

No. 24-5156

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT COURT**

JERRY DUARTE,
Creditor-Appellant

v.

JENNA DENISE HILLARD
Debtor-Appellee

On Appeal from the United States District Court
For the Northern District of California
No. 4:23-cv-01461-JSW
Hon. Jeffrey S. White

APPELLANT'S OPENING BRIEF

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DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Appellant submits that this bankruptcy proceeding does not include any debtors other than the one named in the caption.

Dated: November 6, 2024

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I. INTRODUCTION

Appellant seeks reversal of the Bankruptcy Court's February 24, 2002 Order sustaining the objection to Appellant's claim as untimely in the underlying Chapter 13 proceeding. In order for a creditor to receive payments under a Chapter 13 plan, a proof of claim for the creditor's claim must be submitted, but bankruptcy law provides for a number of interested persons to submit the creditor's claim. The Bankruptcy Court erred in finding that the proof of claim must be submitted *by the creditor*, i.e., that it cannot be submitted on the creditor's behalf. As a result of that error, the Bankruptcy Court incorrectly held that Appellant's claim was not timely submitted.

Under Rule 3002, a creditor may submit their claim directly in the beginning period of the bankruptcy. If the creditor does not, a 30-day window opens, under Rule 3004, during which the debtor can submit the claim on the creditor's behalf. In fact, the debtor's ability to submit a claim is expressly conditioned on the creditor not having filed by the Rule 3002 deadline.

In this case, the debtor submitted Appellant's claim, albeit in an informal manner, but the Bankruptcy Court did not consider whether

the claim was submitted under Rule 3004 due to its conclusion that Rule 3002 must be met regardless of what happens after the Rule 3002 deadline. The Bankruptcy Court's ruling nullifies Rule 3004.

The District Court affirmed the Bankruptcy Court's Order for different reasons. The District Court recognized Rule 3004's operation, but erroneously concluded that the informal claim doctrine does not apply to Rule 3004.

The informal claim doctrine exalts substance over form, validating written statements that serve the same function of a formal proof of claim—specifying the amount and basis of a claim against the estate, evincing an intent to hold the estate liable for the claim, and bring the claim to the Court's attention. Here, Debtor submitted Appellant's claim under Rule 3004. After notice that Appellant had not timely filed under Rule 3002, Debtor incorporated Appellant's late proof of claim into her amended schedules and amended her plan twice, excluding all unsecured creditors except the timely Rule 3002 claims *and Appellant's claim*.

Appellant's claim was timely submitted under Rule 3004 and should have been allowed. The Bankruptcy Court's Order sustaining the objection to Appellant's claim should be reversed.

II. JURISDICTIONAL STATEMENT

This matter originated in the Bankruptcy Court, the Bankruptcy Court sustained the debtor's objection to Appellant's creditor claim. The Bankruptcy Court had jurisdiction over the proceeding pursuant to 28 U.S.C. § 157(b). *In re Imaging3, Inc.*, 634 F. App'x 172, 175 (9th Cir. 2015) ("Allowance and disallowance of claims against an estate are specifically listed as 'core' proceedings under 28 U.S.C. § 157.").

The Bankruptcy Court's order was appealed to the District Court, which had jurisdiction under 28 U.S.C. § 158(a)(1) to hear that appeal. The District Court affirmed and Appellant' timely filed a notice of appeal. This Court has jurisdiction to hear the appeal pursuant to 28 U.S.C. § 158(d)(1).

III. ISSUES PRESENTED

1. Bankruptcy Rule 3004 authorizes a debtor to submit a creditor's claim only where the creditor did not timely submit their own claim within the time provided under Rule 3002. Did the lower courts

err as a matter of law in concluding that a creditor must timely file its claim under Rule 3002 even if the creditor timely submits the claim under Rule 3004?

2. Did the District Court err as a matter of law in finding that the informal claim doctrine does not apply to actions taken by a creditor?

IV. STATEMENT OF THE CASE

A. After receiving notice that Appellant did not timely submit a proof of claim, Debtor amends her bankruptcy schedules and Chapter 13 plan to incorporate and recognize Appellant's proof of claim.

