


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
October 03, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 15-15696-MKN
) Chapter 13
RALPH STEVEN LEWIS,)
)
) Date: September 19, 2019
Debtor.) Time: 2:30 p.m.
)

ORDER REGARDING MOTION TO DISMISS OR CONVERT FOR LACK OF ELIGIBILITY UNDER 11 U.S.C. 109(e) AND CAUSE UNDER 11 USC § 1307(c) [sic]¹

On September 19, 2019, the court heard the Motion to Dismiss or Convert for Lack of Eligibility Under 11 U.S.C. 109(e) and Cause Under 11 USC § 1307(c) (“Dismissal Motion”), brought by Wilmington Savings Fund Society, FSB, Owner Trustee of the Residential Credit Opportunities Trust V-C (“Wilmington V-C”). Appearances by the parties or their counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND²

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRE” are to the Federal Rules of Evidence.

² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned Chapter 13 proceeding. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See also Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of court filings in a state court case where the same plaintiff asserted similar claims); Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this case, the underlying bankruptcy case and public records.”).

1 On October 2, 2015, Ralph Steven Lewis (“Debtor”) filed a voluntary Chapter 13 petition
2 through his counsel, Randal R. Leonard, Esq. (“Attorney Leonard”). (ECF No. 1). On the same
3 day, Debtor filed his schedules of assets and liabilities (“Schedules”), his statement of financial
4 affairs (“SOFA”), and his Chapter 13 Statement of Your Current Monthly Income and
5 Calculation of Commitment Period (“CMI Form”). (ECF No. 4). In his Schedule “A,” Debtor
6 attested that he had an interest in certain real estate located at 2470 Citrus Garden Circle,
7 Henderson, NV 89052 (“Citrus Garden Property”) and \$0.00 in secured claims against the Citrus
8 Garden Property. In his Schedule “B,” Debtor attested that he has an aggregate of \$13,460 in
9 personal property assets, which included, in pertinent part, \$1,100 in a checking account and
10 \$1,000 on account of a “2015 Tax Refund.” In Schedule “I,” Debtor attested that he receives
11 \$0.00 from Social Security, that he has \$0.00 in combined monthly income, and that he did not
12 expect an increase or decrease of his reported income within the year after filing his Schedule
13 “I.” In his Schedule “J,” Debtor attested that he has \$1,522 in monthly expenses,³ which, when
14 subtracted from the \$0.00 in combined monthly income, resulted in a negative monthly net
15 income of \$1,522. Debtor also attested, in response to Questions 1 and 2 of his SOFA, that he
16 had “none” of the following:

17 **1. Income from employment or operation of business**

18 State the gross amount of income the debtor has received from
19 employment, trade, or profession, or from operation of the debtor’s
20 business, including part-time activities either as an employee or in
21 independent trade or business, from the beginning of this calendar
22 year to the date this case was commenced. State also the gross
23 amounts received during the **two years** immediately preceding this
24 calendar year. (A debtor that maintains, or has maintained,
25 financial records on the basis of a fiscal rather than a calendar year
26 may report fiscal year income. Identify the beginning and ending
27 dates of the debtor’s fiscal year). If a joint petition is filed, state
28 income for each spouse separately. (Married debtors filing under
chapter 12 or chapter 13 must state income of both spouses
whether or not a joint petition is filed, unless the spouses are
separated and a joint petition is not filed).

³ The monthly expenses identified on Schedule “J” did not include any rent or mortgage payments. See Schedule “J,” Question 4.

1 **2. Income other than from employment or operation of**
2 **business**

3 State the amount of income received by the debtor other than from
4 employment, trade, profession, or operation of the debtor's
5 business during the **two years** immediately preceding the
6 commencement of this case. Give particulars. If a joint petition is
7 filed, state income for each spouse separately. (Married debtors
8 filing under chapter 12 or chapter 13 must state income for each
9 spouse whether or not a joint petition is filed, unless the spouses
10 are separated and a joint petition is not filed).

11 (emphasis in original). In his CMI Form, Debtor listed \$0.00 in income received from all
12 sources during the six full months prior to filing this bankruptcy case. Debtor signed his
13 Schedules, SOFA, and CMI Form under penalty of perjury.

