

Judicial Variance Statement for the Hon. Martin R. Barash
Regarding the Local Bankruptcy Rules, the Central Guide and Forms

Judge Barash enforces the Local Bankruptcy Rules, the Central Guide (formerly, the Court Manual) and the use of mandatory forms, subject to the following exceptions, additions and clarifications:

LOCAL BANKRUPTCY RULES (LBR):

- **LBR 3018-1(a)(2) Chapter 11 Ballot Summary:** Plan proponents are required to file their ballot summary not later than seven (7) days before the confirmation hearing, rather than the 14 days required under LBR 3018-1(a)(2).
- **LBR 3020-1(b): Postconfirmation Requirements**
 - Following the occurrence of the effective date of a confirmed plan, the plan proponent is required to file and serve on all creditors affected by the confirmed plan a “Notice of Effective Date of Confirmed Plan” which provides the date the confirmed plan became effective.
 - All postconfirmation status reports must be supported by admissible evidence; generally, a declaration from the reorganized debtor, plan trustee, or plan administrator addressing LBR 3020-1(b)(1) – (b)(6) suffices.
- **LBR 4003-2(d) & LBR F 4003-2.1.AVOID.LIEN.RP.MOTION:** On motions to avoid judgment liens pursuant to § 522(f), the evidence required by LBR 4003-2(d) must address the fair market value of the subject property, and the loan balances, *as of the petition date*. On form F 4003-2.1.AVOID.LIEN.RP.MOTION, at ¶ 10, the column for “Current Lien Amount” should list the lien amount as of the petition date, not the amount as of the filing of the motion. *See 11 U.S.C. § 522(a)(2); Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 392 (9th Cir. BAP 2003) (a debtor's § 522(f) lien avoidance rights are determined as of the petition date).
- **LBR 5003-2(c)(1) Motions to File Under Seal:** If a filing under seal is requested, after filing the written motion requesting such relief, the movant must deliver a judge’s copy of the motion, along with an unredacted version of the document to be filed under seal, to chambers. Alternatively, after filing the written motion, movant may email a conformed copy of the filed motion and a .pdf format file of the unredacted version of the document to be filed under seal to:

Chambers_MBarash@cacb.uscourts.gov

- **LBR 5005-2 & The Central Guide § 2.0 regarding Judge’s Copies:** Except for motions requesting permission to file a document under seal, no judge’s copies are required unless specifically requested by chambers.
- **LBR 7030-1(b)(1) Lodging of Deposition Transcripts:** Judge Barash does not require the lodging of original deposition transcripts but otherwise requires compliance with LBR 7030-1(b) for using deposition transcripts as evidence at trial or at an evidentiary hearing.
- **LBR 7055-1(b) Motions for Default Judgment:** In addition to evidence of the amount of damages, plaintiff must submit admissible evidence to establish all elements of the plaintiff’s claim(s) for relief.
- **LBR 9009-1(b)(4) Alteration of Court-Approved Forms:** Judge Barash generally enforces the prohibition on altering or deleting language in court-approved forms (both mandatory and optional). However, plan proponents who elect to use form disclosure statements (LBR F 3017-1.CH11.DISCLSR.STMT) and / or form plans (LBR F 3018-1.CH11.PLAN & Official Form 425A) must delete or cross-out any portions of the form plan that are not applicable to the case.
- **LBR 9013-1(c)(2) Supplemental Notice of Hearing:** Until further notice, all of Judge Barash’s hearings will be conducted remotely, using ZoomGov audio and video. In addition to all other

applicable noticing requirements, Judge Barash requires that a moving party or other party noticing a ZoomGov hearing before him (i) file and serve a completed *Supplemental Notice of Hearing to Be Held Remotely Using ZoomGov Audio and Video* ("Supplemental Notice"), at the same time the principal notice of such hearing is to be filed and served, or (ii) incorporate conforming language into such principal notice. The form of the Supplemental Notice can be found in the Self-Calendaring Instructions for Judge Barash. The unique ZoomGov connection information for each day's hearings before Judge Barash—which information is necessary to complete the Supplemental Notice—is posted on his public calendar.

- **LBR 9013-1(k) Voluntary Dismissal of a Motion:** If a movant seeks to voluntarily dismiss a motion or application to which opposition has been filed, movant must file a stipulation, signed by counsel for the opposing party, consenting to the dismissal. See Fed. R. Civ. P. 41(a)(1)(A); Fed. R. Bankr. P. 9014(c). Voluntary dismissal by giving telephonic notice to opposing counsel is not adequate.
- **LBR 9021-1(b)(3)(B) Holding Period for Orders on Contested Motions:** Unless otherwise ordered, if opposition was filed to a motion or application, Judge Barash will wait only three (3) calendar days (not 7 days) to enter an order following service of a proposed form of order.
- **LBR 9027-1(b)(1):** In removed proceedings, Judge Barash will enter his own *Order to Show Cause re Remand and Notice of Status Conference*. The removing party is not required to prepare a separate notice of status conference.
- **LBR 9070-1(a)(4) Lodging of Trial Exhibits:** Unless otherwise ordered, Judge Barash does not require lodging of physical trial exhibits prior to the beginning of trial. Instead, by the deadline set in the trial scheduling order, the parties shall email their trial exhibits in .pdf format to chambers at the address below. Each .pdf file shall comprise a separate exhibit and be named accordingly (e.g., "Plaintiff's Exh. 1," "Defendants' Exh. A," "Joint Exh. 1").

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LOCAL BANKRUPTCY RULES FORMS:

- **LBR F 1017-1.1.MOTION.DEBTOR.CONVERT:** If a chapter 7 debtor moves to convert to chapter 13 and the debtor's current Schedule J indicates the debtor has negative (or de minimis) monthly net income, the debtor is required to supplement the mandatory form with admissible evidence addressing the debtor's eligibility for chapter 13 as "an individual with regular income" sufficient to fund a chapter 13 plan. See 11 U.S.C. § 109(e).
- **LBR 2015.3(b) & F 2015-3.1.SUBV.STATUS.RPT:** Subchapter V debtors are required to file and serve a status report not later than 14 days before the date of the initial status conference. However, use of the form F 2015-3.1.SUBV.STATUS.RPT is optional.
- **F 3015-1.19.APP.CH13.FEES.DMCON:** This form for allowance of fees and expenses following a dismissal or conversion of a chapter 13 case subject to a Rights and Responsibilities Agreement is mandatory.
- **F 4001-1.RFS Forms:**
 - Each of the court-approved relief from stay forms include in the prayer for relief a paragraph requesting that the "order is binding and effective in any future bankruptcy case, no matter who the debtor may be, without further notice." Judge Barash does not grant such relief outside of an adversary proceeding.
 - **F 4001-1.RFS.RP.ORDER & F 4001-1.RFS.ORDER:** The final paragraph of the order for "other" relief must include the following language:

Moratoriums not affected. This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium.

- **F 4001-1.RFS.RP.ORDER:** The optional “Adequate Protection Agreement” attached to the order includes, at ¶ 6.a., that the “stay automatically terminates without further notice, hearing or order.” Judge Barash does not approve adequate protection stipulations including ¶ 6.a. relief but will approve stipulations incorporating ¶ 6.b, 6.c., or 6.d.
- **F 4003-2.1.AVOID.LIEN.RP.MOTION:** On form F 4003-2.1.AVOID.LIEN.RP.MOTION, at ¶ 10, the column for “Current Lien Amount” should list the lien amount as of the petition date, not the amount as of the filing of the motion.

NATIONAL FORMS

- **Official Form 425A Plan of Reorganization for Small Business Under Chapter 11:** Subchapter V debtors and plan proponents in non-subchapter V small business cases may use the optional Form 425A plan, however the plan proponent must delete or cross-out any portions of the form plan that are not applicable to the case. LBR 9009-1(b)(4) is not enforced regarding form plans.

THE CENTRAL GUIDE

- **The Central Guide § 2.0 regarding Judge’s Copies:** Except for motions requesting permission to file a document under seal, no judge’s copies are required unless specifically requested by chambers.

MISCELLANEOUS:

Applications to Employ Real Estate Brokers: Notwithstanding California law permitting dual representation or the language in form listing agreements, real estate brokers employed by the bankruptcy estate may only represent the seller in any sale. The order employing a real estate broker must include language substantially similar to the following:

It is further ordered that notwithstanding anything to the contrary contained in the listing agreement attached to the application, [name of real estate broker] and the persons acting as agents may only represent the estate, as seller of the subject real property. Neither [name of real estate broker] nor any person acting as an agent of [name of real estate broker], shall receive, directly or indirectly, any compensation payable to any broker or agent representing the buyer of the subject real property.

Appraisals as Evidence of FMV: Written appraisals are inadmissible hearsay unless accompanied and authenticated by a declaration under penalty of perjury by the appraiser.

Retention of Jurisdiction Language in Dismissal Orders: If he grants a motion to dismiss a bankruptcy case, Judge Barash frequently will require the following language to be included in the dismissal order:

The Court reserves jurisdiction on all issues arising under sections 110, 329, 330 and 362 of the Bankruptcy Code, the Court’s contempt and sanctions powers,

any violations of the Federal Rules of Bankruptcy Procedure or the Court's local rules, criminal referrals to the United States' Attorney's Office and any other ancillary matters related to this case.