

Judicial Variance Statement for the Hon. Victoria S. Kaufman
Regarding the Local Bankruptcy Rules, the Central Guide and Forms

Judge Kaufman 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 and Ballots:** Unless otherwise set forth in a scheduling order, plan proponents are required to file their ballot summary, as well as copies of all received ballots, not later than ten (10) 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.
- **LBR 5005-2(d) and the Central Guide Section 2-02 TCG Supplement: Serving a Judge’s Copy (Judge’s Copy):** See Judge Kaufman’s procedures (posted at www.cacb.uscourts.gov, “Judges,” “Kaufman, V.,” “Instructions/Procedures,” “Serving Judge’s Copies of Documents for Cases Assigned to Judge Victoria S. Kaufman”).
- **LBR 7016-1(b)(1) and (b)(3) Pre-trial Stipulations:** Judge Kaufman requires that a pre-trial stipulation be filed, but not separately lodged, in LOU.
- **LBR 7030-1(b)(1) Lodging of Deposition Transcripts:** Judge Kaufman 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 7056-1(b)(2) Summary Judgment:** The proposed statement of uncontroverted facts and conclusions of law must be served and filed on the docket but should **not** be lodged in LOU at the same

time. The court may direct the prevailing party to lodge proposed findings and conclusions after the hearing on summary judgment or partial summary judgment. A proposed summary judgment should **not** be lodged in LOU until after the hearing date.

- **LBR 9009-1(b)(4) Alteration of Court-Approved Forms:** Judge Kaufman 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:** In addition to all other applicable noticing requirements, Judge Kaufman recommends that a moving party or other party noticing a ZoomGov hearing before her (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 Kaufman. The unique ZoomGov connection information for each day's hearings before Judge Kaufman--which information is necessary to complete the Supplemental Notice--is posted on her public calendar.
- **LBR 9013-1(j) Appearance at Hearing:** In most cases, Judge Kaufman issues tentative rulings 24 to 48 hours prior to the date scheduled for a hearing. Notwithstanding the issuance of a tentative ruling, unless (a) Judge Kaufman's chambers or calendar clerk has confirmed that no appearance is necessary or (b) the tentative ruling itself states that no appearance is necessary, **appearances are required**. Where the tentative ruling states that no appearance is required, parties may still appear. A moving party's failure to attend the hearing on its own motion may result in denial of the motion for failure to prosecute and in the imposition of sanctions. An opposing party that fails to attend the hearing on a motion that it has opposed will be deemed to have withdrawn its opposition to the motion and to have consented to the relief requested therein.
- **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). Voluntary dismissal by giving telephonic notice to opposing counsel is not adequate.
- **LBR 9019-1(a)(2) Settlements:** Judge Kaufman does not follow the hearing appearance procedure for settlements provided in LBR 9019-1(a)(2). Parties must appear at every hearing unless the hearing has been vacated, the matter is on the chapter 13 consent calendar, or the tentative ruling indicates that appearances are waived. If the parties timely and properly bring a settlement before the court via stipulation or motion to approve compromise, and an order is lodged, the court will usually vacate the hearing once the order is entered.
- **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 Kaufman will wait only three (3) court 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 Kaufman will enter her 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 9075-1 Emergency Motions and Applications for Orders Setting Hearings on Shortened Notice:** Chapter 11 first-day motions may be scheduled by calling Judge Kaufman’s Courtroom Deputy at (818)587-2850 or by calling chambers at (818)587-2823 or (818)587-2826. For all other emergency motions or applications for an order setting a hearing on shortened notice, the applicable moving papers must first be filed on the docket and a judge’s copy must be delivered to Judge Kaufman’s bin on the first floor of 21041 Burbank Blvd., Woodland Hills, California 91367 before the matter will be considered. The moving party should then call chambers to leave a message indicating that the papers have been filed and delivered.

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.
- **F 3003-1.MOTION.BARDATE:** Do not use this LBR form. At the initial chapter 11 status conference for an individual debtor, Judge Kaufman sets the deadlines for filing proofs of claim.
- **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 Kaufman does not grant such relief outside of an adversary proceeding.
 - **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 Kaufman 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.
- **F 4003-2.4.JR.LIEN.MOTION:** In chapter 13 cases, Judge Kaufman allows junior liens on principal residences to be avoided by filing a motion. Debtors seeking to avoid a junior lien on a principal residence must use this form.

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.

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 she grants a motion to dismiss a bankruptcy case, Judge Kaufman may 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.

Other Forms or Format Required Only By Judge Kaufman: Please see Judge Kaufman's procedures (posted at www.cacb.uscourts.gov, "Judges," "Kaufman, V.," "Instructions/Procedures"). Any other variances are determined on a case-by-case basis.