The relief described hereinbelow is SO ORDERED.

SIGNED this 9th day of January, 2026.

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 DENYING WILMINGTON'S REMAINING REQUESTS FOR RELIEF

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 and denied Wilmington's request to set aside Cade's discharge.[3] On July 17, 2025, the Court (1) determined that neither Cade's plan nor Fed. R. Bankr. P. 3002.1 would prevent Wilmington from recovering its post-petition escrow advances but (2) ordered Wilmington to show cause why it had not waived its right to recover such advances under the reasoning of pre-Rule 3002.1 cases such as *In re Payne*, 387 B.R. 614 (Bankr. D. Kan. 2008).[4] Having reviewed Wilmington's response, the Court will deny Wilmington's remaining requests for relief.

The Court's July 17, 2025 order states:

> Although Rule 3002.1 did not apply to Cade's case, the Court is nevertheless faced with the same problem Rule

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[2] *See* ECF 34 (motion to reopen); ECF 35 (motion to vacate); ECF 49 (Wilmington's brief); *see also* ECF 50 (Cade's brief). Wilmington is represented by attorney James Todd. Cade is represented by attorney Kimberly Athie. This proceeding "arises in" a case under Title 11 for purposes of 28 U.S.C. §§ 1334(b) and 157(a). It is a core proceeding under 28 U.S.C. § 157(b) because it requires the Court to interpret and enforce 11 U.S.C. §§ 105(a), 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] *See* ECF 39 (reopening case); ECF 45 (reflecting bench ruling that Bankruptcy Code did not authorize court to revoke Cade's discharge).

[4] *See* ECF 53 (order to show cause).

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, 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. . . . Notably, while the "current escrow balance" decreased between February and December 2022, 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 to recover any escrow advances it made during the pendency of this case.[5]

Wilmington's response contains four arguments.

First, Wilmington argues that *In re Payne* is distinguishable because "Debtor herein has not raised any issues with the misapplication of payments made to the lender by the Trustee."[6] However, the waiver in *In re Payne* was due to lack of notice, not payment misapplication:

> 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. When a lender silently accepts payments for over three years without notifying the borrower the payments are insufficient, when the borrower believes his taxes and insurance are being paid by his monthly payments to his lender, and when the borrower has no reason to know the lender is advancing taxes and insurance and thereby increasing borrower's indebtedness, the lender waives his right to recover the advances from the borrower.[7]

The lack of notice present in *In re Payne* is likewise present in this case.

Second, Wilmington argues that "it cannot be reasonably said that Debtor was unaware that the taxes and insurance premiums were being paid by someone other than herself, even though she was ultimately responsible for them."[8] However:

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[5] ECF 53 at 11-13.

[6] ECF 55 at 2.

[7] *In re Payne*, 387 B.R. at 637 (citing *In re Dominique*, 368 B.R. at 921).

[8] ECF 55 at 2-3.

- Cade filed her voluntary Chapter 13 petition on January 14, 2019;
- Cade's pre-petition mortgage payments of $782.56 included taxes and insurance (i.e., escrow);[9]
- Cade's Chapter 13 plan payments of $860.00 exceeded her pre-petition mortgage payments;
- Aside from attorney fees and trustee fees, Wilmington's claim was the only claim paid through Cade's plan;
- Wilmington did not give Cade any notices regarding her escrow account until February 2022, more than three years into her bankruptcy case;
- Wilmington's February 2022 notice of payment change informed Cade that as of March 2022, her monthly escrow payment would increase from $409.78 to $718.63, for a new total monthly payment of $1,091.41;[10]
- The escrow account statement attached to Wilmington's February 2022 notice of payment change informed Cade that the new $1,091.41 total payment amount was necessary to prevent the balance of her escrow account from going below $1,013.98 over the course of the following year;[11]
- Following the February 2022 notice, Cade increased her Chapter 13 plan payments to $1,091.41;[12]

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[9] *See* ECF 53 at 5 (stating that Cade's pre-petition mortgage payment was $782.56: $372.78 for principal and interest and $409.78 for taxes and insurance).

[10] *See* ECF 49-6 at 2.

[11] *See* ECF 49-6 at 6.

[12] *See* ECF 53 at 7.

