

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**May 23, 2024 at 10:00 a.m.**

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**FINAL RULINGS**

1. [23-20796-E-7](#)      **SARA FOX**      **MOTION FOR RELIEF FROM**  
[KMM-1](#)      **Mikalah Liviakis**      **AUTOMATIC STAY**  
4-15-24 [\[37\]](#)

**TOYOTA MOTOR CREDIT  
CORPORATION VS.**

**Final Ruling:** No appearance at the May 23, 2024 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 7 Trustee, and Office of the United States Trustee on April 15, 2024. By the court’s calculation, 38 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.

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2015 Toyota Highlander, VIN ending in 3322 (“Vehicle”). The moving party has

provided the Declaration of Debra Knight to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Sara Aleath-Helen Fox (“Debtor”).

Movant had not made three postpetition payments as of March 8, 2024, with an arrearage of \$659.80. Exhibit E, Docket 41. On January 10, 2024, the Vehicle was declared a total loss. Declaration, Docket 40 p. 2:25-26. As of April 3, 2024, the outstanding indebtedness owed to Movant on its secured claim, less any partial payments or suspense balance was \$6,975.44, and the insurance settlement funds were \$19,304.23. *Id.* at p. 2:26-3:1. Movant seeks relief to allow it to apply the \$6,975.44 toward the balance of its secured claim, and then remit the balance of the insurance settlement to the Chapter 7 Trustee, Kimberly J. Husted (“Trustee”). *Id.* at p. 3:1-3.

On April 23, 2024, Trustee filed a response indicating nonopposition. Docket 45. Trustee states she confirms the Vehicle was totaled and the insurance proceeds were sent to Movant. She states her belief that the Motion seeks a comfort order allowing the lender to accept its insurance proceeds. *Id.* at ¶ 3. She also notes, however, that the insurance carrier USAA has already sent Debtor’s exemption of \$7,500 to Debtor directly. *Id.* at ¶ 3.

## DISCUSSION

### 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.

### 11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

However, Debtor has some equity in the insurance proceeds of the Vehicle. She was remitted the amount of \$7,500 from USAA for her exemption in the Vehicle. Therefore, relief under 11 U.S.C. § 362(d)(2) is not warranted.

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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated 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 2015 Toyota Highlander, VIN ending in 3322 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of and apply proceeds from the insurance payout of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.