The relief described hereinbelow is SO ORDERED.

SIGNED this 17th day of July, 2025.

Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

MARCELLA CADE,

Debtor.

Case No. 19-20062
Chapter 13

ORDER TO SHOW CAUSE

Debtor Marcella Cade received a Chapter 13 discharge pursuant to 11 U.S.C. § 1328(a) on March 28, 2023.[1] More than a year later, on April 4, 2024, creditor Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as Trustee for Pretium Mortgage Acquisition Trust ("**Wilmington**"), asked this Court to:

[1] ECF 29.

(a) reopen Cade's bankruptcy case;

(b) set aside the discharge order;

(c) allow post-petition escrow advances in the amount of $32,433.40;

(d) determine that the debt is secured by Wilmington's first-priority mortgage on Cade's home; and

(e) order that Wilmington may collect the advances from Cade.[2]

The Court has already reopened the case[3] and denied Wilmington's request to set aside Cade's discharge.[4] As to Wilmington's remaining requests, this order determines that neither Cade's plan nor Fed. R. Bankr. P. 3002.1 would prevent Wilmington from recovering post-petition escrow advances. However, Wilmington will be ordered to show cause why, under the reasoning of *In re Payne*, 387 B.R. 614 (Bankr. D. Kan. 2008), and similar cases in other districts, it has not *waived* its right to recover any such advances made during the pendency of this case.[5]

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[2] *See* ECF 34 (motion to reopen); ECF 35 (motion to vacate); ECF 49 (Wilmington's brief); ECF 50 (Cade's brief). Wilmington is represented by attorney James Todd. Cade is represented by attorney Kimberly Athie. This matter is a core proceeding under 28 U.S.C. § 157(b) because it requires the Court to interpret and enforce 11 U.S.C. §§ 1322, 1325, and 1328; Fed. R. Bankr. P. 3002.1; and its own prior orders. Venue is appropriate under 28 U.S.C. § 1409.

[3] ECF 39.

[4] *See* ECF 45 (reflecting bench ruling that Bankruptcy Code did not authorize court to revoke Cade's discharge); *see also* 11 U.S.C. § 1328(e) (requiring motion for revocation to be made within one year of discharge); *id.* (authorizing revocation "only if (1) such discharge was obtained by the debtor through fraud; and (2) the requesting party did not know of such fraud until after such discharge was granted").

[5] *Cf. Gardner v. United States (In re Gardner)*, 913 F.2d 1515, 1517-18 (10th Cir. 1990) (explaining that bankruptcy courts are courts of limited jurisdiction).

Marcella Cade has lived in her home at 5706 Georgia Avenue in Kansas City, Kansas, since 1978. She and her late husband, Marvin, financed their purchase of the home with a $37,950 mortgage loan. The mortgage provides, in relevant part:

> **2. Funds for Taxes and Insurance.** Subject to Lender's option under paragraphs 4 and 5 hereof, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Mortgage, and ground rents on the property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. . . .
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> . . . If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after notice from Lender to Borrower requesting payment thereof.
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> . . .
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> **4. Charges; Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and ground rents, if any, at Lender's option in the manner provided under paragraph 2 hereof or by Borrower making payment, when due, directly to the payee thereof. . . .
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> **5. Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the

> Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage. . . .
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> . . .
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> **7. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, . . . then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest . . . . Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage.[6]

The loan and mortgage were assigned to CitiMortgage in 2004.[7]

In 2005, the Cades executed a loan modification agreement with CitiMortgage. In that agreement, the Cades agreed to pay CitiMortgage a principal balance of $39,162.22 with 10% annual interest by making monthly payments of $372.78 until November 2026.[8] Other provisions of their mortgage—including the Cades' obligation "to make all payments of taxes, insurance premiums, assessments, [and] escrow items"—remained intact.[9] The loan modification agreement and mortgage were assigned to Wilmington in 2018.[10]

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[6] Mortgage, ECF 49-1 at 11-12.

