of witnesses, including other caregivers for Wiedey, that
15 Debtor engaged in acts of elder abuse, such as inducing Wiedey to sign numerous
16 checks from her bank account payable to Debtor. *See Trustee's Reply to Opposition*,
17 and exhibits attached thereto; *Trustee's Supplemental Reply to Opposition* and exhibits
18 attached thereto.

19 Furthermore, if Debtor did possess a claim against the Trust, she may be judicially
20 estopped from asserting that claim because she failed to list her interest in the Trust as
21 an asset on her bankruptcy schedules, though she attempted to enforce her interest in
22 the Trust postpetition. *See Schedule B (Personal Property) to Petition*, filed on May 3,
23 2011 (Item 20. "Contingent and noncontingent interests in estate of a decedent, death
24 benefit plan, life insurance policy, or trust" – "NONE"); *see also, Hamilton v. State Farm*
25 *Fire & Casualty Co.*, 270 F.3d 778, 783 (9th Cir. 2001) (noting that, "[I]n the bankruptcy
26 context, a party is judicially estopped from asserting a cause of action not raised in a
27 reorganization plan or otherwise mentioned in the debtor's schedules or disclosure
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1 statements”).¹ Thus, Trustee has a legitimate concern that the estate faces not
2 insignificant risks based on the Wilson Parties’ argument in favor of summary judgment in
3 the state court probate proceedings relying upon *Hamilton v. State Farm Fire & Casualty*
4 *Co.*, 270 F.3d at 783, and that the estate may be judicially estopped from claiming an
5 interest in the Trust due to Debtor’s failure to list any interest in Trust assets on her
6 original bankruptcy schedules in this case. See *Trustee’s Further Supplemental Brief* at
7 5 (“the Trustee is very concerned that if the Trustee of the Revocable Trust were to
8 prevail on the Summary Judgment, the Estate’s interest in the Revocable Trust would be
9 worth \$0”).

10 Trustee has also submitted sufficient evidence to support the allowance of the
11 Wilson Parties’ claim based on the 850 Petition for \$156,000 in checks drawn on
12 Weidey’s account disbursed to Debtor during her care of Wiedey during a two-year
13 period in 2008 and 2009, which Debtor filled out and Wiedey signed, and many of the
14 checks were in large sums of \$1,000 to \$5,000. Trustee submitted the excerpt of
15 Debtor’s deposition wherein she was asked about the checks, and said that she filled out
16 the checks payable to her and Debtor signed them. *Exhibit 8 to Trustee’s Reply to*
17 *Opposition*, Excerpt of Transcript of Deposition of Rosie S. Cruz, March 1, 2011 (Debtor
18 explaining that they were just gifts from Wiedey and that she just did as Wiedey directed).
19 No explanation was provided by Debtor why she was given the checks in addition to her
20 regular compensation as a paid caregiver. *Id.*; see also, *Declaration of Alfred H. Siegel*
21 *attached to Motion* at 20. Given the circumstances here that Weidey’s legal competence
22 is in question, her age and dependency on a caregiver like debtor, and debtor’s vague
23 and unhelpful responses to questions about her receipt of substantial sums from Weidey
24

25 ¹ In a case decided recently, the Ninth Circuit held that judicial estoppel as held in *Hamilton* may not be
26 applicable if the debtor can show that the failure to disclose the assets on the bankruptcy schedules was
27 due to “mistake” or “inadvertence.” *Ah Quin v. County of Kauai Department of Transportation*, ___ F.3d
28 ___, 2013 WL 3814916 (9th Cir., July 24, 2013). However, in the case at bar, there is no evidentiary
showing that debtor failed to disclose her interests in the Trust assets on her bankruptcy schedules due to
mistake or inadvertence.

1 in a short period of time, Trustee's concerns about the 850 Petition are warranted and
2 support a settlement.

3 The objecting creditor, Fox and Fox, argues that the settlement is not within the
4 range of reasonableness in settling Debtor's claim against the trust in the state court
5 litigation and that Trustee and the Wilson Parties acted fraudulently and in collusion to
6 bring about this settlement. In support of its argument that the settlement is not
7 reasonable, Fox and Fox has submitted evidence, which includes declarations from
8 Wiedey's probate counsel who interviewed her before signing the Second Trust
9 Amendment and opined that she was competent. However, the evidence is conflicting,
10 and Trustee's characterization of the factual disputes over the Second Trust Amendment
11 as "vastly polarized" and justifies the exercise of reasonable business judgment to settle
12 the probate litigation. See *Trustee's Supplemental Reply to Opposition* at 3.

