

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

November 17, 2015 at 1:30 p.m.

1. [15-25722](#)-E-13 JENNIFER JENSEN
RFM-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-28-15 [[31](#)]

HUNTINGTON NATIONAL BANK

VS.

DEBTOR DISMISSED: 10/19/2015

Final Ruling: No appearance at the November 17, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 28, 2015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Jennifer Jensen ("Debtor") commenced this bankruptcy case on July 17, 2015. Huntington Nation Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2005 Lexus RX 330, VIN ending in 2182 (the "Vehicle"). The moving party has provided the Declaration of Anthony Watters to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on October 13, 2015.

The instant case was dismissed on October 19, 2015 for failure to

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appear at the Meeting of Creditors, failure to commence plan payments, failure to file tax return, and failure to file an amended plan. Dckt. 46.

While the Movant asserts various arguments and grounds, the applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) **the time the case is dismissed;** or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) **revests the property of the estate in the entity**

***in which such property was vested immediately before
the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of October 19, 2015, the automatic stay as it applies to the Vehicle and as it applies to Debtor, was terminated by operation of law. At that time, the Vehicle ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtor and Vehicle on October 19, 2015, and Huntington Nation Bank.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Huntington Nation Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the court confirms that automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the Debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the vehicle identified as a 2005 Lexus RX 330, VIN ending in 2182, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the October 19, 2015 dismissal of this bankruptcy case filed by Jennifer Lyn Jensen, the Debtor.

2. [15-27341](#)-E-13 ROBERT LEACH
MDE-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-16-15 [[21](#)]

CIT BANK, N.A. VS.

**APPEARANCES OF MARK D. ESTEL, ESQ. AND ERICA LOFTIS
LISTED ON THE MOTION AS THE ATTORNEYS FOR MOVANT
REQUIRED FOR NOVEMBER 17, 2015 HEARING**

TELEPHONIC APPEARANCES PERMITTED

No Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 16, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

**The Motion for Relief From the Automatic Stay is
~~granted/denied without prejudice.~~**

MOTION FOR RELIEF

CIT Bank, N.A., fka OneWest Bank, N.A., fka OneWest Bank, FSB ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3319 Hartselle Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Victoria Frausto to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The court begins with the Motion for relief, which shall state with particularity the grounds upon which Movant bases the relief and the relief itself. The Motion, Dckt. 21, states with particularity the following grounds:

- A. Movant seeks relief from the automatic stay under 11 U.S.C. § 362.
- B. Relief is sought as to the Debtor and the Debtor's bankruptcy estate.
- C. Movant seeks to enforce its remedies against the 3319 Hartselle Way Property.
- D. Movant states the legal conclusion that the filing of this bankruptcy petition was part of a scheme to delay, hinder or defraud creditors that involved multiple bankruptcy case filings by Debtor.
- E. Debtor has filed no less than four cases (not identified in the motion, nor date of filing and current status) affecting Movant's interest in the Hartselle Way Property.
- F. Movant would be irreparably harmed if relief is not granted from the 11 U.S.C. § 1301 Co-Debtor stay.
- G. A declaration, points and authorities and "other evidence attached" (which is unidentified) is filed in support of the Motion.

Based upon the face of the Motion, Movant has failed to state grounds with particularity which provide a basis for relief from the automatic stay or the co-debtor stay. Rather, the "grounds" appear to be an incomplete summary of several legal principles stated to the court.

REQUIREMENT TO STATE GROUNDS WITH PARTICULARITY

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that generic resolutions without any specifics and instructs the court to mine through the other filings to construct the bases for the relief sought. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal

court. The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Additionally, the Local Bankruptcy Rules and Guidelines for Preparation of Documents which requires that the motion be a separate pleading from the points and authorities left counsel believing that he would just have to prepare two duplicate documents "just to follow the rules." This is incorrect.

