

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

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**In re:**

**DENNIS J. & LISA A. HEROLD,**

**Debtors**

**Bankruptcy No. 04-35131  
Chapter 7**

**NOTICE OF MOTION AND MOTION  
OBJECTING TO CLAIMED  
EXEMPTION**

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TO: The Debtors and other entities specified in Local Rule 9013-3.

1. Michael S. Dietz, Trustee of the above bankruptcy estate moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this Motion on November 4, 2004, at 10:00 a.m., in Courtroom 228B, United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this Motion must be filed and delivered not later than 10:00 a.m. on October 28, 2004, which is seven days before the hearing, or filed and served by mail not later than October 25, 2004, which is ten days before the time set for the hearing. **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, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this Chapter 7 case was filed on September 2, 2004. The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 522, Bankruptcy Rule 4003 and Local Rule 4003-1(a). This Motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, and 9013-5.

6. The Debtors have scheduled a retirement annuity with Principal Financial Group belonging to Debtor Lisa Herold valued at \$49,452.46 and two vehicles: 1990 Chevy Cavalier valued at \$1,200 and 1998 Ford Windstar Van valued at \$3,800. The retirement annuity was claimed exempt on Schedule C under 11 U.S.C. §522(d)(10)(a). The vehicles were claimed exempt on Schedule C under 11 U.S.C. §522(d)(2) and (d)(5). Attached as Exhibit "A" is a true and correct copy of Schedule C filed in this case. Attached as Exhibit "B" is a true and correct copy of the title to the 1990 Chevy Cavalier which is believed to be in Debtor's maiden name, Lisa Schoonover. Attached as Exhibit "C" is a true and correct copy of the title to the 1998 Ford Windstar Van.

7. Movant objects to the above noted exemptions claimed in that schedule for the following reasons: The retirement annuity was claimed exempt under 11 U.S.C. §522(d)(10)(a) which is an inapplicable exemption because it is for exempting Social Security benefits, Unemployment Compensation benefits and local public assistance. Also, based on the statement provided by the debtors the ending accumulated value is actually \$53,016.76 which differs from the scheduled value by \$3,564.30. The vehicles are both titled in Lisa's name but are scheduled as joint on Schedule "B", therefore, they may not be claimed as exempt under both debtor's (d)(2). Attached as Exhibit "B" is a true and correct copy of Schedule B filed in this case.

**WHEREFORE**, the Trustee moves the Court for an Order denying the claimed

exemption of the retirement annuity with Principal Financial Group (contract # 0305977), 1990  
Chevy Cavalier (VIN#1G1JC14G2LJ299006), 1998 Ford Windstar Van  
(VIN#2FMDA5145WBA25122).

Dated: October 6, 2004

/e/ Michael S. Dietz

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Michael S. Dietz  
Registration No. 188517  
DUNLAP & SEEGER, P.A.  
Attorneys for Trustee  
206 S. Broadway, Suite 505  
Post Office Box 549  
Rochester, Minnesota 55903  
Telephone: (507) 288-9111

**VERIFICATION**

I, Michael S. Dietz, Trustee, 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: October 6, 2004

/e/ Michael S. Dietz

Michael S. Dietz, Trustee  
206 S. Broadway, Suite 505  
Post Office Box 549  
Rochester, Minnesota 55903  
Telephone: (507) 288-9111

## EXHIBIT “A”

In re Dennis J. Herold Lisa A. Herold, Case No. \_\_\_\_\_  
 Debtor. (If known)

## SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under:

(Check one box)

