

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Jon L. and Janet M. Johnson

U.S. BANKRUPTCY COURT  
ST. PAUL, MN  
Chapter 7

Debtor(s).

BK 04-31268

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DEBTORS' RESPONSIVE MOTION TO DENY MOTION TO DISMISS  
CHAPTER 7 CASE

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1. The United States Trustee filed a motion to dismiss this case under Section 707(a) and (b) on June 9, 2004, along with a Supplemental Motion to Dismiss filed on July 9, 2004, which hearing is scheduled before the Court on August 2, 2004, at 3:00p.m.

2. The Trustee's Supplemental Motion withdraws those portions of its motion for cause under Section 707(a), requesting additional information and documentation be provided to the Trustee, which information has been provided, and, therefore, that portion of Section 707(a) has been withdrawn.

3. Debtors have reviewed the Trustee's motions in detail, and make the following response in contesting the mathematics and the various assumptions made by counsel for the Trustee, as will hereinafter be detailed.

4. The fourth paragraph of the Trustee's motion references a pay stub of Spouse Janet Johnson for a period ending April 24, 2004, makes various inaccurate computations and/or false assumptions regarding the net incomes of these joint debtors.

5. This petition was filed on or about March 4, 2004, and at a time when debtor Jon Johnson's income was smaller than it presently is as a function of a raise Mr. Johnson received in the month of April. Similarly, although Janet Johnson was employed at the time of the filing of the petition in this matter, she is presently not employed in any capacity, and accordingly the actual net income of the debtors should be adjusted as a function of this development if the Court is going to consider other developments occurring following the filing of the parties' petition in the early days of March, 2004.

6. Accordingly, the calculations contained in paragraph four of the Trustee's Supplemental Motion identifying adjusted average net pay per month for Janet Johnson in the sum of \$1,254.87, should in equity be eliminated entirely from the parties' disposable income.

7. With respect to the income statements or receipts of Mr. Jon Johnson, these income receipts reflect income as well as reimbursement for expenses, and accordingly, should not be entirely considered as income. Specifically, counsel for

Trustee calculated the net take-home pay for Jon Johnson for the end of April, 2004, at \$1,677.91, when in fact, of this figure \$315.81 was included with his pay as reimbursement for over the road expenses he incurs in his employment, which reimbursement does not approach the actual expenses which Mr. Johnson incurs. Accordingly, the actual net income for the last pay period of April, 2004, although identifying \$1,677.91 as take-home pay, is (minus the \$315.81 reimbursement) the sum of \$1,362.10.

Also, counsel for the Trustee calculates debtor Jon Johnson's income over an annualized basis, which artificially elevates his actual monthly net income both as a function of the fact Mr. Johnson has "sold" vacation weeks which he does not anticipate doing in the future in order to maximize his income which is not a normal part of his annualized income, nor should reimbursed expenses from his employer be considered as part of his annualized income in reaching a net monthly income figure. It had previously been the practice of debtor Jon Johnson's employer to submit separate checks for reimbursement of expenses, rather than combining them within the regular paychecks, which practice has, however, changed and reimbursed employee expenses are now wrapped together and contained within regular paychecks received by Jon Johnson, thus, artificially elevating the extent of his actual earnings apart from partially reimbursed expenses of his vocation.

8. Attached hereto as Exhibit "A" to this motion is a four-page itemization of the types of expenses reimbursed by debtor Jon Johnson's employer over the past several years, which specifically include expenses for fuel, vehicle maintenance, equipment purchases, and the like, all of which are included and paid to Mr. Johnson in a lump sum with his regular bi-monthly paychecks, and which, therefore, should not be considered as "income."

9. Accordingly, the actual net monthly income of debtors Jon Johnson and Janet Johnson (unemployed following the filing of the petition) should be in the total sum of  $\$1,362.10 \times 2 = \$2,724.20$ .

10. Accordingly, with the loss of any income as a function of debtor Janet Johnson's loss of employment, and as a function of the straight-forward recomputations of Jon Johnson's actual net monthly income, the parties simply do not have expendable income with which to retire debts, which is the subject of this Chapter 7 Consumer Bankruptcy Petition. This would be the case even after adding back voluntary contributions to retirement and pension accounts, as argued by counsel for the Trustee.

11. The Trustee's initial motion, as well as the supplemental motion, addresses the question of Schedule "J" expenses being excessive for these co-debtors, which this responsive motion will address in detail.

Specifically, as will be explained in detail, all expenses claimed by these debtors are actual and legitimate monthly living expenses as a function of particular demands of

their medical circumstances and as a function of Mr. Johnson's day-to-day employment demands.

12. Specifically, expenses for food have been listed at \$1,000.00 per month for the combined food expenses for both debtors. The debtors frankly believe that this is an underestimation of their actual monthly food expense, particularly given the fact that virtually every meal that Mr. Johnson eats, he must dine outside the home and while traveling on the road in furtherance of his employment. Mr. Johnson averages approximately 1500 miles of travel per week as a computer repair technician, and accordingly eats virtually every meal of the work week, Monday through Friday, on the road as he travels. Assuming that some meals may be as cheap as \$5.00 per meal and that others may be as expensive as \$15.00 per meal, it would be fair to assume that Mr. Johnson incurs expense of \$10.00 per meal three times per day for the five days of the work week throughout the year. This would produce a reasonable sum of no less than \$660.00 of monthly expense for food eaten out by Mr. Johnson alone.

Prior to Janet Johnson's unemployment, she also traveled to and from her place of work, approximately twenty miles each way, and also ate at least one meal outside of the home and at the typical expense of \$10.00 per meal. These figures incorporated along with the food purchased by the debtors for meals eaten at home on the weekends, or the rare occasion during the week when they are able to eat at home, should easily be able to sustain the identified monthly expense for food and/or meals of the co-debtors of \$1,000.00 per month. As reflected by Exhibit "A", debtor Jon Johnson is not reimbursed for any of his on-the-road and business-related food expense.

13. likewise, debtors believe they scheduled home maintenance expense of \$200.00 is reasonable under their particular circumstances, given the need for imminent repairs to a number of structures of the home, including windows, gables, roof shingles, and siding, all of which are overdue for the timely and appropriate maintenance of this home.

Debtors attach hereto as Exhibit "B" photographs of various of the above-referenced structures of their home to graphically identify the nature and extent of the home maintenance and repairs that must be undertaken to maintain the livability and value of the parties' home.

14. Similarly, debtors scheduled medical and dental expenses at \$400.00 per month which, although unusually high, are factually supported by the circumstances which face these particular debtors. Specifically, the parties face \$500 deductibles each, and substantial obligations for contribution of medical expenses which are extraordinary. Janet Johnson must remain on maintenance medications for two very serious medical conditions, which medications are extremely expensive, resulting in medication costs out-of-pocket for Janet alone in excess of \$100.00 per month. In addition, as part of the regimen of treatment for Janet Johnson's conditions, she must attend regular chiropractic appointments, for which insurance is only minimally applicable and presently not applicable at all following her recent loss of employment. Accordingly, debtors

respectfully submit that the medical and dental expenses identified are reasonable under the particular circumstances facing these joint debtors.

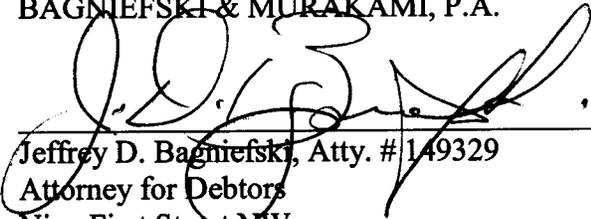
15. Counsel for Trustee maintains that the clothing expense of \$200.00 should be reduced to \$150.00 and that the figure recited in Schedule "J" is excessive. The debtors were both formerly employed as professional individuals, and accordingly must maintain a certain level of dress in their employment, and it is not unreasonable to incur \$200.00 per month in clothing expense where the Trustee claims that \$150.00 is reasonable. Specifically, it should be understood that Mr. Johnson, as a traveling computer hardware technician, must maintain a professional appearance, including a substantial laundry expense produced for this clothing. It should also be understood that through Mr. Johnson's work with very large computers, including printers, it is often the case that he destroys clothing through the course of his troubleshooting, and must discard clothing on a regular basis, thus, leading to what might otherwise be a relatively high clothing item expense under Schedule "J."

16. Similarly, counsel for the Trustee contests as excessive the sum of \$216.00 as and for telephone expense of the joint debtors. At the time this petition was filed and Mrs. Johnson was employed, both Mr. and Mrs. Johnson had professional necessity for carrying separate cellular phones which, along with a long distance land line within the home, resulted in monthly expenses for, essentially, three phones at \$216.00 which, under the circumstances, is not an unreasonable amount of money.

17. For all of the herein above stated reasons, it is respectfully submitted that the debtors Schedule "J" expenses are, with some minor exceptions, recently arising out of Mrs. Johnson unemployment status, appropriate and reasonable expenses. More importantly, is respectfully submitted that a fair computation of the parties' actual net monthly income against the parties' reasonable monthly living expenses produces a substantial negative figure of disposable income, rather than a positive figure of disposable income, as alleged by counsel for the Trustee, and accordingly, it is respectfully submitted that the Trustee's motion to dismiss this case be denied.

Dated: July 23, 2004

BAGNIEFSKI & MURAKAMI, P.A.