Attorneys regularly and easily comply with the rules and provide the court with a motion that states with particularity the grounds and with particularity the relief requested. This is required by Fed. R. Bankr. P. 9013 and Fed. R. Civ. P. 7(b). These attorneys have knowledge and legal skill equal to or less than counsel for Defendants. This court has noted that attorneys who get tripped up by the application of the rules (rather than the judge giving up and doing the attorney's work to sift from the arguments, conjecture, speculation, citations, and quotations in the points and authorities, the declarations, and exhibits to state the grounds for the attorney) are often wedded to a practice built around treating motions as a mere perfunctory procedural document. Most of the time the "motion" is treated as a mere notice, and the points and authorities written as if it were an appellate brief - stating all of the substantive grounds, legal authorities, and arguments in one document. Law and motion practice is not the same as an appellate brief.

In bankruptcy court, the vast majority of substantive matters are determined on the rapid law and motion calendar. In enacting Federal Rule of Bankruptcy Procedure 9013 and Federal Rule of Civil Procedure 7(b), the Supreme Court has created a higher pleading standard than for a complaint. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 only require that a complaint only provide a "short plain statement" to adequately plead a claim. Given only a twenty-eight to forty-two day notice periods for hearings on motions in bankruptcy court for the determination (or termination) of rights, clear solid pleading is at a premium.

As the court noted to counsel at the hearing, while he may have good writing skills and the court with some limited additional work can distill from the motion, points and authorities, and exhibits what are most likely the grounds, there is not a different application of rules based on whether the court "likes" one attorney's writing style and does not "like" another attorney's writing style. Attorneys and parties do not have to guess when the issues and grounds are sufficiently complex or their writing styles

significantly lacking that the court will require the them to follow the rules verus when they can just "let it slide and the court will do the work." The uniform application of the rules to all attorneys and parties makes it easy for counsel to practice in this court - there are no secret "gotcha rules."

From the court's review of the pleadings discussed below, all counsel has to do is move the grounds for the Motion which are stated in the Points and Authorities to the Motion. Then he can have a very simple, short points and authorities which is just that, a statement of the legal points and authorities. Following the rules creates no additional work for counsel and does not require unnecessary duplicate pleading. FN.1.

FN.1. The court notes that following the rules and stating the grounds in the motion insures that attorneys clearly know that they have proper grounds for the motion. Too often attorneys, wrapped up in passion for their cause and ready to argue for their client, begin with a points and authorities stating their conclusion and then construct "arguments" about how they win. Some attorneys, so bent on arguing, miss stating fundamental grounds which are essential to obtaining the relief. By stating all of the grounds in the motion, free from the arguments, citations, quotations, speculation, and contentions, the attorney following the rules is forced to make sure that he or she has proper grounds for the relief requested - not merely that the attorney can passionately argue why such relief is something the client and attorney desire.

This court also has observed combined motions and points and authorities which were intentionally drafted in a confusing way to obfuscate that no proper grounds existed. Such a strategy is not only intended to mislead the court, but make responding to such abusive pleadings more burdensome in time and cost for the party against whom the relief is sought

In reviewing the Points and Authorities (Dckt. 24) and Declaration (Dckt. 23), it becomes evident that Movant is operating under its own set of pleading rules based upon the way it chooses to organize the judicial process. The Points and Authorities, rather than stating legal points, legal authorities, cases, citations, and argument, alleges the following factual and legal "grounds" upon which the relief is based, which include:

- A. Commencement date of this bankruptcy case.
- B. Identification of the Property which is the subject of the Motion.
- C. Statement of the Debtor's interest in the Property.
- D. Factual allegations about the underlying debt which is secured by the Property.
- E. Identification of a Note and Deed of Trust, which are filed as Exhibits A and B.
- F. Execution of a loan modification agreement.
- G. The debt alleged to be secured by the Property, specifically alleging,