- 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
1990 Chevy Cavalier-VIN No.: 1G1JC14GL29906; license plate no. GIP804	11 USC § 522(d)(2)	1,200.00	1,200.00
1998 Ford Winstar Van-VIN No.: MDA514WBA25122; Plate no.: MFD773	11 USC § 522(d)(2)	2,775.00	3,800.00
	11 USC § 522(d)(5)	1,025.00	
Clothes	11 USC § 522(d)(3)	750.00	750.00
First Farmers & Merchants Acct No.: 9851477293	11 USC § 522(d)(5)	100.00	100.00
Jewelry	11 USC § 522(d)(4)	200.00	200.00
Lewis Park, Lot 12, Block 3, Mower County, Minnesota	11 USC § 522(d)(1)	24,165.16	70,000.00
Misc. Household Goods	11 USC § 522(d)(3)	5,000.00	5,000.00
Principal Life Ins. Co.: 0305977	11 USC § 522(d)(8)	7,090.00	7,090.00
Retirement Annuity, Principal Financial Group	11 USC § 522(d)(10)(A)	49,452.46	49,452.46
State Farm Life Ins. Co.: LF-1131-3941	11 USC § 522(d)(11)(C)	0.00	0.00

## EXHIBIT “B”

mileage  
114,237

RECORDED OWNER(S) RECORD OF SALE  
PLATE NUMBER **318 KNT**  
TITLE NUMBER **A2630F291**  
VIN **1G1JC14G2LJ299006**  
EXCISE TAX PAID  
TOTAL FEES PAID

BUYER'S SIGNATURE(S) \_\_\_\_\_ SALE DATE \_\_\_\_\_  
STREET ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

**STATE OF MINNESOTA**  
**CERTIFICATE OF TITLE**  
TO A MOTOR VEHICLE  
THIS TITLE IS PRIMA FACIE PROOF OF OWNERSHIP  
KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

DO NOT SEPARATE UNTIL SOLD

VEHICLE IDENTIFICATION NUMBER <b>1G1JC14G2LJ299006</b>	ODOMETER <b>46500</b>	MAKE <b>CHEV</b>	YEAR <b>90</b>	TYPE <b>CP CVL</b>
TITLE NUMBER <b>A2630F291</b>	DATE ISSUED <b>09/20/94</b>	NEW OR USED	IF NEW, DATE OF FIRST SALE	FOR CENTRAL OFFICE USE ONLY

**NO SECURITY INTERESTS**

**OWNER** **DOB 02164**

**SCHOONOVER LISA ANN**  
**1716 3RD AVE NE**  
**AUSTIN MN 55912-4515**

**08 9045 318 KNT** **2**

**ASSIGNMENT BY SELLER (TRANSFEROR)**

FEDERAL AND MINNESOTA LAW REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. MINNESOTA LAW REQUIRES THAT YOU MAKE DISCLOSURES ABOUT POLLUTION CONTROL EQUIPMENT AND DAMAGE TO THE VEHICLE. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT. SOME EXEMPTIONS MAY APPLY.

ODOMETER DISCLOSURE STATEMENT. I (WE) STATE THAT THE ODOMETER NOW READS \_\_\_\_\_ (NO TENTHS) MILES AND TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED HEREIN UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED

(1) I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS

(2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

DAMAGE DISCLOSURE STATEMENT. TO THE BEST OF MY KNOWLEDGE THIS VEHICLE  HAS  HAS NOT (CHECK ONE) SUSTAINED DAMAGE IN EXCESS OF 70% ACTUAL CASH VALUE

POLLUTION SYSTEM DISCLOSURE STATEMENT. TO THE BEST OF MY KNOWLEDGE THE POLLUTION CONTROL SYSTEM ON THIS VEHICLE INCLUDING THE RESTRICTED GASOLINE PIPE  HAS  HAS NOT (CHECK ONE) BEEN REMOVED, ALTERED OR RENDERED INOPERATIVE.

WARNING-ODOMETER DISCREPANCY IF BOX (1) OR (2) IS CHECKED. ASSIGNMENT. I (WE) CERTIFY THAT THIS VEHICLE IS FREE FROM ALL SECURITY INTERESTS. WARRANT TITLE AND ASSIGN THE VEHICLE AND REGISTRATION PAID TO.

