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In Re:  
Codi J Merchlewitz,  
AKA Codi J Carter,  
Debtor,

Case No. 04-35115

Chapter 7 Case

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY**

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

1. Wells Fargo Bank, N.A. moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on October 13, 2004 at 9:30 AM o'clock, in Courtroom No. 228A, at the United States Courthouse, 316 North Robert Street, St. Paul, MN.
3. Any response to this motion must be filed and delivered not later than 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 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 case was filed on August 31, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay in §362(a) to foreclose its lien against the 2001 Dodge Stratus Cpe 2D SE vehicle (the collateral), and requests the court permit Movant to immediately enforce the order requested, lifting the 10 day stay imposed by Rule 4001(a)(3).

6. Movant requests relief from the stay for cause under §362(d)(1). Debtor is delinquent under the terms of the original contract with Movant. Movant requests relief under §362(d)(2). The Debtor has no equity in the collateral, and the collateral is not necessary to an effective reorganization.
7. Movant gives notice that it may, if necessary, call the person who signed the verification to this motion, or some other representative of Movant, from Movant's offices in Minnesota, to testify regarding the debt and value.
8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the property promptly upon the Court signing the Order.
9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

**WHEREFORE**, Wells Fargo Bank, N.A. moves the Court for an order modifying the automatic stay of §362(a) and such other relief as may be just and equitable.

Dated: September 16, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

SEP-08-2004 11:26

WELLS FARGO

0 0

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480 350 2550

P.04/08

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

HERCHLEWITZ CODI JILL  
531 WESTVIEW DRIVE #303  
HASTINGS MN 55033

NNL739

1ST SECURED PARTY

LIEN HOLDER

01 Year	DODG Make	2PSSE Model	J2220S239 Title NR.
4B3A642G11ED32493 VIN	05/11/04 Security Date	NO Rebuilt	

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

WELLS FARGO BANK NA  
PO BOX 53439  
PHOENIX AZ 85072-3439

EXHIBIT A

502 371 0083718 9001

<b>MAY 18 2004</b> <b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b>		<b>Seller</b> HASTINGS CHRYSLER CENTER, INC. 2380 HIGHWAY 51 SOUTH HASTINGS, MN 55033 <small>"We" and "us" mean the Seller above, its successors and assigns.</small>	<b>Buyer</b> JOY MERCHLEWITZ 531 WESTVIEW DRIVE #303 HASTINGS, MN 55033 <small>"You" and "your" mean each Buyer above, and guarantor, jointly and individually.</small>
No.	Date <b>05/11/2004</b>		

**SALE:** You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Year	2001	VIN	483A642G11E032493	Other:
Motor Vehicle Make	DODGE	Lic. No./Year		
Purchased Model	STRATUS	<input type="checkbox"/> New <input checked="" type="checkbox"/> Used		4910910

Description of Trade-In	00 DODGE STRATUS	1B3EJ46X7YR146801
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**SECURITY:** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with the Contract.

**PROMISE TO PAY AND PAYMENT TERMS:** You promise to pay us the principal amount of \$ 16925.43, plus finance charges accruing on the unpaid balance at the rate of 12.9000 % per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

**LOAN ADMINISTRATION FEE:** You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be  paid in cash,  paid pro rata over the contract term.  Withheld from the payments (if this fee is withheld from the proceeds, the amount is included in the principal sum).

**DOWN PAYMENT:** You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED.  You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

**TRUTH IN LENDING DISCLOSURES**

<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate.	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you.	<b>AMOUNT FINANCED</b> The amount of credit provided to you or on your behalf.	<b>TOTAL OF PAYMENTS</b> The amount you will have paid when you have made all scheduled payments.	<b>TOTAL SALE PRICE</b> The total cost of your purchase on credit, including your down payment of
12.90 %	\$ 7473.21	\$ 16925.43	\$ 24398.64	\$ 0.00
Payment Schedule: Your payment schedule will be				\$ 24398.64

Number of Payments	Amount of Payments	When Payments Are Due
72	338.87	MONTHLY BEGINNING 06/10/2004

**Security:** You are giving a security interest in the Motor Vehicle purchased.

**Late Charge:** If a payment is more than 10 days late, you will be charged 5% OF THE UNPAID AMOUNT OF THE DELINQUENT INSTALLMENT OR \$5.00, WHICHEVER IS GREATER. This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.58.

