

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 21, 2015 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	14-25820-D-11 FWP-27	INTERNATIONAL MANUFACTURING GROUP, INC.	MOTION FOR COMPENSATION FOR BEVERLY N. MCFARLAND, CHAPTER 11 TRUSTEE(S) 9-17-15 [760]
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2.	15-27235-D-7 DAO-1	MARY PIRES	MOTION TO AVOID LIEN OF MERCED MILLING COMPANY LLC 9-21-15 [14]
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Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

3. 15-20344-D-7 DIRK/MARIA CREWS MOTION FOR AUTHORITY TO DEPOSIT
DNL-5 FUNDS INTO BLOCKED ACCOUNT
9-23-15 [61]

4. 14-25146-D-7 GILBERT CHAVEZ MOTION FOR COMPENSATION FOR
BHS-3 BARRY H. SPITZER, TRUSTEES
ATTORNEY(S)
9-17-15 [74]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. The moving party is to submit an appropriate order. No appearance is necessary.

5. 15-23746-D-7 GORDON BONES AMENDED MOTION TO DISMISS
15-2160 ADVERSARY PROCEEDING
MELISSA JOSEPH, AS TRUSTEE OF 9-24-15 [11]
THE RICHARD W. DE SI V. BONES

Final ruling:

This is the defendant's motion to dismiss the plaintiffs' complaint pursuant to Fed. R. Civ. P. 12(b)(6), made applicable in this proceeding by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. The plaintiff has filed opposition. For the following procedural reasons, the motion will be denied without prejudice.

The moving papers contain numerous procedural violations of the court's local rules; in particular, LBR 9014-1 and 9004-1(a), which incorporates the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901. On September 14, 2015, the moving party filed as a single document a notice of motion and motion and a memorandum of points and authorities. On September 24, 2015, the moving party filed as a single document an amended notice of motion and motion, a memorandum of points and authorities, an exhibit, a declaration with exhibits, and a proof of service. Except as otherwise noted, both sets of documents contain the following procedural defects. The moving papers were filed as a single document rather than separately. The moving papers do not contain a docket control number. The original moving papers do not contain the adversary number. None of the original moving papers is signed. The notice and amended notice do not advise the potential

respondent whether written opposition must be filed, or if so, of the deadline for filing it or the consequences of not filing timely written opposition. The notice and amended notice do not state the location of the courthouse where the hearing will be held. The moving papers are not on pages having numbered lines in the left margin and the pages are not numbered. There is no proof of service of the original moving papers. The proof of service of the amended moving papers is signed under oath as to the declarant's age and citizenship but not as to the facts of service, as required by 28 U.S.C. § 1746. Finally, the service date on the proof of service, September 15, 2015, cannot be accurate as it predates the date the documents that were served were themselves signed, September 23, 2015.

As a result of these procedural defects, the motion will be denied by minute order. No appearance is necessary.

6. 14-20064-D-7 GLENN GREGO OBJECTION TO CLAIM OF INTERNAL
WR-68 REVENUE SERVICE, CLAIM NUMBER
12
9-16-15 [465]

Final ruling:

Moving party filed an amended notice of hearing setting this matter for November 18, 2015 at 10:00 a.m. As such, no appearance is necessary on October 21, 2015.

7. 15-26866-D-7 ELROY/JUSTINA HARRIGAN MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
8-31-15 [5]

8. 14-27267-D-7 SARAD/USHA CHAND CONTINUED OBJECTION TO CLAIM OF
RLG-3 INTERNAL REVENUE SERVICE, CLAIM
NUMBER 1-4
7-14-15 [132]

Tentative ruling:

This is the debtors' objection to the amended claim of the Internal Revenue Service ("IRS") filed April 15, 2015. The IRS has filed opposition. For the following reasons, the objection will be overruled.¹

"A proof of claim executed and filed in accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). "Upon objection, [a] proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" Lundell v. Anchor Constr. Specialists, Inc., 223

F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). "To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proof[] of claim [itself].'" Id. (citation omitted, emphasis added).

