**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

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| In re: [*name of debtor*], Debtor. |  Case No. [##-#####] Chapter 13 |
| [*name of debtor*], Plaintiff, vs.[*name of creditor*], Defendant. |  A. P. No. [##-#####] |
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**COMPLAINT FOR TURNOVER OF PROPERTY**

 [*Name of debtor*] (“Debtor”), debtor in the above-entitled bankruptcy case, complains of [*name of creditor*] (“Creditor”) as follows:

1. This is a complaint for the turnover of property of the estate pursuant to 11 U.S.C. § 542(a) and Fed. R. Bankr. P. 7001(1).
2. **JURISDICTION AND VENUE**
3. This Court has jurisdiction of this case under 28 U.S.C. §§ 1334(b) and 157(a). Venue is proper pursuant to 28 U.S.C. § 1409(a).
4. This is a core proceeding under 28 U.S.C. § 157(b)(2)(E).
5. **STATEMENT OF FACTS**
6. The Debtor filed the petition commencing the above-entitled bankruptcy case on [*date of filing*] (the “Petition Date”).
7. On the Petition Date, the Debtor owned a vehicle (the “Vehicle”) described as follows: [*insert year, model, make, VIN number (if available), and license plate number*].
8. Creditor claims a(n)

[ ]  purchase money security interest

[ ]  security interest

[ ]  lessor’s interest under a lease

[ ]  other interest [*describe nature of interest*]

in the Vehicle.

1. Creditor claims that a debt in the approximate amount of $\_\_\_\_\_\_\_\_\_\_\_\_ (as of the Petition Date) is secured by the Vehicle (or owed under a lease of the Vehicle).
2. On the Petition Date, Creditor was in possession of the Vehicle.
3. The Debtor is a Chapter 13 debtor. The Vehicle is property of the bankruptcy estate that the Debtor is entitled to use, sell, or lease under 11 U.S.C. § 363(b).
4. The Vehicle is not of inconsequential value or benefit to the estate.
5. **CONCLUSION**

WHEREFORE, the Debtor requests that the Court enter judgment against Creditor requiring Creditor to deliver possession of the Vehicle to the Debtor and granting to the Debtor all other relief to which the Debtor is entitled or which the Court finds appropriate.

DATED: Honolulu, Hawaii, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 [*DEBTOR’S COUNSEL*]

 Attorney(s) for Debtor

 [*DEBTOR’S NAME*]

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

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| In re: [*name of debtor*], Debtor. |  Case No. \_\_\_\_\_\_\_\_ Chapter 13 |
| [*name of debtor*], Plaintiff, vs.[*name of creditor*], Defendant. |  A. P. No. \_\_\_\_\_\_\_\_ |
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**MOTION FOR TEMPORARY**

**RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, [*name of debtor*], debtor in the above-captioned bankruptcy case, hereby moves this Court for entry of a temporary restraining order and preliminary injunction requiring [*name of creditor*] (“Creditor”) to turn over to the Debtor the vehicle described below.

1. **STATEMENT OF FACTS**

The Debtor filed the petition commencing the above-entitled bankruptcy case on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Petition Date”). On the Petition Date, the Debtor owned a vehicle (the “Vehicle”) described as follows: [*insert year, model, make, VIN number (if available), and license plate number*]. Creditor claims that a debt in the approximate amount of $\_\_\_\_\_\_\_\_\_\_\_\_ (as of the Petition Date) is [*secured by the Vehicle/owed under a lease of the Vehicle*].

On the Petition Date, Creditor was in possession of the Vehicle. On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Debtor, as Plaintiff, filed a Complaint for Turnover of Property under 11 U.S.C. § 542(a) and Bankruptcy Rule 7001(1) against Creditor, seeking turnover of the Vehicle. The Debtor has demanded that Creditor return the Vehicle to the Debtor. As of the date of this motion, Creditor has not delivered possession of the Vehicle to the Debtor.

1. **ARGUMENT**

Fed. R. Bankr. P. Rule 7065 makes Fed. R. Civ. P. Rule 65 applicable in adversary proceedings. Under Rule 65, the traditional criteria for issuing a preliminary injunction are: “1) a strong likelihood of success on the merits, 2) the possibility of (now likely, not just possible) irreparable injury to plaintiff if the preliminary relief is not granted, 3) a balance of hardships favoring the plaintiff, and 4) advancement of the public interest (in certain cases).” *Morgan-Busby v. Gladstone (In re Morgan-Busby),* 272 B.R. 257, 261 (B.A.P. 9th Cir. 2002).

“Alternatively, a preliminary injunction may issue if the moving party demonstrates ‘(1) a combination of probable success on the merits and the possibility of irreparable harm; or (2) that serious questions are raised and the balance of hardships tips in its favor.’” *Id.* The Debtor has made the required showing for a preliminary injunction under either of these standards.