**Prepayment:** If you pay off this Contract early, you will not have to pay a penalty.

If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

**Contract Provisions:** You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

**ITEMIZATION OF AMOUNT FINANCED**

Vehicle Price (incl. sales tax of \$ 519.68)	\$ 10514.68
Service Contract, Paid to: <u>21ST CENTURY</u>	\$ 1750.00
Cash Price	\$ 12264.68
Manufacturer's Rebate	\$ N/A
Cash Down Payment	\$ N/A
Deferred Down Payment	\$ N/A
a. Total Cash/Rebate Down	\$ N/A
b. Trade-in Allowance	\$ 2000.00
c. Less: Amount owing	\$ 5390.00
Paid to: <u>TRANE FEDERAL CU</u>	
d. Net Trade-in (b. minus c.)	\$ -3390.00
e. Net Cash/Trade-in (a. plus d.)	\$ -3390.00
Down Payment (a., d. minus e. if negative)	\$ 0.00
Unpaid Balance of Cash Price	\$ 12264.68
Paid to Public Officials - Filing Fee	\$ 125.75
Insurance Premiums*	\$ N/A
Amount to Finance less e. (If e. is negative)	\$ 3390.00
To: <u>HASTINGS CHRYSLER CENTER, INC.</u>	\$ 50.00
To:	\$
To:	\$
To: <u>AMERICAN HERITAGE*</u>	\$ 195.00
Total Other Charges/Amounts Pd. to Others	\$ 440.75
Less: Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 16925.43

\*We may retain or receive a portion of this amount.

**NOTICE TO BUYER**

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) **IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.**

**BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.**

**Credit Life:** Insured N/A

Single  Joint Prem. \$ N/A Term N/A

**Credit Disability:** Insured N/A

Single  Joint Prem. \$ N/A Term N/A

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

**PROPERTY INSURANCE:** You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A. If you get insurance from or through us you will pay \$ N/A of coverage.

This premium is calculated as follows:

\$ N/A Deductible, Collision Coverage \$ N/A

\$ N/A Deductible, Comprehensive Cov. \$ N/A

Fire-Theft and Combined Additional Coverage \$ N/A

\$ N/A

**Liability Insurance** coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

**MOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover ULTIMATE.

This Service Contract will be in effect for 36 months or 36000 miles.

**ASSIGNMENT:** This Contract and Security Agreement is assigned to METLS PARKS BANK, N.A.

The Assignee, phone \_\_\_\_\_ This assignment is made  under the terms of a separate agreement  under the terms of the ASSIGNMENT BY SELLER on page 2 of this assignment is made with recourse. HASTINGS CHRYSLER CENTER

Seller: By \_\_\_\_\_ Date 05/11/2004

Buyer: Joy Merchlewitz 05/11/2004

Signature \_\_\_\_\_ Date \_\_\_\_\_

Seller: By \_\_\_\_\_ Date \_\_\_\_\_

EXHIBIT B

ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services if you buy them over time. You agreed to purchase the Vehicle over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURE assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge, collect, and you do not agree to pay, any finance charge or fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, you have a right to a refund of the excess charge. If you agree, or if you do not make a timely request for a refund, we will apply the refund amount first to reduce the principal balance, and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

This Contract is governed by the laws of Minnesota and the United States of America.

NAME AND LOCATION: Your name and address indicated on page 1 are your exact legal name and your principal residence. You will provide us with at least 30 days notice prior to changing your name or principal residence.

PREPAYMENT: You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance, but no refund will be paid if the amount of the refund would be less than \$5.00.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving us a security interest in the Property, you represent and agree to the following:

- A. Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or attached to the Vehicle.
B. You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
C. The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
D. You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of the Contract.
E. You will not attempt to sell the Property (unless it is property identified inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
F. You will pay all taxes and assessments on the Property as they become due.
G. You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

DEFAULT: You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- A. You fail to perform any obligation that you have undertaken in this Contract.
B. We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.
If you default, you agree to pay our costs for collecting amounts owing, including court costs, attorneys' fees, and fees for repossession, repair, storage and sale of the Property securing this Contract. If this Contract is subject to Minn. Stat. § 168.71, the amount of our attorneys' fees you must pay will not exceed 10% of the amount due and payable under this Contract.