13 In his supplemental reply to the opposition, Trustee stated:

14 The factual background, documents and State Court pleadings demonstrate
15 the vastly polarized factual disputes over the Second Amendment, thereby,
16 in and of itself, seemingly justifying the Trustee's reasonable exercise of his
17 business judgment to settle the Estate's claims. For example (this is not
18 the extensive list of examples, but is merely an illustration), Fox provides
19 exhibits which he believes demonstrates that Joanne [i.e., Wiedey] had
20 testamentary capacity to enter into the Second Amendment. In contrast,
21 the Trustee of the Revocable Trust [i.e., Wilson] provided evidence of the
22 testimony of a doctor stating that Joanne lacked capacity. Further, Fox
23 provides exhibits contending that Wilson terminated the employment of care
24 givers, doctors and other persons employed by Joanne upon her becoming
25 conservator over Joanne. Again, in complete contrast, the Trustee of the
26 Revocable Trust asserts that once Wilson was in control over Joanne, she
27 saw all the bad care that had taken place and terminated those people."

28 *Id.* These illustrations fairly exemplify the substantial litigation hazards the estate
must face in continuing to litigate Debtor's claims in the state court probate
litigation. See also, *Trustee's Reply to Opposition and exhibits attached thereto*;
Sur-Reply and exhibits attached thereto; *Trustee's Supplemental Reply to*
Opposition and exhibits attached thereto. In the state court probate proceedings,
Debtor and the Wilson Parties offered expert testimony of physicians who had
conflicting opinions on whether Wiedey had legal capacity to execute the Second

1 Trust Amendment in 2008 in light of her dementia later diagnosed in 2010. *Id.*
2 During the state court probate proceedings, over the objection of Debtor through
3 Fox and Fox, the Wilson Parties elicited testimony of an examining physician, Dr.
4 Cheryl Gray, who heard fearful statements of Wiedey, suggestive of elder abuse
5 (“No, Rosie, no, don’t hurt me” that Dr. Gray testified that she recalled Wiedey
6 telling her). *Id.* (Exhibit A to Trustee’s Supplemental Reply to Opposition).

7 The chronology of events also supports Trustee’s recommendation of settlement
8 of Debtor’s claims to the Trust with the Wilson Parties because in the original Declaration
9 of Trust dated July 25, 1995, Wiedey left monetary gifts of \$15,000 to \$25,000 to five
10 charities, left monetary gifts of \$25,000 each to her niece, Ann, and to her nephew,
11 Thomas, and left her personal property, her residence, a monetary gift of \$200,000 and
12 the balance of the trust estate to her sister, Wilson. *Declaration of Alfred H. Siegel*
13 *attached to Motion* at 19. In 2006, Wiedey added her sister, Wilson, as a co-trustee in
14 the First Trust Amendment in 2006 because she recognized she needed assistance in
15 managing her financial affairs. *Id.* In the First Trust Amendment, Wiedey granted to
16 Wilson and herself right to act alone in exercising the powers of the trustee of the Trust.
17 *Id.* In 2008, Weidey signed the Second Trust Amendment in which she left monetary
18 gifts of \$10,000 to \$25,000 to seven charities, left monetary gifts of \$50,000 each to her
19 niece, Ann, and to her nephew, Thomas, and left her personal property, her residence,
20 and a monetary gift of \$400,000 to Debtor, and a monetary gift of \$200,000 and the
21 balance of the trust estate to her sister, Wilson. *Id.* at 20. In the Second Trust
22 Amendment, Wiedey purportedly removed Wilson as co-trustee, but left Wilson as the
23 successor trustee. *Id.* 2010, Wilson was appointed as Wiedey’s conservator, and
24 undertook an investigation of Debtor, who was Wiedey’s care custodian. *Id.* In March
25 2010, Dr. David Trader, M.D., a geriatric psychiatrist, examined Wiedey and diagnosed
26 her as having dementia, which was either Alzheimer’s Disease, Vascular Dementia, or a
27 Mixed Type Dementia. *Exhibit 7 to Trustee’s Reply to Opposition*, Excerpt of Trial
28 Testimony of Dr. David W. Trader, April 4, 2011; *Declaration of Alfred H. Siegel attached*

1 *to Motion* at 20. Dr. Trader testified that he was of the opinion that due to Wiedey's
2 mental illness, she lacked legal competency to execute the Second Trust Amendment in
3 2008. *Id.* This sequence of events indicating that an abrupt change by Wiedey in the
4 beneficiaries of her trust as to the bulk of her assets from her close relative, her sister,
5 Wilson, to her paid caregiver, Debtor, in light of her dementia diagnosed shortly after this
6 change as well as the medical opinion testimony of Wiedey's mental illness and legal
7 competency strongly support Trustee's recommendation of settlement with the Wilson
8 Parties.