* 1. **Substantial Likelihood of Success on the Merits**

The Debtor is certain to succeed in this adversary proceeding. “[Section] 542(a) ‘imposes a duty of turnover that is mandatory when the statute’s conditions . . . are met.’” *City of Chicago v. Fulton*, 141 S. Ct. 585, 594 (Sotomayor, J., concurring). These conditions are met as the Vehicle is property that the Debtor may use under § 363 and is not of inconsequential value or benefit to the estate.

* 1. **Balance of Hardships Favors the Debtor**

As the Declaration attached hereto as Exhibit “A” explains in greater detail, without use of the Vehicle, the Debtor will suffer immediate and irreparable harm, including [*loss of employment, inability to make plan payments, and dismissal of the debtor’s bankruptcy case, etc.*].

The Debtor will protect Creditor against any risk of harm by (a) making monthly adequate protection payments [*through the Chapter 13 trustee/directly to the Creditor*] equivalent to 1% of the Vehicle’s present fair market value, or $\_\_\_\_\_\_, on the \_\_\_\_\_ day of the month after the entry of an order on this motion and continuing until a plan is confirmed or this case is dismissed or converted, and (b) maintaining all insurance required by Debtor’s contract with Creditor. Should the Debtor fail to timely tender payments or maintain the required insurance, Creditor would be entitled to the relief provided in the proposed order attached hereto as Exhibit “B.”

At minimum, the benefit to the Debtor of immediate possession of the Vehicle is greater than the potential risk of harm to Creditor that would result from an order requiring turnover of the Vehicle. No remedy other than immediate turnover of the Vehicle would protect the Debtor from harm. Any monetary relief will come only after entry of judgment on the adversary complaint. A future judgment is not an adequate remedy for the immediate harm the Debtor will suffer.

* 1. **Injunction is Consistent with Public Policy**

Requiring immediate turnover of the Vehicle would further the purpose of the Bankruptcy Code and would otherwise be consistent with public policy.

“The principal purpose of the Bankruptcy Code is to grant a ‘fresh start’ to the ‘honest but unfortunate debtor.’” *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (internal quotations omitted). The Creditor’s interest in the Vehicle will be adequately protected. Without use of the Vehicle, the Debtor will not be able to maintain a Chapter 13 plan. This would deprive the Debtor and all creditors of the benefits of Chapter 13.

* 1. **No Bond is Required**

In an adversary proceeding, “a temporary restraining order or preliminary injunction may be issued on application of a debtor . . . without compliance with Rule 65(c).” Fed. R. Bankr. P. 7065. No bond should be required in the present circumstances because the Debtor has agreed to protect the Creditor’s interest in the Vehicle by making monthly payments of 1% of the Vehicle’s value and maintaining all insurance required by the Debtor’s contract with Creditor.

**III. CONCLUSION**

The Debtor requests that the Court grant the motion and enter an order (substantially in the form attached hereto as Exhibit “B”) requiring Creditor to deliver possession of the Vehicle to the Debtor and granting to the Debtor such other relief as the Court deems just and equitable.

DATED: Honolulu, Hawaii, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 [*DEBTOR’S COUNSEL*]

 Attorney(s) for Debtor

 [*DEBTOR’S NAME*]

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

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| In re: [*name of debtor*], Debtor. |  Case No. \_\_\_\_\_\_\_\_\_ Chapter 13 |
| [*name of debtor*], Plaintiff, vs.[*name of creditor*], Defendant. |  A. P. No. \_\_\_\_\_\_\_\_\_ |
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**DECLARATION OF [*name of debtor*]**

 I, [*name of debtor*], declare the following:

1. I am above the age of 18 and legally competent to testify to the facts below and so testify based upon personal knowledge unless otherwise stated.
2. I am the debtor in the above-captioned bankruptcy case.
3. On the date of my bankruptcy petition in this case (“Petition Date”), I owned a vehicle (the “Vehicle”) described as follows: [*insert year, model, make, VIN number (if available), and license plate number*].
4. [*Name of creditor*] (“Creditor”) claims that a debt in the approximate amount of $\_\_\_\_\_\_\_\_\_\_\_\_ (as of the Petition Date) is secured by the Vehicle (or owed under a lease of the Vehicle).
5. I rely on the Vehicle [*for transportation to work, for my work as an Uber/Lyft driver, to get to medical appointments, etc.*].
6. Without use of the Vehicle, I am unable toconfirm and perform a Chapter 13 plan because [*I will be unable to earn money, etc.*].
7. I believe the Vehicle’s fair market value to be $\_\_\_\_\_\_\_\_, [*based on the KBB, etc.*].
8. I will protect the Creditor’s interest in the Vehicle by paying 1% of the Vehicle’s fair market value, or $\_\_\_\_\_\_, each month until a plan is confirmed and maintaining all insurance required by my contract with the Creditor. A true and correct copy of the declarations page of the current insurance policy is attached hereto as Exhibit “A.”

