

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Jeffrey Scott Jonsgaard
 Jennifer Lynn Jonsgaard
 Debtor(s).

Case No. Bky 04-35099-DDO
Chapter 7 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Jeffrey Scott Jonsgaard, 24185 Green Terrace Way, Winona, Minnesota 55987, Jennifer Lynn Jonsgaard, 24185 Green Terrace Way, Winona, Minnesota 55987, Debtor and their attorney, Richard H. Darby, Darby, Delano & Price, PO Box 617, Winona, MN 55987, and other entities specified in Local Rule 9013-3.

1. Affinity Plus, of 2730 Snelling Ave N, Saint Paul, MN 55113, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this matter at 9:30 a.m., on Wednesday, October 13, 2004 in Courtroom No. 228 A, at the United States Courthouse, at 316 N. Robert St., in St. Paul, MN 55101.

3. Any response to this motion must be filed and delivered not later than Thursday, October 7, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and Holidays), or filed and served by mail not later than Friday, October 1, 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, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on August 30, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3 and 9006-1. Movant requests relief with respect to: 1997 Chevrolet C3500 Pick Up, Serial #1GCHK39J4VE137043 and 2001 Chevrolet Tracker, Serial #2CNBJ634116906167.

6. Movant has a valid and perfected first security interest in the following collateral to secure the purchase price thereof: 1997 Chevrolet C3500 Pick Up, Serial #1GCHK39J4VE137043 and 2001 Chevrolet Tracker, Serial #2CNBJ634116906167.

7. Copies of the Retail Installment Contracts whereby Debtor granted Movant a security interest in the aforesaid collateral are attached hereto as Exhibit A.

8. Movant has duly perfected its security interest in the aforesaid collateral as reflected on the Confirmations of Lien Perfection, true and correct copies of which are attached hereto as Exhibit B.

9. The NADA retail value of the 1997 Chevrolet Pick Up at the time of the filing of the petition was \$13,650.00 while the amount of Movant's claim was \$14,795.70. The debtor is delinquent One Thousand Six Hundred Eighty Five and 54/100 Dollars, (\$1,685.54) for the monthly installments due on April 26, 2004 through August 26, 2004.

10. The NADA retail value of the 2001 Chevrolet Tracker at the time of the filing of the petition was \$11,000.00 while the amount of Movant's claim was \$13,563.95. The debtor is delinquent One Thousand Five Hundred Eleven and 31/100 Dollars, (\$1,511.31) for the monthly installments due on April 26, 2004 through August 26, 2004.

11. Movant does not have, and has not been offered, adequate protection of its interest in the above collateral, Debtor has no equity in the collateral, and the above collateral is not necessary for an effective reorganization.

11. A separate memorandum of facts and law is submitted with the motion.

WHEREFORE, Affinity Plus by its undersigned attorney, moves the Court for an order or judgment that the automatic stay provided by 11 U.S.C. §362(a) be modified so as to permit Affinity Plus to foreclose its security interest in the above collateral, and for such other relief as may be just and equitable.

Dated: September 15, 2004

MESSERLI & KRAMER, P.A.

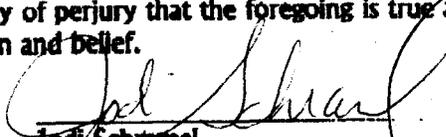
By: 

William C. Hicks, #142505
Derrick N. Weber, #241623
Atty for Affinity Plus
3033 Campus Drive
Suite 250
Plymouth, Minnesota 55441
Telephone (763) 548-7900

VERIFICATION

I, Jodi Schramel, corporate representative of the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 9/14/04



Jodi Schramel

Local Rule Reference: 9013-2

k7.5m



AFFINITY PLUS
FEDERAL CREDIT UNION

175 W. Lafayette Road, St. Paul, Minnesota 55107
(651) 291-3900

**CLOSED-END NOTE DISCLOSURE
LOAN AND SECURITY AGREEMENT**

DEBTOR
JENNIFER L JONSGAARD
RR 6, BOX 42 N WINONA, MN 55987

OTHER DEBTOR
JEFF S JONSGAARD
RR 6, BOX 42N WINONA MN 55987

DATE OF LOAN 12/26/02	LOAN MATURITY DATE 1/10/08	LOAN OFFICER
NOTE NUMBER	SOCIAL SECURITY NO. 474-86-9052	
DEBTOR'S ACCOUNT NO./LOAN NO. 963763 -L6	DEBTOR'S DATE OF BIRTH 9/8/65	
CHECK NUMBER	OTHER DEBTOR'S DATE OF BIRTH 12/12/59	

