



**IT IS ORDERED as set forth below:**

**Date: May 01, 2008**

*Mary Grace Diehl*

Mary Grace Diehl  
U.S. Bankruptcy Court Judge

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE: : CASE NUMBER  
: :  
WILLIAM LEONARD SIMS, : **06-62756-MGD**  
: :  
Debtor. : CHAPTER 13  
:

**ORDER DIRECTING DEBTOR TO FILE 11 U.S.C. § 1328 CERTIFICATE**

The above-styled Chapter 13 case is before the Court *sua sponte*. On January 8, 2008, the Chapter 13 Trustee filed her Notice of Completed Plan indicating that William Leonard Sims (“Debtor”) has completed his payments to creditors pursuant to the terms of his confirmed Chapter 13 plan. The Notice, which was mailed to Debtor and his counsel, further notified Debtor that he must file a completed 11 U.S.C. § 1328 Certificate disclosing any domestic support obligations or previous discharges within 45 days to prevent his case from being closed without a discharge.<sup>1</sup> To date, Debtor has not filed a § 1328 Certificate. For the reasons set forth herein, Debtor has through

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<sup>1</sup> On January 29, 2008, an Order was inadvertently entered discharging the Trustee and closing the estate. Because no discharge order had been entered, the January 29, 2008 Order was vacated and the case was reopened.

and including May 30, 2008, to file his § 1328 Certificate or his case may be closed without a discharge.

11 U.S.C. § 1328 and “Debtor’s 11 U.S.C. § 1328 Certificate”

Section 1328(a) of the Bankruptcy Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), states that the court shall grant the debtor a discharge:

[A]s soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid... 11 U.S.C. § 1328(a).

The statute effectively requires that one of two things to happen in order for a debtor to receive a discharge: (1) a debtor with a domestic support obligation must certify that payments under the obligation are current or (2) the court must determine that no domestic support obligation exists.

While the statute does not expressly require such court inquiry, given the nature of domestic support obligations and the duration of most Chapter 13 plans,<sup>2</sup> this Court knows no other way of ensuring compliance with § 1328(a) in the absence of a debtor’s certification other than to verify that no domestic support obligation exists.

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<sup>2</sup> In most instances, it takes a debtor three to five years to complete a Chapter 13 plan, so while a debtor may not have had any domestic support obligations at the time his or her petition and plan were filed, the debtor could have incurred such an obligation during the pendency of the plan. Under these circumstances, the debtor would ideally file amendments to his or her schedules and plan. The reality, however, is that if the new obligation does not affect the debtor’s ability to make the required payments under the confirmed plan, the debtor is unlikely to file amendments disclosing the obligation.

As some Chapter 13 plans filed post-BAPCPA began to near completion, the U.S. Bankruptcy Court for the Northern District of Georgia anticipated the challenge of verifying a debtor's eligibility to receive a discharge in light of § 1328(a) and created a local form to be completed and filed by Chapter 13 debtors after the completion of their plan payments.<sup>3</sup> This form, entitled "Debtor's 11 U.S.C. § 1328 Certificate," requires debtors to declare whether they (1) have not been required to pay any domestic support obligation during the pendency of the case, (2) have paid all domestic support obligations as required by order or statute, or (3) have not paid all domestic support obligations as required by order or statute. A debtor must then sign the form beneath a statement that reads: "By signing this Notice, I acknowledge that all of the statements contained herein are true and accurate and that the Court may rely on the truth of each of these statements in determining whether to grant me a discharge in this case. The Court may revoke my discharge if my statements are not accurate."

While there is no Local Rule or General Order requiring the filing of this certificate in order to receive a discharge, the form allows the Court to determine that a debtor is in compliance with § 1328(a) (and § 1328(f)) and is, barring any other prohibition, eligible to receive a discharge. Without this completed certificate, the Court can only look to the record to try to determine whether the debtor is in compliance with § 1328. The Court can look to the

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<sup>3</sup> The "§ 1328 Certificate" also addresses § 1328(f) in that it requires debtors to disclose whether they have previously received a discharge that would make them ineligible to receive a discharge in their current case. However, a debtor's petition, which must be signed under penalty of perjury, requires a debtor to disclose any bankruptcy case filed within the previous 8 years. Debtor has disclosed his previous bankruptcies on his petition and a review of those cases reveals that Debtor has not received a discharge in the previous 8 years. This Order thus addresses only Debtor's eligibility to receive a Chapter 13 discharge and the "§ 1328 Certificate" in light of § 1328(a).

debtor's petition and to U.S. Bankruptcy Court records to determine whether a debtor is eligible for a discharge under § 1328(f), but the Court has no independent means of verifying whether a debtor is current on any domestic support obligations disclosed in his or her petition and plan or whether a debtor has incurred a domestic support obligation since the filing of the case.

### The Present Case

Debtor filed his petition for relief under Chapter 13 of the Bankruptcy Code on March 10, 2006, and his Chapter 13 plan was confirmed on May 3, 2006. After the confirmation of Debtor's plan, he surrendered his real property to the mortgage company and was therefore able to complete the payments required under the plan much sooner than anticipated. On January 8, 2008, the Chapter 13 Trustee filed her Notice of Completed Plan indicating that William Leonard Sims ("Debtor") has completed his payments to creditors pursuant to the terms of his confirmed Chapter 13 plan. The Notice further informed Debtor that he must file a completed 11 U.S.C. § 1328 Certificate disclosing any domestic support obligations or previous discharges within 45 days to prevent his case from being closed without a discharge.

Debtor has not filed the certificate or otherwise provided the Court with information regarding any domestic support obligations he may have. Though Debtor and his counsel were informed of the need to file the § 1328 Certificate, because this procedure was implemented only months ago and so few Chapter 13 plans filed post-BAPCPA have reached completion, and because the notice provided to Debtor and his attorney was a notice from the Trustee and not an order by this Court, the Court is hesitant to simply close Debtor's case without a discharge for failure to file the certificate. However, the Court has been unable, on its own, to determine whether Debtor is in compliance with § 1328(a).

Debtor's schedules do not disclose any domestic support obligations, pending domestic litigation, or dependents. The Court has no way of knowing, however, whether Debtor has incurred a domestic support obligation since the filing of his case and confirmation of his plan. Any such determination based on a debtor's age, marital status, or dependents as disclosed on Schedule I would be a baseless assumption. Any number of factors in Debtor's marital, parental, or family status could have caused him to incur a domestic support obligation during the pendency of this case and this Court cannot determine that Debtor is in compliance with § 1328(a) without affirmation from Debtor that his circumstances have not changed. Accordingly, it is

**ORDERED** that, on or before May 30, 2008, Debtor shall file "Debtor's 11 U.S.C. § 1328 Certificate" or otherwise provide the Court with information sufficient for the Court to determine whether Debtor is in compliance with § 1328(a) to prevent this case from being closed without a discharge.

The Clerk shall serve a copy of this Order upon Debtor, counsel for Debtor, the Chapter 13 Trustee, and the U.S. Trustee.

**END OF DOCUMENT**