UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY
DATE: October 11, 2022
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
Sacramento, California

October 11, 2022 at 1:00 p.m.

1.	20-20208-B-13 SLH-2	ERIK COATES Seth L. Hanson	MOTION TO REFINANCE 9-13-22 [27]

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 to refinance.

Debtor seeks court approval to refinance real property commonly known as 530 Renaissance Drive, Tracy, California ("Property") with Nations Direct Mortgage, LLC ("Creditor"). Creditor and Debtor have reached an agreement to refinance the mortgage loan in the amount of $514,892, at an interest rate of 4.75%, over the next 30 years. Debtor previously reached an agreement with Nations Direct Mortgage, LLC concerning the refinance of his residence. The agreement did not include the payoff of a secured solar loan that is now included in the subsequent refinance agreement. Consequently, a new Motion for Order Approving Refinance of Residential Mortgage is being filed and dismissal of the first motion will be sought.

Although the agreement will increase Debtor's overall mortgage expenses, the new loan with Creditor will pay off the previous mortgage loan with Freedom Mortgage and Debtor will take out approximately $75,160.31 in cash, a portion of which will be remitted to the bankruptcy estate and pay 100% of claims filed by general unsecured creditors.

The motion is supported by the Declaration of Erik Coates. The Declaration affirms Debtor's desire to refinance the Property.

The repayment of the new loan does not appear to unduly jeopardize Debtor's performance of the plan filed January 14, 2020. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

2. 20-24627-B-13 GINA TOSCANO
PGM-2 Peter G. Macaluso

MOTION TO REFINANCE AND/OR MOTION TO WAIVE RULE 6004(H)
9-9-22 [33]

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 to refinance and the motion to waive Fed. R. Bankr. P. 6004(h).

Debtor seeks court approval to refinance real property commonly known as 13521 Gypsum Way, Lathrop, California ("Property") with Equity Prime Mortgage, LLC. Although the agreement will increase Debtor's overall mortgage expenses, the new loan with Creditor will allow Debtor to pay off her bankruptcy at 100% and the remaining proceeds of which will go toward repairs to her home. The term of the loan is for 360 months at 5.625% fixed interest and a new monthly payment of $2,414.00.

The motion is supported by the Declaration of Gina Toscano. The Declaration affirms Debtor's desire to refinance the Property.

The repayment of the new loan does not appear to unduly jeopardize Debtor's performance of the plan filed October 2, 2020. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The request to waive the 14-day stay of enforcement under Fed. R. Bankr. P. 6004(h) is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

3.	22-21927-B-13 FAT-2 **Thru #4**	ORLANDO ANDRADE Flor De Maria A. Tataje	MOTION TO RECONSIDER AND/OR MOTION TO VACATE 9-26-22 [25]

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 deny the motion to vacate order denying the motion to value collateral of Harley Davidson Credit.

Debtor Orlando Andrade ("Debtor") moves for reconsideration of the court's order denying a motion to value his 2020 Harley Davidson Road Glide Motorcycle at $18,400.00. The Debtor filed the motion to value on August 8, 2022. *See* dkt. 10. The court denied the motion to value without prejudice in an order filed on September 15, 2022. *See* dkt. 20. Although the motion to value was not opposed, the court found that the Debtor's valuation of the motorcycle based on "personal research, including review of local Newspaper ads, trade articles, and web sites such as Kelly [sic] Blue Book and NADA," dkt. 13, was based on hearsay and therefore not persuasive. *See d*kt. 19. The Debtor moved for reconsideration on September 26, 2022. *See* dkt. 25.

Debtor requests that the court vacate its order on grounds that the ruling was based on a manifest error of law and there is now new previously unavailable evidence.

Discussion

Filed less than 14 days after the entry of judgment, the Debtor's motion for reconsideration is governed by Civil Rule 59(e) applicable by Bankruptcy Rule 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, *1-2 (Bankr. E.D. Cal. 2012). There are four grounds on which a Civil Rule 59(e) motion may be granted: (1) to correct manifest errors of law or fact upon which the judgment rests; (2) to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Relief under Civil Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Id.*

Debtor contends that the first and second grounds are applicable here. As explained below, the court finds no manifest error of law with respect to its prior decision denying the motion to value and what the Debtor relies on as newly-discovered evidence actually confirms that the court's prior ruling is correct.

