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2 **NOT FOR PUBLICATION**
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6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 In re Case No. 11-19985-A-7
9 DANIEL LOPEZ DC No. BMO-1

10 Debtor.
11 _____/

12 FINDINGS OF FACT AND CONCLUSIONS OF LAW
13 REGARDING MOTION FOR RELIEF FROM THE
14 AUTOMATIC STAY FILED BY KERN FEDERAL CREDIT UNION

15 A final hearing on the motion for relief from the automatic
16 stay by Kern Federal Credit Union ("Kern") with respect to a 2004
17 Infinity vehicle was held November 29, 2011. Following argument,
18 the court took the matter under submission. This memorandum
19 contains findings of fact and conclusions of law required by
20 Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of
21 Civil Procedure 52. This is a core proceeding as defined in 28
22 U.S.C. §157(b) (2) (G) .

23 Daniel Lopez filed his chapter 7 petition on September 2,
24 2011. The meeting of creditors in the case was scheduled for
25 October 31, 2011. It was continued to November 28, 2011. The
26 debtor failed to appear at the meeting on November 28, 2011, and
27 the chapter 7 trustee has now moved to dismiss the case.

28 Under Bankruptcy Code § 521(a) (6), the automatic stay is
lifted if the debtor does not reaffirm within 45 days after the

1 first meeting of creditors is concluded. Because the first
2 meeting has not been concluded, the stay still is in place.

3 The motion asserts that on or about October 24, 2006, Lopez
4 and his non-filing wife purchased a 2004 Infinity vehicle
5 pursuant to an Open-End Disbursement Receipt Plus (the
6 "Agreement") and that the vehicle purchase was financed by Kern.
7 A copy of the Agreement is attached to the motion. The motion
8 further asserts that the amount financed was \$40,080.86 with
9 interest at the rate of 10.25%. The loan was secured by the
10 purchased vehicle. Further, the motion contends that as of
11 October 5, 2011, the amount of \$31,360.59 was due and owing. The
12 last payment received by Kern was in March 2009. Debtor has not
13 filed a Statement of Intention. The motion further asserts that
14 the debtor does not have insurance on the vehicle. He has valued
15 the car at \$22,000 on Schedule "A."

16 At the initial hearing on the motion on October 26, 2011,
17 the debtor appeared and indicated that he opposed the motion.
18 Therefore, the matter was continued for final hearing on November
19 29, 2011. On November 15, 2011, the debtor filed opposition to
20 the motion. According to the opposition, Kern did not lend
21 \$40,080.86 to the debtor and his wife. The opposition further
22 asserts that the Agreement appears to be a forgery; that a
23 digital copy of the debtor's signature does not meet the best
24 evidence rule; and that Kern must provide the original documents.
25 It also asserts that Kern is not "the true holder of any
26 enforceable instrument pertaining to Daniels [sic] vehicle and
27 Daniel was concerned that multiple agencies could have the same
28 claim as KFCU is making with a mere copy of an alleged agreement

1 that has no original signatures.”

2 Lopez further asserts that Kern has been paid in full and
3 has “illegally collected insurance proceeds on this alleged
4 account.” He says that Kern is not the real party in interest.

5 On November 18, 2011, Kern filed a reply to this opposition.
6 Kern asserts correctly that it is the real party in interest.
7 Federal Rule of Civil Procedure 17(a) requires that any action be
8 prosecuted in the name of the real party in interest. In this
9 case, Kern is the holder of an agreement for the payment of a
10 loan by the debtor. The authenticity of the Agreement is
11 supported by the declaration and the amended declaration of
12 Surama Layman. There has never been a transfer to anyone other
13 than Kern. Kern is the original lender and is the holder of the
14 instrument. Kern is the real party in interest.

15 Kern also points out that even if it does not possess the
16 original document, it would still be entitled to enforce the
17 instrument under California Commercial Code § 3309.

18 Surama Layman states, in her amended declaration, that she
19 discovered the original declaration was in error because her
20 office does not hold the original Agreement. She further states
21 that her office record keeping is a “paperless” system. The
22 original documents are scanned into a computer and then
23 discarded. Kern does not retain the original documents, but the
24 paperless system allows Kern to print an accurate copy of the
25 original scanned document. It is this accurate copy of the
26 original scanned document that is attached to the motion.

27 Kern correctly points out in its reply that the original is
28 not required because there is no genuine issue of authenticity.

1 Federal Rules of Evidence Rule 1003 states:

2 "A duplicate is admissible to the same extent as an original
3 unless (1) a genuine issue is raised as to the authenticity
4 of the original or (2) in the circumstances it would be
5 unfair to admit the duplicate in lieu of the original."

6 In this case, the debtor has not raised a genuine question
7 as to the authenticity of the document. Instead, he has asserted
8 without any foundation that the agreement appears to be a
9 "forgery." Yet, until 2009, Lopez made payments to Kern. Lopez
10 has the car. Further, Lopez's opposition to the motion is not
11 supported by any evidence.

12 Bankruptcy Code § 362(g) provides that the party requesting
13 relief from stay has the burden of proof on the issue of the
14 debtor's equity in the property, and the party opposing the
15 motion for relief from stay has the burden of proof on all other
16 issues. Here, there is no argument about the equity in the
17 vehicle. Lopez has failed to meet his burden of proof with
18 respect to the other issues raised by the motion. In fact, Lopez
19 has come forward with no evidence in support of his position.
20 For the foregoing reasons, the motion for relief from stay will
21 be granted by separate order, and the stay provided by Federal
22 Rule of Bankruptcy Procedure 4001(a)(3) is waived.

23 DATED: 1-5-12

24 /S/

25 WHITNEY RIMEL, Judge
26 United States Bankruptcy Court
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