Jeffrey D. Bagniefski, Atty. # 149329

Attorney for Debtors  
Nine First Street NW  
Rochester, MN 55901  
(507) 280-0100

# **Exhibit**

**“A”**

*Jon  
Vehicle  
History*

07/09/2004

**SSG Fleet Manager  
Employee Information**

Created:	04/26/2002 12:00:00 AM	Primary VIN:	1FTYR10U52PB09999
Emp #:	1111	VIN (Short):	09999
First Name:	Jon L.		<--- Show Vehicle
Last Name:	Johnson		
Region:	405		
Last MVR:		Award Exempt:	No
		Total Miles:	125,067
Videos Out:		Event Miles:	-70,673
Date Sent:	Date Returned:	Milestone Miles:	192,054
		Milestone Awards:	25K - 05/06/2002 50K - 05/29/2002 75K - 07/30/2002 100K - 10/31/2002 150K - 09/29/2003

Expense Date	Expense Cat.	Expense Type	Amount	VIN (Short)	Odometer
06/05/2004	Variable	Fuel	\$111.43	1FTYR10U52PB09999	122290
06/04/2004	Variable	Oil Change	\$30.98	1FTYR10U52PB09999	122290
05/29/2004	Variable	Fuel	\$120.74	1FTYR10U52PB09999	121199
05/22/2004	Variable	Fuel	\$117.92	1FTYR10U52PB09999	119981
05/15/2004	Variable	Fuel	\$141.63	1FTYR10U52PB09999	118604
05/08/2004	Variable	Fuel	\$96.47	1FTYR10U52PB09999	117451
05/01/2004	Variable	Fuel	\$88.41	1FTYR10U52PB09999	116366
05/01/2004	Variable	Car Wash	\$4.50	1FTYR10U52PB09999	116366
04/24/2004	Variable	Fuel	\$125.73	1FTYR10U52PB09999	115006
04/17/2004	Variable	Fuel	\$16.88	1FTYR10U52PB09999	113897
04/17/2004	Variable	Fuel	\$34.45	Rental	797
04/16/2004	Variable	Misc Maint.	\$151.00	1FTYR10U52PB09999	113667
04/16/2004	Variable	Tune-Up	\$243.92	1FTYR10U52PB09999	113667
04/16/2004	Variable	Brakes	\$944.61	1FTYR10U52PB09999	113667
04/16/2004	Variable	Glass	\$2.25	1FTYR10U52PB09999	113667
04/16/2004	Variable	Misc Maint.	\$65.30	1FTYR10U52PB09999	113667
04/16/2004	Variable	Oil Change	\$22.30	1FTYR10U52PB09999	113667
04/16/2004	Variable	Misc Maint.	\$126.09	1FTYR10U52PB09999	113667
04/16/2004	Variable	Transmission	\$139.95	1FTYR10U52PB09999	113667
04/10/2004	Variable	Fuel	\$150.13	1FTYR10U52PB09999	113667
04/03/2004	Variable	Fuel	\$112.18	1FTYR10U52PB09999	112367
03/27/2004	Variable	Fuel	\$109.73	1FTYR10U52PB09999	111080
03/20/2004	Variable	Fuel	\$98.73	1FTYR10U52PB09999	109721
03/13/2004	Variable	Fuel	\$100.63	1FTYR10U52PB09999	108567
03/10/2004	Variable	Oil Change	\$28.84	1FTYR10U52PB09999	108567
03/06/2004	Variable	Fuel	\$113.20	1FTYR10U52PB09999	107479
02/28/2004	Variable	Fuel	\$94.70	1FTYR10U52PB09999	106467
02/21/2004	Variable	Fuel	\$83.70	1FTYR10U52PB09999	105466
02/14/2004	Variable	Fuel	\$108.25	1FTYR10U52PB09999	104296
02/09/2004	Variable	Oil Change	\$28.84	1FTYR10U52PB09999	104296
02/07/2004	Variable	Fuel	\$70.30	1FTYR10U52PB09999	103276
01/31/2004	Variable	Fuel	\$97.90	1FTYR10U52PB09999	102650
01/24/2004	Variable	Fuel	\$96.50	1FTYR10U52PB09999	101695