The first ground is inapplicable. In the Debtor's argument that market reports and similar commercial publications are not excluded by the rule against hearsay, the Debtor relies on *In re Solis*, 576 B.R. 828, 2016 Bankr. LEXIS 1708 (Bankr. W.D. Tex. 2016), and relies in part and distinguishes from *In re Guerra*, 2008 Bankr. LEXIS 4303 (Bankr. E.D. Cal. 2008).

The court in *In re Solis* found that NADA and Edmunds price reports are admissible under the Fed. R. Evid. 803(17) exception because there is precedent to suggest that both publications are reliable and credible, and they might be admissible without an expert. Since there were no objections, the court considered the reports. *Id.* at 829 n4.

The court in *In re Guerra* relied on the value of the vehicle listed in debtor's original schedules to determine the value of the collateral since the debtor and objecting party did not submit any new evidence of value. *Id.* at *10. The court also cited to *In re Morales*, 387 B.R. 36, 45 (Bankr. C.D. Cal. 2008), to state that absent unusual circumstances the retail value should be calculated by adjusting the Kelley

Blue Book or NADA Guides retail value for a like vehicle by a reasonable amount in light of any additional evidence presented regarding the condition of the vehicle or any other relevant factors. *In re Guerra* at *10. Thus, Debtor contends, the court in *Guerra* did not rule that a debtor cannot rely on local newspaper ads, trade articles, or web sites such as Kelley Blue Book and NADA to form an opinion as to the value of collateral.

It is true that authenticated market reports and similar commercial publications are not excluded by the rule against hearsay. Fed. R. Evid. 803(17), 901. However, Debtor's original motion to value collateral, FAT-1, and the present motion to reconsider and vacate order, FAT-2, fail to provide any authenticated market reports or similar commercial publications. The original motion to value collateral was accompanied by a declaration and no exhibits, and the present motion to reconsider and vacate order is accompanied by nothing.

Moreover, even if the court were to ignore that the Debtor consulted trade publications such as the Kelley Blue Book and NADA to form his opinion of the motorcycle's value, the Debtor's opinion is still admittedly based on "[n]ewspaper ads [and] trade articles[.]" Dkt. 13 at ¶ 3. Both are hearsay and the Debtor has not demonstrated any exception that otherwise applies to these items as such. And therein lies the problem.

The Debtor is a lay witness. A lay witness may provide an opinion of value under Fed. R. Evid. 701. However, a lay opinion or testimony may not be based or rely on hearsay. *U.S. v. Lloyd*, 807 F.3d 1138, 1154 (9th Cir. 2015). ("But a lay opinion witness may not . . . rely on hearsay[.]" (Internal quotations and citation omitted)); *U.S. v. Gadson*, 763 F.3d 1189, 1211 (9th Cir. 2014) ("As we have explained, lay opinion testimony may not . . . rely on hearsay[.]"); *In re Palmdale Hills Prop. LLC*, 577 B.R. 858, 865 (Bankr. C.D. Cal. 2017) ("Both [witnesses] testimony are not admissible as lay testimony because they are based on inadmissible hearsay[.]").

That the same opined value of the motorcycle appears in the schedules does not alter the result. *Compare* dkt. 12 with dkt. 25 at ¶ 19. If anything, it confirms the court's original decision. Schedules are filed under penalty of perjury. *See* Fed. R. Bankr. P. 1008. As such, they have evidentiary value. *See Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969 (9th Cir. 2012). But to the extent the Debtor relies on the identical valuation included in the schedules, the valuation stated in the schedules suffers from the same defect as the valuation included in the motion to value. In other words, the valuation in both is lay opinion testimony based on hearsay. Consequently, in both sources, the Debtor's opinion is not persuasive because it is not credible, reliable, or admissible.