1. Principal
 2. Interest
 3. Late Charges
 4. Costs (including attorneys' fees)
 5. Advances
 6. Suspense Account Balance
 7. Total Amount of Claim.
- H. The current monthly payment amount.
- I. The date the last payment was received by Movant.
- J. The date the next payment will become due.
- K. The date a notice of default was recorded.
- L. The date a notice of sale was recorded.
- M. A foreclosure sale was scheduled for May 23, 2014.
- N. Debtor filed the First Bankruptcy Case on May 22, 2014, to delay the scheduled foreclosure sale.
- O. The First Bankruptcy Case was dismissed on June 9, 2014, for failure to file information.
- P. A second notice of trustee's sale was recorded.
- Q. A second foreclosure sale was scheduled for July 7, 2014.
- R. Debtor filed the Second Bankruptcy Case on June 30, 2014, to delay the scheduled second foreclosure sale.
- S. The Second Bankruptcy Case was dismissed on July 18, 2014, due to a failure to file information.
- T. The trustee's sale was postponed to August 4, 2014.
- U. Debtor filed the Third Bankruptcy Case was filed on August 4, 2014, to delay the postponed trustee's sale.
- V. The Third Bankruptcy Case was dismissed on October 2, 2014, due to Debtor's failure to pay fees.
- W. The trustee's sale was postponed to September 21, 2015.
- X. Debtor filed this Fourth (current) Bankruptcy Case on September 21, 2015, to delay the scheduled foreclosure sale.
- Y. The next section of the "Points and Authorities" is titled "**GROUNDS FOR RELIEF FROM STAY.**" [Emphasis in original.]
- Z. The first "Grounds" is that pursuant to 11 U.S.C. § 362(d)(4), the filing of the current petition is part of a scheme to delay, hinder

or defraud creditors by filing multiple bankruptcy cases.

- AA. The evidence will show that Debtor has filed no less than four cases to prevent Movant from exercising its rights.
- BB. Pursuant to 11 U.S.C. § 1301 relief from the co-debtor stay is proper.
- CC. The co-debtor (who is not a debtor in this case) is liable under the Note and Movant "would be irreparably harmed" by continuation of the stay. (The court notes that other than stating a legal conclusion that Movant would be "irreparably harmed," Movant does not attempt to state the "grounds" upon which such a conclusion could be based. Rather, it appears that Movant leaves it to the court to assemble the best case possible for Movant on this point.)

The "Points and Authorities" provide no legal points, cases, citations, or legal arguments. Rather, it is clear that it is merely a compilation of the "grounds" which must be properly stated in the Motion itself. While Movant may argue that Movant's counsel writes really clear points and authorities, as well as appellate briefs, so the court should just waive the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure, it does not work that way in a trial court which fairly, equally, and equitably applies the rules to all parties. Given the short time periods in which a motion is filed and heard, the need to clearly state the grounds upon which the movant relies is at a premium. A trial court does not have months for multiple law clerks to review, dissect, analyze, and then conduct oral argument on the way an appellate judge can address an appellate brief.

The trial court on the law and motion calendar, as opposed to an appellate court, also does not have the benefit of a prior judge having clearly stating findings of fact and conclusions of law upon which the decision was based. The trial court, within an approximate two week period after all the pleadings have been filed, must determine all of the findings of fact and conclusions of law from the clearly stated with particularity grounds in the motion, the succinct and on point legal authorities and citations, and the well-organized evidence presented by the parties.

Further the grounds which must be stated with particularity governed by the certifications made through Federal Rule of Bankruptcy Procedure 9011. The points and authorities may well be chock full of citations, quotations, arguments, contentions, and speculation, which Movant might argue are not governed by Rule 9011 in the same manner as the grounds which must be stated with particularity.

Finally, the court will not engage in a differential application of the Rules, telling one attorney that is or her work is good enough to be exempt from the Rules and another attorney must comply with the Rules. Though in an academic sense one might be able to distinguish based on such quality differences, it inevitably creates the appearance that the judge is not impartial, but has her or her "favorite" attorneys who get whatever they ask for from the judge.