01/17/2004	Variable	Fuel	\$89.69	1FTYR10U52PB09999	100588
12/27/2003	Variable	Fuel	\$46.39	1FTYR10U52PB09999	99468
12/21/2003	Variable	Car Wash	\$3.99	1FTYR10U52PB09999	99468
12/20/2003	Variable	Fuel	\$118.43	1FTYR10U52PB09999	98825
12/13/2003	Variable	Fuel	\$77.15	1FTYR10U52PB09999	97665
12/06/2003	Variable	Fuel	\$119.09	1FTYR10U52PB09999	96650
11/29/2003	Variable	Fuel	\$106.53	1FTYR10U52PB09999	95323
11/28/2003	Variable	Glass	\$180.31	1FTYR10U52PB09999	95001
11/22/2003	Variable	Fuel	\$99.27	1FTYR10U52PB09999	95001
11/22/2003	Variable	Oil Change	\$28.84	1FTYR10U52PB09999	95001
11/15/2003	Variable	Fuel	\$90.03	1FTYR10U52PB09999	93308
11/08/2003	Variable	Fuel	\$148.91	1FTYR10U52PB09999	92038
10/31/2003	Variable	Misc Maint.	\$50.00	1FTYR10U52PB09999	92038
10/31/2003	Variable	Tires	\$378.00	1FTYR10U52PB09999	92038
10/25/2003	Variable	Fuel	\$138.28	1FTYR10U52PB09999	90334
10/18/2003	Variable	Fuel	\$97.36	1FTYR10U52PB09999	89085
10/11/2003	Variable	Fuel	\$103.29	1FTYR10U52PB09999	87583
10/04/2003	Variable	Fuel	\$84.62	1FTYR10U52PB09999	86342
09/27/2003	Variable	Fuel	\$83.06	1FTYR10U52PB09999	84995
09/26/2003	Variable	Oil Change	\$28.84	1FTYR10U52PB09999	84995
09/20/2003	Variable	Fuel	\$116.75	1FTYR10U52PB09999	83908
09/06/2003	Variable	Fuel	\$106.84	1FTYR10U52PB09999	82036
08/30/2003	Variable	Fuel	\$78.93	1FTYR10U52PB09999	80768
08/23/2003	Variable	Fuel	\$127.44	1FTYR10U52PB09999	79611
08/16/2003	Variable	Fuel	\$82.15	1FTYR10U52PB09999	78302
08/11/2003	Variable	Car Wash	\$3.99	1FTYR10U52PB09999	78302
08/09/2003	Variable	Fuel	\$129.71	1FTYR10U52PB09999	77107
08/02/2003	Variable	Fuel	\$100.72	1FTYR10U52PB09999	75627
08/02/2003	Variable	Prevent. Maint.	\$11.95	1FTYR10U52PB09999	75627
08/01/2003	Variable	Oil Change	\$29.67	1FTYR10U52PB09999	75627
07/30/2003	Variable	Tires	\$19.57	1FTYR10U52PB09999	75627
07/26/2003	Variable	Fuel	\$81.36	1FTYR10U52PB09999	74362
07/19/2003	Variable	Fuel	\$123.91	1FTYR10U52PB09999	72992
07/19/2003	Variable	Car Wash	\$5.00	1FTYR10U52PB09999	72992
07/14/2003	Variable	Oil Change	\$8.54	1FTYR10U52PB09999	72992
07/12/2003	Variable	Fuel	\$80.28	1FTYR10U52PB09999	71564
07/05/2003	Variable	Fuel	\$105.49	1FTYR10U52PB09999	70230
07/05/2003	Variable	Car Wash	\$3.99	1FTYR10U52PB09999	70230
06/28/2003	Variable	Fuel	\$82.81	1FTYR10U52PB09999	68998
06/21/2003	Variable	Fuel	\$125.69	1FTYR10U52PB09999	67755
06/14/2003	Variable	Fuel	\$123.32	1FTYR10U52PB09999	66524
06/13/2003	Variable	Oil Change	\$28.84	1FTYR10U52PB09999	66524
06/07/2003	Variable	Fuel	\$117.56	1FTYR10U52PB09999	65081
05/31/2003	Variable	Fuel	\$96.21	1FTYR10U52PB09999	63708
05/20/2003	Variable	Tires	\$10.07	1FTYR10U52PB09999	62424
05/11/2003	Variable	Fuel	\$105.59	1FTYR10U52PB09999	62194
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05/03/2003	Variable	Fuel	\$75.24	1FTYR10U52PB09999	59099
05/03/2003	Variable	Mistake	\$0.00	1FTYR10U52PB09999	59099
04/29/2003	Variable	(Correction)	\$28.84	1FTYR10U52PB09999	59099
04/26/2003	Variable	Oil Change	\$67.10	1FTYR10U52PB09999	57899
04/19/2003	Variable	Fuel	\$88.64	1FTYR10U52PB09999	56890
04/12/2003	Variable	Fuel	\$51.28	1FTYR10U52PB09999	55899
04/12/2003	Variable	Fuel	\$4.50	1FTYR10U52PB09999	55899
03/29/2003	Variable	Car Wash	\$81.72	1FTYR10U52PB09999	55297
03/29/2003	Variable	Fuel	\$3.99	1FTYR10U52PB09999	55297
03/29/2003	Variable	Car Wash	\$41.09	1FTYR10U52PB09999	55297
03/22/2003	Variable	Oil Change	\$123.63	1FTYR10U52PB09999	54000
03/21/2003	Variable	Fuel	\$3.99	1FTYR10U52PB09999	54000
03/15/2003	Variable	Car Wash	\$125.56	1FTYR10U52PB09999	52372
03/08/2003	Variable	Fuel	\$108.93	1FTYR10U52PB09999	50996

