

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Julie A. Ortiz
SSN XXX-XX-8062

CHAPTER 13 CASE

CASE NO. 03-36965 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Mitsubishi Motors Credit of America c/o Systems & Services Technologies, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 1, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than August 27, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than August 23, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on October 13, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$27,866.88, as evidenced by that certain Retail Installment Contract dated December 11, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a contract on personal property in which Debtor has an interest as evidenced by that certain Retail Installment Contract December 11, 2001, executed by Julie Ann Ortiz and Nicholas Paul Ortiz, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is legally described as follows to-wit:

2002 Mitsubishi Eclipse, VIN# 4A3AC54H02E051039.

Secured Creditor is now the holder of said Retail Installment Contract and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of August 11, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months November, 2003 through August, 2004, inclusive, in the amount of \$618.39 each; accruing attorneys fees and costs. Debtor has failed to make any offer of adequate protection. Additionally, Debtor has failed to provide proof of insurance.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$18,000.00 subject to Secured Creditor's

Retail Installment Contract in excess of \$23,088.29.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow repossession pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

13. Nicholas Paul Ortiz is a co-debtor pursuant to 11 U.S.C. § 1301. Secured Creditor moves the Court for an Order for judgment that the automatic stay be lifted with respect to his interests.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence repossession proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 11th day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

OTHER IMPORTANT AGREEMENTS

Please Charge and Payment Item. Finance Charge is figured on a daily basis at the Annual Percentage Rate ("APR") on the amount of the Amount Financed outstanding from time to time until it is paid in full. The APR and the original Amount Financed are shown on the front of this contract. The amount shown on the front of this contract for Finance Charge, Total Payments and the Total Sale Price assume that you make each payment in full on the day it is due. Your final payment will equal all amounts you owe on the date you make the payment. That amount may differ from the amount shown on this contract if (1) you pay early or late, (2) you pay more or less than the scheduled payment or (3) Creditor adds amounts to the amount you owe for any of the reasons stated below. Creditor may apply any payments it receives first to Finance Charge that we owe and then to the unpaid part of the Amount Financed, or in another order Creditor chooses.

Defaulted and Right of Lien. You agree to pay the Creditor all you owe under this contract even if the vehicle is damaged, destroyed or missing. Unless you first have received Creditor's written consent, you may not take the vehicle out of the state of your residence for more than 30 days. Under no circumstances will you be permitted to remove the vehicle from the United States, except to Canada and then only for a period of 30 days or less. You agree not to expose the vehicle to misuse or modification. You agree to keep the vehicle repaired and in good condition. You agree that the vehicle will not be used in any manner contrary to any law. You will remain liable for the vehicle from all liens and encumbrances except the Creditor's. You agree not to sell, rent, lease or otherwise dispose of the vehicle or the vehicle of the contract without the Creditor's permission. If the Creditor pays any repair bills, storage bills, taxes, fees, or other charges on the vehicle following notice to you of non-payment, you agree to repay the amount when the Creditor asks for it. You agree to comply with all inspection, accounting, tax and title laws applicable to the vehicle.

Security Interest. You are giving the Creditor a security interest in the vehicle being purchased and any accessories, equipment and replacement parts installed in the vehicle. The security interest also covers (1) insurance premiums and charges for protection plans required to the Creditor (2) proceeds of any insurance policies or protection plans on the vehicle and (3) proceeds of any insurance policies on your life or health which are financed by this contract. This security interest in all instances you owe in this contract and in any transfer, removal, addition or assignment of this contract. The security interest also includes all personal you make in this contract.

Prepayment. You may delivery the unpaid balance of the Amount Financed in full or part at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of payment.

Required Physical Damage Insurance. You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. At any time during the term of this contract, if you do not have physical damage insurance which covers both the interest of you and the Creditor in the vehicle, then the Creditor will send you a written notice of your failure to insure and give you a reasonable time in which to provide the required insurance.