The debtors state that they have requested, through the Freedom of Information Act, supporting documentation used in the IRS's audits for debtor Sarad Chand's amounts owed for the tax years 2009 and 2010. The debtors state they do not have access to certain business records that were seized by the Federal Bureau of Investigation, that they have not yet received the documentation they have requested from the IRS, and that there is a major discrepancy between deposits made into their bank accounts and the amounts listed on the IRS's claim. The debtors "object to the final determination of this claim until they have been able to review the requested supporting documentation used for the 2009 and 2010 audit." Obj., filed July 14, 2015, at 2:25-26. They anticipate further discovery will be needed. Thus, they request that the court sustain their objection, set the matter for an evidentiary hearing, and grant a continuance until they have had a reasonable time to review the supporting documentation.

The IRS's response, which is supported by declarations and exhibits, is to the effect that in May of 2014, after the audit had been completed and two months before the debtors commenced this case, the IRS sent the debtors' counsel over 5,900 pages of documentation related to the 2010 tax assessments in response to a Freedom of Information Act request that had been made by the debtors' counsel - the same law firm that represents them in this case. The IRS also states the debtors failed to challenge the deficiency determinations resulting from the audit, resulting in the deficiencies being assessed and the filing of a federal tax lien.

Regardless of the IRS's response, the fact that a debtor has requested but not yet received documentation supporting a creditor's claim is not a valid basis on which to object to the claim, particularly where there is no evidence the creditor has refused to provide the requested documentation. As the debtors here have submitted no such evidence and no evidence tending to defeat the claim, they have failed to shift the burden of production back to the IRS and failed to overcome the prima facie validity of the claim. Thus, the objection will be overruled. Further, at this point at least, there is no basis on which the court should set the matter for an evidentiary hearing.

In addition, there are the following procedural defects in the notice of hearing, which the IRS has waived in this instance by the filing of opposition. However, the court has advised the debtors' counsel about these defects on two prior occasions and would appreciate counsel taking note of them this time around: (1) the notice of hearing provides incorrect information about the time for filing written opposition - within 14 days before the hearing date, whereas the correct deadline is at least 14 days before the hearing date; and (2) the notice is in the nature of a hybrid of LBR 9014-1(f)(1) and (f)(2) in that it states that "if there is not a timely objection to the requested relief or appearance at a hearing, the Court may enter an order granting the relief by default," whereas a motion must be noticed as one or the other. Finally, the docket control number used for this matter has been used for a prior matter in this case, contrary to LBR 9014-1(c)(3).

The court will hear the matter.

1 As a preliminary matter, where the debt underlying a claim will not or may not

be discharged, the debtor has standing to object to the claim. Wellman v. Ziino (In re Wellman), 2007 Bankr. LEXIS 4291, *5 n.5 (9th Cir. BAP 2007); Vandevort v. Creditor's Adjustment Bureau, Inc. (In re Vandevort), 2007 Bankr. LEXIS 4919, *12 n.9 (9th Cir. BAP 2007). In this case, the deadline to file complaints objecting to the debtors' discharge has been extended to December 7, 2015. Thus, as of this date, the debtors have standing to object to claims.

9. 13-23371-D-11 JUAN/MARGARITA RAMIREZ MOTION FOR REVIEW OF FEES
UST-2 9-22-15 [247]

Final ruling:

Pursuant to the order entered on October 8, 2015, the hearing on this motion is continued to November 4, 2015 at 10:00 a.m. No appearance is necessary.

10. 15-27375-D-7 JAMAL SHEHADEH MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
9-21-15 [5]

11. 15-27284-D-11 CONSOLIDATED RELIANCE, STATUS CONFERENCE RE: VOLUNTARY
INC. PETITION
9-16-15 [1]

Tentative ruling:

This is the initial chapter 11 status conference in this case. The court does not ordinarily issue tentative rulings in advance of such hearings; however, in this case, there are certain service defects that need to be addressed. By an Order to (1) File Status Report; and (2) Attend Status Conference, filed September 21, 2015 (the "Order"), the debtor-in-possession was required to serve the Order, and later to file and serve a status report, on certain parties specified in the Order. On October 9, 2015, the debtor timely filed its status conference report and served it on some but not all of the parties required by the Order to be served. The debtor failed to serve the following, who were required to be served: (1) two of the four parties listed on Schedule G as parties to executory contracts or unexpired leases; (2) two of the creditors on the list of 20 largest unsecured creditors; and (3) the two parties on the list of equity

security holders. As to the latter, it may well be that those parties are the debtor's primary contacts with its counsel; they were nevertheless required by the Order to be served. In addition, the debtor failed to serve the following creditors at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1: (1) the Internal Revenue Service (completely incorrect address); (2) the Employment Development Department (incomplete address); (3) the State Board of Equalization (served at address for service of § 505 requests rather than address for other bankruptcy notices); and (4) the Securities and Exchange Commission (completely incorrect address).