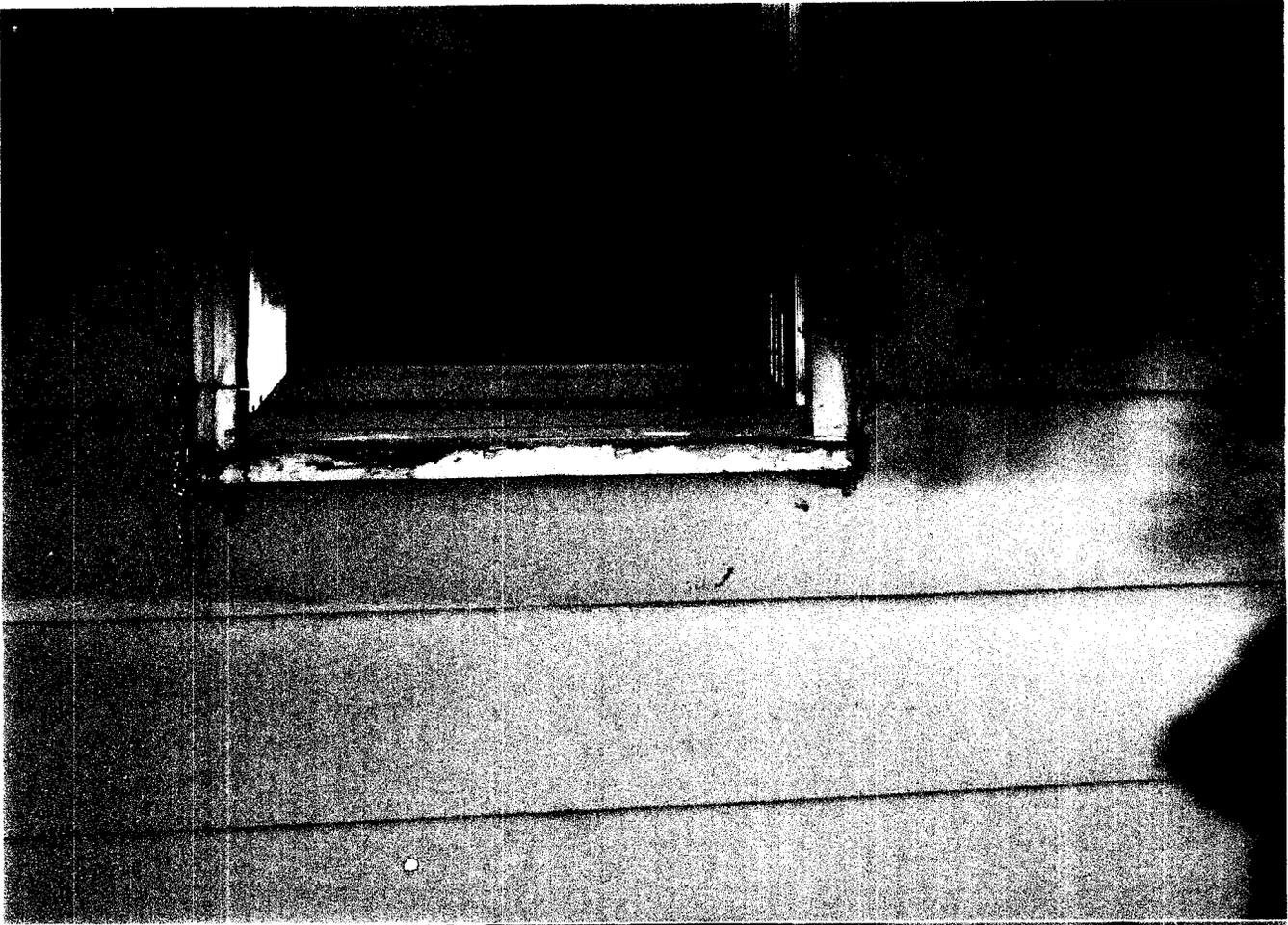
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02/15/2003	Variable	Fuel	\$120.47	1FTYR10U52PB09999	47650
02/08/2003	Variable	Fuel	\$88.07	1FTYR10U52PB09999	46374
02/03/2003	Variable	Fuel	\$8.42	1FTYR10U52PB09999	46374
02/01/2003	Variable	Prevent. Maint.	\$99.29	1FTYR10U52PB09999	45149
01/25/2003	Variable	Fuel	\$38.09	1FTYR10U52PB09999	43910
01/18/2003	Variable	Fuel	\$83.20	1FTYR10U52PB09999	43371
01/11/2003	Variable	Fuel	\$131.23	1FTYR10U52PB09999	42369
01/10/2003	Variable	Fuel	\$10.60	1FTYR10U52PB09999	42369
01/07/2003	Variable	Tires	\$28.84	1FTYR10U52PB09999	42369
01/04/2003	Variable	Oil Change	\$95.41	1FTYR10U52PB09999	41018
12/28/2002	Variable	Fuel	\$50.31	1FTYR10U52PB09999	40103
12/21/2002	Variable	Fuel	\$30.27	1FTYR10U52PB09999	39551
12/14/2002	Variable	Fuel	\$104.83	1FTYR10U52PB09999	39100
12/14/2002	Variable	Fuel	\$28.84	1FTYR10U52PB09999	39100
12/07/2002	Variable	Oil Change	\$99.71	1FTYR10U52PB09999	37998
11/30/2002	Variable	Fuel	\$49.81	1FTYR10U52PB09999	37128
11/23/2002	Variable	Fuel	\$98.50	1FTYR10U52PB09999	36428
11/22/2002	Variable	Fuel	\$4.50	1FTYR10U52PB09999	36428
11/16/2002	Variable	Car Wash	\$95.97	1FTYR10U52PB09999	35202
11/09/2002	Variable	Fuel	\$84.52	1FTYR10U52PB09999	33898
11/02/2002	Variable	Fuel	\$104.82	1FTYR10U52PB09999	32897
10/26/2002	Variable	Fuel	\$108.38	1FTYR10U52PB09999	31691
10/19/2002	Variable	Fuel	\$93.38	1FTYR10U52PB09999	30665
10/15/2002	Variable	Fuel	\$28.84	1FTYR10U52PB09999	30665
10/12/2002	Variable	Oil Change	\$27.21	1FTYR10U52PB09999	29424
10/09/2002	Variable	Fuel	\$64.41	1FTYR10U52PB09999	28300
09/28/2002	Variable	Fuel	\$137.36	1FTYR10U52PB09999	28126
09/23/2002	Variable	Fuel	\$15.00	1FTYR10U52PB09999	28126