If you do not provide the required insurance within a reasonable time, the Creditor is under no obligation to buy any insurance, but may do so if it chooses. If the Creditor does not buy physical damage insurance which covers both interests in the vehicle, it may, if it decides, buy insurance which covers only the Creditor's interest. If the Creditor buys either of these coverages, it will let you know what type it is and the charge you must pay. The Creditor may either provide irrevocable reassignment from you for the cost of such insurance or pay add the insurance premium to the unpaid balance on this contract. If the insurance is assigned to you by the unpaid balance of this contract, interest will be charged on the balance portion of the Annual Percentage Rate disclosed in this contract, and you agree to pay the insurance premium with interest in equal installments along with the payments shown on the payment schedule.

If the vehicle is lost or damaged, you agree that the Creditor can use any insurance settlement either to repair the vehicle or to apply to your debt.

Late Payment. Acceptance of a late payment does not resume your late payment or mean that you can keep making payments after they are due.

Default Insurance or Protection Plan. This contract may require charges for optional insurance or protection plans. If the vehicle is repossessed, you agree that the Creditor may claim benefits under these coverages and attribute them to reduce amounts for arrears charges.

Insurance or Protection Plan Charge Interest to Creditor. If any charge for required insurance is returned to the Creditor, it may be credited to your account or used to buy similar insurance or insurance which covers only the Creditor's interest in

the vehicle. Any refund on optional loan protection plans obtained by the Creditor will be credited to your account. Repossession is full before the scheduled date. If you fail to pay any payment according to the payment schedule or if you break any of the agreements in this contract (default), the Creditor can demand that you pay all you owe on this contract at once.

Repossession of the Vehicle for Failure to Pay. If you fail to pay according to the payment schedule or if you break any of the agreements in this contract (default), the Creditor shall have the right to repossess the vehicle in order to cover any property without breach of the peace and take the vehicle in which it has a security interest (repossession). The Creditor may exercise this right without notice to you. It may also take personal belongings in the vehicle, such as clothing and tools. The Creditor will hold them only to the extent the law may require. Any accessories, equipment or replacement parts will remain with the vehicle.

Right to Retain the Vehicle After Repossession. If the Creditor repossesses the vehicle, you have the right to get it back (redeem) by paying the entire amount you owe on the contract (not just your last payment) plus the cost of repossessing and storing the vehicle and other expenses that the Seller or the Creditor may have. Your right to redeem will end when the vehicle is sold.

Sale of the Repossessed Vehicle. The Creditor will send you a written notice of sale at least 10 days before selling the vehicle. If you do not return the vehicle by the date on the notice, the Creditor can sell the vehicle. The Creditor will use the net proceeds of the sale to pay all or part of your debt.

The net proceeds of sale will be figured this way: Any charges for taking and storing the vehicle, cleaning and advertising, etc., and any reasonable attorney fees will be subtracted from the selling price.

If you owe the Creditor less than the net proceeds of sale, the Creditor will pay you the difference, unless required to pay it to someone else. For example, the Creditor may be required to pay a lender who has given you a loan and also taken a security interest in the vehicle.

Unpaid Advances provided by law, if you owe more than the net proceeds of sale, you will pay the Creditor the difference between the net proceeds of sale and what you owe when the Creditor asks for it. If you do not pay the amount asked, you may also be charged interest at the highest lawful rate until you do pay all you owe to the Creditor.

Attorney Fees. You agree to pay Creditor's reasonable attorney fees, up to 15% of the amount due under the contract, after default and referral to an attorney who is not a salaried employee of the Creditor or its assignor.

Delay in Enforcing Rights and Waiver of this Contract. The Creditor can delay or refuse from enforcing any of its rights under this contract without losing them. For example, the Creditor can extend the time for making some payments without enforcing others. Any change in terms of this contract must be in writing and signed by the Creditor. No oral changes are binding. If any part of this contract is not valid, all other parts will remain enforceable.

Warranty Creditor Rescinds. If this is a used vehicle to which the FTC Used Motor Vehicle Trade Regulation Rule applies, see your vehicle form for any statutory warranty. In the case of all other vehicles, you understand that the Creditor is not offering any warranty and that there will be no implied warranty of merchantability, of fitness for a particular purpose, or any other warranty, express or implied by the Creditor, covering the vehicle unless it is of a type obtained primarily for personal, family, or household use, or the Creditor obtains a written warranty or subscription plan within 30 days from the date of this contract.