DECLARATION IN SUPPORT OF MOTION

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The Frausto Declaration (Dckt. 23) provides testimony of the following facts, for which he must have personal knowledge (Fed. R. Evid. 602), in support of the Motion:

1. His position with Movant and basis for having knowledge of the facts which are the subject of his testimony, as well as the basis for his recitation of information from the business records of Movant.
2. Movant is in possession of the Note executed by Debtor, which Note is endorsed in blank, and authentication of Exhibit A, the Note.
3. Movant's assertion of rights under the deed of trust which secures the note and authentication of Exhibit B, a copy of the Deed of Trust, and Exhibit C, the Assignment of the Deed of Trust.
4. The modification of the Note and authentication of Exhibit D, a copy of the modification agreement.
5. The computation of the claim in this bankruptcy case and the component parts of the obligation.
6. The Declarant's legal conclusion that the filing of the current bankruptcy petition is part of a scheme to delay, hinder, or defraud all creditors.
7. A Notice of Trustee's Sale was recorded April 28, 2014 with a scheduled foreclosure sale date of May 23, 2014. On May 22, 2014, Debtor filed a Chapter 13 Bankruptcy petition as Case No. 14-25416.
8. The bankruptcy case was dismissed June 9, 2014, for failure to file information. (The Declaration does not state how the Declarant has personal knowledge of the basis for the dismissal.)
9. A Notice of Trustee's Sale was recorded June 12, 2014 with a scheduled foreclosure sale date of July 7, 2014, 2014. On June 30, 2014, Debtor filed a Chapter 13 Bankruptcy petition as Case No. 14-26770.
10. The case was dismissed July 18, 2014, for failure to file information. (The Declaration does not state how the Declarant has personal knowledge of the basis for the dismissal.)
11. A Notice of Trustee's Sale was recorded August 4, 2014. The same day, Debtor filed a Chapter 13 Bankruptcy petition as Case No. 14-27958.
12. The case was dismissed October 2, 2014, for failure to pay fees. (The Declaration does not state how the Declarant has personal knowledge of the basis for the dismissal.)
13. A Notice of Trustee's Sale was recorded September 21, 2015, with a scheduled foreclosure sale date of September 21, 2015. On September 18, 2015, Debtor filed a Chapter 13 Bankruptcy petition as Case No. 15-27341, the instant Chapter 13 case.

Declaration, Dckt. 23.

TRUSTEE'S REPLY

November 17, 2015 at 1:30 p.m.

David Cusick, the Chapter 13 Trustee, filed a reply on November 3, 2015. Dckt. 28.

Trustee confirms the filing and dismissal dates for Debtor's 4 cases, and also notes that Debtor failed to commence plan payments of \$200.00. Dckt. 29.

DISCUSSION

The present Motion presents the court with a dilemma. Though this court for more than five years has made it clear that the simple, basic pleading rules which are necessary for a bankruptcy trial court to function will be equally and fairly enforced, counsel has filed the present motion failing to comply with the most fundamental of the rules. If this were counsel's or counsel's firm's first time or two appearing, the court would deal with it as a "learning experience," address the point and proceed. However, it is not the first, second, or possibly even hundredth time that counsel or his and her firm has appeared in this court.

In fairness, the court does not recall either counsel as continually causing this problem for the court. Thus, it may not be as much a counsel problem as a client problem, CIT Bank, N.A. now appearing in cases for the old OneWest Bank, FSB loans. The court notes that in other cases even after the merger of OneWest Bank, FSB into CIT Bank, N.A., CIT Bank, N.A. and some of its attorneys filed pleadings and misrepresented to the court that OneWest Bank, FSB existed and was a real party in interest with standing, even after OneWest Bank, FSB no longer existed.

On the other hand, the court has in front of it a Debtor, who with his co-debtor have been repeatedly filing non-productive bankruptcy cases. Buried in the supporting pleadings were the grounds alleging the filing of the following prior bankruptcy cases, as well as additional cases identified by the court. Further, the court has identified other factual "grounds" which cause the court grave concerns relating to Debtor's conduct in filing the multiple bankruptcy cases. Movant's apparent formulaic approach to the motion (treating it almost as if the judge's role is limited to just adopting the conclusions stated in the motion and signing the order prepared by Movant) missed these key facts which should have been stated.