14 On October 8, 2015, Debtor filed his initial Chapter 13 plan ("Initial Plan"). (ECF No.
15 13). In Section 1.03, Debtor specifies that the applicable commitment period is 3 years. In
16 Section 1.04 of the Initial Plan, Debtor listed \$0.00 in disposable income. In Section 1.08 of the
17 Initial Plan, Debtor proposed to make 36 monthly payments of \$300, though the source of such
18 funds was not described in the Initial Plan. In Section 6.02 of the Initial Plan, Debtor stated, in
19 pertinent part, the following:

20 6.02 – Debtor disputes that Bank of America has a properly
21 perfected secured interest on his homestead commonly known as
22 2470 Citrus Garden Circle, Henderson, NV. Any claim filed by
23 Bank of America should be treated as unsecured. Debtor therefore
24 anticipates that he will be objecting to the claim Bank of America
25 files in this case.

26 On October 14, 2015, Bank of America ("BOA") filed an objection to confirmation of the
27 Initial Plan ("BOA Objection"). (ECF No. 16). That objection stated, in pertinent part, as
28 follows:

 This objecting secured creditor holds the First Deed of
Trust on the subject property generally described as 2470 Citrus
Garden Circle, Henderson, NV 89052. As of October 2, 2015, the
amount in default was actually estimated to be \$96,295.26,
pursuant to the forthcoming Proof of Claim. The Debtor's Chapter
13 Plan lists the arrearage owing to Secured Creditor as \$0.00.
Secured creditor requests that the arrearages as set forth in the
forthcoming Proof of Claim be filed through the Plan [sic].

1 Additionally, the Secured Creditor objects to being treated
2 as an Unsecured Creditor as listed by the Debtor in Section 6.02 of
3 the proposed plan.

4 BOA Objection at 1:18-24.

5 On February 8, 2016, BOA filed proof of claim 8-1 (“POC 8-1”) asserting a claim of
6 \$360,741.96, secured by the Citrus Garden Property.

7 On July 18, 2016, Debtor, filed Amended Chapter Plan No. 2 (“First Amended Plan”).
8 (ECF No. 33). In Section 1.03, Debtor specifies that the applicable commitment period is 3
9 years. In Section 1.04 of the First Amended Plan, Debtor listed \$0.00 in disposable income. In
10 Section 1.08 of the First Amended Plan, Debtor proposed to make 52 monthly payments of \$100,
11 though the source of such funds was not described in the First Amended Plan. In Section 1.09 of
12 the First Amended Plan, Debtor proposed to make an additional \$300 payment from a source
13 referred to as “TPI.” In Section 6.02 of the First Amended Plan, Debtor stated, in pertinent part,
14 the following:

15 6.02 – Debtor disputes that Bank of America has a properly
16 perfected secured interest on his homestead commonly known as
17 2470 Citrus Garden Circle, Henderson, NV. Debtor therefore will
18 be objecting to the claim Bank of America filed in this case.

19 On October 14, 2016, a “Transfer Of Claim Other Than For Security” was filed reflecting
20 that BOA transferred its claim asserted in POC 8-1 to Wilmington Savings Fund Society, FSB,
21 as trustee for Stanwich Mortgage Loan Trust A (“Wilmington-Stanwich”). (ECF No. 40).

22 On June 2, 2017, Attorney Leonard filed a motion seeking to withdraw as Debtor’s
23 counsel (“Withdrawal Motion”), which was subsequently accompanied by Attorney Leonard’s
24 affidavit (“Leonard Affidavit”). (ECF Nos. 64 and 71). In his affidavit, Attorney Leonard
25 attested, in pertinent part, that he experienced a “fundamental disagreement[.]” with the Debtor
26 because “Debtor wishes to pursue certain actions against Bank of America that Counsel does not
27 believe are viable.” Leonard Affidavit at ¶¶ 5 and 6.