An implied warranty of merchantability generally means that the vehicle is fit for the ordinary purpose for which such vehicles are generally used. A warranty of fitness for a particular purpose is a warranty that any article which the Creditor has agreed to know the particular purpose for which you require the vehicle and you rely on the Creditor's skill or judgment to furnish a suitable vehicle.

This provision does not affect any warranties covering the vehicle which may be provided by the vehicle manufacturer.

Meaning of Creditor. The word "Creditor" includes the original Seller and also includes any person or organization to whom this contract may be sold or assigned.

Governing Law. You and the Creditor agree that this transaction is subject to the laws of the state of Minnesota.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. DEBTOR HEREBY RELEASES THE CREDITOR FROM ALL SUCH CLAIMS AND DEFENSES.

<p>SELLER'S ASSURANCE</p> <p>Seller agrees and warrants to MITSUBISHI MOTORS CREDIT OF AMERICA, INC. (MCA) all of its right, title and interest in this contract.</p> <p>Seller warrants and represents: (1) The contract arose from the sale of the property described on the face of the contract; (2) Seller transferred good title to the property at the time of this sale of any kind; (3) All disclosures required by law were properly made to the Buyer prior to the Buyer signing the contract; (4) All insurance documentation will be delivered to the Buyer within the time required by law; (5) To the best of Seller's knowledge, the Customer's statement attached is accurate; (6) The downpayment received by Seller is exactly as stated; (7) The contract is enforceable; (8) Seller is insured as required by law; and (9) Seller has complied with all applicable requirements of the FTC Used Motor Vehicle Trade Regulation Rule.</p> <p>Each of these warranties and representations is material to MCA's acceptance of this contract. If any of them is breached or is otherwise, Seller unconditionally determines to accept responsibility for the contract and to pay MCA, upon demand, the full amount of the unpaid balance under this contract. Seller also agrees to indemnify MCA to the full extent of all losses of expense incurred by MCA as a result of such breach or error.</p> <p>Seller agrees to indemnify MCA for any judicial award or loss suffered as a result of a claim or defense of Buyer against Seller.</p>	<p>If this contract is rescinded by court order, Seller shall pay MCA the full amount MCA paid to purchase it.</p> <p>Seller shall be liable upon a waiver, compromise, settlement or variation of the terms of the contract releases the Buyer.</p> <p>Seller waives notice of acceptance of this guarantee and notice of non-payment and non-performance.</p> <p>CONTRACTS ASSIGNED WITH RECOURSE</p> <p>If this contract is assigned with recourse, in addition to the foregoing warranties, covenants and obligations, Seller unconditionally guarantees payment on demand of the unpaid balance on this contract and all losses and expenses incurred by MCA in the event of a default in payment of any installment.</p> <p>CONTRACTS ASSIGNED WITHOUT RECOURSE OR WITH LIMITED RECOURSE</p> <p>If this contract is assigned without recourse or with limited recourse, such assignment is without recourse to the Seller except in the circumstances set forth above and it and to the extent that no recourse is stated in the following paragraph.</p> <p>Seller unconditionally guarantees that if Buyer defaults in the payment of any installment under this contract, Seller will pay, upon demand by MCA, the unpaid balance up to the sum of \$_____.</p>
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6-014-00-0 (2/01)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Julie A. Ortiz
SSN XXX-XX-8062

CHAPTER 13 CASE

CASE NO. 03-36965 DDO

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of August 11, 2004, Debtor is delinquent for the post-petition monthly payments as required for the months of November, 2003 through August, 2004, in the amount of \$618.39 each; accruing attorneys fees and costs.

2. Debtor has failed to make any offer of adequate protection. Additionally, Debtor has failed to provide proof of insurance.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$18,000.00 subject to Secured Creditor's Retail Installment Contract in excess of \$23,088.29.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

III. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 1301(c) WHERE THE INTEREST OF THIS SECURED CREDITOR WOULD BE IRREPARABLY HARMED BY CONTINUATION OF SUCH STAY.