The second ground is also inapplicable. Although there is now previously unavailable evidence in the form of the newly filed Claim 7-1, it does not assist the court in ruling in favor of Debtor's motion to value collateral at $18,400.00. If anything, the newly-discovered evidence in the form of the recently-filed proof of claim reinforces the court's prior ruling on the motion to value.

The Debtor separately states that his motion to value collateral was unopposed and, therefore, should be granted by the court. But as this court stated in *In re Bassett*, 2019 Bankr. LEXIS 624 (Bankr. E.D. Cal. 2019), not every unopposed motion to value will be granted. *See also Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). A debtor still has the initial burden of producing some admissible evidence of value. In most cases, that may be satisfied by a declaration that states the debtor's opinion of value. *See* Fed. R. Evid. 701; *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). And in most cases, if unopposed, the court may accept the debtor's opinion of value as conclusive. *Enewally*, 368 F.3d at 1173. But as *Enewally* also notes, just as the court "may" accept a debtor's opinion of value as conclusive in the absence of contrary evidence, the court also "may not" accept the debtor's opinion of value even when no other evidence of value is presented if the value stated in the declaration is not credible or if the declaration suffers from an evidentiary defect as it does here.

In summary, the Debtor has not demonstrated that extraordinary relief under Civil Rule

59(e) is warranted. For all the foregoing reasons, the Debtor's motion to vacate the order denying the motion to value will be denied.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

4.	22-21927-B-13 RDG-1	ORLANDO ANDRADE Flor De Maria A. Tataje	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-19-22 [21]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. *See* Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. *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 sustain the objection and deny confirmation of the plan.

First, Creditor California Department of Tax and Fee Administration has filed a secured claim in the amount of $14,884.05 (Claim 5-1). Debtor's plan does not provide for this secured claim. The plan is not feasible under 11 U.S.C. § 1325(a)(6).

Second, Debtor's plan provides for total unsecured priority claims in the amount of $31,699.00. The Internal Revenue Service has filed a proof of claim with a priority portion of $52,752.71 (Claim 3-1). Debtor's plan payment is insufficient to pay these claims.

Third, Paragraph 2.01 of Debtor's plan provides for a monthly plan payment of $1,195.00 for 60 months. Debtor has failed to provide admissible evidence that the plan is mathematically feasible. The Chapter 13 Trustee's calculations indicate that Debtor's plan payment will need to be at least $1,793.00 for 60 months in order for the plan to be feasible.

Fourth, feasibility depends on the granting of a motion to value collateral of Harley Davidson Credit. The motion to value is denied without prejudice at dkt. 20, FAT-1. *See also* FAT-2.

Fifth, based on Debtor's Form 122C-2 and Form 122C-1, there is disposable income available to make payments to general unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B) at a 100% dividend. However, Debtor's plan provides for 0% distribution to general unsecured creditors. Therefore, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B).

Sixth, Debtor's Statement of Financial Affairs is silent as to payments for attorney's fees paid prior to filing and any fees associated with the credit counseling course. Debtor's plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

The plan filed August 2, 2022, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

5.	22-21557-B-13 GEL-1	MARINA GALINDO Gabriel E. Liberman	CONTINUE MOTION TO EXTEND AUTOMATIC STAY 6-29-22 [10]

Final Ruling

No appearance at the October 11, 2022, hearing is required. An order determining that the automatic stay terminates in its entirety under 11 U.S.C. § 362(c)(3) was entered on October 4, 2022. This matter is removed from calendar.

The court will issue an order.

6.	22-21861-B-13 CJK-1	BASILIO MIRANDA Charles L. Hastings	OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A. 9-23-22 [21]

Final Ruling

No appearance at the October 11, 2022, hearing is required. Debtor and Bank of America, N.A. entered into a stipulation that resolves the creditor's objection. An order approving stipulation was entered on September 29, 2022. This matter is removed from calendar.

The court will issue an order.

7. 21-23777-B-13 NATALIE YOST — MOTION TO CONFIRM PLAN
JLL-2 Jennifer G. Lee — 9-1-22 [44]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.