- Wilmington's December 2022 notice of payment change informed Cade that as of February 2023, her monthly escrow payment would increase from $718.63 to $760.22, for a new total monthly payment of $1,133.00;[13]
- The escrow account statement attached to Wilmington's December 2022 notice of payment change informed Cade that the new $1,133.00 total payment amount was necessary to prevent the balance of her escrow account from going below $1,190.10 over the course of the following year;[14]
- Following the December 2022 notice, Cade's final payment to the Chapter 13 trustee was for $1,133.00;[15] and
- Wilmington did not notify Cade of the escrow deficiencies alleged in its motion until April 4, 2024, more than a year after she received her Chapter 13 discharge.

Under those circumstances, it was reasonable for Cade to believe that she was paying for taxes and insurance through her Chapter 13 plan. To call that belief unreasonable would require a practitioner's knowledge of bankruptcy law (sections 1322(b)(2) and (5) in particular) and an amortization calculator—and the record does not indicate that Cade had either.

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[13] *See* ECF 49-7 at 2.

[14] *See* ECF 49-7 at 6.

[15] *See* ECF 53 at 7.

Third, Wilmington argues that waiver would violate § 1322(b)(2)'s "antimodification" provision.[16] Wilmington is correct that § 1322(b)(2) did not permit Cade's *Chapter 13 plan* to modify its escrow-related rights. However, "this does not mean [that Wilmington's] rights cannot be altered *by other means*." *See In re Dominique*, 368 B.R. at 920 (emphasis added).[17] The Court has already found that Cade's Chapter 13 plan left Wilmington's escrow-related rights intact.[18] Whether Wilmington subsequently *waived* those rights is a separate issue that does not implicate § 1322(b)(2).

Finally, Wilmington argues:

> If Lender is deemed to have waived the right to collect the amounts advanced on behalf of the Debtor, because it did not comply with a rule that this Court has found did not apply to Lender, it would result in an unearned windfall for the Debtor and Debtor's unjust enrichment.[19]

Wilmington's argument again conflates waiver with a separate issue, this time compliance with Rule 3002.1. The Court has already found that Rule 3002.1 did not apply to Cade's bankruptcy case, because her Chapter 13 plan did not provide for "contractual installment payments."[20] But Rule 3002.1 did not apply to *In re Garza*,

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[16] ECF 55 at 3-4 (citing *Nobelman v. Am. Savings Bank*, 508 U.S. 324 (1993), and *Mortg. Corp. of the S. v. Bozeman (In re Bozeman)*, 57 F.4th 895 (11th Cir. 2023)).

[17] *See also* ECF 53 at 13 n.35 (quoting *In re Dominique*).

[18] *See* ECF 53 at 9 & n.30.

[19] ECF 55 at 4.

[20] *See* ECF 53 at 11. Effective December 1, 2025, the words "contractual" and "installment" were deleted from Rule 3002.1(a) "in order to clarify and broaden the rule's applicability." *See* Fed. R. Bankr. P. 3002.1 advisory committee's note to 2025 amendment.

In re Payne, *In re Johnson*, and *In re Dominique*, either. In those cases, waiver was based on the lenders' failure to provide notices of escrow-account deficiencies, *not* their failure to comply with Rule 3002.1 (which was not yet in effect). Under those circumstances, waiver does not constitute a windfall or unjust enrichment; it is an equitable remedy.

Wilmington provided Cade with no notices regarding her escrow account during the first three years of her bankruptcy case. During the fourth and final year of Cade's bankruptcy, Wilmington filed two notices of payment change. Although Wilmington attached escrow account statements to those notices, the statements contained internal inconsistencies and led Cade to reasonably believe that her Chapter 13 plan payments included payments to escrow. Then, more than a year after Cade received a Chapter 13 discharge and exited bankruptcy, Wilmington asserted—for the first time—that Cade owed an additional $32,433.40 in post-petition escrow advances. The Court concludes that Wilmington has waived its right to recover any such advances made prior to entry of Cade's discharge on March 28, 2023.

Consequently, as of March 28, 2023, Cade owed nothing to Wilmington. Cade's mortgage therefore required Wilmington to release its lien on that date, because its secured claim had been satisfied. *See* Mortgage ¶ 22, ECF 49-1 at 13.

Any claim Wilmington may have against Cade for taxes and insurance paid after March 28, 2023, on Cade's behalf[21] is therefore unsecured.

For the reasons stated here and in the Court's July 17, 2025 order, Wilmington's remaining requests for relief are hereby denied.

IT IS SO ORDERED.

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[21] This order expresses no opinion as to whether Wilmington has such a claim because bankruptcy courts are courts of limited jurisdiction. *See Gardner v. United States (In re Gardner)*, 913 F.2d 1515, 1517-18 (10th Cir. 1990).