I, [*name of debtor*], declare under penalty of law that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 [*DEBTOR*]

Declarant

**UNITED STATES BANKRUPTCY COURT**

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**ORDER GRANTING A TEMPORARY**

**RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff, [*name of debtor*], debtor in the above-captioned bankruptcy case, filed a Motion for Temporary Restraining Order and Preliminary Injunction on \_\_\_\_\_\_\_\_\_, seeking return of a [*description of vehicle*] (the “Vehicle”) currently in possession of [*name of creditor*] (“Creditor”). Debtor’s motion came for hearing on \_\_\_\_\_\_\_\_\_\_\_\_. Having considered the submissions of the parties, I find as follows:

The Debtor has demonstrated a substantial likelihood of success on the merits of [*his/her*] claims against Creditor for turnover of the Vehicle.

The Debtor is likely to suffer irreparable harm in the absence of this order. The Debtor relies on the Vehicle [*for transportation to and from work, to earn a living as a driver for Uber, to get to medical appointments, etc.*]*.* Without the Vehicle, the Debtor will suffer immediate harm, including [*loss of employment, inability to make plan payments, and dismissal of the debtor’s bankruptcy case, etc.*]. This harm would be irreparable because [*without a vehicle the Debtor will be unable to get another job, etc.*].

The balance of hardships strongly favors the Debtor. The benefit to the Debtor of immediate possession of the Vehicle is greater than the risk of harm to Creditor that would result from an order requiring turnover of the Vehicle. The provisions of this order will adequately protect the Creditor’s interest in the Vehicle.

The issuance of a preliminary injunction would advance the public interest because it furthers the Bankruptcy Code’s principal purpose of granting “a ‘fresh start’ to the ‘honest but unfortunate debtor.’” *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007). Without use of the Vehicle, the Debtor would not be able to maintain a Chapter 13 plan to repay [*his/her*] creditors, which would deprive the Debtor and all [*his/her*] creditors of the benefits of Chapter 13.

THEREFORE, it is HEREBY ORDERED that:

1. Creditor shall immediately deliver possession of the Vehicle to the Debtor.
2. The Debtor shall pay Creditor $\_\_\_\_ per month [*through the Chapter 13 trustee/directly to the Creditor*], commencing on the \_\_\_\_\_ day of the month after the entry of this order, and shall maintain all insurance required by the Debtor’s contract with Creditor. These provisions are to remain in place until a plan is confirmed, relief from stay is granted to Creditor, or the Debtor’s case is dismissed or converted.
3. If the Debtor fails to timely tender any payments required by this Order, or if any required insurance lapses, Creditor may mail a written notice of default to the Debtor (at the most current address provided in the court’s record) and Debtor’s counsel. The Debtor shall have fourteen days from the date of mailing of the written notice to cure the default. If the Debtor fails to cure the default within fourteen days from the date of mailing of the written notice, Creditor may (a) file with the Court a declaration under penalty of perjury that specifies the default and attests that notice has been mailed in accordance with this order and (b) submit a proposed order terminating the automatic stay, and the court may enter the order without further notice or hearing. Upon entry of the order, the automatic stay shall be immediately terminated as necessary to permit Creditor to exercise all of its rights in the Vehicle (but Creditor may not assert any monetary claims or seek, obtain, or enforce any money judgment against the Debtor).
4. The Debtor shall be entitled to a maximum of three notices of default and opportunities to cure pursuant to the preceding paragraph. If the Debtor defaults again after the Creditor has served three notices of default, Creditor is relieved of any obligation to serve additional notices of default or provide additional opportunities to cure. Instead, Creditor may, without first mailing another notice of default or providing the Debtor with an opportunity to cure, (a) file and serve a declaration under penalty of perjury setting forth the Debtor’s defaults and the notices previously given, and (b) submit a proposed order terminating the stay, and the court may enter the order without further notice or hearing.
5. This order shall be binding only during the pendency of this bankruptcy case. If, at any time, the stay is terminated with respect to the Vehicle by court order or by operation of law, the foregoing terms and conditions cease to be binding and Creditor may proceed to enforce its remedies under applicable non-bankruptcy law against the Vehicle or the Debtor.
6. If Creditor obtains an order terminating the automatic stay based on the Debtor’s default hereunder, the order granting such relief will contain a waiver of the 14-day stay as provided in Fed. R. Bankr. P. Rule 4001(a)(3).
7. Creditor may accept any and all payments made pursuant to this Order without prejudice to or waiver of any rights or remedies to which Creditor would otherwise have been entitled under applicable non-bankruptcy law.
8. The Debtor is not required to post a bond as security for payment of damages to Creditor pursuant to Fed. R. Bankr. P. Rule 7065.

**END OF ORDER**