If an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

- A. We may require you to immediately pay us, less any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
B. We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
C. We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
D. We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then forward what you owe us.

E. Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not give up our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

RETURNED CHECK CHARGE: You agree to pay a service charge for each returned check or returned automatic payment request. The amount of the service charge will be \$30.00.

INSURANCE: You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee on any such policy. (Generally, loss payee is the one to be paid the policy benefits in case of loss or damage to the property.) In the event of loss or damage to the Property, we may require additional security or assurance of payment before we allow insurance proceeds to be used to repair or replace the Property. If the insurance proceeds do not cover the amounts you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until the Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. We will notify you if we do so. This insurance may include coverages not required of you. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full. However, if this Contract is assigned, and § 47.5B, the amount will earn finance charges from the date paid at 8% per year.

OBLIGATIONS INDEPENDENT: Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- A. You must pay this Contract even if someone else has also signed it.
B. We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
C. We may release any security and you will still be obligated to pay this Contract.
D. If we give up any of our rights, it will not affect your duty to pay this Contract.
E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WAIVER: To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; (3) give notice that we intend to make, or are making, this Contract immediately due; or, (4) obtain official certification of nonpayments.

THIRD PARTY AGREEMENT
By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.
You acknowledge receipt of a completed copy of this Contract.
Signature \_\_\_\_\_ Date \_\_\_\_\_

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. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HERETOFORE.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

ASSIGNMENT BY SELLER

Seller sells and assigns this Retail Installment Contract and Security Agreement (Contract), to the Assignee, its successors and assigns, (including all its rights, title and interest in this Contract, and any Guarantees executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE AGREEMENT: If this Assignment is made "under the terms of a separate agreement" as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.)

- Seller warrants:
A. This Contract represents a sale by Seller to Buyer on a time price basis and not on a cash basis.
B. The statements contained in this Contract are true and correct.
C. The down payment made by the Buyer in the time or dated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.
D. This sale was completed in accordance with all applicable federal and state laws and regulations.
E. This Contract is valid and enforceable in accordance with its terms.
F. The names and signatures on this Contract are not forged, fictitious or assumed, and are true and correct.
G. This Contract is assigned in the Seller free of all liens, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
H. A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.
I. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
J. Seller has or will perfect a security interest in the Property in favor of the Assignee.
If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including interest charges) plus the costs and expenses of Assignee, including attorney's fees.

Seller will indemnify Assignee for any loss sustained by it because of judicial set-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

Seller waives notice of the acceptance of this Assignment, notice of non-payment or non-performance and notice of any other remedies available to Assignee.

Assignee may, without notice to Seller, and without affecting the liability of Seller under this Assignment, compound or release any rights against, and grant extensions of time for payment to be made, to Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE.

WITH RECOURSE: If this Assignment is made "with recourse" as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

**Vehicle Retail Value Summary**  
**N.A.D.A Official Used Car Guide**  
**Thursday, September 09, 2004**

**Guide Edition:** Desert Southwest Used Car Guide - September 2004

**Vehicle Description:** 2001 DODGE  
 STRATUS-4 CYL. CPE 2D SE

**VIN:** 4B3AG42G11E032493      **Weight:** 3012  
**Stock #:**                                      **MSRP:** \$17,810

<b>N.A.D.A. Base Retail Value</b>	<b>\$8,550</b>
Mileage Value (N/A Miles):	N/A
Accessories Value:	\$0
 <b>N.A.D.A Adjusted Retail Value</b>	 <b>\$8,550</b>
Appraiser Adjustment Value	\$0
<b>Adjusted Vehicle Value</b>	<b>\$8,550</b>

**Accessories:**

## EXHIBIT C

**Appraiser Adjustments:**

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 any revisions or additions made by anyone on this report.  
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04-03797-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

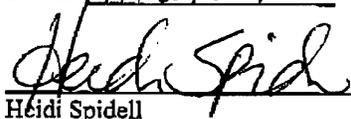
In Re:  
Codi J Merchlewitz AKA Codi J Carter,  
Debtor,