[7] Assignment of Mortgage, ECF 49-1 at 16.

[8] Loan Modification Agreement ¶¶ 1-2, ECF 49-1 at 19.

[9] *Id.* ¶ 4.

[10] Assignment of Mortgage, ECF 49-2.

In 2019, three years after her husband's death, Marcella Cade filed for bankruptcy. Wilmington filed a $31,988.90 claim secured by the mortgage on Cade's home and nothing else.[11] Wilmington's mortgage proof of claim attachment (Official Form 410A) reported a prepetition arrearage of $9,090.66 and stated that Cade's monthly mortgage payment was (then) $782.56: $372.78 for principal and interest and $409.78 for escrow (i.e., taxes and insurance).[12]

Given that Wilmington's claim was secured only by a mortgage on Cade's principal residence, and that Cade's last payment under the loan modification agreement was not due until November 2026, Cade should have proposed a Chapter 13 plan that paid off her prepetition arrearage while maintaining her regular mortgage payments. *See* 11 U.S.C. § 1322(b)(2) (permitting plan to "modify the rights of holders of secured claims, *other than* [emphasis added] a claim secured only by a security interest in real property that is the debtor's principal residence"); 11 U.S.C. § 1322(b)(5) (permitting plan to "notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due *after* [emphasis added] the date on which the final payment under the plan is due"); 11 U.S.C. § 1322(d) (specifying that plan may not provide for payments over period longer than 5 years).

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[11] Claim No. 4-1, ECF 49-1 at 2-3. Because Wilmington had a first-priority mortgage and Cade's home was worth $140,138, Wilmington's claim was fully secured. *Cf.* ECF 1 at 9 (reflecting property value).

[12] Mortgage Proof of Claim Attachment (Official Form 410A), ECF 49-1 at 5.

Instead, Cade proposed a plan that paid Wilmington's $31,988.90 claim in full at the trustee's discount rate.[13] In other words, instead of treating Wilmington's claim under § 1322(b)(5), Cade's plan treated the claim under § 1325(a)(5). Although its treatment of Wilmington's claim did not comply with § 1322(b)(2), Cade's plan—which required her to make monthly payments of $860 to the Chapter 13 trustee—was confirmed without objection on March 12, 2019.[14] The plan was silent as to escrow.

Section 10.1 of Cade's plan provides:

> Any secured creditor whose debt is secured by real property will retain its lien pursuant to § 1325(a)(5) and shall be required to release the lien at the time designated by § 1325(a)(5);[15] provided, however, that entry of the discharge shall not release a lien that secures a claim being treated under § 1322(b)(5).

Wilmington filed three notices pursuant to Fed. R. Bankr. P. 3002.1 during Cade's bankruptcy case. First, on July 15, 2019, Wilmington filed a notice of postpetition mortgage fees, expenses, and charges (Official Form 410S2) itemizing $550 in bankruptcy-related fees.[16] (The fees were subsequently paid through Cade's

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[13] *See* ECF 5. Technically, the plan proposed to pay Wilmington $32,120 (the same amount listed on Cade's Schedule D) at the trustee's discount rate. However, under D. Kan. LBR 3015(b).1(d), the $31,988.90 amount stated in Wilmington's proof of claim controlled over the amount listed in the plan.

[14] *See* ECF 15 (reflecting automatic confirmation).

[15] "[T]he time designated by § 1325(a)(5)" is "the earlier of—(aa) the payment of the underlying debt determined under nonbankruptcy law; or (bb) discharge under section 1328." *See* 11 U.S.C. § 1325(a)(5)(B)(i)(I).

