

**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: July 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.

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Modesto, California

**July 2, 2024 at 1:00 p.m.**

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1. [22-90315](#)-B-13 ANGEL TAPIA MOTION TO MODIFY PLAN  
[SLH](#)-1 Seth L. Hanson 5-20-24 [[29](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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). 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 grant the motion to modify plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

**July 2, 2024 at 1:00 p.m.**

2. [24-90321](#)-B-13 ARACELI OLIVARES  
[ADR](#)-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
6-15-24 [[10](#)]

AMINIAN YAZDI, TRUSTEE OF  
THE AMINIAN YAZDI TRUST 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 July 9, 2024, at 1:00 p.m.**

Aminian Yazdi, Trustee of the Aminian Yazdi Trust ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 4021 Anna Avenue, Keyes, California (the "Property") pursuant to 11 U.S.C. §§ 362(d)(1), 362(d)(2) and, apparently, 362(d)(4) to the extent Movant requests that the order granting the motion and terminating the automatic stay bind the Debtor for 180 days and/or 2 years. Movant has provided the Declaration of Jordan DeBoer to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

Debtor Araceli Olivares ("Debtor") possesses the subject property as lessee and has not paid pre-petition rent.<sup>1</sup> Debtor's month-to-month tenancy of a single family residence was terminated pre-petition pursuant to state law when he failed to vacate the property after a 60-day notice to quit was served upon him. Debtor is still in possession.

The Property has been the subject of another bankruptcy and state court actions. An Antonio Zapata filed for chapter 13 bankruptcy on April 9, 2024, case no. 24-90134, stating that he allegedly lived at the Property. That case was dismissed on April 29, 2024, for failure to timely file documents. Additionally, the Property was the subject matter of three separate Claims of Right to Possession and Demurrers by Antonio Zapata, Ernesto Rojas, and Javier Cepeda. All three actions were overruled. Debtor also provided testimony confirming that the three named people do not reside at the Property.

Movant states that it commenced an unlawful detainer action in state court on December 6, 2023, but that it cannot proceed with the process until relief from the automatic stay is granted.

### **Discussion**

Movant is the landlord of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Debtor was served a 60-day Notice to Quit on September 26, 2023, and as of November 27, 2023, the Notice expired. Debtor did not move from the Property prior to the expiration of the Notice, and Debtor has not paid any rent since that date. Based upon the evidence submitted, the court determines that there is no equity or other interest in the property for either the Debtor or the

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<sup>1</sup>The amount of pre-petition rent owed is unclear. The motion states that \$4,101.00 is owed, the DeBoer Declaration states that \$8,050.00 is owed, and the Relief From Stay Information Sheet states that "over \$7,00.00" is owed.

Estate. 11 U.S.C. §§ 362(d) (1), 362(d) (2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

Finally, the court will not grant prospective relief under § 362(d) (4) or otherwise. Prospective relief under § 362(d) (4) is available only to a "creditor whose claim is secured by an interest in ... real property" which Movant is not as a lessor.

The court shall issue an order terminating and vacating the automatic stay to allow Movant to commence and/or continue any eviction and/or unlawful detainer proceedings under applicable state law.

There being no opposition, the 14-day stay of enforcement under Rule 4001(a) (3) will be 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, July 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 July 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 July 9, 2024, at 1:00 p.m.

CONTINUED TO 8/6/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 7/24/24.

4. [24-90158](#)-B-13 SEAN MOFFATT  
[LGT](#)-1 Simran Singh Hundal

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
5-16-24 [[12](#)]

**Final Ruling**

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed March 28, 2024, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

5. [24-90167](#)-B-13 CHRISTINA TAFURI CONTINUED OBJECTION TO  
[LGT](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY LILIAN  
G. TSANG  
5-16-24 [[37](#)]

CONTINUED TO 8/13/24 AT 1:00 P.M. AT MODESTO COURTROOM TO BE HEARD AFTER THE CONTINUED  
MEETING OF CREDITORS SET FOR 8/07/24.

**Final Ruling**

No appearance at the July 2, 2024, hearing is required. The court will issue an order.

6. [23-90576](#)-B-13 GURMAIL SINGH AND KULDEEP MOTION FOR RELIEF FROM  
[KMM-2](#) KAUR CO-DEBTOR STAY  
David C. Johnston 5-31-24 [[74](#)]  
HARLEY-DAVIDSON CREDIT CORP.  
VS.

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). 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). 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 grant the motion for relief from automatic stay.

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 Issac Choe to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Choe Declaration states that Debtors are past due from May 6, 2023, through April 6, 2024, which consists of \$1,794.17 pre-petition payments and \$1,281.55 post-petition payments.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$12,156.66, as stated in the Choe Declaration, while the value of the Vehicle is determined to be \$11,370.00, as stated in the Choe Declaration.

### **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.

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).



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.

The motion is ORDERED GRANTED.

The court will issue an order.