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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 06-22030-B-13J
10 CHARLES DAVIS II,) Docket Control No. JPJ-2
11 Debtor.) Date: October 3, 2006
12) Time: 9:30 a.m.

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

15 Because the ruling constitutes a "reasoned explanation" of
16 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
17 Internet site, www.caeb.uscourts.gov, in a text-searchable
18 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.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 Neither the respondent within the time for opposition nor the
21 movant within the time for reply has filed a separate statement
22 identifying each disputed material factual issue relating to the
23 motion. Accordingly, both movant and respondent have consented to the
24 resolution of the motion and all disputed material factual issues
25 pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

26 The motion is granted in part and the case is dismissed.
27 This case is dismissed pursuant to 11 U.S.C. § 521(e)(2)(B). Debtor
28 was required to provide to the trustee "not later than 7 days before

1 the first date set for the meeting of creditors,...a copy of the
2 Federal income tax return required under applicable law... for the
3 most recent tax year ending immediately before the commencement of the
4 case and for which a Federal income tax return was filed." 11 U.S.C.
5 § 521(e)(2)(A)(i) (West 2006). The trustee alleges without dispute
6 that the debtor has failed to comply with that section. The debtor's
7 failure to do so requires dismissal under Section 521(e)(2)(B), unless
8 he "demonstrates that the failure to so comply is due to circumstances
9 beyond the control of the debtor." Debtor's opposition fails to
10 address this contention at all. The debtor has provided no evidence
11 that his failure to comply was beyond his control. Therefore,
12 dismissal is required.

13 The arguments raised by creditor Grant Reynolds are unpersuasive.
14 As an initial matter, service on Mr. Reynolds of this motion and
15 debtor's response hereto was not required. Notice of this motion is
16 not governed by Federal Rule of Bankruptcy Procedure 2002 because
17 motions to dismiss in chapter 13 are not among those listed in the
18 Rule. Rule 2002(a)(4) only applies to dismissal motions for chapters
19 7, 11, and 12. Therefore, requests for special notice under Fed. R.
20 Bankr. P. 2002(g) need not be served with this motion as special
21 notice requests are limited to "notices required to be mailed under
22 Rule 2002." Rule 3017 is inapplicable in this case because it relates
23 to notice of disclosure statements in chapter 9 and chapter 11. This
24 case is one under chapter 13. Finally, Rule 9007 did not require
25 service on Mr. Reynolds because there is no order on file in this case
26 requiring service on Mr. Reynolds. This motion is governed by Fed. R.
27 Bankr. P. 9014 which requires notice to those parties against whom
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1 relief is sought. The debtor is the party against whom relief is
2 sought. He was properly served.

3 The court acknowledges creditor's preference that this case be
4 converted to one under chapter 7. Unfortunately, that relief is
5 unavailable. The language of Section 521(e)(2)(B) is mandatory. "If
6 the debtor fails to comply with clause (i) or (ii) of subparagraph
7 (A), the court shall dismiss the case unless the debtor demonstrates
8 that the failure to so comply is due to circumstances beyond the
9 control of the debtor." 11 U.S.C. § 521(e)(2)(B) (West 2006)
10 (emphasis added). It is undisputed that debtor failed to comply with
11 subparagraph (A). Dismissal is the only option available to this
12 court.

13 The court declines to reach the remaining allegations in the
14 motion.

15 The court will issue a minute order.
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