28 On July 21, 2017, the court entered an order granting the Withdrawal Motion. (ECF No.
72).

1 On February 20, 2018, Debtor, in pro se, filed Amended Chapter 13 Plan Number 3
2 (“Second Amended Plan”). (ECF No. 106). In Section 2.2, Debtor specifies that the applicable
3 commitment period is 3 years. In Section 2.3 of the Second Amended Plan, Debtor did not
4 identify any disposable income. In Section 2.5 of the Second Amended Plan, Debtor proposed to
5 make 36 monthly payments of \$100 plus 1 monthly payment of \$300, though the source of such
6 funds was not described in the Second Amended Plan. In Section 9.2 of the Second Amended
7 Plan, Debtor stated, in pertinent part, the following:

8 c. Debtor disputes Claim #8 of Wilmington Savings Fund Society,
9 FSB, as Trustee for Stanwich Mortgage Loan Trust A and has filed
an Objection to Claim

10 On February 26, 2018, Debtor filed Amended Chapter 13 Plan Number 4 (“Third
11 Amended Plan”), which contained the same versions of Sections 2.2, 2.3, and 2.5 that appeared
12 in the Second Amended Plan. (ECF No. 108).

13 On April 27, 2018, Wilmington-Stanwich filed an amended proof of claim 8-2 (“POC 8-
14 2”) asserting a claim in the amount of \$360,741.96, secured by the Citrus Garden Property.

15 On May 29, 2018, Debtor filed an objection to POC 8-2 (“Claim Objection”). (ECF No.
16 122). The Claim Objection is scheduled for an evidentiary hearing on October 8, 2019.⁴

17 On December 6, 2018, a “Transfer Of Claim Other Than For Security” was filed
18 reflecting that Wilmington-Stanwich’s transferred its claim asserted in POC 8-2 to Wilmington-
19 VC. (ECF No. 155).

20 On January 11, 2019, an “Assignment of Deed of Trust” was recorded with the Clark
21 County Recorder as Instrument No. 20190111-0000507, reflecting the assignment of the deed of
22 trust on the Citrus Garden Property from Wilmington-Stanwich to Wilmington Savings Fund
23 Society, FSB, As Owner Trustee of the Residential Credit Opportunities Trust V-B
24 (“Wilmington-VB”). On the same day, another “Assignment of Deed of Trust” was recorded

25 ⁴ Debtor objects to POC 8-2 on a variety of substantive grounds, e.g., that the debt was
26 settled, that the original promissory note is not in possession of the claimant, etc., but none of
27 those grounds are based on bankruptcy law. In the event the claimant sought to foreclose under
28 the deed of trust on which the claim is based, nothing would prevent the Debtor from raising the
same non-bankruptcy arguments in seeking to enjoin a foreclosure in a non-bankruptcy court of
competent jurisdiction.

1 with the Clark County Recorder as Instrument No. 20190111-0000508 reflecting the assignment
2 of the deed of trust on the Citrus Garden Property from Wilmington-VB to Wilmington-VC. See
3 Order Regarding Motion to Vacate Order, and Motion for New Trial Re Debtor’s Objection to
4 Claim No. 8 at 4:5-12. (ECF No. 173).

5 On January 18, 2019, Wilmington-VC filed an objection to confirmation of the Third
6 Amended Plan. (ECF No. 159).

7 On April 16, 2019, Wilmington-VC filed a motion for relief from stay (“MRAS”)
8 seeking authority to proceed with foreclosure of the Citrus Garden Property under its deed of
9 trust. (ECF No. 177).

10 On June 10, 2019, an order was entered denying the MRAS (“MRAS Order”). (ECF No.
11 188).⁵

12 On August 9, 2019, Wilmington-VC filed the current Dismissal Motion. (ECF No. 217).

13 On September 4, 2019, Debtor filed an opposition (“Opposition”) to the Dismissal
14 Motion along with his supporting declaration (“Declaration”). (ECF No. 227).

15 DISCUSSION

16 By its Motion, Wilmington-VC seeks to dismiss Debtor’s Chapter 13 case, in pertinent
17 part, under Section 109(e). In his Opposition, Debtor argues, among other things, that
18 Wilmington-VC lacks standing. The court first addresses Debtor’s challenge to Wilmington-
19 VC’s standing.

20 I. Wilmington-VC’s Standing.

21 Debtor’s standing argument is based, in large part, on his pending Claim Objection.
22 Standing in a bankruptcy case, however, is not limited to creditors holding allowed claims.
23 Instead, a party in interest also has standing to seek dismissal of a case notwithstanding the
24 existence of a pending objection to their proof of claim. See Azam v. U.S. Bank Nat’l Assoc. (In
25 re Azam), 642 Fed. Appx. 777, 779 (9th Cir. March 21, 2016) (unpublished); de la Salle v. U.S.
26 Bank, N.A. (In re de la Salle), 461 B.R. 593, 604 (B.A.P. 9th Cir. 2011). Additionally, this court
27

28 ⁵ Wilmington-VC appealed the MRAS Order to the Bankruptcy Appellate Panel for the
Ninth Circuit. (ECF No. 191).