Nicholas Paul Ortiz is a co-debtor pursuant to 11 U.S.C. § 1301 and the non-debtor party in these proceedings and has received the consideration for the claim held by Secured Creditor. Neither the debtor nor Mr. Ortiz provided for the payments referenced herein.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 11th day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
SAINT PAUL DIVISION**

IN RE:

**Julie A. Ortiz
Debtor**

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CASE NO. 03-36965-ddo

CHAPTER NO. 13

AFFIDAVIT

STATE OF MISSOURI

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§

COUNTY OF BUCHANAN

Before me, the undersigned authority, on this day personally appeared the undersigned Affiant, who being by me duly sworn, on her oath stated:

1. "My full name is Greg Lipps and I am at least eighteen (18) years old."

2. "I am employed by Mitsubishi Motors Credit of America c/o Systems & Services Technologies, Inc. ('Creditor') and I have the care, custody, and control of all records ('Records') concerning the account of Julie A. Ortiz ("Debtor") and Nicholas Ortiz ("Codebtor"). All facts recited herein are within my personal knowledge and are true and correct."

3. "The Records reflect acts, events, conditions, or opinions made at or near the time by, or from information transmitted by, a person with knowledge in the course of a regularly conducted business activity, and it was the regular practice of the business activity to make the record."

4. "The Records indicate that by virtue of a Motor Vehicle Contract & Security Agreement ('Agreement'), dated December 11, 2001, entered into by Creditor, Debtor and Co-Debtor who financed the purchase of a 2002 MITSUBISHI ECLIPSE, VIN # 4A3AC54H02E051039 ("Vehicle"). True and correct copies of the Agreement and Certificate of Title indicating Creditor's lien on the Vehicle are attached hereto as Exhibits 'A' and 'B', respectively."

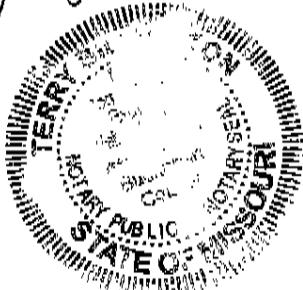
5. "The Records indicate that as of June 29, 2004, the amount owed to Creditor under the Agreement was \$23,088.29. Debtor's and Co-Debtor's payments under the Agreement are \$618.39 per month and Debtor and Co-Debtor are due for November 7, 2003 and all subsequent payments, for a total delinquency of \$4,947.12."

FURTHER, AFFIANT SAYETH NAUGHT.



Greg Lipps
Mitsubishi Motors Credit of America c/o
Systems & Services Technologies, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 23rd day of July, 2004.



Terry Billington
NOTARY PUBLIC IN AND FOR THE
STATE OF Missouri

My Commission Expires: 2-23-08 Printed Name: Terry BILLINGTON

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Julie A. Ortiz
SSN XXX-XX-8062

Debtor.

CHAPTER 13 CASE

CASE NO. 03-36965 DDO

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on August 11, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Greg Lipps, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Julie A. Ortiz
13749 Huntington Ave S
Savage, MN 55378

Mitsubishi Motors Credit of America, Inc.
c/o Brice, Vander Linden & Wernick, P.C.
P.O. Box 829009
Dallas, TX 75382-9009

Nicholas P. Ortiz
13749 Huntington Ave S
Savage, MN 55378

Mitsubishi Motors Credit of America
c/o J. Ward Holliday & Associates, P.C.
501 Elm Street, Suite 400, LB13
Dallas, TX 75202

Richard J. Pearson
PO Box 120088
New Brighton, MN 55112

Jasmine Z. Keller
12 S 6th St Ste 310
Minneapolis, MN

Washington Mutual Home Loans
c/o McCalla Raymer, et. al.
Bankruptcy Department
1544 Old Alabama Road
Roswell, GA 30076

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 11th day of August, 2004.

/e/ Diana Waletzko

Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Julie A. Ortiz
SSN XXX-XX-8062

Debtor.

CHAPTER 13 CASE

CASE NO. 03-36965 DDO

ORDER

The above entitled matter came on for hearing upon motion of Mitsubishi Motors Credit of America c/o Systems & Services Technologies, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 1, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 and § 1301 with regard to that certain Retail Installment Contract dated December 11, 2001, executed by Julie Ann Ortiz and Nicholas Paul Ortiz, covering personal property legally described as follows, to-wit:

2002 Mitsubishi Eclipse, VIN# 4A3AC54H02E051039

and may proceed to take possession of the vehicle and sell, lease or dispose of the vehicle in a commercially reasonable manner. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court