The court will hear the matter as scheduled but intends to continue the hearing and require the debtor to file a notice of continued hearing and serve it, together with the Order and status conference report, on all required parties not previously served or served at an incorrect address.

12.	13-24087-D-7	LEO UNGUI AND VALARIE	MOTION TO EMPLOY ANDREW J.
	SCB-2	HARPER-UNGUI	HILL, III AS SPECIAL COUNSEL
			AND/OR MOTION TO EMPLOY DANIEL
			C. CHAPMAN AS SPECIAL COUNSEL
			9-15-15 [45]

Tentative ruling:

This is the trustee's motion to employ special counsel for the litigation of an action pending in the U.S. District Court for the Southern District of West Virginia. No party-in-interest has filed opposition and it appears the relief requested in the motion is supported by the record. The court has one concern, however.

The trustee has been informed that the parties to the lawsuit have reached a proposed settlement; the trustee states she wishes to retain special counsel to continue prosecuting the lawsuit, "including, without limitation, finalizing the proposed settlement." Mot. at 2:22. The supporting declarations are more specific. Andrew J. Hill, III states that the proposed settlement is "part of an aggregate settlement of multiple lawsuits that [his] firm is also handling." A. Hill Decl. at 2:15-16. He adds: "Confidentiality of the terms of the potential settlement, including the amount, is an essential term of the agreement, and the Defendant has insisted that the terms be disclosed only to the extent necessary and required by law. [¶] . . . I believe that the proposed settlement is reasonable and recommend that the bankruptcy estate accept it." Id. at 2:20-3:1. It is unclear whether the trustee is asking the court to permit special counsel to finalize the settlement without this court's approval. She does, however, ask for approval of special counsel to prosecute the lawsuit, including "finalizing the proposed settlement." The motion and notice of hearing are insufficient to inform potential respondents that the compromise is to be considered at this time and insufficient to permit the court to determine whether the compromise is fair and equitable. Thus, to the extent the trustee is seeking approval of the compromise or seeking to employ counsel to finalize the compromise without a further motion, notice, or hearing, that relief will not be granted.

The court will hear the matter.

13. 15-24611-D-7 MICHAEL/SUSAN PAGE MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON 10-7-15 [24]
VS.
14. 15-27611-D-12 TERRY/VERA ADAMS STATUS CONFERENCE RE: VOLUNTARY
PETITION
9-29-15 [1]
15. 12-40315-D-7 OLUSEGUN/YVONNE LERAMO MOTION FOR ADMINISTRATIVE
DNL-15 EXPENSES
9-23-15 [337]

Tentative ruling:

This is the trustee's motion for allowance of and authority to pay administrative tax claims. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, there was an error in notice. The notice of hearing, which is the only document served on the general creditor body, gives the amounts to be allowed and paid as, for the IRS: \$114,746 for chapter 11 and \$37,454 for chapter 7; and for the Franchise Tax Board, \$2,146 for chapter 11 and \$572 for chapter 7. In contrast, the motion gives the figures for the IRS as \$114,746 for chapter 11 and \$77,872 for chapter 7 and for the FTB as \$37,454 for chapter 11 and \$572 for chapter 7. If the trustee requests, the court will continue the hearing to allow the trustee to correct this notice defect.

The court will hear the matter.

16. 12-40315-D-7 OLUSEGUN/YVONNE LERAMO MOTION FOR COMPENSATION BY THE
DNL-17 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM TRUSTEES
ATTORNEY(S)
9-23-15 [341]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. The moving party is to submit an appropriate order. No appearance is necessary.