[16] *See* Notice of Postpetition Mortgage Fees, Expenses, and Charges, July 15, 2019, ECF 49-5.

plan.[17]) Second, on February 8, 2022, Wilmington filed a notice of mortgage payment change (Official Form 410S1) advising that as of March 1, 2022, Cade's monthly escrow payment would increase from $409.78 to $718.63, such that her total mortgage payment would increase to $1,091.41.[18] Third, on December 27, 2022, Wilmington filed a second notice of mortgage payment change advising that as of February 1, 2023, Cade's monthly escrow payment would increase from $718.63 to $760.22, such that her total mortgage payment would increase to $1,133.00.[19]

Cade appears to have responded to Wilmington's two notices of mortgage payment change by increasing her monthly payments to the Chapter 13 trustee. After the first notice, Cade increased her payments to the trustee from $860.00 to $1,091.41.[20] After the second notice, Cade's final payment to the trustee on February 15, 2023, was for $1,133.00.[21]

The Chapter 13 trustee's final report shows that Wilmington was paid a total of $37,645.79 on its claim—$31,988.90 principal plus $5,656.89 interest—through Cade's plan.[22]

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[17] *See* Trustee's Final Report and Account, ECF 31.

[18] *See* Notice of Mortgage Payment Change, Feb. 8, 2022, ECF 49-6.

[19] *See* Notice of Mortgage Payment Change, Dec. 27, 2022, ECF 49-7.

[20] *See* Trustee's Report of Receipts and Disbursements, ECF 25.

[21] Cade's payment history can be viewed at www.13network.com (last visited June 23, 2025).

[22] *See* Chapter 13 Trustee's Final Report, ECF 31.

Cade received a discharge pursuant to 11 U.S.C. § 1328(a), again without objection, on March 28, 2023.[23] The case was closed on June 8, 2023.[24]

On April 4, 2024, Wilmington filed the motion now before the Court, alleging that it had made post-petition escrow advances totaling $32,433.40—i.e., that it had paid $32,433.40 in taxes and insurance on Cade's behalf—since Cade's Chapter 13 case was filed.[25] Wilmington asks the Court to "allow"[26] the post-petition escrow advances in the amount of $32,433.40; determine that such debt is secured by Wilmington's on Cade's home; and order that Wilmington may collect those advances from Cade.[27]

Wilmington alleges that it made the following post-petition advances:[28]

Date	**Amount**	**Name**
4/8/2019	$1,071.64	County tax
12/4/2019	$1,159.76	County tax
12/31/2019	$3,005.34	Hazard insurance
4/10/2020	$1,089.76	County tax
12/2/2020	$1,229.40	County tax
12/30/2020	$3,263.61	Hazard insurance
4/20/2021	$1,229.40	County tax
12/1/2021	$1,328.64	County tax

[23] Order of Discharge, ECF 29.

[24] *See* Final Decree, ECF 32.

[25] ECF 35.

[26] In a Chapter 13 case, claim allowance occurs pursuant to 11 U.S.C. § 502 and 11 U.S.C. § 1305. Because Wilmington's motion does not cite either statutory provision, the Court assumes Wilmington is not using the term "allow" in the technical sense.

[27] ECF 49 at 2.

[28] Wilmington's Ex. 9, ECF 49-9.

12/6/2021	$3,525.91	Hazard insurance
4/18/2022	$1,328.64	County tax
12/5/2022	$4,471.32	Hazard insurance
12/5/2022	$1,340.64	County tax
4/17/2023	$1,340.64	County tax
7/28/2023	−$90.00	Refund of real estate tax money
11/28/2023	$1,675.29	County tax
12/2/2023	$5,463.41	Hazard insurance
	$32,433.40	**Total**

Wilmington first argues that Cade's Chapter 13 plan did not modify Wilmington's right to recover escrow advances from Cade.[29] Wilmington is correct. Cade's mortgage gave Wilmington the right to receive monthly escrow funds from Cade; to pay taxes and insurance on Cade's behalf; and to recover the difference from Cade as a component of her secured debt. Section 1322(b) did not permit Cade's plan to modify those rights. The plan itself was silent as to escrow. Because "it would be unreasonable to interpret [a plan] as attempting to achieve a result everyone knew violated the Bankruptcy Code," *In re Hamilton*, Case No. 14-10665, 2017 WL 1533382, at *5 (Bankr. D.N.M. Apr. 27, 2017), the Court must interpret the plan's silence as leaving Wilmington's escrow-related rights intact.[30] *Cf. In re*

[29] ECF 49 at 6.

