IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:	)	
	)	
LEWIS J. RANKINS and	)	
FELICIA M. RANKINS,	)	Case No. 14-2729
	)	
Debtor.	)	

ORDER GRANTING MOTION TO MODIFY IN PART

This case came before the court on October 16, 2019 on the debtors' motion to modify (doc. 52) their chapter 13 plan and the trustee's objection (doc. 61) thereto. The debtors "request that the length of their Chapter 13 plan be reduced to the amount paid and that no further payments be required from the Debtors to the Chapter 13 Trustee." (*See* doc. 52, ¶7). They nonetheless admit that they still owe a delinquency payment of a little over $600.00 that was due at the time of the filing of the motion. The trustee does not object to the motion except to the extent that the debtors seek to make the modification retroactive to the date of the filing of the motion. According to the trustee's calculation, at the time of the hearing, the debtors were delinquent $1,026.50, which is also the amount required to pay out the case since the current 60-month plan term has run.

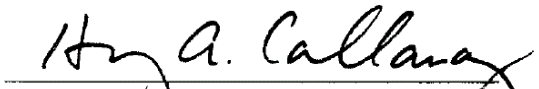
11 U.S.C. § 1329(b)(2) states that "[t]he plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved." The Seventh Circuit has interpreted the statute to mean that a modification is effective when the party requests the modification, unless the court later disapproves the modification. *See Germeraad v. Powers*, 826 F.3d 962, 969 (7th Cir. 2016); *see also generally In re Santillan*, No. 15-35753, 2018 WL 4674573 (Bankr. S.D. Tex. Sept. 26, 2018) (noting ambiguity in § 1329(b)(2) as to when proposed modification becomes effective). However, the court has not found any controlling precedent from the Eleventh Circuit or any persuasive precedent from any court within this circuit addressing the issue of when a modification becomes effective, *i.e.* at the time of the filing of the motion to modify or at the time the court grants the motion.

The court is of the opinion that the better approach is for the modification to become effective once the court actually grants the motion to modify. "During the 'notice and hearing' period, an amendment is simply a proposal, and cannot in any respect be regarded as part of the plan itself." *In re Vela*, 526 B.R. 230, 236 (Bankr. W.D. Mich. 2015). "To hold otherwise would artificially transform a mere proposal into a binding provision, even before the time for resolving objections has passed." *Id.*

In this particular case, the result is that the debtors must pay about $400.00 more than they wanted to complete their plan. However, making a plan modification effective as of the date of the motion would have negative effects on debtors in general. If the court followed the Seventh Circuit, the result would be that when the trustee filed a motion to modify to increase a debtor's plan payments, the debtor would immediately be in arrears for the plan payments at the higher amount if the court granted the motion.

At the hearing, the debtors requested that the court allow them to extend their plan to 66 months if the court found that the motion to modify did not apply retroactively. The court hereby grants that request. The court requests that the trustee submit a proposed order approving a plan modification extending the term to 66 months and including the new monthly plan payment required for the debtors to complete their plan.

Dated: October 17, 2019



HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE