

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address           <input type="checkbox"/> Attorney for Plaintiff(s) <input type="checkbox"/> Plaintiff(s) appearing without attorney	FOR COURT USE ONLY
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - \_\_\_\_\_ DIVISION**

In re:           <div style="text-align: right;">Debtor(s).</div>	CASE NO.:  CHAPTER 13  ADVERSARY NO.:
vs.           <div style="text-align: right;">Plaintiff(s),</div> <div style="text-align: right;">Defendant.</div>	<b>DEBTOR'S MOTION FOR DEFAULT JUDGMENT RE COMPLAINT TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(a),(d), FRBP 3012]</b>  DATE: TIME: COURTROOM: PLACE:

**NAME OF CREDITOR HOLDING JUNIOR LIEN:** \_\_\_\_\_

1. Name of Defendant(s) against whom default judgment is sought: \_\_\_\_\_ (hereinafter, "Defendant").
2. Plaintiff(s) filed the Complaint in the above-captioned proceeding on \_\_\_\_\_.
3. The Summons and Complaint were served on Defendant by  Personal Service  Mail Service on the following date \_\_\_\_\_.

4. A conformed copy of the completed Return of Summons form is attached hereto.

5. The time for filing an answer or other response expired on \_\_\_\_\_.

6. No answer or other response has been filed or served by Defendant.

7. The default of Defendant:

a.  Has not yet been entered, but is hereby requested.

b.  Was Entered on \_\_\_\_\_.

8. **A Status Conference:**

a.  Is scheduled for \_\_\_\_\_.  
*Specify date, time, and place*

b.  Was held on \_\_\_\_\_.  
*Specify date, time, and place*

9.  **DECLARATION OF NON-MILITARY STATUS:** No defendant named in Paragraph 1 above is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (Pub. L. 108-189) (50 U.S. Code App. §§ 501-594). The undersigned declares under penalty of perjury that this statement of defendant's non-military status is true and correct and is made under penalty of perjury under the laws of the United States of America based upon the undersigned's review of said Defendant's Statement of Affairs and Statement of Income and Expenditures filed in this case and is based upon the undersigned's lack of any information or belief that there has been any change of circumstances as to the defendant's non-military status.

10.  Defaulting party is **not** an **infant** or **incompetent** party.

11. **Property at Issue:**

Plaintiff moves to avoid the junior deed of trust, mortgage or other encumbrance (hereinafter, "Junior lien") encumbering the following real property ("Property"), which is principal residence of Plaintiff(s).

*Street Address:* \_\_\_\_\_

*Unit Number.:* \_\_\_\_\_

*City, State, Zip Code:* \_\_\_\_\_

Legal description or document recording number (including county of recording):

See attached page.

**12. Grounds for Determining Unsecured Status and Avoidance of Junior Lien:**

a. As of \_\_\_\_\_, the Property is subject to the following liens in the amounts specified securing the debt against the Property, which the debtor seeks to have treated as indicated:

\_\_\_\_\_ in the amount of \$ \_\_\_\_\_

i. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_  is  is not to be avoided;

ii. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_  is  is not to be avoided;

See attached page for additional lien(s).

b. As of \_\_\_\_\_, Property is worth no more than \$ \_\_\_\_\_.

c. As a result, Defendant's claim related to the Junior lien on the Property is  wholly  partially unsecured.

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

a.  The amount of the 1st lien identified in paragraph 12(a)(i) is based on \_\_\_\_\_, \_\_\_\_\_ attached hereto and identified as Exhibit \_\_\_\_\_.

b.  The amount of the 2nd lien identified in paragraph 12(a)(ii) is based on \_\_\_\_\_, \_\_\_\_\_ attached hereto and identified as Exhibit \_\_\_\_\_.

c.  The amount of the 3rd lien identified in paragraph 12(a)(iii) is based on \_\_\_\_\_, \_\_\_\_\_, attached hereto and identified as Exhibit \_\_\_\_\_.

d.  The relative priority of the liens encumbering the Property is established by evidence attached as Exhibit \_\_\_\_\_.

e.  The value of the Property from paragraph 3(b) is based on \_\_\_\_\_, \_\_\_\_\_ attached as Exhibit \_\_\_\_\_:

f.  Plaintiff submits the attached Declaration.

g.  Other evidence (*specify*): \_\_\_\_\_.

**14. WHEREFORE, Plaintiff prays that this Court issue an Order granting the following relief:**

a. That the Property is valued at no more than \$ \_\_\_\_\_.  
That Defendant's claim related to the Junior lien shall be allowed as a non-priority general unsecured claim in the amount per the filed Proof of Claim.

b. The avoidance of Defendant's Junior lien is contingent upon  Debtor's completion of the chapter 13 plan, or  Debtor's receipt of a chapter 13 discharge.

- c. The Defendant shall retain its lien in the junior position for the full amount due under the corresponding note and lien in the event of either the dismissal of Debtor's chapter 13 case, the conversion of Debtor's chapter 13 case to any other chapter under the United States Bankruptcy Code, or if the Property is sold or refinanced prior to:
- Debtor's completion of the chapter 13 plan, or
  - Debtor's receipt of a chapter 13 discharge.
- d. In the event that the holder of the first position lien or any senior lien on the Property forecloses on its interest and extinguishes Defendant's lien rights prior to:  Debtor's completion of the chapter 13 plan, or  Debtor's receipt of a chapter 13 discharge, Defendant's lien shall attach to the proceeds greater than necessary to pay the senior lien, if any, from the foreclosure sale.
- e.  See attached continuation page for additional provisions.

Dated: \_\_\_\_\_

Respectfully submitted,

By: \_\_\_\_\_  
*Signature of Plaintiff or Attorney for Plaintiff*

Name: \_\_\_\_\_  
*Type Name of Plaintiff or Attorney for Plaintiff*

## 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 described as **DEBTOR'S MOTION FOR DEFAULT JUDGMENT RE COMPLAINT TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE** 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 indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

**II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):

On \_\_\_\_\_, I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service 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

**III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on \_\_\_\_\_, I served the following person(s) and/or entity(ies) by personal delivery, 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 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 of America that the foregoing is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type Name

\_\_\_\_\_  
Signature

**II. SERVED BY U.S. MAIL, CERTIFIED MAIL OR OVERNIGHT MAIL** (indicate method for each person or entity served):

(Attached page to Proof of Service-please include any additional or alternative addresses and attach additional pages if needed)  
 (Certified Mail required for service on a national bank.)

Name of 1 <sup>st</sup> Name of 1st Lien Holder & 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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
Name of 1st Lien Holder- Agent for Service of Process	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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
Name of 1st Lien Holder – Servicing Agent	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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____

Name of 2nd Lien Holder & 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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
Name of 2nd Lien Holder- Agent for Service of Process	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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
Name of 2nd Lien Holder – Servicing Agent	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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____

Name of 3rd Lien Holder & 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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
Name of 3rd Lien Holder- Agent for Service of Process	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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
Name of 3rd Lien Holder – Servicing Agent	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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____

Alternative/Additional 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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____
Alternative/Additional 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"/> US Mail <input type="checkbox"/> Certified mail – Tracking # _____ <input type="checkbox"/> Overnight mail – Tracking # _____ Carrier Name: _____