17. 12-40315-D-7 OLUSEGUN/YVONNE LERAMO MOTION FOR COMPENSATION FOR
DNL-16 GONZALES & SISTO LLP,
ACCOUNTANT(S)
9-23-15 [347]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. The moving party is to submit an appropriate order. No appearance is necessary.

18. 14-31725-D-11 TAHOE STATION, INC. MOTION TO DISMISS CASE
DMS-1 9-30-15 [237]

Tentative ruling:

This is the debtor's motion to dismiss this chapter 11 case. The trustee has filed a statement of non-opposition. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily the court would entertain opposition, if any, at the hearing. However, in this instance, the moving party served only the chapter 11 trustee, the United States Trustee, an attorney in the United States Attorney's office, the California Attorney General's office on behalf of the California Water Resources Control Board, the U.S. Small Business Administration, and Valley Business Bank. The moving party failed to serve the attorney for the chapter 11 trustee and failed to serve several other creditors in this case, as required by LBR 2002(a)(4). In particular, the moving party failed to serve (1) EDF Resource Capital, Inc., listed on the debtor's Schedule D; (2) Harvinder Kaur and Ponna Kaur, listed on Schedule F; (3) Aria Oil Company, listed on Schedule G; (4) Tahoe Blue Property, Inc., listed on an amended Schedule G filed April 1, 2015; and (5) the Franchise Tax Board, which has filed a claim in this case. In addition, the motion states there are administrative claims in this case due to or on account of, among others, Convenience Management Services, Inc., sales and use taxes, underground storage tank fees, and vendor expenses; however, the holders of these claims were not served. As a result of these service defects, the court intends to deny the motion. In the alternative, the court will consider continuing the hearing to permit the moving party to file a notice of continued hearing and serve it, together with the motion and supporting declaration and points and authorities, on all creditors.

The court notes also that there is a defect in the proof of service in that certain creditors are listed as "not on list of consenting efiles - also served by first-class mail," whereas the proof of service lists only their email addresses and not the street addresses at which they were served by mail. Thus, the proof of service is insufficient to demonstrate proper service.

The court will hear the matter.

19. 13-20636-D-7 GOLD FORK ENTERPRISES, MOTION FOR ALLOWANCE OF
SMD-4 INC. ADMINISTRATIVE INCOME TAX
CLAIMS
9-29-15 [70]

Tentative ruling:

This is the trustee's motion for allowance of and authority to pay administrative tax claims. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, as a preliminary matter, the court notes that the first paragraph of the motion gives the amount due the Franchise Tax Board as \$2,686.35 whereas on the second page, the amount is given as \$1,883.35. The trustee will need to clarify this discrepancy at the hearing.

The court will hear the matter.

20. 15-24748-D-7 WILLIAM/DOLORES GUNN MOTION TO AVOID LIEN OF
RPH-1 PORTFOLIO RECOVERY ASSOCIATES.
LLC
9-23-15 [15]

Tentative ruling:

This is the debtors' motion to avoid an alleged judicial lien of Portfolio Recovery Associates, LLC ("Portfolio"). The motion will be denied because the moving parties failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d)(6).

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

Here, the only evidence of a judicial lien is the declaration of Dolores Marilyn Gunn, who testifies that Portfolio obtained a judgment against her for \$3,789.62 and "obtained a judicial lien against my property by recording an Abstract of Judgment . . . in the real property records of El Dorado County, California" Gunn Decl., filed Sept. 23, 2015, at 1:22-24. The debtor also testifies, "I

have filed Schedule[s] A and B in this matter, which list all of my assets, with a total of \$9,907. [¶] I have claimed on Schedule C that each and every one of my assets is exempt." Id. at 1:25-27. Neither the declaration nor the motion identifies the particular real property to which the alleged judicial lien is alleged to have attached.

Under California law, a judicial lien on real property is created by the recording of an abstract of judgment with the county recorder of the county in which the property is located (Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a)); the recording of an abstract of judgment does not create a judicial lien against personal property. Here, the debtors disclosed no real property on their Schedule A; instead, where required to list all real property, they answered "None." The values of the personal property assets listed on their Schedule B and claimed as exempt on their Schedule C total \$9,907, the figure the debtor claims in her declaration is the total value of all of her assets. As with Schedule A, there is no real property claimed as exempt on the debtors' Schedule C. In other words, there is no evidence the debtors own any real property to which a judgment lien might have attached. Thus, there is no evidence a judgment lien on any property of the debtors was ever created and no evidence there is a judicial lien here that is subject to avoidance. Further, there is no evidence the lien, if it exists, impairs an exemption in real property that has been claimed by the debtors. Thus, the debtors have not established they are entitled to relief under § 522(f) (1) (A).