09/21/2002	Variable	Tires	\$97.65	1FTYR10U52PB09999	26496
09/14/2002	Variable	Fuel	\$101.72	1FTYR10U52PB09999	25010
09/07/2002	Variable	Fuel	\$58.15	1FTYR10U52PB09999	23821
09/04/2002	Variable	Fuel	\$3.99	1FTYR10U52PB09999	23821
09/03/2002	Variable	Car Wash	\$28.84	1FTYR10U52PB09999	23821
08/31/2002	Variable	Oil Change	\$95.32	1FTYR10U52PB09999	22758
08/24/2002	Variable	Fuel	\$56.44	1FTYR10U52PB09999	21610
08/17/2002	Variable	Fuel	\$160.41	1FTYR10U52PB09999	20796
08/10/2002	Variable	Fuel	\$105.23	1FTYR10U52PB09999	18895
08/03/2002	Variable	Fuel	\$120.20	1FTYR10U52PB09999	17583
07/27/2002	Variable	Fuel	\$90.62	1FTYR10U52PB09999	16243
07/25/2002	Variable	Fuel	\$28.84	1FTYR10U52PB09999	16243
07/23/2002	Variable	Oil Change	\$3.99	1FTYR10U52PB09999	16243
07/20/2002	Variable	Car Wash	\$95.17	1FTYR10U52PB09999	14852
07/13/2002	Variable	Fuel	\$103.73	1FTYR10U52PB09999	13652
07/06/2002	Variable	Fuel	\$97.54	1FTYR10U52PB09999	12160
06/29/2002	Variable	Fuel	\$93.75	1FTYR10U52PB09999	10844
06/24/2002	Variable	Fuel	\$3.99	1FTYR10U52PB09999	10844
06/22/2002	Variable	Car Wash	\$88.56	1FTYR10U52PB09999	9629
06/15/2002	Variable	Fuel	\$12.24	1FTYR10U52PB09999	8500
06/10/2002	Variable	Fuel	\$28.84	1FTYR10U52PB09999	8500
06/08/2002	Variable	Oil Change	\$75.33	1FTYR10U52PB09999	8161
06/04/2002	Variable	Fuel	\$84.58	1FTYR10U52PB09999	6661
05/28/2002	Variable	Fuel	\$4.99	1FTYR10U52PB09999	6661
05/25/2002	Variable	Car Wash	\$106.75	1FTYR10U52PB09999	5651
05/18/2002	Variable	Fuel	\$83.42	1FTYR10U52PB09999	4061
05/11/2002	Variable	Fuel	\$28.84	1FTYR10U52PB09999	2994
05/11/2002	Variable	Oil Change	\$85.61	1FTYR10U52PB09999	2994
05/09/2002	Fixed	Fuel	\$-2770.00	1GCCS14X0XK146661	179439
05/04/2002	Variable	Sale	\$107.40	1FTYR10U52PB09999	1910

