

1 **WO**

NOT FOR PUBLICATION

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 IN THE MATTER OF:

No. CV-17-04790-PHX-JJT

10 Harry Delbert Dalton,

BAP NO. AZ-17-1310

11 Debtor.

BK NO. 0:17-bk-06058-PS

12 Harry Delbert Dalton,

13 Appellant,

ORDER

14 v.

15 Lawrence J. Warfield,
16 Chapter 7 Trustee,

17 Appellee.

18
19 At issue is the Motion to Withdraw the Reference from the United States
20 Bankruptcy Appellate Panel of the Ninth Circuit (“BAP”) for the Limited Purpose of
21 Ruling on Appellant/Debtor’s Motion to Proceed *in Forma Pauperis*, filed by way of
22 BAP’s Order Transferring Motion to United States District Court for Limited Purpose of
23 Ruling on Motion Under 28 U.S.C. § 1915 (Doc. 1). In an action before BAP, *pro se*
24 Appellant Harry Delbert Dalton filed an Application to Proceed in Court Without
25 Prepaying Fees or Costs (Doc. 1 at 3-7). Upon this Court’s review of the Application, *see*
26 *Perroton v. Gray (In re Perroton)*, 958 F.2d 889 (9th Cir. 1992), the Court finds that
27 Appellant does not have the means to pay BAP’s fees and will therefore grant the
28 Application. Furthermore, upon screening the Notice of Appeal (Doc. 1 at 8-67, “NOA”)

1 pursuant to 28 U.S.C. § 1915(e)(2), the Court cannot find that the appeal is frivolous or
2 otherwise warrants dismissal at this juncture.

3 For cases in which a party is permitted to proceed *in forma pauperis*—that is, the
4 party lacks the means to pay court fees—Congress provided that a district court “shall
5 dismiss the case at any time if the court determines” that the “allegation of poverty is
6 untrue” or that the “action or appeal” is “frivolous or malicious,” “fails to state a claim on
7 which relief may be granted,” or “seeks monetary relief against a defendant who is immune
8 from such relief.” 28 U.S.C. § 1915(e)(2). Section 1915(e) applies to all *in forma pauperis*
9 proceedings. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000).

10 Here, Appellant, the Debtor in the underlying bankruptcy proceeding, appeals the
11 Bankruptcy Court’s October 13, 2017 Order approving the Trustee’s Motion to Approve
12 Compromise, over Appellant’s objections. (Doc. 1 at 68-69, Order.) The compromise was
13 an effort to resolve Appellant’s claim against Wade Atchison, an Allstate Insurance agent,
14 for failing to notify Appellant of possible risks in changing his insurance policy and
15 subsequently of a lapse in policy coverage. The Bankruptcy Court concluded that the
16 proposed compromise—Mr. Atchison’s payment of \$5,000 to the Trustee—was a
17 reasonable exercise of the Trustee’s business judgment, otherwise reasonable, and in the
18 best interest of the bankruptcy estate. (Order at 1.)

19 In the Notice of Appeal, Appellant takes issue with the fairness of the approved
20 compromise. (NOA at 2.) Without the benefit of the entire procedural history and briefing
21 by the parties, the Court cannot conclude from the face of the Notice of Appeal that it is
22 devoid of merit. Accordingly, the Court declines to dismiss the appeal under 28 U.S.C.
23 § 1915(e)(2).

24 IT IS THEREFORE ORDERED granting the Motion to Withdraw the Reference
25 from the United States Bankruptcy Appellate Panel of the Ninth Circuit for the Limited
26 Purpose of Ruling on Appellant/Debtor’s Motion to Proceed *in Forma Pauperis* (Doc. 1).

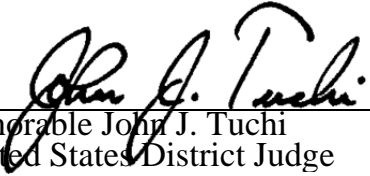
27

28

1 IT IS FURTHER ORDERED granting *pro se* Appellant Harry Delbert Dalton's
2 Application to Proceed in Court Without Prepaying Fees or Costs (Doc. 1 at 3-7).

3 IT IS FURTHER ORDERED directing the Clerk of this Court to close this matter.

4 Dated this 4th day of January, 2018.

5
6 
7 _____
8 Honorable John J. Tuchi
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28