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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 SACRAMENTO DIVISION
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11 In re)
12) Case No. 06-21610-A-7
13 STEVEN and DEBORAH MALONE,)
14) Docket Control No. EBN-1
15 Debtors.)
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21)

22 On August 14, 2006 at 9:00 a.m., the court considered the
23 motion of Travis Credit Union requesting relief from the
24 automatic stay. The court's ruling on the motion is appended to
25 the minutes of the hearing. Because that ruling constitutes a
26 "reasoned explanation" of the court's decision, it is also posted
27 on the court's Internet site, www.caeb.uscourts.gov, in a text-
28 searchable format as required by the E-Government Act of 2002.
The official record, however, remains the ruling appended to the
minutes of the hearing.

21 **FINAL RULING**

22 This motion for relief from the automatic stay has been set
23 for hearing on the notice required by Local Bankruptcy Rule 9014-
24 1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to
25 file written opposition at least 14 days prior to the hearing as
26 required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered
27 as consent to the granting of the motion. Cf. Ghazali v. Moran,
28 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered

1 and the matter will be resolved without oral argument.

2 The motion will be granted.

3 The movant, Travis Credit Union, seeks relief from the
4 automatic stay with respect to a 2004 Chevrolet Tahoe vehicle.
5 The movant alleges lack of equity on the basis that the value of
6 the vehicle is \$27,107.50, whereas the secured claim totals
7 \$36,282.33. The movant also alleges cause on the grounds that
8 the debtors have not made two pre-petition and one post-petition
9 payments to the movant.

10 11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7
11 debtor to file a statement of intention with reference to
12 property that secures a debt. The statement must be filed within
13 30 days of the filing of the petition or by the date of the
14 meeting of creditors, whichever is earlier. The debtor must
15 disclose in the statement whether he or she intends to retain or
16 surrender the property, whether the property is claimed as
17 exempt, and whether the debtor intends to redeem such property or
18 reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A).

19 The petition was filed on May 16, 2006 and the meeting of
20 creditors was first convened on June 12, 2006. Therefore, a
21 statement of intention that refers to the movant's vehicle and
22 debt was due no later than June 12. The debtors filed a
23 statement of intention with their petition, on May 16. However,
24 the statement does not mention the subject vehicle or the
25 movant's claim. That is, the debtors have not stated any
26 intention regarding the movant's claim or the vehicle securing
27 it.

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1 11 U.S.C. § 521(a)(2)(B) requires that a chapter 7
2 individual debtor, within 30 days after the first date set for
3 the meeting of creditors, perform his or her intention with
4 respect to such property. No reaffirmation agreement or motion
5 to redeem the property has been filed in this case.

6 If the property securing the debt is personal property and
7 an individual chapter 7 debtor fails to file a statement of
8 intention, or fails to indicate in the statement that he or she
9 either will redeem the property or enter into a reaffirmation
10 agreement, or fails to timely surrender, redeem, or reaffirm, the
11 automatic stay is automatically terminated and the property is no
12 longer property of the bankruptcy estate. See 11 U.S.C. §
13 362(h).

14 Here, the debtors failed to state their intention with
15 regard to the vehicle securing the movant's claim and they have
16 taken no action to redeem the vehicle or to reaffirm the debt
17 secured by the vehicle. As a result, the automatic stay
18 automatically terminated on or about June 13, 2006.

19 The trustee may avoid automatic termination of the automatic
20 stay by filing a motion within whichever of the two 30-day
21 periods set by section 521(a)(2) is applicable, and proving that
22 such property is of consequential value or benefit to the estate.
23 If proven, the court must order appropriate adequate protection
24 of the creditor's interest in its collateral and order the debtor
25 to deliver possession of the property to the trustee. If not
26 proven, the automatic stay terminates upon the conclusion of the
27 hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

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1 The trustee in this case has filed no such motion and the
2 time to do so has expired. The court also notes that the trustee
3 filed a "no-asset" report on July 26, 2006, indicating that he
4 does not intend to administer the vehicle or any other asset.

5 Therefore, even without this motion being filed, the
6 automatic stay terminated on June 13. However, the motion is not
7 moot. 11 U.S.C. § 362(j) requires the court to issue, at the
8 request of a creditor, an order confirming that the automatic
9 stay has terminated pursuant to section 362(h). The court will
10 so confirm. The movant has leave to repossess its collateral, to
11 dispose of it pursuant to applicable law, and to use the proceeds
12 from its disposition to satisfy its claim.

13 The court also notes that even if the automatic stay had not
14 already automatically terminated, the motion will be granted
15 pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to
16 repossess its collateral, dispose of it pursuant to applicable
17 law and to use the proceeds from its disposition to satisfy its
18 claim. No other relief is awarded. The vehicle has a value of
19 \$19,610, according to schedule B, and is encumbered by a secured
20 claim of \$36,282.33. The debtors have no equity in the vehicle
21 and no evidence exists that it is necessary to a reorganization
22 or that the trustee can administer it for the benefit of the
23 creditors. Further, the debtors have not made two pre-petition
24 and one post-petition payments to the movant. This is cause for
25 the granting of relief from stay.

26 The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered
27 waived due to the fact that the movant's vehicle is being used by
28 the debtors without compensation and is depreciating in value.

1 Because the movant has not established that the value of its
2 collateral exceeds the amount of its claim, the court awards no
3 fees and costs. 11 U.S.C. § 506(b).

4 Dated: August 14, 2006