SELLER'S PRINTED NAME \_\_\_\_\_ DATE \_\_\_\_\_ BUYER'S PRINTED NAME \_\_\_\_\_

SELLER'S STREET ADDRESS \_\_\_\_\_ BUYER'S ADDRESS \_\_\_\_\_

SELLER'S SIGNATURE \_\_\_\_\_ BUYER'S SIGNATURE \_\_\_\_\_

**COMPLETE REVERSE SIDE** **APPLICATION FOR TITLE BY BUYER (TRANSFeree)**

PRINT BUYER'S FULL NAME(S) LAST, FIRST, AND MIDDLE \_\_\_\_\_ DATE(S) OF BIRTH \_\_\_\_\_

STREET ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ COUNTY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

IS THIS VEHICLE SUBJECT TO SECURITY AGREEMENT(S)?  NO  YES  ADDITIONAL  IF YES, COMPLETE SECTION BELOW

FIRST SECURED PARTY (PRINT NAME) \_\_\_\_\_ DATE OF SECURITY AGREEMENT \_\_\_\_\_

STREET ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

# EXHIBIT “C”

mileage  
94335

RECORDED OWNER(S) RECORD OF SALE  
 PLATE NUMBER 351 PKS  
 TITLE NUMBER A1040J337  
 V.I.N. 2FMDA5145WBA25122  
 EXCISE TAX PAID  
 TOTAL FEES PAID  
 BUYER'S SIGNATURE(S) \_\_\_\_\_ SALE DATE \_\_\_\_\_  
 STREET ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

DETACH THIS PORTION DO NOT SEPARATE UNTIL SOLD  
**STATE OF MINNESOTA**  
**CERTIFICATE OF TITLE**  
 TO A MOTOR VEHICLE  
 THIS TITLE IS PRIMA FACIE PROOF OF OWNERSHIP  
 KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

2FMDA5145WBA25122 VEHICLE IDENTIFICATION NUMBER	N/REQD ODOMETER	FORD MAKE	98 YEAR	ES WIN TYPE	
A1040J337 TITLE NUMBER	04/15/97 DATE ISSUED	NEW NEW OR USED	04/03/97 IF NEW, DATE OF FIRST SALE		
FIRST SECURED PARTY 04/03/97				OWNER	FOR CENTRAL OFFICE USE ONLY DOB 02164
NORWEST BANK MN SC NA 501 MAIN ST N AUSTIN MN 55912		HEROLD LISA ANN 1716 3RD AVE NE AUSTIN		MN 55912-4515	

ADDITIONAL LIENS 0 03 21235 351 PKS Z

**ASSIGNMENT BY SELLER (TRANSFEROR)**  
 FEDERAL AND MINNESOTA LAW REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. MINNESOTA LAW REQUIRES THAT YOU MAKE DISCLOSURES ABOUT POLLUTION CONTROL EQUIPMENT AND DAMAGE TO THE VEHICLE. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT. SOME EXEMPTIONS MAY APPLY.

ODOMETER DISCLOSURE STATEMENT, I (WE) STATE THAT THE ODOMETER NOW READS \_\_\_\_\_ (NO TENTHS) MILES AND TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED HEREIN UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.

(1) I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.

(2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

DAMAGE DISCLOSURE STATEMENT, TO THE BEST OF MY KNOWLEDGE THIS VEHICLE  HAS  HAS NOT (CHECK ONE) SUSTAINED DAMAGE IN EXCESS OF 70% ACTUAL CASH VALUE.

POLLUTION SYSTEM DISCLOSURE STATEMENT, TO THE BEST OF MY KNOWLEDGE THE POLLUTION CONTROL SYSTEM ON THIS VEHICLE INCLUDING THE RESTRICTED GASOLINE PIPE  HAS  HAS NOT (CHECK ONE) BEEN REMOVED, ALTERED OR RENDERED INOPERATIVE.

