## UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

In re

Jose R. and Lilliam Margarita Quintana

CHAPTER 13 CASE NO. 8:06-bk-06867-CPM

Debtor(s)

# MOTION TO MODIFY STAY AND FOR OTHER RELIEF FILED BY VOLVO FINANCE NORTH AMERICA, INC. <u>REGARDING LEASED 2001 VOLVO C70 VIN# YV1NC56D61J019971</u>

A HEARING IS REQUESTED: This Motion does not simply seek adequate protection. A hearing is requested because Creditor believes there is good cause for an actual Order lifting the stay as opposed to an order providing for adequate protection. The basis for the Creditor's request is as follows:

X The Plan provides for rejection of the Debtors lease of the subject vehicle with Creditor.

\_\_\_\_ The Plan does not provide for adequate protection payments to the Creditor.

\_\_\_\_\_ The Motion seeks relief as to the Codebtor in that the Plan does not afford the Creditor complete relief in the form of payment of 100% of the principal, interest and attorneys fees which are due it.

Other

VOLVO FINANCE NORTH AMERICA, INC. ("Lessor"), pursuant to §§362(d)(1) and (2)

of the Bankruptcy Code, hereby moves this Court for entry of an order granting relief from stay as

to the bankruptcy estate and as to the Debtor(s), or, in the alternative, for adequate protection, and

states:

1. For value received, the Debtor(s) executed and delivered a lease contract

("Lease") as evidence of indebtedness to Lessor. Copies of the Lease and the Title to the leased Property (in the case of a motor vehicle or other titled Property) are attached hereto as Exhibit A.

2. The Lease pertains to Property described as: 2001 VOLVO C70 VIN#

### YV1NC56D61J019971 ("Property")

3. Lessor is the owner (or has financed the Lease for its dealer which is the owner of the Property) and is the holder for value of the Lease.

4. Lessor is owed the amounts referenced in the attached Affidavit plus any changes accruing subsequent to the date of the Affidavit.

5. The Debtor(s) defaulted under the terms of the Lease with Lessor by failing to do the following: make all payments when due as specified in the attached Affidavit, or, in the instance of a Chapter 7 proceeding, failing to reaffirm the indebtedness secured by the Collateral/Property, or both.

6. The Debtor(s), and the estate, have made no offer of adequate protection to Lessor regarding Lessor's interest in the Property. Lessor, therefore, lacks adequate protection.

7. The Property is diminishing and decreasing in value and continues to do so by virtue of the continued use of the Property by the Debtor(s) without payments to Lessor.

8. The Debtor(s), and the estate, lack equity in the Property.

9. The Property is not necessary to an effective reorganization.

10. Pursuant to the terms of the Lease between the parties, the Debtor(s) is/are obligated to pay Lessor's reasonable attorneys' fees and court costs. Lessor has retained the undersigned attorneys and has agreed to pay them a reasonable fee for their services rendered in connection with this Motion.

11. Lessor asserts sufficient cause exists to waive the requirement of Bankruptcy Rule 4001(a)(3), therefore allowing an Order to be effective upon this Honorable Court's signature, as the Property is easily moved and easily secreted and easily damaged within the ten day period that would otherwise stay recovery of the Property. In addition Lessor prays that the Court suspend the Rule in all instances in which there is a Consent on the part of the Debtor(s).

12. Lessor also seeks relief from the codebtor stay imposed by §1301 of the BankruptcyCode as against the following Codebtor(s): NONE

WHEREFORE, Lessor requests that the Court enter an order modifying or terminating the automatic stay as to the Debtor(s) and to the estate to permit Lessor to enforce its in rem remedies as against the Property and permit Lessor to proceed both in rem and in personam as against any Codebtor(s). In the alternative, Lessor requests that the Court order the Debtor(s) to make adequate protection payments to Lessor under the terms and condition of the Lease, including payment of Lessor's reasonable attorneys' fees and costs.

## /s/ Brad W. Hissing, Esq.

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bhissing@kasslaw.com
Florida Bar No. 854794

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT a true and correct copy of the foregoing was furnished on January 5, 2007, by U.S. Mail and/or electronic mail to: Jose R. and Lilliam Margarita Quintana, 12620 Catamaran Place, Tampa, FL 33618; Thomas Nanna, Esq., 8910 N. Dale Mabry Hwy, Suite 1, Tampa, Florida 33614-1580; Jon Waage, Trustee, P.O. Box 25001, Bradenton, FL 34206.

## /s/ Brad W. Hissing, Esq.

Brad W. Hissing, Esq. (x1347)

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## NBSC Online Application

Ford Credit

Ford MotorCredit Company HBSC Online Application

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- Assignments
- Case Search
- Imagine
- Invoice History

Customer Details Case Details Review Plan Treatment Review Motion Results

# **Customer Information**

Account Number 38788569 Primary Customer QUINTANA, JOSE

### Vehicle Information

Product Type Lease Collateral 2001 VOLVO C70 Vin Number YV1NC56D61J019971 Retail Value 50.00 Wholesale Value 50.00

### **Contract Terms**

Contract Date 03/10/2005 Original Payment Amount \$359.48 Term 24

Payments Made 20

Payments Remaining 4 Lease Termination Date 03/10/2007

## **Pay Detail**

Net Balance at Time of Filling S1.455.89 Last Payment Amount S359 48 Last Payment Date 10/10/2006 Past Due Date 11/10/2006

> Past Due Amount **\$718.96** Total Late Charges Due **\$17.97** Total Past Due **\$736.93**

#### UNITED STATES BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

In re

Jose R and Lilliam Margarita Quintana

CHAPTER 13 CASE NO 8 06-bk-06887-CPM

Debtor(s)

### AFFIDAVIT IN SUPPORT OF MOTION TO MODIFY AUTOMATIC STAY

#### STATE OF MICHIGAN COUNTY OF WAYNE

BEFORE ME, the undersigned authority, personally appeared. John Debono, who, being first sworn, deposes and says

1 I am John Debono and am employed by VOLVO FINANCE NORTH AMERICA. INC ("Creditor") in the capacity of Bankruptcy Representative

2 This affidavit is based upon the loan payment records of the Creditor These records are regularly maintained in the course of business and it is the regular practice of the Creditor to make and maintain these records These records reflect loan payments that are noted in the records at the time of receipt by persons whose regular duties include recording this information. I maintain these records for the Creditor and regularly use and rely upon them in the performance of my duties

3 That I am the custodian of the records relating to the account involved in the above named matter

4 The interest which Creditor seeks to protect and which relief from stay is sought is described as 2001 VOLVO C70 VIN# YV1NC56D61J019971

5 A bankruptcy petition was filed by the Debtor(s) on 12/01/2006 The Debtor(s) is/are in default by failing to make the payment due  $(\dot{U})/(\dot{U})/(\dot{U})/(\dot{U})$ \* and all subsequent payments

(\*List the default date in the format of month / day / year List the earliest date on which payments are due )

FURTHER AFFIANT SAYETH NOT

VOLVO FINANCE NORTH AMERICA, INC Name of Creditor By John Debono

SWORN TO and SUBSCRIBED before me this  $\frac{1}{2}$  day of  $\frac{1}{2}$  day of \frac{1}{2} day of  $\frac{1}{2}$  day of \frac

Name NOTARY CYNTHIA A KOROLY Notary Public Wayne County Michigan My Commission Expires Feb 7 2011