[30] Having determined that Cade's plan did not modify Wilmington's rights vis-à-vis escrow, the Court need not determine whether § 1322(b) conflicts with § 1327. *Cf. Mortg. Corp. of the S. v. Bozeman (In re Bozeman)*, 57 F.4th 895, 900 (11th Cir. 2023) ("We declare the antimodification provision the victor.").

Hamilton, 2017 WL 1533382, at *4 ("Ambiguous plans should be interpreted to comply with the Bankruptcy Code.").

Next, Wilmington argues that the ruling in *In re Kinderknecht*, Case No. 17-12530, 2023 WL 320984 (Bankr. D. Kan. Jan. 19, 2023), would not prevent Wilmington from recovering post-petition escrow advances. Again, Wilmington is correct. *In re Kinderknecht* involved similar facts—a lender had "essentially advanced money toward Debtors' insurance and taxes that should have been paid by Debtors." *See* 2023 WL 320984, at *6. However, the lender failed to notify the debtors that their escrow account was deficient. *See id.* at *7 (observing that lender "had 'numerous, obvious opportunities' to identify the needed increase to the escrow payment at any point between June 2018 and June 2022, but failed to do so"). Because the lender had not complied with Fed. R. Bankr. P. 3002.1(b), which required the lender to notify the debtors of escrow-related payment changes, the court excluded evidence of those changes pursuant to Fed. R. Bankr. P. 3002.1(i) and ordered that the lender was "prohibited from collecting this escrow adjustment in any way and in any court." *Id.* at *8.

Rule 3002.1 applies "in a Chapter 13 case to a claim that is secured by a security interest in the debtor's principal residence and for which the plan provides for the trustee or debtor to make contractual installment payments." Fed. R. Bankr. P. 3002.1(a). "Contractual installment payments" refers to payments made pursuant to the original contract between the debtor and the secured creditor. *White v. NewRez LLC (In re White)*, 641 B.R. 717, 724 (Bankr. S.D. Ga. 2022). Thus, a plan

that pays less than the contract rate of interest on a secured claim does not provide for "contractual installment payments." *See In re Davenport*, 627 B.R. 705, 735 & n.32 (Bankr. D.D.C. 2020) (holding that plan paying 6% interest on claim did not provide for contractual installment payments on note bearing 10.5% interest). Here, Cade's plan paid Wilmington's claim at the trustee's discount rate—less than the 10% interest to which Wilmington was entitled under the loan modification agreement. Cade's plan therefore did not provide for "contractual installment payments"—and for that reason, Rule 3002.1 did not apply to Cade's case.

Although Rule 3002.1 did not apply to Cade's case, the Court is nevertheless faced with the same problem Rule 3002.1 was enacted to address. *See Collier on Bankruptcy* ¶ 3002.1.01 (Richard Levin & Henry J. Sommer eds., 16th ed.) ("The rule is designed to prevent unexpected deficiencies in mortgage payments when a case is completed and closed."). And before Rule 3002.1 went into effect, "[t]he majority of courts . . . determined that the failure to provide an annual escrow analysis constitutes a *waiver* of any right to recover a deficiency." *In re Garza*, No. 08-60088, 2012 WL 4738651, at *3 (Bankr. S.D. Tex. 2012) (emphasis added); *see In re Payne*, 387 B.R. 614, 637-39 (Bankr. D. Kan. 2008) ("A lender may not recover advances made on behalf of borrowers without at least an annual notice to the borrower of the advance and the resulting escrow deficiency. In this situation, waiver is an available equitable remedy."); *In re Johnson*, 384 B.R. 763, 776 (Bankr. E.D. Mich. 2008) ("Five years of silence in these circumstances is sufficient to induce a belief on the part of the Debtor that he was paying exactly the right

amount every month. . . . Washington Mutual has waived its right to now recover the disputed amount of the arrearage . . . ."); and *In re Dominique*, 368 B.R. 913, 921 (Bankr. S.D. Fla. 2007) ("Waiver of reimbursement is a logical consequence of failure to give notice.").

At this point, the record contains no evidence that Wilmington provided Cade with any escrow-related notifications before February 4, 2022. Moreover, although Wilmington did attach escrow account disclosure statements to the notices of payment change it filed on February 4, 2022, and December 27, 2022,[31] the statements are confusing, contain inconsistent figures, and make it impossible to discern the actual balance of Cade's escrow account at any given point. For example, the first page of the February 4, 2022, statement provides (variously, from top to bottom) that Cade's "current escrow balance" was −$10,151.21;[32] that her "current balance projection" was −$1,018.67; that "[t]his is not a bill for the shortage amount . . . [t]he total shortage amount is automatically divided by 12 and included in your monthly payment"; and that Cade's "shortage amount"[33] was $2,539.71. The first

[31] *See* Annual Escrow Account Disclosure Statement, Feb. 4, 2022, ECF 49-6 at 6; Annual Escrow Account Disclosure Statement, Dec. 7, 2022, ECF 49-7 at 6. Wilmington also attached a third disclosure statement to its motion. *See* Annual Escrow Account Disclosure Statement, Dec. 12, 2023, ECF 35-5 at 14.

[32] The $10,141.21 figure is inconsistent with Wilmington's current argument that it advanced Cade a total of $16,903.46 ($3,525.91 + $1,328.64 + $1,229.40 + $3,263.61 + $1,229.40 + $1,089.76 + $3,005.34 + $1,159.76 + $1,071.64, *see* ECF 49-9) prior to February 2022.

[33] According to the disclosure statements, the "shortage amount" is the amount required to keep the balance of the escrow account from going below two times the monthly escrow payment (the maximum cushion permitted under RESPA) over the following year. Thus, for example, the February 4, 2022 disclosure statement calculated that an additional $2,539.71 would be required to keep the balance of the

page of the December 7, 2022 statement contains the same not-a-bill and shortage-automatically-included disclaimer language and (again from top to bottom) provides that Cade's "current escrow balance" was −$12,794.69; that her "current balance projection" was −$791.96; and that her "shortage amount" was $1,982.06. Notably, while the "current escrow balance" decreased between February and December 2022,[34] the "current balance projection" increased and the "shortage amount" decreased—both of which would lead a reader to believe that her current payments were sufficient.

For the preceding reasons, Wilmington is hereby ordered to show cause, on or before August 8, 2025, why under the reasoning of cases such as *In re Garza*, *In re Dominique*, *In re Johnson*, and *In re Payne*, Wilmington has not waived its right[35] to recover any escrow advances it made during the pendency of this case. If Wilmington makes that showing, Cade may, but is not required to, respond within 30 days thereafter.

IT IS SO ORDERED.

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escrow account from going below $1,013.98 (twice the monthly escrow payment of $506.99) over the following year.

[34] A $2,643.48 decrease (from −$10,151.21 to −$12,794.69) is inconsistent with Wilmington's current argument that it advanced Cade a total of $7,140.60 ($1,340.64 + $4,471.32 + $1,328.64) during the same time frame. *Compare* ECF 49-6 at 6, *and* ECF 49-7 at 6, *with* ECF 49-9.

[35] *Cf. In re Dominique*, 368 B.R. at 920 (observing that although § 1322(b)(2) does not permit Chapter 13 plan to modify debtor's ongoing debt service obligations, "this does not mean such a lender's rights cannot be altered *by other means*") (emphasis added).