Finally, in order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)." Mohring, 142 B.R. at 391. Here, there is simply no evidence of a judicial lien held by Portfolio. Further, the debtors have failed to submit a copy of the recorded abstract of judgment. "The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Id. at 396. If the debtors had demonstrated they in fact own real property to which a judicial lien attached, the court would nevertheless deny the motion: obtaining a copy of the recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

As a result of this evidentiary defect, the motion will be denied by minute order. The court will hear the matter.

21. 15-24748-D-7 WILLIAM/DOLORES GUNN
RPH-2

MOTION TO AVOID LIEN OF
INTERNAL REVENUE SERVICE
9-23-15 [19]

Tentative ruling:

This is the debtors' motion to avoid an alleged judicial lien of the Internal Revenue Service (the "IRS"). The motion will be denied because the moving parties failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d) (6).

The motion is made "pursuant to 11 U.S.C. §522(f)(1)(A) and FRBP Rule 4003(d)." Debtors' Motion, filed Sept. 23, 2015, at 1:20-21. It refers to two notices of federal tax lien recorded by the IRS in the real property records of El Dorado County, California. The motion adds that "Debtor[s] filed Schedule[s] A and B in this matter, which list all of their assets, with a total of \$9,907. [¶] Debtor[s] claimed on Schedule C that each and every one of their assets is exempt" Id. at 2:2-5. There is no indication in the moving papers that the IRS has a lien by virtue of anything other than its notices of federal tax lien.

Section 522(f)(1)(A), on which the debtors rely, provides that a debtor in bankruptcy may avoid a lien to the extent it impairs an exemption to which the debtor would have been entitled, if the lien is a judicial lien.¹ The Bankruptcy Code defines a "judicial lien" as one "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." § 101(36). A "statutory lien" is one that arises "solely by force of a statute on specified circumstances or conditions, . . . but does not include security interest or judicial lien" § 101(53). Thus, the definitions are mutually exclusive - a lien is either a judicial lien or a statutory lien; it cannot be both. See In re Harpole, 260 B.R. 165, 171 (Bankr. D. Mont. 2001), citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 312 (1977).

Tax liens are statutory liens. Harpole, 260 B.R. at 172, citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 314 (1977). As such, they are not subject to avoidance under § 522(f)(1)(A). In re Khoe, 255 B.R. 581, 588 (E.D. Cal. 2000). See also § 522(c)(2)(B), which preserves, even as to exempt property, "a tax lien, notice of which is properly filed." As the debtors have failed to demonstrate that the lien they seek to avoid is a judicial lien, they have not established they are entitled to relief under § 522(f)(1)(A).

Finally, in the prayer to the motion, the debtors ask that the court "find that the taxes owed by debtor for years 2008 and 2009 are not secured and are dischargeable." Mot. at 2:12-13. Except as permitted under Fed. R. Bankr. P. 4003(d) (lien avoidance under § 522(f) - relief the court has already denied, above), this is relief that must be sought by way of an adversary proceeding. Fed. R. Bankr. P. 7001(2) and (6).

For the reasons stated, the motion will be denied by minute order. The court will hear the matter.

1

There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1).

In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

Tentative ruling:

This is the debtors' motion to avoid an alleged judicial lien of the Franchise Tax Board (the "Board"). The motion will be denied because the moving parties failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d) (6).

The motion is made "pursuant to 11 U.S.C. §522(f) (1) (A) and FRBP Rule 4003(d)." Debtors' Motion, filed Sept. 23, 2015, at 1:19-20. It refers to a notice of state tax lien recorded by the Board in the real property records of El Dorado County, California. The motion adds that "Debtor[s] filed Schedule[s] A and B in this matter, which list all of their assets, with a total of \$9,907. [¶] Debtor[s] claimed on Schedule C that each and every one of their assets is exempt" Id. at 1:27-2:2. There is no indication in the moving papers that the Board has a lien by virtue of anything other than its notice of state tax lien.

Section 522(f) (1) (A), on which the debtors rely, provides that a debtor in bankruptcy may avoid a lien to the extent it impairs an exemption to which the debtor would have been entitled, if the lien is a judicial lien.¹ The Bankruptcy Code defines a "judicial lien" as one "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." § 101(36). A "statutory lien" is one that arises "solely by force of a statute on specified circumstances or conditions, . . . but does not include security interest or judicial lien" § 101(53). Thus, the definitions are mutually exclusive - a lien is either a judicial lien or a statutory lien; it cannot be both. See In re Harpole, 260 B.R. 165, 171 (Bankr. D. Mont. 2001), citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 312 (1977).

Tax liens are statutory liens. Harpole, 260 B.R. at 172, citing H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 314 (1977). As such, they are not subject to avoidance under § 522(f) (1) (A). In re Khoe, 255 B.R. 581, 588 (E.D. Cal. 2000). See also § 522(c) (2) (B), which preserves, even as to exempt property, "a tax lien, notice of which is properly filed." As the debtors have failed to demonstrate that the lien they seek to avoid is a judicial lien, they have not established they are entitled to relief under § 522(f) (1) (A).

Finally, in the prayer to the motion, the debtors ask that the court "find that the taxes owed by debtor for years 2008 and 2009 are not secured and are dischargeable." Mot. at 2:9-10. Except as permitted under Fed. R. Bankr. P. 4003(d) (lien avoidance under § 522(f) - relief the court has already denied, above), this is relief that must be sought by way of an adversary proceeding. Fed. R. Bankr. P. 7001(2) and (6).

For the reasons stated, the motion will be denied by minute order. The court will hear the matter.

1

There are four basic elements of an avoidable lien under § 522(f) (1) (A): First, there must be an exemption to which the debtor

would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1).

In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added).

23. 14-22151-D-7 RAYMOND SADOWSKI MOTION FOR RELIEF FROM
DJD-1 AUTOMATIC STAY
SETERUS, INC. VS. 9-30-15 [57]

Final ruling:

This matter is resolved without oral argument. This is Seterus, Inc.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

24. 14-26862-D-7 VLADIMIR/YELENA TIMCHUK MOTION FOR COMPENSATION FOR
DMW-5 JEFFREY D. WILSON,
ACCOUNTANT(S)
9-23-15 [61]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

25. 15-25084-D-7 WILLIAM/CAROL HARRIS MOTION TO SELL AND/OR MOTION
EJN-2 FOR COMPENSATION FOR FIRST
CAPITAL AUCTION, INC.,
AUCTIONEER(S)
10-2-15 [51]

26. 15-27284-D-11 CONSOLIDATED RELIANCE, CONTINUED ORDER TO SHOW CAUSE
INC. 9-21-15 [13]

27. 15-25098-D-7 NESTOR ROCES MOTION TO CONVERT CASE FROM
BLG-1 CHAPTER 7 TO CHAPTER 13
9-28-15 [21]

Tentative ruling:

This is the debtor's motion to convert this case from chapter 7 to chapter 13. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily the court would entertain opposition, if any, at the hearing. However, in this instance, the moving party served only the trustee, the trustee's attorney, and the United States Trustee, and failed to serve any of the several creditors in this case, as required by LBR 2002(a)(4). As a result of this service defect, the court intends to deny the motion. In the alternative, the court will consider continuing the hearing to permit the moving party to file a notice of continued hearing and serve it, together with the motion and supporting declaration, on all creditors.

The court will hear the matter.

28. 13-21199-D-7 JAMES SCOTT MOTION FOR COMPENSATION FOR
DNL-18 GONZALES AND SISTO LLP,
ACCOUNTANT(S)
9-23-15 [324]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. The moving party is to submit an appropriate order. No appearance is necessary.

29. 13-21199-D-7 JAMES SCOTT
DNL-19

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEES
ATTORNEY(S)
9-23-15 [329]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. The moving party is to submit an appropriate order. No appearance is necessary.

30. 15-26419-D-7 DAVID GARRISON

TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
10-7-15 (13)