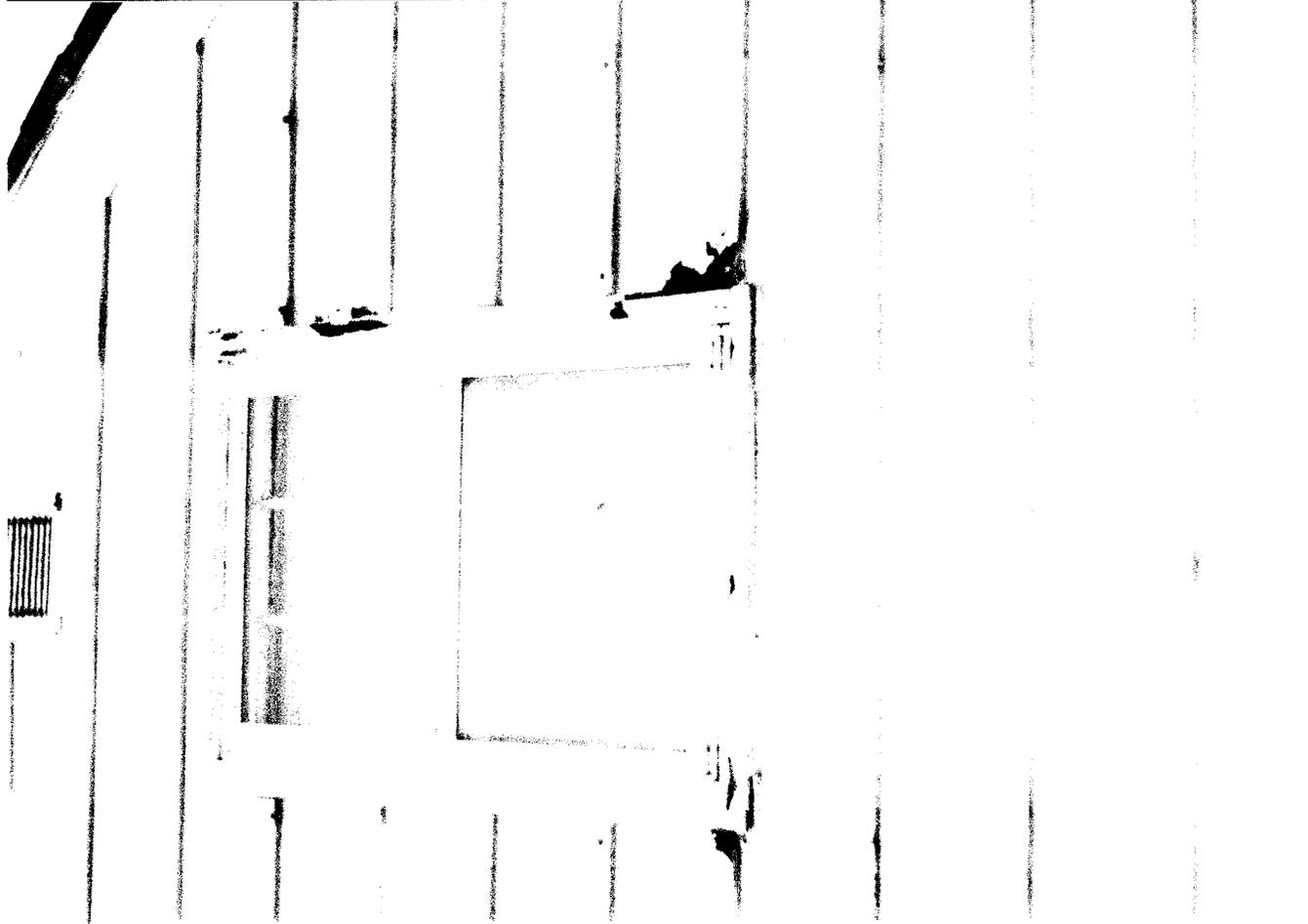
04/27/2002	Variable	Fuel	\$6.95	1GCCS14X0XK146661	179423
04/27/2002	Variable	Fuel	\$20.29	1FTYR10U52PB09999	268
04/20/2002	Variable	Fuel	\$10.70	1GCCS14X0XK146661	179273
04/20/2002	Variable	Tires	\$67.17	1GCCS14X0XK146661	179273
03/26/2002	Fixed	Fuel	\$13029.00	1FTYR10U52PB09999	0
		Purchase			