9 The argument of Fox and Fox that Trustee and the Wilson Parties acted
10 fraudulently and collusively in bringing about the settlement goes to the fairness and
11 equity of the settlement. *See Opposition* at 1-5. However, the court finds that this
12 allegation is unproven as the evidence indicates that Trustee and the Wilson Parties
13 represented different and independent interests in their negotiations, which were at arms-
14 length. Trustee in his declaration in the Motion reasonably explained the objective basis
15 for his decision to settle Debtor's claims with the Wilson Parties, and therefore, the court
16 finds that Fox and Fox's allegations of Trustee's fraud and collusion to be
17 unsubstantiated and that the settlement otherwise has been shown to be reasonable, fair
18 and equitable under the *A & C Properties* standards. *See Declaration of Alfred H. Siegel*
19 *attached to Motion* at 19-24. The court further finds that Fox and Fox has not rebutted
20 Trustee's evidentiary showing that the settlement is reasonable, fair and equitable.

21 In sum, based on the court's analysis of the state court probate litigation, Trustee
22 has shown that there are considerable litigation risks to the estate which justify the
23 proposed settlement, and accordingly, the court determines that the first *A & C Properties*
24 factor favors the settlement.

25 The second *A & C Properties* factor, "the difficulties, if any, to be encountered in
26 the matter of collection," is a relevant factor here because Trustee must prevail in the
27 state court probate litigation in order to recover any money in this litigation. As discussed
28 previously, the outcome of the state court probate litigation over Debtor's claims is by no

1 means a certain win for the estate. Without the settlement, the estate is burdened by the
2 expense and delay of litigating complex and difficult claims in the state court probate
3 litigation with uncertain prospects for success. While it is likely that Trustee and Fox and
4 Fox would discuss the latter representing the estate in the state court litigation with the
5 Wilson Parties, and most likely, the only way the estate could prevail would be to
6 negotiate representation by Fox and Fox. Further litigation would entail additional
7 litigation costs which the estate would have to fund and erode any potential recovery by
8 the estate. *See Supplemental Reply of Chapter 7 Trustee to Opposition of Frank O. Fox*
9 *to the Motion of Chapter 7 Trustee to Approve Compromise of Controversies with Mary*
10 *Jean Wilson, Conservator of the Person and Estate of Joanne S. Wiedey, Mary Jean*
11 *Wilson, Trustee of the Joanne S. Wiedey Trust dated July 25, 1995, as Amended, Mary*
12 *Jean Wilson and Joanne M. Gibson, filed on May 28, 2013, at 8 (Declaration of Anthony*
13 *A. Friedman, stating that Fox and Fox demanded 70% contingency fee to represent*
14 *Trustee, but Trustee not willing to authorize such a fee). The estate will benefit now from*
15 *the settlement, and having to litigate for any recovery risks recovering nothing, which may*
16 *leave the estate administratively insolvent and unable to pay even the costs of*
17 *administration in this bankruptcy case.² This factor supports the settlement.*

18 As to the third *A & C Properties* factor, “the complexity of the litigation involved,
19 and the expense, inconvenience and delay necessarily attending it,” Trustee also points
20 out that the expenses that the estate would bear in continuing to litigate these actions on
21 behalf of the estate are substantial. *Declaration of Alfred H. Siegel attached to Motion at*
22 *19-24. As discussed above, litigating Debtor’s claims in the state court probate litigation*
23 *is complex and involves significant expense and inconvenience and delay to see that*
24 *litigation through. See, e.g., Declaration of Alfred H. Siegel attached to Motion at 19-24;*

25 _____
26 ² According to Fox and Fox, it has a \$1.2 million “secured” claim in Debtor’s interest in the Trust, which it
27 estimates to be worth at least \$1.6 million (whether the claim is actually secured is disputed). *See*
28 *Opposition* at 1. The settlement will allow the estate to recover about the net amount of recovery based on
these amounts estimated by Fox and Fox without exposing the estate to litigation risk of recovering nothing
in the probate litigation with the Wilson Parties.

1 *Opposition* at 1-12 and Exhibit A attached thereto; *Trustee’s Reply to Opposition and*
2 *exhibits attached thereto; Sur-Reply and exhibits attached thereto.* This factor supports
3 the settlement.