ANNUAL PERCENTAGE RATE: The cost of your credit as a yearly rate. 4.250%	FINANCE CHARGE: The dollar amount the credit will cost you. \$1,769.97	Amount Financed: The amount of credit provided to you or on your behalf. \$15,157.69	Total of Payments: The amount you will have paid after you have made all payments as scheduled. \$18,267.00
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Your payment schedule will be:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	WHEN PAYMENTS ARE DUE
59	\$304.45	2/10/03 and Monthly
1	\$304.45	on the 10th thereafter
		1/10/08

Fixed Rate Variable Rate

Variable Rate Plan: The Annual Percentage Rate (APR) for this loan will be the one year Treasury Bill rate plus 3% rounded upward to the nearest 1/8%. The minimum APR for this loan is 11.4%. Rate is adjusted quarterly. The maximum APR will be that permitted by law. Any increase or decrease in the APR will effect the number of payments made, not the amount of payments. Example: If your loan was for \$3,000 for 36 months at 12% APR and after 12 months the APR increased to 13%, you would have to make one additional payment.

Security: You are giving a security interest in: The goods or property being purchased Other, Describe: Your shares and/or deposits in the credit union
Collateral for other loans will also secure this loan.

Late Charges: If you are more than 15 days past due, you will be charged a late charge of \$15.00. **Property Insurance:** You may obtain property insurance from anyone you want that is acceptable to the credit union. **Required Deposit Balance:** The Annual Percentage Rate does not take into account your required deposit balance. **Filing Fees:** \$

Prepayment. If you pay off early, you will not have to pay a penalty. "e" means estimate. See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Itemization of Amount Financed of \$ \$15,157.69	Amount Paid to others on your behalf (Describe)
AMOUNT PAID TO YOU DIRECTLY	AMOUNT PAID ON YOUR ACCOUNT
	GAP (a portion will be retained by us) 296.00
	FILING FEES

SECURITY INFORMATION

MOTOR VEHICLES:	YEAR 2001	MAKE <u>Chevy</u>	MODEL <u>4Wdr CRUZE</u>	BODYTYPE <u>TRAIL</u>	SERIAL NUMBER 2CNBJ634118908167
SHARES PLEDGED:	ACCOUNT NUMBER	AMOUNT	OTHER COLLATERAL		

I understand that some or all of the above property is normally protected by law from the claims of creditors, and I voluntarily give up my right to that protection for the above listed property with respect to claims arising out of this contract.
I agree that the terms and conditions in the disclosure statement and the loan and security agreements located on the page 2 of this document shall apply to this loan. If there is more than one borrower, we agree that all the conditions of the loan and security agreements governing this loan shall apply to both jointly and severally. I acknowledge that I have received a copy of the loan and security agreements and disclosure statement.

Borrower's Signature <u>Jennifer L Jonsgaard</u>	Date 12-26-02	Witness <u>Judy M Nusted</u>	Date 12-26-02
<input type="checkbox"/> Co-Borrower <input type="checkbox"/> Other Owner <input type="checkbox"/> **Guarantor	Date	Witness <u>Judy M Nusted</u>	Date 12-26-02
<u>Jeff S Jonsgaard</u>	12-26-02		

*OTHER OWNER: Any person who has a properly interest (other than as a renter or lessor) in the above described collateral signs here. The other owner, unless also a co-maker, is not obligated to pay the debt, but understands that the credit union has a security interest in the collateral as explained in the Security Agreement. **GUARANTOR: Upon default, the credit union may seek immediate payment from the guarantor of any end all sums due on the loan. The guarantor waives all notice to which he or she would otherwise be entitled by law.



175 W. Lafayette Road, St. Paul, Minnesota 55107
(651) 291-3900

**CLOSED-END NOTE DISCLOSURE
LOAN AND SECURITY AGREEMENT**

DEBTOR JENNIFER L JONSGAARD RR 6, BOX 42 N WINONA, MN 55987		DATE OF LOAN 12/23/02	LOAN MATURITY DATE 1/10/08	LOAN OFFICER
OTHER DEBTOR JEFF S JONSGAARD RR 6, BOX 42N WINONA MN 55987		NOTE NUMBER	SOCIAL SECURITY NO. 474-86-9052	
		DEBTOR'S ACCOUNT NO./LOAN NO. 963763 - L6.1	DEBTOR'S DATE OF BIRTH 9/8/65	
		CHECK NUMBER	OTHER DEBTOR'S DATE OF BIRTH 12/12/59	

ANNUAL PERCENTAGE RATE: The cost of your credit as a yearly rate. 7.750%	FINANCE CHARGE: The dollar amount the credit will cost you. \$3,494.43	Amount Financed: The amount of credit provided to you or on your behalf. \$15,912.09	Total of Payments: The amount you will have paid after you have made all payments as scheduled. \$20,856.60
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Your payment schedule will be:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	WHEN PAYMENTS ARE DUE
59	\$347.81	2/10/03 and Monthly
1	\$347.61	on the 10th thereafter
		1/10/08

Fixed Rate Variable Rate

Variable Rate Plan: The Annual Percentage Rate (APR) for this loan will be the one year Treasury Bill rate plus 3% rounded upward to the nearest 1/8%. The minimum APR for this loan is 7.75%. Rate is adjusted quarterly. The maximum APR will be that permitted by law. Any increase or decrease in the APR will effect the number of payments made, not the amount of payments. Example: If your loan was for \$3,000 for 36 months at 12% APR and after 12 months the APR increased to 13%, you would have to make one additional payment.

Security: You are giving a security interest in: The goods or property being purchased Other, Describe: Your shares and/or deposits in the credit union
Collateral for other loans will also secure this loan.

Late Charges: If you are more than 15 days past due, you will be charged a late charge of \$15.00.	Property Insurance: You may obtain property insurance from anyone you want that is acceptable to the credit union.	Required Deposit Balance: The Annual Percentage Rate does not take into account your required deposit balance.	Filing Fees: \$
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Prepayment: If you pay off early, you will not have to pay a penalty. "a" means estimate. See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Itemization of Amount Financed of \$ \$15,912.09	Amount Paid to others on your behalf (Describe)
AMOUNT PAID TO YOU DIRECTLY	AMOUNT PAID ON YOUR ACCOUNT
	GAP (a portion will be retained by us)
	FILING FEES

SECURITY INFORMATION

MOTOR VEHICLES:	YEAR 1997	MAKE C3500 PICK	MODEL CHEVY	BODYTYPE	SERIAL NUMBER 1GCHK39J4VE137043
SHARES PLEDGED:	ACCOUNT NUMBER	AMOUNT	OTHER COLLATERAL		

I understand that some or all of the above property is normally protected by law from the claims of creditors, and I voluntarily give up my right to that protection for the above listed property with respect to claims arising out of this contract.

I agree that the terms and conditions in the disclosure statement and the loan and security agreements located on the page 2 of this document shall apply to this loan. If there is more than one borrower, we agree that all the conditions of the loan and security agreements governing this loan shall apply to both jointly and severally. I acknowledge that I have received a copy of the loan and security agreements and disclosure statement.

Borrower's Signature <i>Jennifer Jonsgaard</i>	Date 12-26-02	Witness <i>Jeff Jonsgaard</i>	Date 12-26-02
<input type="checkbox"/> Co-Borrower <input type="checkbox"/> Other Owner <input type="checkbox"/> **Guarantor	Date	Witness <i>Jeff Jonsgaard</i>	Date 12-26-02

*OTHER OWNER: Any person who has a property interest (other than as a renter or lessor) in the above described collateral signs here. The other owner, unless also a co-maker, is not obligated to pay the debt, but understands that the credit union has a security interest in the collateral as explained in the Security Agreement. **GUARANTOR: Upon default, the credit union may seek immediate payment from the guarantor of any and all sums due on the loan. The guarantor waives all notice to which he or she would otherwise be entitled by law.

96376326

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

JONSGAARD JEFFREY SCOTT
JONSGAARD JENNIFER LYNN
R 6 BX 42N
WINONA MN 55987

GGL667

Year 01	Make CHEV	Model 4WTKR	Title NR. C0420R831
VIN 2CNBJ634116906167	Security Date 12/26/02	Rebuilt NO	

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

AFFINITY PLUS FED CR UN
175 W LAFAYETTE RD
SAINT PAUL MN 55107-1488

96376326.1

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

JONSGAARD JEFFREY SCOTT
R 6 BX 42N
WINONA MN 55987

YAL6869

Year 97	Make CHEV	Model PCGM4	Title NR. C0420R830
VIN 1GCHK39J4VE137043	Security Date 12/26/02	Rebuilt NO	

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

AFFINITY PLUS FED CR UN
175 W LAFAYETTE RD
SAINT PAUL MN 55107-1488

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Re: Jeffrey Scott Jonsgaard
Jennifer Lynn Jonsgaard

Case No. Bky 04-35099-DDO
Chapter 7 Case

Debtor(s).