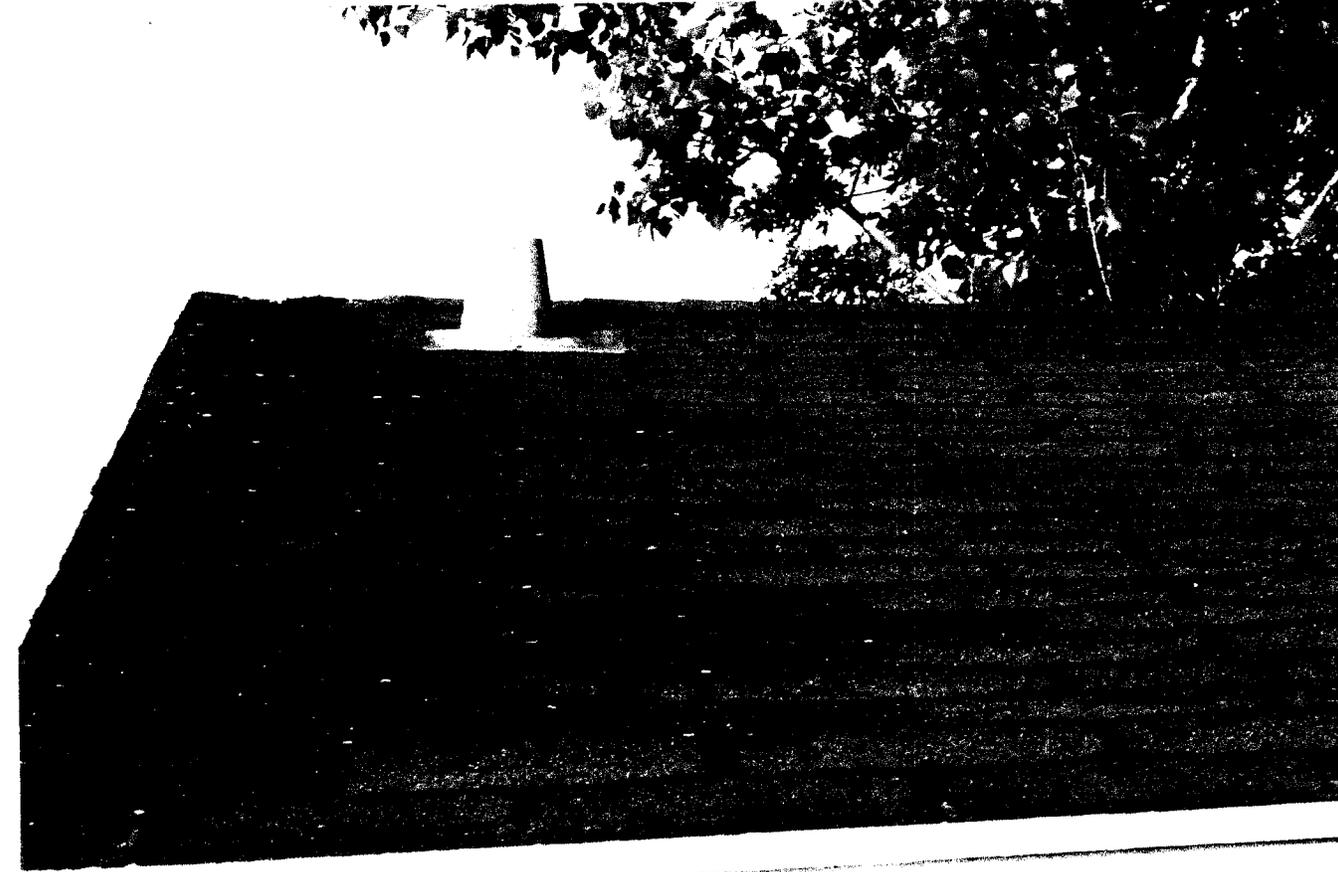
Event Date	Event Type	Vehicle VIN	Mileage	Preventable
09/29/2003	Milestone Award	1FTYR10U52PB09999	82748	N/A
10/31/2002	Milestone Award	1FTYR10U52PB09999	30106	N/A
07/30/2002	Milestone Award	1FTYR10U52PB09999	14818	N/A
05/29/2002	Milestone Award	1FTYR10U52PB09999	4160	N/A
07/21/2001	Milestone Award	1FTYR10U52PB09999	25000	N/A

# **Exhibit**

**“B”**







**AFFIDAVIT OF SERVICE BY MAIL**

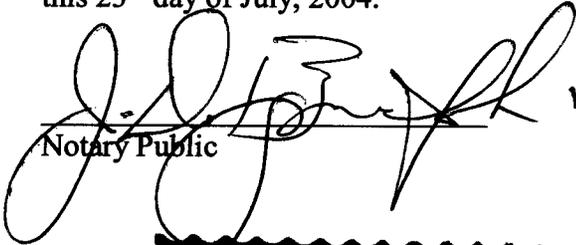
STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF OLMSTED    )

I, Anna Zakem, being first duly sworn, depose and state that on July 23, 2004, I served a true and correct copy of the attached Debtors' Responsive Motion to Deny Motion to Dismiss Chapter 7 Case, dated July 23, 2004, enclosed in a properly addressed envelope, by depositing the same, with postage prepaid, in the United States mail at Rochester, Minnesota addressed as follows:

Ms. Sarah J. Wencil  
U.S. Trustee's Office  
1015 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

  
\_\_\_\_\_  
Anna Zakem

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of July, 2004.

  
\_\_\_\_\_  
Notary Public