Case No. 04-35115  
Chapter 7 Case

**VERIFICATION FOR MOTION FOR RELIEF FROM STAY**

I, Heidi Spidell, a Collection Officer of Wells Fargo Bank, N.A., the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account no. 502-371-0083718-9001.
2. The Debtor owes the Creditor \$17,686.72, payoff amount as of September 14, 2004, plus accrued unpaid interest thereon since that date. The monthly loan payment is \$338.87. As of September 14, 2004, the loan payments are in arrears \$1,065.17 for payments owing since July 10, 2004.
3. The debt owed to the Creditor is secured by a perfected lien on a 2001 Dodge Stratus Cpe 2D SE vehicle. The current NADA published retail value of the collateral is \$16,500.00.
4. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the loan documents are attached as Exhibit "B".

Dated: 9/16/04

Heidi Spidell  
Wells Fargo Bank, N.A.  
Loss Recovery Center  
PO Box 7648, MAC# U1851-023  
Boise, ID 83707

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Codi J Merchlewitz,  
AKA Codi J Carter,  
Debtor,

Case No. 04-35115

Chapter 7 Case

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**MEMORANDUM OF FACT AND LAW**

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Wells Fargo Bank, N.A. ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

**FACTS**

Movant is the holder of a secured claim, and is thus a party in interest. Movant has a valid and perfected security interest in the collateral. The collateral is in Debtor's possession or control.

The total net balance due on the Contract is \$17,686.72 as of September 14, 2004. On information and belief, the collateral has an NADA retail value of \$16,500.00. NADA pages showing this collateral value are attached as Exhibit "C".

Movant's collateral is subject to depreciation in that the collateral is being used, subjecting the same to wear and tear, while Debtor is failing to make payments.

**ARGUMENT**

Pursuant to 11 U.S.C. §362(d)(1), a creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such creditor." In this case, there is a lack of adequate protection as follows:

- Failure to make the payments required by the Contract since July 10, 2004.
- Failure to make payments due post petition under the Contract.
- Failure to redeem, reaffirm or surrender the collateral.
- Failure to maintain physical damage insurance on the collateral.

Movant has not been provided with adequate protection of Movant's interest in the collateral.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay.

See, United States Association of Texas v. Timbers of Inwood Association, Ltd. (In re Timbers of Inwood Association, Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991). Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor to prove adequate protection and/or absence of cause.

Pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate if the Debtor has no equity in the property and the property is not necessary to an effective reorganization. See, In re Gellert, 55 B.R. 970 (Bkrcty. D.N.H. 1983). In the present case, the balance due Movant on the Contract is \$17,686.72. It appears Debtor has no equity in the collateral. No evidentiary hearing is required on the issue of equity unless Debtors dispute it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997). There is no reorganization proposed by the Debtor in this Chapter 7 case. Pursuant to 11 U.S.C. §362(g), the burden is on Debtor to establish that collateral is necessary for reorganization.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief. Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: September 16, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Codi J Merchlewitz,  
AKA Codi J Carter,  
Debtor,

Case No. 04-35115

Chapter 7 Case

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**UNSWORN CERTIFICATE OF SERVICE**

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I, Linda Jeanne Jungers, declare under penalty of perjury that on September 16, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Codi J Merchlewitz  
8520 D Street  
Winona, MN 55987

Richard H Darby  
PO Box 617  
Winona, MN 55987

Michael S. Dietz  
Chapter 7 Trustee  
505 Marquette Bldg  
PO Box 549  
Rochester, MN 55903

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

Executed on: September 16, 2004

Signed: /e/Linda Jeanne Jungers  
Linda Jeanne Jungers  
STEWART, ZLIMEN & JUNGERS  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

04-03797-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Codi J Merchlewitz,  
AKA Codi J Carter,  
Debtor,

Case No. 04-35115

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**ORDER FOR RELIEF FROM THE STAY**

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Wells Fargo Bank, N.A.'s Motion for an order granting relief from the stay came before the Court on October 13, 2004 at 9:30 AM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit Wells Fargo Bank, N.A. to repossess and sell the  
2001 Dodge Stratus Cpe 2D SE vehicle, VIN 4B3AG42G11ED32493  
in accordance with applicable state law.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge