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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re:	)	
	)	
RALPH MAY, JR.,	)	Case No. 01-20206-B-13J
	)	
Debtor.	)	
	)	
_____	)	
RALPH MAY, JR.,	)	
	)	
Plaintiff	)	Adv. No. 05-2303-B
	)	
vs.	)	
	)	
COUNTY OF RIVERSIDE DEPT. OF	)	Docket Control No. SDB-3
	)	
CHILD SUPPORT,	)	Date: September 26, 2006
	)	
Defendant(s).	)	Time: 9:30 a.m.

On or after the calendar set forth above, the court issued the following ruling. The official record of the ruling is appended to the minutes of the hearing.

Because the ruling constitutes a "reasoned explanation" of the court's decision under the E-Government Act of 2002 (the "Act"), a copy of the ruling is hereby posted on the court's Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable format, as required by the Act. However, this posting does not constitute the official record, which is always the ruling appended to the minutes of the hearing.

**DISPOSITION AFTER ORAL ARGUMENT**

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the

1 motion. Accordingly, both movant and respondent have consented to the  
2 resolution of the motion and all disputed material factual issues  
3 pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

4 Federal Rule of Civil Procedure 56, made applicable to this  
5 proceeding by Bankruptcy Rule 7056, provides that summary judgment is  
6 appropriate if the pleadings, depositions, answers to interrogatories,  
7 admissions on file, and declarations, if any, show that there is "no  
8 genuine issue of fact and that the moving party is entitled to  
9 judgment as a matter of law."

10 A court cannot grant summary judgment simply upon the fact of  
11 non-opposition by the other party in the adversary action. Henry v.  
12 Gill Industries, Inc., 983 F.2d 943, 950 (9<sup>th</sup> Cir. 1993) (summary  
13 judgment cannot be granted based upon the failure to file opposition  
14 under a local rule); In re Lenard, 140 B.R. 550, 555 (D. Colorado  
15 1992) (discussing the advisory notes to F.R.C.P. 56(e) which provide  
16 "Where the evidentiary matter in support of the motion does not  
17 establish the absence of a genuine issue, summary judgment must be  
18 denied even if no opposing evidentiary matter is presented."). Thus,  
19 even where defendant's response fails to address the issues raised in  
20 the motion, instead raising a new issue in a counter motion, this  
21 court must "independently determine from the record whether summary  
22 judgment is proper." Lenard, 140 B.R. at 555.

23 The plaintiff, Ralph E. May, Jr., filed this motion for summary  
24 judgment against defendant County of Riverside Department of Child  
25 Support Services on his one-count complaint to determine whether a  
26 pre-petition debt for foster care costs (the "Debt") owed to defendant  
27 was discharged in plaintiff's chapter 13 case. Plaintiff argues that  
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1 summary judgment is appropriate because the undisputed facts before  
2 the court entitle plaintiff to judgment as a matter of law.

3 The motion is granted in part to the extent set forth herein.  
4 Plaintiff is entitled to summary adjudication that the Debt is not  
5 excepted from discharge under either 11 U.S.C. § 523(a) (5) or  
6 523(a) (18). Summary judgment as to the complaint as a whole is  
7 unavailable in this motion because plaintiff failed to address here  
8 defendant's third asserted basis for nondischargeability. That issue  
9 is addressed elsewhere on this calendar in reference to defendant's  
10 cross-motion for summary judgment. The parties have submitted a  
11 stipulated statement of facts (Dkt. No. 48) which the court  
12 incorporates by reference.

13 As to Section 523(a) (5), the court agrees with plaintiff that  
14 this subsection does not except the Debt from discharge. Section  
15 523(a) (5) provides:

16  
17 A discharge under §727 ... does not discharge an  
18 individual debtor from any debt "(5) to a spouse, former  
19 spouse, or child of the debtor, for alimony to,  
20 maintenance for, or support of such spouse or child, in  
21 connection with a separation agreement, divorce decree,  
22 or other order of a court of record, determination made  
23 in accordance with State or territorial law by a  
24 governmental unit, or property settlement agreement, but  
25 not to the extent that (A) such debt is assigned to  
26 another entity, voluntarily, or by operation of law, or  
27 otherwise (other than debts assigned pursuant to section  
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1 408(a)(3) of the Social Security Act, or any such debt  
2 which has been assigned to the Federal Government or to a  
3 State or any political subdivision of such State); or (B)  
4 such debt includes a liability designated as alimony,  
5 maintenance, or support unless such liability is actually  
6 in the nature of alimony, maintenance or support." (West  
7 2001).

8  
9 The plain language of this subsection shows that it does not  
10 apply to the Debt. The Debt is not one owed "to a spouse, former  
11 spouse or child of the debtor." The Debt is and always has been owed  
12 to defendant. The Debt therefore is not excepted from discharge by  
13 Section 523(a)(5).

14 As to Section 523(a)(18), the court agrees with plaintiff that  
15 this subsection does not except the Debt from discharge. However, the  
16 court reaches this conclusion for a reason different from that  
17 addressed in the motion. It is undisputed that the underlying  
18 bankruptcy case is one under chapter 13. It is also undisputed that  
19 debtor completed payments under his plan and received a discharge  
20 under 11 U.S.C. § 1328(a), the so-called superdischarge. Section  
21 1328(a)(2) sets forth those subsections of Section 523 that apply to a  
22 discharge granted under Section 1328(a):

23  
24 "(a) As soon as practicable after completion by the  
25 debtor of all payments under the plan, unless the court  
26 approves a written waiver of discharge executed by the  
27 debtor after the order for relief under this chapter, the  
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1 court shall grant the debtor a discharge of all debts  
2 provided for by the plan or disallowed under section 502  
3 of this title, except any debt - ... (2) of the kind  
4 specified in paragraph (5), (8), or (9) of section 523(a)  
5 or 523(a)(9) [sic] of this title;..." (West 2001).

6  
7 It also cannot be disputed that the debt owed to defendant was  
8 "provided for" by the plaintiff's confirmed plan. Defendant's claim  
9 did not qualify for treatment in classes 1 through 6 such that it  
10 would be specifically mentioned by name. The plan provides for the  
11 Debt in Class 7. That class provides treatment for all general  
12 unsecured claims, of which the Debt is one. See 8 Lawrence P. King,  
13 et al., COLLIER ON BANKRUPTCY, § 1328.02[3][a] (15<sup>th</sup> ed. rev. 2006);  
14 Lawrence Tractor Co. v. Gregory (In re Gregory), 705 F.2d 1118, 1122  
15 (9<sup>th</sup> Cir. 1993).

16 Section 523(a)(18) is not one of the subsection listed in 2001  
17 when debtor filed his bankruptcy case nor for that matter in any  
18 version of the statute enacted since then. The court therefore need  
19 not reach the merits of whether the Debt is one which falls within the  
20 scope of Section 523(a)(18) because even if it does, it was discharged  
21 under Section 1328(a). Plaintiff is therefore entitled to summary  
22 adjudication on this issue.

23 The court will issue a minute order.

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