4 As to the fourth *A & C Properties* factor, “the paramount interest of the creditors
5 and a proper deference to their reasonable views in the premises,” the court finds that the
6 settlement is in the paramount interest of creditors. Trustee argues that the settlement is
7 to be in the best interest of most of the estate’s creditors because (1) the estate will
8 receive \$365,000 in settlement of Debtor’s claims in the probate litigation, and (2) the Fox
9 and Fox claim of \$1.12 million will be objected to and litigated at no further expense to
10 the estate. *Motion* at 13-18; *see also, Declaration of Alfred H. Siegel attached to Motion*
11 *at 19-24.* The settlement provides for certainty of a prompt distribution to creditors while
12 rejection of the settlement leaves the estate without any certainty of success in prevailing
13 in the litigation against the Wilson Parties, which could leave the estate insolvent and
14 without any dividend to creditors. *Id.* Trustee and the bankruptcy estate benefit from
15 having outside litigation counsel familiar with the state court litigation represent it on the
16 objection to the creditor’s claim of Fox and Fox. *Id.* Trustee estimates that this will save
17 the estate at least \$10,000 to \$15,000 in attorneys’ fees, but counsel for Wilson Parties
18 estimates that the fees to litigate the objection will be most likely in the range of \$70,000
19 to \$120,000. The court is of the view that it will take more than \$10,000 and more in the
20 range of \$50,000 to \$75,000, which would benefit the estate. The creditors expressly
21 weighing in on the settlement are only the participants in the state court probate litigation,
22 Fox and Fox and the Wilson Parties. The interests of the creditors in general favors
23 acceptance of the settlement because this would provide certain and sufficient funds to
24 pay for administrative expenses of the estate as well as a dividend to creditors. Thus,
25 the factor of the paramount interest of creditors favors the settlement.

26 In conclusion, the court finds that the revised compromise reached between the
27 Trustee and the Wilson Parties as set forth in the Settlement Agreement and Release
28 attached to the Motion as amended by Trustee’s Further Supplemental Brief, filed on July

1 8, 2013, falls within the range of reasonableness, is fair, reasonable, and equitable, is a
2 proper exercise of Trustee's reasonable business judgment, and may be approved under
3 Rule 9019. Accordingly, the court will enter a separate order granting the motion.

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24 Date: September 13, 2013

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Robert Kwan
United States Bankruptcy Judge

1 **NOTICE OF ENTERED ORDER AND SERVICE LIST**

2 Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM DECISION ON**
3 **MOTION OF CHAPTER 7 TRUSTEE TO APPROVE COMPROMISE OF CONTROVERSIES WITH MARY**
4 **JEAN WILSON, CONSERVATOR OF THE PERSON AND THE ESTATE OF JOANNE S. WIEDEY,**
5 **MARY JEAN WILSON, TRUSTEE OF THE JOANNE S. WIEDEY TRUST DATED JULY 25, 1995, AS**
6 **AMENDED, MARY JEAN WILSON AND JOANNE M. GIBSON** was entered on the date indicated as
7 “Entered” on the first page of this judgment or order and will be served in the manner indicated below:

8 **I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)** – Pursuant to controlling
9 General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following
10 person(s) by the court via NEF and hyperlink to the judgment or order. As of **September 13, 2013**, the
11 following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary
12 proceeding to receive NEF transmission at the email address(es) indicated below:

- James G Beirne bankruptcy@lawcenterca.com, beirne1@msn.com
- Anthony A Friedman aaf@lnbyb.com
- Scott H Olson solson@seyfarth.com
- Alfred H Siegel (TR) Al.siegel@asiegelandassoc.com,
 Lisa.Irving@asiegelandassoc.com;Margo.tzeng@asiegelandassoc.com;asiegel@ecf.epiqsystems.
 com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Gilbert B Weisman notices@becket-lee.com

13 **II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or
14 order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the
15 address(es) indicated below:

16 Frank O Fox
17 Fox and Fox
18 4262 Wilshire Blvd 3rd Floor
19 Los Angeles, CA 90010

20 **Debtor:**

21 Rosie S Cruz
22 c/o Orlando Lastico
23 3275 Park Lane
24 Long Beach, CA 90806

25 Grobstein Teeple Financial Advisory Services, LLP
26 6300 Canoga Ave., Ste. 1130W
27 Woodland Hills, CA 91367

28 **III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or
order which bears an “Entered” stamp, the party lodging the judgment or order will serve a complete copy
bearing an “Entered” stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of
service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile
transmission number(s) and/or email address(es) indicated below: