

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: April 2, 2024

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.
The court will issue an order.

2. [23-90537](#)-B-13 CHERYL PORTER
SCHIMMELFENNIG
Gordon G. Bones

MOTION TO CONFIRM PLAN
2-9-24 [[33](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the amended plan.

First, Debtor's plan is not proposed in good faith. There is no declaration from the Debtor in support of the motion. 11 U.S.C. § 1325(a)(3).

Second, the proposed plan is not feasible. It does not provide a post-petition mortgage payment, pre-petition arrears, and a monthly dividend payable to those arrears owed to Mr. Cooper, the Debtor does not have sufficient income to make plan payments in month 2 or 6 through 46, and the proposed monthly payment is not sufficient to pay secured creditors and the Trustee's compensation and expense. 11 U.S.C. § 1325(a)(6).

Third, the Amended Form 2030 Disclosure of Compensation of Attorney for Debtor states that the agreed upon fee of \$3,000.00 does not include representation of Debtor in any judicial lien avoidances and relief from stay actions. Dkt. 24. This is contradictory to the Rights and Responsibilities signed by Debtor and her attorney, dkt. 5, and Local Bankruptcy Rule 2017-1(a). These services are included in the "No Look Fee" and should not be excluded.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

3. [20-90146](#)-B-13 CHARLES/DAWN ROBINSON OBJECTION TO CLAIM OF
[DCJ](#)-6 David C. Johnston DEPARTMENT OF THE TREASURY -
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 23
2-17-24 [[96](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to overrule as moot the objection to Claim No. 23-2 of Department of the Treasury - Internal Revenue Service.

The Debtors request that the court disallow the claim of Department of the Treasury - Internal Revenue Service ("Creditor"), Claim No. 23-2, filed May 5, 2021. However, Creditor has filed an amended Claim No. 23-3 on February 22, 2024. Therefore, the Debtors' objection to claim is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

4. [23-90576](#)-B-13 GURMAIL SINGH AND KULDEEP MOTION FOR RELIEF FROM
[KMM-1](#) KAUR AUTOMATIC STAY
David C. Johnston 2-28-24 [[44](#)]

HARLEY-DAVIDSON CREDIT CORP.
VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion for relief from stay and continue the matter to April 9, 2024, at 1:00 p.m.**

Harley-Davidson Credit Corp. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Harley-Davidson FXSB Breakout (the "Vehicle"). The moving party has provided the Declaration of Helata Misty to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Misty Declaration states that Debtor's outstanding balance is \$11,507.66. Movant's papers reflect 7 pre-petition payments in default totaling \$1,794.17 and 3 post-petition payments in default totaling \$768.93.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$11,507.66, as stated in the Misty Declaration, while the value of the Vehicle is determined to be \$11,370.00 as valued by Movant. Debtors' Schedules B and D do not list the Vehicle and the plan filed December 18, 2023, does not provide for Movant as a secured creditor.

The Chapter 13 Trustee filed a response stating that Debtors are current under the plan filed on December 18, 2023, that the Debtors' schedules do not include the Vehicle, and that the plan does not list Movant as a secured creditor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant

to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 5, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on April 9, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 9, 2024, at 1:00 p.m.