Case Number	Parties filing	Relevant Dates for Case
14-27958 Chapter 13 In <i>Pro Se</i>	Robert Leach	Filed: August 4, 2014 Dismissed: November 13, 2014
		<p>The order dismissing the case was based on the failure to pay filing fees. 14-27958, Dckt. 31.</p> <p>The proposed plan filed in the case provided for \$200 a month payments for 36 months. <i>Id.</i> at 11. The Class 1 Plan payments (apparently understated) are listed at \$1,939.00 a month. The plan lists a personal loan owed to Cash Call as a Class 5 priority unsecured claim. No other claims are provided for in the plan.</p> <p>On Schedule I Debtor states he is unemployed and has income of \$2,924 a month from unemployment and public support. Dckt. 13 at 16-17. No income is listed for a non-debtor spouse.</p> <p>On Schedule J Debtor lists \$2,787.00 for a family of three persons (Debtor and two minor children). <i>Id.</i> at 18-21. After deducting the \$1,127.00 mortgage payment and a \$720 a month car payment, Debtor purports to state that all of the other expenses for the family of three are only \$940 a month.</p> <p>Debtor failed to attend the First Meeting of Creditors. Trustee's Report, September 8, 2014 docket entry.</p> <p>Debtor failed to make any plan payments. Trustee's Motion to Dismiss, <i>Id.</i>, Dckt. 26.</p>
14-26770 Chapter 13 In <i>Pro Se</i>	Robert Leach	Filed: June 30, 2014 Dismissed: September 3, 2014
		<p>The order dismissing the case was based on the failure to file the basic documents necessary to prosecute a Chapter 13 case. Order; 14-26770, Dckt. 12.</p> <p>The documents not filed by Debtor included: Chapter 13 Plan, Schedules A-J, and the Statement of Financial Affairs. Notice of Incomplete Filing; <i>Id.</i> Dckt. 3.</p> <p>No filing fees paid by Debtor.</p>
14-25416 Chapter 13 In <i>Pro Se</i>	Robert Leach	Filed: May 22, 2014 Dismissed: August 6, 2014

<p>The order dismissing the case was based on the failure to file the basic documents necessary to prosecute a Chapter 13 case. Order; 14-25416, Dckt. 12.</p> <p>The documents not filed by Debtor included: Chapter 13 Plan, Schedules A-J, and the Statement of Financial Affairs. Notice of Incomplete Filing; <i>Id.</i> Dckt. 3.</p> <p>Debtor did not pay any filing fees.</p>		
<p>09-28946 Chapter 7 Counsel</p>		
Robert Leach	Jennifer Leach	<p>Filed: May 5, 2009</p> <p>Discharge Granted: August 10, 2009</p>
<p>Debtor and non-filing Co-Debtor in Current Case granted Chapter 7 Discharge.</p>		

In reviewing the Statement of Financial Affairs Debtor states under penalty of perjury that he does not have a spouse and has not had a spouse in the eight years immediately preceding the commencement of this bankruptcy case on September 18, 2015. Statement of Financial Affairs Question 16; Dckt. 1 at 13. However, Debtor and Jennifer Leach commenced their joint Chapter 7 case on May 5, 2019, stating that they were married. 09-28946; Petition, Dckt. 1; Statement of Financial Affairs Question 16, *Id.* at 38. To file a joint case, Debtor and Jennifer Leach had to be married when the Chapter 7 case was filed. 11 U.S.C. § 302(a). The September 8, 2015 filing of the current case is within eight years of the filing of the Chapter 7 case in which Debtor and Jennifer Leach stated under penalty of perjury they were married.

The court is presented with the problem of whether to "reward" either party to the present Motion. The Debtor would be rewarded by the court denying the present motion and requiring Movant to file a new motion that complies with Federal Rule of Bankruptcy Procedure 9013, thereby giving Debtor two more months of an unwarranted automatic stay to frustrate Movant in exercising its rights. Alternatively, if the court "rewards" Movant by waiving the requirements of Rule 9013 (which all other attorneys and parties are required to follow) and granting the relief, Movant has then written it's own "bankruptcy rules," and damn be the law except as Movant and its attorneys dictate on the federal courts.

At the hearing, Movant's counsel presented the court with a suggested resolution of this dilemma in proposing ~~XXXXXXXXXXXXXXXXXX~~.