## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

## HARLEY-DAVIDSON CREDIT CORP.,

v.

**OPINION** and **ORDER** 

JHD HOLDINGS INC., H2D MOTORCYCLE VENTURES LLC, and SARA J. POMEROY,

19-cv-155-jdp

Defendants.

Plaintiff,

Plaintiff Harley-Davidson Credit Corp. has moved for an *ex parte* temporary restraining order under Federal Rule of Civil Procedure 65(b) against defendants HD Holdings, Inc., H2D Motorcycle Ventures LLC, and Sara J. Pomeroy. Dkt. 5. Harley-Davidson says that it is a floorplan lender and has a financing agreement with defendants, who are Harley-Davidson dealers. Harley-Davidson alleges that, since the fall of 2018, defendants have been selling their merchandise and retaining all the proceeds rather than using it to repay their loan to Harley-Davidson, as required by the agreement. In its motion, Harley-Davidson asked the court to temporarily restrain defendants from selling any more merchandise to prevent the loss of its security interest in the collateral.

The court held an *ex parte* telephonic hearing on the motion. Harley-Davidson appeared by counsel, Daniel Fleming.

At the hearing, the court stayed a decision on Harley-Davidson's motion. Although Harley-Davidson made a strong showing that it would succeed on the merits, the court was not persuaded that Harley-Davidson was entitled to the relief it requested, which would essentially require defendants to temporarily close their businesses without notice or an opportunity to be heard. The court directed Harley-Davidson to file a revised proposal that was more narrowly tailored to Harley-Davidson's concerns, which was selling collateral without reporting it and using the proceeds to repay the loan.

The court has received a new proposed temporary restraining order from Harley-Davidson. Dkt. 15. The court has reviewed the proposal and will adopt it with minor modifications. In sum, defendants will be restrained from selling merchandise financed by Harley-Davidson unless they notify Harley-Davidson and remit the proceeds to Harley-Davidson, as required by the financing agreement.

In accordance with Rule 65(b), the court concludes that Harley-Davidson has shown that it will be irreparably injured without the temporary restraining order. Specifically, Harley-Davidson will lose its security interest in the collateral if defendants continue selling merchandise without remitting the proceeds to Harley-Davidson. Harley-Davidson has cited evidence that the injury will be irreparable because defendants do not otherwise have the means to repay the loans. The court also concludes that Harley-Davidson need not give security because the temporary restraining order doesn't require defendants to do anything other than comply with their contractual obligations. *Authenticom, Inc. v. CDK Glob., LLC*, No. 17-cv-318-jdp, 2017 WL 3017048, at \*10 (W.D. Wis. July 14, 2017) (injunction bond not required when "there's no danger that the opposing party will incur any damages from the injunction") (internal quotations omitted).

The court will a hold a hearing to determine whether Harley-Davidson is entitled to preliminary injunctive relief, after defendants have notice and an opportunity to be heard.

## ORDER

## IT IS ORDERED that:

- 1. Plaintiff Harley-Davidson Credit Corp.'s motion for a temporary restraining order, Dkt. 5, is GRANTED as modified in the attachment to this opinion.
- 2. Harley-Davidson's motions to seal its submissions, Dkt. 10 and Dkt. 14, are DENIED as moot. The clerk of court is directed to unseal all docket entries in this case.
- 3. A hearing on the additional relief that Harley-Davidson is requesting will be held on Tuesday, March 5, at 1:00 p.m. in Courtroom 260, located at 120 North Henry Street, Madison, WI 53703.
- 4. Harley-Davidson must personally serve this order, the summons, the complaint, and all other court filings on all defendants today. If Harley-Davidson does not file proof of service with the court today, the court will rescind the temporary restraining order and postpone the hearing pending proof of service.
- 5. If defendants wish to file written materials in response to Harley-Davidson's motion, they may have until 8:00 a.m. on Tuesday, March 5, to do so.

Entered February 28, 2019.

BY THE COURT:

/s/

JAMES D. PETERSON District Judge