

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

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**July 27, 2021 at 1:30 p.m.**

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**FINAL RULINGS**

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| 1. | <a href="#"><u>20-23866</u></a> -E-13      ANNE PRICE<br><a href="#"><u>APN-1</u></a> Mary Anderson<br>TOYOTA MOTOR CREDIT<br>CORPORATION VS. | MOTION FOR RELIEF FROM<br>AUTOMATIC STAY<br>6-25-21 [ <a href="#"><u>50</u></a> ] |
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**Final Ruling:** No appearance at the July 27, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 25, 2021. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Motion is granted, with the court confirming that the stay has already been modified under the confirmed Chapter 13 Plan.</b>
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Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2020 Toyota 4Runner, VIN ending in 9571 (“Vehicle”). The moving party has provided the Declaration of Donna Delahanty to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Anne Marie Price (“Debtor”).

Movant argues Debtor has not made two-plus post-petition payments, with a total of \$2,315.38 in post-petition payments past due. Declaration, Dckt. 52. Moreover, Movant asserts that Debtor has not maintained insurance coverage as provided by the agreement.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

## **TRUSTEE’S NON-OPPOSITION**

Trustee filed a Non-Opposition on July 6, 2021. Dckt. 57. Trustee asserts that Creditor is provided for in the proposed plan as a Class 4 claim and no payments have been disbursed to Creditor by Trustee. *Id.* at 1. Additionally, Debtor is current under the plan. *Id.* at 2.

## **DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$54,382.27 (Declaration, Dckt. 52). Debtor values the Vehicle at \$45,000.00, as stated in Schedules A/B and D filed by Debtor. Movant’s NADA Guide report values the Vehicle at \$48,075.00.

### **11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Here, in the confirmed Chapter 13 Plan expressly provides that the automatic stay has already been modified and Movant has been free of the stay to obtain possession of and dispose of the collateral since confirmation of the Chapter 13 Plan in this case since January 14, 2021. Confirmation Order, Dckt. 44. The confirmed Plan provides for Class 4 treatment of claims:

3.10. Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

Class 4 Creditor's Name/Collateral Description	Monthly Contract Installment	Person Making Payment
Toyota Financial Services / 2020 Toyota 4 Runner 35000 miles Value KBB dealer certified value retail excellent condition 1. Location: 2205 Trails CT, Rancho Cordova CA 95670	0.00	Debtor

3.11. Bankruptcy stays.

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

*Id.*, ¶¶ 3.10, 3.11.

The requested modification has already been made by virtue of the Plan having been confirmed. The court appreciates that a creditor or other party in interest may need documentation of what has been modified by a plan (generally involving real estate and record title), and will issue an order confirming that the stay has already been modified.

### **Request for Injunctive Relief**

Though citing only to 11 U.S.C. § 362(d) and stating grounds to have the stay “modified,” in the prayer Movant requests, in addition to have the “stay” “modified,” that the court issue a mandatory injunction and “Require Debtor to immediately provide valid, written proof of insurance coverage for the property, as necessary.” Motion, Prayer ¶ 3; Dckt. 50.

This is not a situation where the court is not modifying, or has not previously modified, the automatic stay based on a debtor “swearing” that the Vehicle is insured, and as part of the creditor’s “adequate protection” or as a condition of not modifying the stay requires a debtor to provide proof of the insurance.

### **Ruling**

The court shall issue an order confirming that the automatic stay has been modified to allow Movant, and 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.

### **Additional Relief**

The prayer also includes some curious language requesting that the court “Terminate the pending automatic stay provisions. . . .” *Id.*, Prayer, ¶ 2. This indicates that there is some future stay in the future that is “pending” and will spring to life at some future time.<sup>Fn.1.</sup> It may be that Movant anticipate a future conversion of this case to Chapter 7 and the plan modification of the stay not being effective post-conversion or modify the plan.

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FN. 1. The word “pending” is defined in the Merriam-Webster Dictionary as:

pending adjective  
Definition of pending (Entry 2 of 2)

1: not yet decided : being in continuance  
the case is still pending

2: IMMINENT, IMPENDING

<https://www.merriam-webster.com/dictionary/pending>  
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Given that such relief may be implicit in the Motion, the court further orders that in the event that this case is converted to one under Chapter 7, Movant may seek supplemental relief in this contested matter on at least 7 days notice and hearing.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Toyota Motor Credit Corporation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the as provided in 11 U.S.C. § 362(j) the court confirms that the automatic stay provisions of 11 U.S.C. § 362(a) have been modified to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2020 Toyota 4Runner, VIN ending in 9571 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that Movant may seek supplemental relief in this Contested Matter from the stay in this case as it may exist under the Chapter 13 confirmed plan or if the case is converted to one under another Chapter of the Bankruptcy Code. The motion for supplemental relief shall be filed using the Docket Control Number for this case (no additional filing fee

required, the fee already having been paid for this Contested Matter) and shall be set for hearing on at least seven (7) days notice. Opposition, if any, may be presented orally at the noticed hearing.

No other or additional relief is granted.

2.     [21-21767](#)-E-13     **WAYNE CREEL AND JACKIE**     **MOTION FOR RELIEF FROM**  
          [RDW](#)-2           **JAYNES-CREEL**           **AUTOMATIC STAY AND/OR MOTION**  
                          **Mikalah Liviakis**           **FOR ADEQUATE PROTECTION**  
**FIREFIGHTERS FIRST CREDIT**           **7-12-21 [37]**  
**UNION VS.**

**Final Ruling:** No appearance at the July 27, 2021 hearing is required.

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Firefighters First Credit Union (“Creditor”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief from the Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**