

# How to Get Section 362 Orders entered and served correctly and quickly

**Hon. Vincent P. Zurzolo**

*USBC Central District of California*

**Effective July 1, 2008**

*These guidelines apply to orders on motions: (1) for relief from the automatic stay; (2) to impose the stay; or (3) to continue the stay (“Section 362 Orders”).*

*The guidelines will add certainty to the process and minimize costs/delay by:*

- 1) fully utilizing electronic processes of filing documents (“CM/ECF”), Lodged Order Upload (“LOU”), and service by Notice of Electronic Filing (“NEF”);
- 2) eliminating or minimizing the need to provide envelopes and copies of orders;
- 3) establishing a process for resolving Section 362 motions by stipulation;
- 4) clarifying the court’s duty to serve copies of orders; and
- 5) giving movant control of the timing of preparing proposed orders.

*Complying with these guidelines will result in Section 362 Orders being entered and served correctly and quickly.*

## **A. Check Tentative Rulings**

Judge Zurzolo posts tentative rulings two court days prior to hearings. Check to see if relief will be granted without a hearing, and if so, what relief. Go to [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov). The Tentative Rulings link is on page one.

## **B. Lodge Proposed Orders via LOU**

All CM/ECF users must lodge Section 362 Orders via LOU. No exceptions.

## **C. When Should a Proposed Order be Lodged?**

**Lodged via LOU** - Proposed orders may be lodged via LOU after tentative rulings are posted; if a tentative ruling is not posted, lodge the proposed order after the hearing.

**Lodged at Intake Window** – Proposed orders may only be lodged after the hearing.

## D. Are F 4001-1 Form Orders Mandatory?

**MANDATORY** -- All Section 362 Orders must be prepared using a F 4001-1 order available at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov) under Local Bankruptcy Rules (“LBR”) and Forms.

**NOT MANDATORY** – If LBR allow for a stipulation regarding the Section 362 Stay without filing a motion, a F 4001-1 order is not required. The stipulation must first be signed and filed via CM/ECF. Next, lodge a separate proposed order approving the stipulation.

## E. What if the Motion is Settled by Stipulation?

Motions “Settled by Stipulation” require approval from counsel for debtor and movant.

**NOTE: “/s/ followed by attorney’s name” may only be used by the attorney who lodges the proposed order. DO NOT lodge orders with multiple “/s/ followed by attorney’s name.”**

Therefore, before lodging a F 4001-1 order in which the “Settled by Stipulation” box on page one is checked, movant must first file via CM/ECF the signed Adequate Protection Attachment pages of the proposed order: (A) granting relief from the automatic stay (F 4001-10.PP or F 4001-10.RP); (B) imposing or continuing the stay (F 4001-10.IS); or (C) continuing the stay (F 4001-10.TCS). The process is:

- 1) obtain all necessary signatures on the Adequate Protection Attachment pages of the appropriate F 4001-1 form order;
- 2) file via CM/ECF the Adequate Protection Attachment pages **with signatures**, accompanied by a pleading cover sheet titled: “Stipulation for Adequate Protection re Section 362 Stay”;
- 3) lodge the entire F 4001-1 order, **including the unsigned** Adequate Protection Attachment pages; and
- 4) when lodging the proposed order via LOU, link the proposed order to the motion, not to the stipulation.

## F. How Soon will the Order be Entered?

**1. Orders on Unopposed Motions** - Orders on unopposed motions will be entered as soon as the court reviews and approves the terms of the proposed order. Pursuant to LBR 9021-1(a)(6), there is no mandatory waiting period.

**2. Orders on Opposed Motions** - If all parties who filed an opposition to the motion sign off on the form of the proposed order, the order will be entered as soon as the court reviews and approves the terms of the proposed order. If all parties who filed an opposition to the motion do not sign off on the form of the proposed order, the court will wait seven court days for objections to be filed before reviewing and approving the terms of the order. See LBR 9021-1(a)(4)-(5).