1 has the power to dismiss a case regardless of whether Wilmington-VC has standing. See In re
2 Azam, 642 Fed. Appx. at 779, *citing In re de la Salle*, 461 B.R. at 604. For these reasons, the court
3 overrules the Debtor's objection to the extent it is based on Wilmington-VC's standing.

4 **II. Debtor's Eligibility Under Section 109(e).**

5 By the instant Dismissal Motion, Wilmington-VC argues, in pertinent part,⁶ that Debtor's
6 self-reported absence of income demonstrates that he lacks the "regular income" required to be a
7 Chapter 13 debtor under Section 109(e).⁷ Section 109(e) states, in pertinent part, that "[o]nly an
8 *individual with regular income* ... may be a debtor under chapter 13 of this title." 11 U.S.C.
9 109(e) (emphasis added). When eligibility for bankruptcy relief is challenged, the burden of
10 proof rests with the debtor to establish the statutory requirements by a preponderance of the
11 evidence. See, e.g., Culp v. Stanziolo (In re Culp), 545 B.R. 827 (D. Del. 2016), aff'd, 681
12 Fed.Appx. 140 (3rd Cir. 2017, cert. denied, 138 S.Ct. 170 (2017) (Chapter 13 eligibility); In re

13 _____
14 ⁶ Wilmington-VC additionally raises arguments under Section 1307(c) for bad faith and
15 unreasonable delay that is prejudicial to creditors. Because dismissal is warranted under Section
16 109(e), the court need not, and does not, discuss the other bases for dismissal alleged in the
17 Dismissal Motion.

18 ⁷ Wilmington-VC previously raised this argument in connection with its MRAS. In
19 denying that motion, the court observed that the Debtor's eligibility for Chapter 13 relief should
20 be raised in the context of a dismissal motion. See MRAS Order at 7:12-16 ("Had Wilmington's
21 predecessor in interest, the Chapter 13 Trustee, or any other party filed a motion to dismiss the
22 Debtor's petition based on lack of eligibility under Section 109(e), these concerns could have
23 been addressed in the appropriate context. As a basis for cause under Section 362(d)(1),
24 however, the court concludes that the more appropriate resolution is at the time plan
25 confirmation is considered."). A hearing on confirmation of the Third Amended Plan is not
26 currently scheduled. In the Debtor's proposed Chapter 13 plans, even the two he submitted
27 without his prior counsel, Debtor represents that he is under median income. This is not
28 surprising because the Debtor also attests that he has no income. Under Section 1325(b)(1), a
confirmable Chapter 13 plan must commit to the payment of all projected disposable income
over the applicable commitment period. Under Section 1325(b)(4), the applicable commitment
period for a below median income debtor is 3 years and plan payments cannot exceed 5 years. In
this case, the Debtor filed his Chapter 13 petition on October 2, 2015, and the 3-year period
already elapsed on October 2, 2018. The 5-year maximum period will expire on October 2,
2020. Despite these statutory constraints, Debtor has resided in the Citrus Garden Property since
the Chapter 13 petition date without making any payments. The instant Dismissal Motion now
expressly addresses whether the Debtor has ever been eligible for Chapter 13 relief.
Determination of the Debtor's eligibility should not await plan confirmation because a hearing
on confirmation of the Third Amended Plan has not been rescheduled.

1 Robinson, 535 B.R. 437, 443 (Bankr. N.D. Ga. 2015) (Chapter 13 eligibility). Compare In re
2 County of Orange, 183 B.R. 594, 599 (Bankr. C.D. Cal. 1995) (Chapter 9 eligibility); In re
3 Snider, 99 B.R. 374, 377 (Bankr. S.D. Ohio 1989) (Chapter 12 eligibility). Debtor's Schedules,
4 SOFA, and CMI Form, signed by Debtor under penalty of perjury, list \$0.00 in historical or
5 present income.

