IT IS ORDERED as set forth below:

Date: March 20, 2008

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

In the United States Bankruptcy Court
for the Northern District of Georgia
Rome Division

In re	)	Case No. 05-42962
	)	
Monica Yuvette Goggins,	)	Chapter 13
aka Monica Yvette Braziel,	)	
	)	
Debtor.	)	Judge Diehl

ORDER

Monica Yuvette Goggins ("Debtor") filed her Chapter 13 case and Chapter 13 Plan on August 15, 2005, prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Debtor's Chapter 13 Plan was filed using the standard form plan that was used in this District prior to BAPCPA. With respect to claims other than those secured by Debtor's principal residence, the Plan provided: "The rights of the holders of each other respective secured claims are hereby modified and each such secured creditor's claim shall be paid to the extent of the value of their security on a pro rata basis . . .Unsecured creditors, whose claims have been filed and allowed, shall be paid to the extent of 100 cents on

the dollars. . . on a pro rata basis of all money available after payment of the above-stated claims as proposed above as determined at the 341 meeting. . .." The Plan also provided for special treatment for the claim of Drive Financial: "3. Pay Drive Financial 100%, including contract rate of interest to protect co-signer, with the unsecured portion of the claim to be paid concurrently with secured creditors."

Drive Financial Services ("Drive") filed a secured claim in the amount of $17,287.86. At the Section 341(a) meeting, the claim was allowed as a secured claim in the amount of $13,975.00 and an unsecured claim in the amount of $3,312.86.[1] The Chapter 13 was confirmed on October 26, 2005.

On February 11, 2008, Debtor filed a First Amended Chapter 13 Plan by which she seeks to modify the treatment of Drive so as to delete the special treatment provision of Drive's claim and further to decrease the percentage payment to unsecured creditors to one cent on the dollar rather than the 100 cents originally provided for. Finally, the Amended Plan provides for payment of interest on secured claims at a rate of prime plus two per cent rather than the contract rate.

Drive objects to the proposed modification and contends that the confirmation order is res judicata of the treatment of Drive's claim and that 11 U.S.C. § 1329 does not permit the proposed change in the treatment of Drive's claim. Debtor contends that the modification is permissible under 11 U.S.C. § 1329.

---

[1]Both claims were set up by the Chapter 13 Trustee to be paid with interest at a rate of 8.25%, even though the Plan provided for contract interest which was at the rate of 23%. The Chapter 13 Trustee and Drive now agree that the effect of the Trustee's actions will require a reallocation of the payments that have been made under the Plan but this matter does not impact the issue now before the Court.

Section 1327(a) of the Bankruptcy Code provides:

> The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

Section 1327 is often referred to as the res judicata effect of a confirmation order: it is a binding determination of the rights and obligations of the debtor and her creditors on which those parties can rely. However, section 1327 does not determine the allowance of claims. That is done pursuant to Section 502 and subsection (j) specifically allows the court to reconsider the allowance or disallowance of a claim at any time. Thus, a claim that was paid by a third party or through the surrender and disposition of collateral could be reconsidered and disallowed, in whole or in part. Drive does not appear to argue with this concept. Rather, Drive contends that the Plan as confirmed classified its claim as secured and therefore the modification cannot be permitted to change that classification. Drive has not carefully read the Plan as confirmed. It is undisputed that the claim of Drive was treated in two parts in the original plan: a secured claim and an unsecured claim with special treatment. The plan modification seeks to change the treatment of each of those two parts of the claim but does not seek to re-classify either part of the claim.

Drive equates "treatment" with "classification." That contention is inconsistent with the way those terms are used in Sections 1322, 1122 and 1123 of the Bankruptcy Code. Classification refers to the placement of a claim in a class in a plan, either alone or with other claims of a similar nature. (11 U.S.C. §§ 1322 (a)(3), 1322(b)(1), 1122, 1123) Treatment refers to the proposed payment or other provision for the claim.(11 U.S.C. §§ 1322(a)(3), 1322(b)(1), 1123(a)(3), 1123(a)(4)). The proposed modification here does not change the fact that Drive has

a secured claim and an unsecured claim. It merely changes the treatment of those claims.

The treatment of the unsecured claim is changed in that the modified plan provides for a reduction in the payment on all unsecured claims as a result of Debtor's changed financial circumstances. This is exactly the situation that Section 1329 is designed to address: changes in Debtor's financial circumstances following confirmation. Courts have adopted various tests as to the applicability of Section 1329. Some have held that no change in circumstances is necessary for a plan modification. Barbosa v. Soloman, 235 F.3d 31 (1st Cir. 2000), In re Witknowski, 16 F.3d 739 (7th Cir. 1994). Other courts have held that a modification is only permitted where there has been a material or substantial change in circumstances in the debtor's income or expenses, that was not anticipated at the time of confirmation. E.g., In re Gallagher, 332 B.R. 277, 283 (Bankr. E.D. Pa. 2005); In re Dunlap, 215 B.R. 867, 869 (Bankr. E.D. Ark. 1997). Debtor meets either test. She is separated from her spouse with a resultant change in her household income and expenses as well as the elimination of her desire to protect the co-debtor spouse. Drive supports its opposition to the modification not with reference to this test but by citation to three cases: Chrysler Financial Corp. v. Nolan (In re: Nolan), 232 F.3d 528 (6th Cir. 2000), In re Abercrombie, 39 B.R. 178 (Bankr. N.D. Ga. 1984) and In re; Coleman, 231 B.R. 397 (Bankr. S.D. Ga. 1999). All three cases concern factual situations which differ from Debtor's. Each involves a proposed surrender of a vehicle, application of proceeds to a secured claim and the classification of the remaining claim as an unsecured claim. The Court agrees that were Debtor to propose to surrender her vehicle and if, upon disposition of the vehicle, the proceeds were insufficient to pay the allowed secured claim in full, she would still be obligated to pay the balance of any allowed secured claim in full. However, that is not at all what is

proposed here. Debtor is retaining the vehicle and paying the secured claim in full. None of the cases cited are relevant to Debtor's change in the treatment of Drive's unsecured claim.

That leaves the question of whether the proposed change in the interest rate on the secured claim of Drive is permitted. As with the change in the treatment of the unsecured claim, this change is one in the treatment of the claim, not the classification and thus is permitted under Section 1329(a)(1) as a reduction in the amount of payments on a particular class of claims if it otherwise meets the test of Section 1329(b)(1) as complying with Sections 1322(a), 1322 (b) and 1323(c) and 1325(a). Drive takes issue with the proposed interest rate, presumably because it would contend that it does not comply with 11 U.S.C. § 1325(a)(5) which requires that the Court find that the present value of the amount to be distributed under the Plan represent the value of the secured claim. The United States Supreme Court addressed this issue in Till v. SCS Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 158 L. Ed. 2d 787 (2004), holding that the a formula approach based upon the prime rate of interest best carried out the intentions of Congress. The current prime rate is 6% and the prime rate as of the date Debtor filed her case was 6.5%. Thus, the proposed 8% falls within the "Prime plus" analysis of the Till case in the absence of any argument to the contrary from Drive.

The Court therefore determines that the Modification of Debtor's Plan is appropriate and complies in all respects with Section 1329. The Court will confim Debtor's Plan, as modified.

END OF DOCUMENT

Distribution List:

Lisa Ritchey-Craig
171 17th Street, NW, Suite 975
Atlanta, GA 30363

Monica Yuvette Goggins
aka Monica Yvette Braziel
314 Kings Crossing Court
Rockmart, GA 30153

James R. McKay
PO Box 1654
Rome, GA 30162-6063

Mary Ida Townson
100 Peachtree Street, NW, Suite 2700
Atlanta, GA 30303