

Attorney or Party Name, Address, Telephone & FAX Numbers, State Bar Number & Email Address <input type="checkbox"/> Debtor's appearing without attorney <input type="checkbox"/> Attorney for:	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – _____ DIVISION	
In re:	CASE NUMBER: CHAPTER 13
DEBTOR'S NOTICE OF MOTION AND MOTION TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(d)]	
Debtor(s).	DATE: TIME: COURTROOM: ADDRESS:
TO CREDITOR HOLDING JUNIOR LIEN (name):	

1. **NOTICE IS HEREBY GIVEN** that on and at the above date, time and place indicated above, Debtor in the above-captioned case will move this court for an order granting the relief set forth in the motion and accompanying supporting documents served and filed herewith.

2. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. *(If you do not have an attorney, you may wish to consult one.)*

3. **Deadline for Opposition Papers:** This motion is being heard on regular notice pursuant to LBR 9013-1. If you oppose this motion, you must file a written opposition with the court and serve a copy of it upon the Debtor or Attorney for Debtor at the address set forth above no later than 14 days before the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

*"Bankruptcy Code" and "11 U.S.C." refer to the United States Bankruptcy Code, Title 11 of the United States Code.
 "FRBP" refers to the Federal Rules of Bankruptcy Procedure. "LBR" and "LBRs" refer to the Local Bankruptcy Rule(s) of this court.*

4. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies under penalty of perjury under the laws of the United States of America that the above-stated hearing date and time were available for this type of Motion according to the self-calendaring procedures of the assigned judge, (*specify name of judge*) Judge _____.

Executed on (*date*): _____

Printed name of law firm (if applicable)

Printed name of Debtor or Attorney for Debtor

Signature of Debtor or Attorney for Debtor

MOTION TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(d)]
(DEBTOR: _____)

NAME OF CREDITOR HOLDING JUNIOR LIEN (Respondent): _____

1. **Subject Property:** Debtor moves to avoid the junior deed of trust, mortgage or other encumbrance (Lien) encumbering the following real property (Property), which is the principal residence of debtor.

Street address: _____

Unit number: _____

City, county, state, zip code: _____

Legal description and/or map/book/page number, including county of recording:

See attached page for legal description of Property or document recording number.

2. Subject Lien

Date and place of recordation of lien recording instrument number and document recording number (*specify*)

3. Case History:

- a. A voluntary petition under Chapter 7 11 12 13 of the Bankruptcy Code , 11 U.S.C. was filed in this case on (*specify petition date*): _____.
- b. An Order of Conversion to Chapter 13 was entered in this case on (*specify date*): _____.

4. Grounds for Avoidance of Junior Lien:

- a. As of (*date of title review*) _____, the Property is subject to the following liens in the amounts specified securing the debt against the Property that Debtor seeks to have treated as indicated:

(1) (*Name of holder of 1st lien*) _____ in the amount of \$ _____.

(2) (*Name of holder of 2nd lien*) _____ in the amount of \$ _____ is is not to be avoided;

(3) (*Name of holder of 3rd lien*) _____ in the amount of \$ _____ is is not to be avoided;

See attached page for additional lien(s).

As of (*date of valuation/appraisal*) _____, Property is worth no more than (*value per valuation/appraisal*) \$ _____.

- b. As shown here, the Creditor holding the judicial lien encumbering the Property is wholly unsecured.

c. **Evidence in Support of Motion:**

- (1) The amount of the lien identified in paragraph 3(a)(1) is based on *(type of evidence)* _____, attached hereto and identified as Exhibit ____ .
- (2) The amount of the lien identified in paragraph 3(a)(2) is based on *(type of evidence)* _____, attached hereto and identified as Exhibit ____ .
- (3) The amount of the lien identified in paragraph 3(a)(3) is based on *(type of evidence)* _____, attached hereto and identified as Exhibit ____ .
- (4) The relative priority of the liens encumbering the Property is established by evidence attached as Exhibit ____.
- (5) The value of the Property from paragraph 3(b) is based on *(type of evidence)* _____, attached as Exhibit ____.
- (6) Debtor submits the attached Declaration(s).
- (7) Other evidence *(specify/identify supplemental evidence)*: _____
_____, attached as Exhibit ____.

WHEREFORE, Debtor requests that this court issue an order granting this motion in the form of the **Attachment** to this motion. *(Attach a separate Attachment for each lien to be avoided.)*

Date: _____

Respectfully submitted,

Signature of Debtor or Attorney for Debtor

Printed name of Debtor or Attorney for Debtor

ATTACHMENT TO MOTION/ORDER
(11 U.S.C. § 506: VALUATION/LIEN AVOIDANCE)

This court makes the following findings of fact and conclusions of law:

1. **Creditor Lienholder/Servicer:** _____.
2. **Subject Lien:** Date and place or recordation of lien (*specify*): _____.

Recorder's instrument number and/or document recording number: _____.

3. Collateral:

- a. Real property (street address, city, county and state, where located, legal description or map/book/page number, including county of recording): _____ See attached page.
- b. Other collateral: _____ See attached page.

4. Secured Claim Amount Determination

- a. Value of Collateral: \$ _____
- b. Senior Liens (reducing equity in the property to which the Subject Lien can attach):
- (1) First lien: (\$ _____)
 - (2) Second lien: (\$ _____)
 - (3) Third lien: (\$ _____)
 - (4) Additional senior liens (*attach list*): (\$ _____)
- Subtotal: (\$ _____)
- c. Secured Claim Amount (negative results should be listed as -\$0-): \$ _____

Unless otherwise ordered, any allowed claim in excess of this Secured Claim Amount is to be treated as a nonpriority unsecured claim and is to be paid pro rata with all other nonpriority unsecured claims in Class 5A of the Plan.

5. **Lien avoidance:** Debtor's request to avoid the Subject Lien is granted as follows. The effective date of avoidance of the Subject Lien (Lien Avoidance Effective Date) will be upon:
- completion of the Chapter 13 Plan, or receipt of a Chapter 13 discharge in this case.

6. **Retention of lien until avoidance:** The Creditor Lienholder will retain the Subject Lien for the full amount due under the corresponding note and deed of trust, mortgage or lien if the Debtor's Chapter 13 case is dismissed or converted to any other chapter under the Bankruptcy Code, or if the Collateral is sold or refinanced, prior to the Lien Avoidance Effective Date.

7. **Retention of rights upon foreclosure of other lien:** In the event that the holder of any other lien on the Collateral forecloses on its interest and extinguishes the Creditor Lienholder/Servicer's lien rights prior to the Lien Avoidance Effective Date, the Creditor Lienholder's lien shall attach to any proceeds greater than necessary to pay the senior lien(s) from the foreclosure sale.

See attached page(s) for more liens/provisions.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **DEBTOR'S NOTICE OF MOTION AND MOTION TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(d)] AND _____**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature

SERVED BY UNITED STATES MAIL, CERTIFIED MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

(Attached page to Proof of Service of Document-please include any additional or alternative addresses and attach additional pages if needed)

(Certified Mail required for service on a national bank.)

1st lienholder (<i>name and address</i>)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
1st lienholder (<i>name</i>) and Agent for Service of Process (<i>name and address</i>)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
1st lienholder (<i>name</i>) and Servicing Agent (<i>name and address</i>)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
2nd lienholder (<i>name and address</i>)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
2nd lienholder (<i>name</i>) and Agent for Service of Process (<i>name and address</i>)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
2nd lienholder (<i>name</i>) and Servicing Agent (<i>name and address</i>)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____

3rd lienholder (name and address)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
3rd lienholder (name) and Agent for Service of Process (name and address)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
3rd lienholder (name) and Servicing Agent (name and address)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____

Alternative/additional address (<i>name and address</i>)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
Alternative/additional address (<i>name and address</i>)	Address from: <input type="checkbox"/> Proof of claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other (<i>specify</i>):	Delivery Method <input type="checkbox"/> United States mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____