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SELLER'S PRINTED NAME _____	DATE _____	BUYER'S PRINTED NAME _____
SELLER'S STREET ADDRESS _____		BUYER'S ADDRESS _____
SELLER'S SIGNATURE _____		BUYER'S SIGNATURE _____

**COMPLETE REVERSE SIDE APPLICATION FOR TITLE BY BUYER (TRANSFeree)**  
 PRINT BUYER'S FULL NAME(S) LAST, FIRST, AND MIDDLE \_\_\_\_\_

STREET ADDRESS _____	CITY _____	COUNTY _____	STATE _____	ZIP CODE _____	DATE(S) OF BIRTH _____
IS THIS VEHICLE SUBJECT TO SECURITY AGREEMENT(S)?		NO <input type="checkbox"/>	YES <input type="checkbox"/>	ADDITIONAL <input type="checkbox"/>	IF YES, COMPLETE SECTION BELOW
FIRST SECURED PARTY (PRINT NAME) _____		DATE OF SECURITY AGREEMENT _____			
STREET ADDRESS _____	CITY _____	STATE _____	ZIP CODE _____		
IF THERE IS AN ADDITIONAL SECURITY AGREEMENT(S) COMPLETE AND ATTACH DPS2017.	NAME OF INSURANCE COMPANY _____	POLICY NUMBER _____			

I (we), certify I (we) am (are) of legal age, have bought this vehicle subject to liens shown and no other...

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Bankruptcy Case No. 04-35131

DENNIS J. & LISA A. HEROLD,

Debtors.

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**UNSWORN CERTIFICATE OF SERVICE**

I, Emily D. Stenhoff, declare under penalty of perjury that on October 6, 2004, I mailed copies of the following:

Trustee's Notice of Motion and Motion Objecting to Exempt Property

by US Mail, postage pre-paid, to each entity named below at the address stated below:

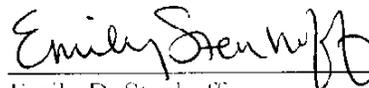
OFFICE OF THE US TRUSTEE  
1015 UNITED STATES COURTHOUSE  
300 SOUTH FOURTH STREET  
MINNEAPOLIS MN 55415

M THOMAS LENWAY  
WARREN F PLUNKETT & ASSOCIATES  
PO BOX 463  
AUSTIN MN 55912

DENNIS J. & LISA A. HEROLD  
1716 3<sup>RD</sup> AVE NE  
AUSTIN MN 55912

Executed on October 6, 2004

Signed: \_\_\_\_\_



Emily D. Stenhoff  
DUNLAP & SEEGER, P.A.  
P O BOX 549  
ROCHESTER MN 55903-0549  
(507) 288-9111

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

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In re:

**DENNIS J. & LISA A. HEROLD,**

Bky Case No. **04- 35131**  
Chapter 7

**Debtors**

**ORDER SUSTAINING TRUSTEE'S  
OBJECTION TO DEBTORS' CLAIM  
OF EXEMPTION**

AT ST. PAUL, MINNESOTA,

This Chapter 7 case came on before the Court on November 4, 2004, for a hearing on the Trustee's objection to the Debtor's claimed exemption of the following property:

Retirement annuity with Principal Financial Group (contract # 0305977), 1990 Chevy Cavalier (VIN#1G1JC14G2LJ299006), 1998 Ford Windstar Van (VIN#2FMDA5145WBA25122).

Appearances, if any, were noted on the record. Upon the documents on file herein and the arguments of counsel:

**IT IS HEREBY ORDERED AND DETERMINED:**

1. The Trustee's objection is sustained.
2. The Debtor's interest in the retirement annuity with Principal Financial Group (contract # 0305977), 1990 Chevy Cavalier (VIN#1G1JC14G2LJ299006), 1998 Ford Windstar Van (VIN#2FMDA5145WBA25122) are not exempt and are property of the bankruptcy estate to be administered by the Trustee in due course.

Dated: November \_\_, 2004

BY THE COURT:

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Dennis D. O'Brien  
United States Bankruptcy Judge