## G. Preparing Proof of Service of Proposed Order

**\*\* SEE SAMPLE “PROOF OF SERVICE” -- MS WORD FORMAT \*\***

- 1. Proposed Orders on Unopposed Motions** - There is no obligation to serve a proposed form of order on any person, entity, or attorney *who did not file an opposition to the motion. This includes a case trustee or the United States trustee.*
- 2. Proposed Orders on Opposed Motions** - Pursuant to LBR 9021-1(a)(3), a proposed order must be served only upon any person, entity, or attorney who filed an opposition to the motion. *There is no obligation to serve the proposed order on any other person or entity.*

## H. Prepare Service List for Notice of Entry of Order

**\*\* SEE SAMPLE “SERVICE LIST FOR ENTERED ORDER” -- MS WORD FORMAT \*\***

**Categories for Service List:** Pursuant to Fed. R. Bankr. Proc. 9022, the court has the duty to transmit a copy of an order only to the U.S. trustee, and to deliver notice of entry of an order only to contesting parties or as the court directs. Allowable service methods are in Fed. R. Civ. Proc. Rule 5(b), and include service via NEF. Recognizing that a movant may wish for additional persons or entities to receive a copy of an entered order, and balancing this with limiting the court’s duty to serve notice of entry of an order, please organize all service lists for notice of entry of orders using the *three underlined categories* identified below:

- 1. Court Service** - At most include the debtor (and counsel, if any), U.S. trustee (except Ch 13 cases), case trustee, and persons or entities (or their counsel, if any) who filed an opposition to the motion. *DO NOT list any other person/entity, including other lien holders, co-borrowers, or persons/entities who merely filed a request for special notice.*

**Served Electronically by the Court** - List the names and email addresses of attorneys (*including movant’s counsel*) who qualify under “**Court Service**” and are listed in CM/ECF on the Electronic Mail Notice List to receive NEF transmission. *The U.S. trustee and case trustee will always be in this category.*

**Served via U.S. Mail by the Court** – *The debtor will always be in this category.* Also list the names and mailing addresses of persons, entities, and/or attorneys (*including movant’s counsel*) who qualify under “**Court Service**” but are not listed in CM/ECF on the Electronic Mail Notice List to receive NEF transmission. **DO NOT** list names that are served via NEF.

- 2. Movant Service** – If Movant desires to serve a copy of the entered order on persons or entities not listed above, movant may do so. Movant must then file a proof of service.

**To be Served by Movant after Order is Entered** - List the names and service method for persons, entities, and/or attorneys who qualify under “**Movant Service.**”

## I. Copies of Proposed Order; Envelopes

All Section 362 Orders are served electronically by the court via NEF to trustees, the United States trustee, and to attorneys who are on the Electronic Mail Notice List for the particular bankruptcy case.

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All Section 362 Orders are served by U.S. Mail via the Bankruptcy Noticing Center (“BNC”) to debtor (and debtor’s attorney, if any), and to persons or entities who are on the Manual Notice List for the particular bankruptcy case.

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By using LOU and complying with these guidelines, it will rarely be necessary to send the court copies and envelopes for Section 362 Orders.

**1. Copies of All Proposed Orders, *Regardless of How Lodged***

**DO NOT** provide any copies of the proposed order for mailing, because copies will be printed either by the BNC (for all relevant addresses on the Manual Notice List) or by the court (in the rare case when a contesting party’s address is missing from the Manual Notice List).

**ONLY SEND ONE COPY** to the court along with the LOU receipt per the LOU procedures, and do so the same day that the proposed order is lodged.

**2. Stamped, Addressed Envelopes, *Regardless of How Proposed Order is Lodged***

**DO NOT** provide envelopes for the debtor and debtor’s attorney, because the BNC will prepare envelopes for them.

**DO NOT** provide envelopes for the case trustee or U.S. trustee, because they will be served electronically via NEF.

**DO NOT** provide envelopes for any other person or entity unless that person or entity filed an opposition to the motion and qualifies under “**Served via U.S. Mail by the Court.**”