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

Affinity Plus moves the Court for an order modifying the automatic stay to permit Affinity Plus to take possession of a 1997 Chevrolet C3500 Pick Up and 2001 Chevrolet Tracker presently in Debtor's possession. Movant has a security interest in the collateral pursuant to Retail Installment Contracts dated December 23, 2002 with regard to the 1997 Chevrolet Pick Up and December 26, 2002 with regard to the 2001 Chevrolet Tracker, between Debtor and Affinity Plus. Movant's perfected security interest in the collateral is evidenced on the Confirmations of Lien Perfection for the vehicles.

The NADA retail value of the 1997 Chevrolet Pick Up at the time of the filing of the petition was \$13,650.00 while the amount of Movant's claim was \$14,795.70. The Debtor is delinquent One Thousand Six Hundred Eighty Five and 54/100 Dollars, (\$1,685.54) to the Movant.

The NADA retail value of the 2001 Chevrolet Tracker at the time of the filing of the petition was 11,000.00 while the amount of Movant's claim was \$13,563.95. The Debtor is delinquent One Thousand Five Hundred Eleven and 31/100 Dollars, (\$1,511.31) to the Movant.

Pursuant to 11 U.S.C. {362(d)(1)}, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in collateral of such creditor." Debtor has defaulted on payments due under the Retail Installment

Contracts. Debtor has failed to provide Affinity Plus with adequate protection for its interest in the collateral. This failure constitutes cause within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the stay.

In addition, pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate where debtors have no equity in the collateral and the collateral is not necessary for an effective reorganization. In this case, the balance due Affinity Plus exceeds the estimated value of the collateral, and therefore, no equity exists in the collateral. Debtors do not need this collateral for an effective reorganization.

In conclusion, Affinity Plus is entitled to an Order modifying the automatic stay and allowing it to pursue its state court remedies for cause, as defined under 11 U.S.C. §362(d), and due to the lack of equity in the collateral and the fact that the collateral is not necessary for Debtor's effective reorganization. Movant does not have adequate protection for its security interest and none has been offered.

Affinity Plus respectfully requests that the above-named Court modify the automatic stay to allow Movant to pursue its remedies pursuant to state law in regard to this collateral to protect its interest in the collateral.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), Affinity Plus requests that this Order shall be effective immediately.

Dated: September 15, 2004

MESSERLI & KRAMER, P.A.

By: 

William C. Hicks, #142505
Derrick N. Weber, #241623
3033 Campus Drive
Suite 250
Plymouth, Minnesota 55441
Telephone (763) 548-7900

04-56594-0

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Ryan Leddy, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, declares under penalty of perjury that on 9/16/04, he served by U.S. mail the following documents:

1. Notice of Hearing and Motion for Relief from Stay;
2. Memorandum in Support of Motion for Relief from Stay; and
3. proposed Order to:

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

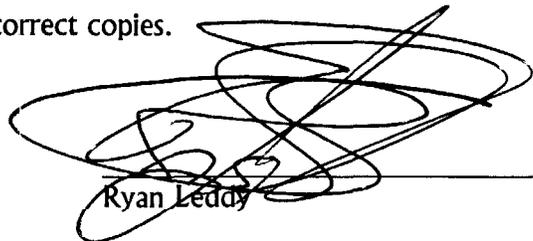
Richard H. Darby
Darby, Delano & Price
PO Box 617
Winona, MN 55987

Jennifer Lynn Jonsgaard
24185 Green Terrace Way
Winona, Minnesota 55987

Michael S. Dietz, Trustee
505 Marquette Bldg.
PO Box 549
Rochester, MN 55903

Jeffrey Scott Jonsgaard
24185 Green Terrace Way
Winona, Minnesota 55987

by depositing and mailing to them true and correct copies.


Ryan Leddy

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Jeffrey Scott Jonsgaard
Jennifer Lynn Jonsgaard

Case No. Bky 04-35099-DDO
Chapter 7 Case

Debtor(s).

ORDER

This matter is before the Court on Affinity Plus's Motion for Relief from Stay. The Motion came on for hearing on Wednesday, October 13, 2004 at 9:30 a.m., at St. Paul, MN. Appearances are as noted in the record.

Affinity Plus requested relief from the automatic stay to foreclose its security interest in a 1997 Chevrolet C3500 Pick Up, Serial #1GCHK39J4VE137043 and 2001 Chevrolet Tracker, Serial #2CNBJ634116906167. Movant holds a duly perfected security interest in the collateral. The Court being advised fully in the Premises, and upon the Affidavit and all files and records herein,

NOW ORDERS:

That the Automatic Stay provided by 11 U.S.C. §362(a) be modified so as to permit Affinity Plus to foreclose its security interest in the above collateral, in accordance with state law. Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), this Order is effective immediately.

Dated: _____

BY THE COURT:

United States Bankruptcy Judge