6 In his Opposition, Debtor argues as follows:

7 11 U.S.C. 109(e) does not restrict Chapter 13 bankruptcy to
8 those persons having wages and salaries and any such
9 interpretation would be highly discriminatory against
10 commissioned, tipped, professional practitioners, independent
11 contractors and project people such as myself whose "regular
12 income" since 1973 has primarily come from "business projects"
13 and "consulting projects" and not an hourly wage. As further stated
14 in my Declaration **Exhibit 1** attached I have means of generating
15 monies "...sufficient to fund a plan." As stated by Keith M.
16 Lundin, *Chapter 13 Bankruptcy* ss 2.1, at 2-1 (3d ed, 2007-1) [sic].
17 Obviously Mr. Lundin must be correct as it applies to my Case do
18 [sic] to the **FACT** that all necessary expenses are in **FACT** current
19 and being paid.

20 The Exhibits I and J attached to the Wilmington Motion do
21 not reflect their modifications filed by me with the Trustee, which
22 were available to Wilmington prior to the filing of this Motion and
23 for which this argument of negative income is simply false.

24 Opposition at 4:19-5:7 (emphasis in original). In his Declaration, the Debtor attests, in pertinent
25 part, as follows:

26 In my normal and regular course of business I have
27 intellectual properties nearly completed that will be sufficient to
28 fund a plan with an additional option of refinancing the subject
Property either or both of which can provide a single payment
sufficient to fund a Plan upon approval of the Court and removal of
the Trustees Sale held open against the Property by the Claimants
of Claim No. 8 since 2015. ...;

At the time of filing this Petition I submitted notice of
sufficient funds to attorney Randall [sic] Leonard for the Trustee's
Office in the amount of \$63,160, which came from the restoration
and sale of long held personal property reported to Leonard on
October 5, 2015 in an email of which a copy is attached hereto
marked as **Exhibit H** and similar reports on Annual Statements to
the Trustee. These funds are not taxable income as the sale prices

1 did not exceed book values and for which tax returns are not
2 required as I reported to the Trustee in his inquiry of July 2016 and
3 January 2017[.]

4 Additional monies come from Social Security as reported
5 in the Annual Statements to the Trustee, which provide sufficient
6 funds for the expenses itemized in the Trustee Annual
7 Statements[.]

8 Declaration at 5:21-6:13 (emphasis in original). Debtor's arguments, however, are insufficient to
9 meet his burden of proof.

10 The Lundin treatise on which the Debtor relies also states, in pertinent, as follows:

11 Section 101(30) works with 11 U.S.C. § 109(e) to define eligibility
12 for Chapter 13. Section 101(30) requires that the debtor be an
13 "individual" with income "sufficiently stable and regular" to make
14 payments under a Chapter 13 plan. The use of the term
15 "individual" in § 101(30) excludes partnerships and corporations
16 from eligibility for Chapter 13. Individual partners or corporate
17 owners, officers or directors may be eligible. That the individual
18 must have "stable and regular" income has been broadly
19 interpreted to permit access to Chapter 13 for individuals with
20 almost any source of income so long as there is available, after
21 payment of necessary expenses, an amount sufficient to fund a
22 plan.

23 Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, 4th Edition, § 2.1, at ¶ 1, Sec.
24 Rev. Mar. 4, 2009, www.Ch13online.com. Although the Lundin treatise refers to cases that have
25 allowed "almost any source of income" to satisfy the "regular income" requirement under
26 Section 109(e), Debtor's disclosures in this case do not list any sources of income or assets as of
27 the petition date that could be used to fund a plan.

28 The October 5, 2015, email from Debtor to his counsel referenced in his Declaration as
Exhibit "H" purports to represent that Debtor, at some undisclosed time, received \$63,160 in
cash from the sale of assets. This email did not purport to represent that Debtor still had access
to that cash as of that date and, indeed, neither Debtor's Schedules nor his SOFA disclose
Debtor's possession or use of this cash at any time on or prior to the petition date. Debtor's
Schedules also fail to list the possession of any "intellectual properties," nor the receipt or

1 entitlement to Social Security payments, which Debtor now chooses to disclose for the first time
2 approximately four years after filing this Chapter 13 case.

