

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

**May 21, 2022 at 11:30 a.m.**

[illegible]

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Local Rule 9014-1(f)(1) Motion—Hearing Required.**

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Subchapter V Chapter 11 Trustee, creditors, and Office of the United States Trustee on April 9, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later

evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Confirmation of Plan of Reorganization is XXXXX.**

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

April 8, 2020 Plan to be filed by May 23, 2020

May 7, 2020 Last Day to File Objections to Confirmation

May 14, 2020 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Creditor/Class	Treatment	
Class 1: Commercializadora de Lugar Loreto	Claim Amount	
	Impairment	Debtors <span style="color: red;">intend</span> to reject the timeshare contract and to surrender their interest, and the creditor shall be free to recover their collateral. The rejection of the creditor's executory contract may create a general unsecured claim against the estate.
Class 2: Nissan Motor Acceptance	Claim Amount	
	Impairment	Paid monthly by Debtors. Post-confirmation, Debtors may, at their election, return the vehicles and make no further payments.
Class 3: PennyMac Loan Services, LLC	Claim Amount	
	Impairment	<span style="color: red;">To be paid as allowed</span> from the proceeds of the sale of Debtors' residence no later than twelve months from the Plan Effective date.

Class 4: Schools Financial Credit Union	<b>Claim Amount</b>	
	<b>Impairment</b>	<b>Continue to be paid monthly</b> by Debtors. Post-confirmation Debtors may, at their election, return the vehicles and make no further payments.
Class 5: Umpqua Bank 2nd D/T on residence	<b>Claim Amount</b>	
	<b>Impairment</b>	To be paid in full from the sales proceeds of Debtors' Residence.
Class 6: Umpqua Bank 1st D/T on commercial property	<b>Claim Amount</b>	
	<b>Impairment</b>	To be paid in full from the sales proceeds of commercial property.
Class 7: Thomas Swain	<b>Claim Amount</b>	
	<b>Impairment</b>	Extent of claim is disputed, but whatever is allowed as a secured claim will be paid, at least in part, from the proceeds of the sale of the Residence. Unsecured portions of the claim shall be paid as a Class 9 general unsecured creditor.
Class 8: Data Sales Corporation	<b>Claim Amount</b>	
	<b>Impairment</b>	<b>To be paid to the extent of the collateral securing</b> the claim at the close of the sale of the commercial property. The balance of its claim, if any, shall be paid as a Class 9 general unsecured creditor.
Class 9: General Unsecured Claims	<b>Claim Amount</b>	
	<b>Impairment</b>	To be paid pro-rata fro the proceeds of sale of the Residence and Commercial Property.

The Declaration of Robert Kelly McClean filed in support of confirmation provides evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

**11 U.S.C. § 1129(a)**

1. The plan complies with the applicable provisions of the Bankruptcy Code Chapter 11, Subchapter V.

**Evidence:** Dckt. 37, pg. 1, 2

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

**Evidence:** Dckt. 37, pg. 1, 2

3. The plan has been proposed in good faith and not by any means forbidden by law.

**Evidence:** Dckt. 37, pg. 2

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

**Evidence:** Dckt. 37, pg. 2

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

**This section is not applicable.**

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

**This section does not apply to the plan.**

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

**Evidence:** Dckt. 37, pg. 2

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

**This section is inapplicable pursuant to 1191(b).**

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

**Per the Memorandum, of Points and Authorities, there are no such claims. Dckt. 38.**

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

**Per the Memorandum, of Points and Authorities, there are no such claims. Dckt. 38.**

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

**Per the Memorandum, of Points and Authorities, there are no such claims. Dckt. 38.**

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

**Not required pursuant to 1191(b).**

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

**Evidence:** Dckt. 37, pg. 3

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

**Evidence:** Dckt. 37, pg. 3

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

**Evidence:** Dckt. 37, pg. 3

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

**Evidence:** Dckt. 37, pg. 3

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;  
or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

**Not required pursuant to 1191(b).**

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

**This section is not applicable.**

### **Limited Opposition to the Plan**

Creditor PennyMac has objected to the Plan of Reorganization. Dckt. 48. Creditor objects on the basis that:

1. the plan violates the anti-modification provisions of 11 U.S.C. § 1123(b)(5);
2. Creditor's treatment is not fair and equitable pursuant 11 U.S.C. § 1191(b);
3. the plan is infeasible per 11 U.S.C. § 1191(c)(3)(A); and
4. fails to provide sufficient remedies in the event that Debtors cannot sell the property.

On May 14, 2020, Debtor filed a reply to Creditor's Objection stating that the parties are currently working together on finding a solution that would allow for Creditor to support confirmation. Dckt. 61.

## DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

### Review of the Plan

As it pertains to the treatment of Class 3, 5, 7, and 9, Debtor proposes to pay the creditors under these classes from the proceeds of the sale of their residence. The terms of the Plan call for its sale no later than twelve months from the plan effective date. A review of the docket reflects that a motion to sell the residence was filed on May 13, 2020. Dckt. 55. This motion is set to be heard on June 11, 2020 at 10:30 a.m.

The terms of the plan provide for creditors under Class 6, 8, and 9 from proceeds of the sale of commercial property. The court granted a motion to sell the commercial property on April 21, 2020. Dckt. 42.

The court has trouble with certain language in this Plan. According to the filed Chapter 11 Plan, under Class 1, the Plan provides the following:

It is the **intention** of Debtors to reject the timeshare contract and to surrender their interest.

Plan, Dckt. 36, 4:22-23. (Emphasis added.). The court is uncertain by what Debtor means when they say they “intend” to reject the timeshare. No timeline is provided and no information is listed that would allow the court to understand what the Debtor will take into consideration in order to make the determination to actually reject the timeshare.

Moreover, under Class 3 for Creditor PennyMac’s secured claim over Debtor’s primary residence, the Plan states the following:

The Secured claim of PennyMac Loan Services, LLC shall be paid as **allowed** from the proceeds of the sale of Debtor’s residence no later than twelve months from the plan effective date.

*Id.*, 5:9-12. (Emphasis added.). The court is uncertain by what Debtor means by “allowed.” The property is Debtor’s residence and the amount owed is not subject to modification. Additionally, as pointed out by Creditor, Debtor fails to provide an actual timeline for the sale, and they do not provide as to alternatives if the sale of the property were not to occur.

Additionally, Debtor refers to a reduction of their Homestead Exemption. Article VII of the Plan states:



In addition, Debtor shall reduce the amount of their Homestead Exemption by \$20,000 to account for the value of unexempt assets as described in the liquidation analysis. The \$20,000 shall be used to satisfy unsecured claims.

*Id.*, 7:19-22. While the Debtor uses the “reduction,” the court believes that Debtor mean that they will assign exemption proceeds in the amount of \$20,000 to go to the unsecured claims. And not “reduce” so as to allow a creditor’s lien to attach to it.

At the hearing, **XXXXXXXXXX**

The Plan of Reorganization is **XXXXXXXXX**.