3 Although Debtor apparently blames Attorney Leonard for not disclosing these assets to
4 the court, Debtor does not allege that the Schedules and SOFA entered on the docket were filed
5 without his knowledge, review, or approval. Additionally, Attorney Leonard withdrew as
6 counsel of record more than two years ago, and Debtor, not Attorney Leonard, has had the
7 continuing obligation to update any deficient disclosures. See Cannata v. Wyndham Worldwide
8 Corp., 798 F. Supp.2d 1165, 1173 (D. Nev. 2011) (“Debtors have a continuing duty during
9 bankruptcy proceedings to amend their schedules and add potential claims as assets. The
10 information provided on bankruptcy schedules informs the actions creditors plan to take during
11 the bankruptcy proceeding, and the same information forms the basis upon which the bankruptcy
12 court decides whether to approve a reorganization plan. Thus, [t]he integrity of the bankruptcy
13 system depends on full and honest disclosure by debtors of all of their assets.”) (quotations and
14 citations omitted); Searles v. Riley (In re Searles), 317 B.R. 368, 378 (B.A.P. 9th Cir. 2004)
15 (“Every debtor has a continuing duty to assure the accuracy and completeness of the schedules.
16 Postpetition discovery of rights that actually existed at the time of filing must be addressed in the
17 schedules. This implies a duty to amend. The continuing nature of the duty to assure
18 accurate schedules of assets is fundamental because the viability of the system of voluntary
19 bankruptcy depends upon full, candid, and complete disclosure by debtors of their financial
20 affairs.”). See also FED. R. BANKR. P. 1009(a) (discussing amendment of schedules, among other
21 things).

22 As the Ninth Circuit has stated,

23 We now simply and explicitly state the rule for determining
24 Chapter 13 eligibility under § 109(e) to be that eligibility should
25 normally be determined by the debtor’s originally filed schedules,
checking only to see if the schedules were made in good faith.

26 Scovis v. Henrichsen (In re Scovis), 249 F.3d 975, 982 (9th Cir. 2001). See Guastella v.
27 Hampton (In re Guastella), 341 B.R. 908, 916 (B.A.P. 9th Cir. 2006). Debtor signed his
28 Schedules under penalty of perjury and, although he now blames his prior attorney, Debtor’s

1 good faith in approving of the disclosures in those Schedules under penalty of perjury has not
2 been challenged by Wilmington-VC. Therefore, in the absence of any such good faith objection,
3 the court determines eligibility based on the representations set forth in the Debtor's schedules,
4 many of which also were reiterated in other documents submitted by the Debtor.⁸ In view of the
5 Debtor's own testimony,⁹ the court concludes that he is ineligible to be a Chapter 13 debtor
6 under Section 109(e).¹⁰

7 **IT IS THEREFORE ORDERED** that the Motion to Dismiss or Convert for Lack of
8 Eligibility Under 11 U.S.C. 109(e) and Cause Under 11 USC § 1307(c), brought by Wilmington
9 Savings Fund Society, FSB, Owner Trustee of the Residential Credit Opportunities Trust V-C,
10 Docket No. 217, be, and the same hereby is, **GRANTED IN PART AND DENIED IN PART**
11 as follows:

- 12 1. Dismissal of the above-captioned proceeding under 11 U.S.C. 109(e) is **GRANTED**;
- 13 2. Dismissal of the above-captioned proceeding under 11 U.S.C. § 1307(c)(1) is
14 **DENIED**; and
- 15 3. Dismissal of the above-captioned proceeding for bad faith under the totality of the
16 circumstances test available under 11 U.S.C. § 1307(c) is **DENIED**.

17 **IT IS FURTHER ORDERED** that all pending hearings, conferences and other matters
18 scheduled in or in connection with the above-captioned proceeding are **VACATED** from the
19 calendar.

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21
22 ⁸ As of the date of the hearing on the Dismissal Motion, Debtor also has not amended his
23 Schedules, nor his CMI Form. Additionally, Debtor has not amended his latest Chapter 13 plan
to identify any income.

24 ⁹ Moreover, because a debtor's schedules are executed under penalty of perjury, the
25 representations in the schedules may be treated as judicial admissions as to the matters addressed
26 therein. See, e.g., In re Lopez, 532 B.R. 140, 148 (Bankr. C.D. Cal. 2015). As a result, the
27 doctrine of judicial estoppel may be applied to preclude a debtor from later asserting a
contradictory position. Compare Ah Quin v. Cty. of Kauai Dep't of Transp., 733 F.3d 267, 271
(9th Cir. 2013).

28 ¹⁰ Whether the Debtor could establish eligibility for Chapter 13 relief in the future, or
seek to reorganize his financial affairs under Chapter 11, is not before the court.