Debtor filed her bankruptcy petition and initial schedules on August 19, 2022. (3-ER-291.) Under Rule 3002, the deadline for creditors to submit a proof of claim was October 28, 2022. Fed. R. Bankr. P. 3002(c).

On October 31, 2022, the Trustee filed a Notice of Filed Claims, which listed Appellant's claim as Claim No. 10 and indicated, "NO CLAIM FILED." (3-ER-225.) That same day, Appellant submitted a proof of claim, demonstrating his claim against the Debtor's estate was \$114,320.00. (2-ER-22-80; 3-ER-229-283.) Up to that point, Debtor's

bankruptcy schedules listed Appellant's claim at just \$87,068.89. (3-ER-311.)

Under Rule 3004, the Trustee and Debtor could timely submit a proof of claim from October 29, 2022 through November 27, 2022. Fed. R. Bankr. P. 3004.

On November 5, 2022, Debtor filed an amended Schedule E/F. (3-ER-186, 193–200.) Debtors' amended schedule incorporated Appellant's \$114,320.00 proof of claim, replacing the \$87,068.89 figure used in Debtor's initial schedules. (*Compare* 3-ER-311 [amended schedule] *with* 3-ER-195 [initial schedule].) By incorporating Appellant's proof of claim, Debtor increased the claim amount by more than \$27,000. (*Ibid.*)

On November 5, Debtor also filed a First Amended Chapter 13 Plan. (3-ER-179–185.) Debtor's First Amended Plan incorporated Appellant's \$114,320.00 claim in her proposed payment of Class 7 nonpriority unsecured creditors. (3-ER-179, 183 at § 3.14; *see also* Table, *infra*, p. 11.)

On November 17, 2022, Debtor filed a Second Amended Chapter 13 Plan, which again incorporated Duarte's \$114,320.00 claim in her proposed payment of Class 7 nonpriority unsecured creditors. (3-

ER-172, 176 at § 3.14; *see also* Table, *infra*, p. 11.) At the same time, Debtor gave notice of her intent to seek confirmation of the Second Amended Chapter 13 Plan, which incorporated Duarte's \$114,320.00 claim in the nonpriority unsecured creditors to be paid under the plan. (3-ER-161.)

Some finer detail shows Debtor's incorporation of Appellant's proof of claim. Debtor's initial Chapter 13 Plan, submitted before any proofs of claim were filed, stated that the unsecured claims totaled \$325,472.62. (3-ER-288 at § 3.14.) That amount included all unsecured creditors listed in Debtor's initial bankruptcy schedules. *See* Table, *infra*, p. 11. Debtor's First Amended Plan stated that the unsecured claims totaled \$299,104.75. (3-ER-179, 183 at § 3.14.) That amount included Appellant's proof of claim and all unsecured proofs of claim listed on the Trustee's Notice of Filed Claims, but mistakenly excluded Capital One's \$14,577.00 proof of claim and Resurgent Capital's \$8,765.73 proof of claim. *See* Table, *infra*, p. 11. Debtor's Second Amended Plan stated the unsecured claims totaled \$322,448.48, which consists of the claims listed on the Trustee's Notice of Filed Claims *plus* Appellant's proof of claim, but no other unsecured creditors identified in

Debtor's bankruptcy schedules. (3-ER-172, 176 at § 3.14; *see also* Table below.)

<u>Unsecured Creditor</u>	<u>Initial Schedules/Plan</u>	<u>1st Amended Plan</u>	<u>2nd Amended Plan</u>
Capital One	\$14,577.00	excluded	\$14,577.50
Capital One	\$6,231.00		
Chase Card Services	\$13,885.00		
Citibank	\$8,765.73		
Credit One Bank	\$184.00		
Credit One Bank	\$9.00		
Appellant Jerry Duarte	\$87,068.89	\$114,320.00	\$114,320.00
Patelco Credit Union	\$975.00		
Portfolio Recovery	\$15,934.00	\$15,933.94	\$15,933.94
Prosper Funding	\$31,277.00	\$31,277.02	\$31,277.02
Resurgent Capital	\$8,765.00	excluded	\$8,765.73
Rocket Loans	\$37,958.00	\$37,958.00	\$37,958.50
SoFi Lending	\$93,772.00	\$93,772.51	\$93,772.51
US Bank/RMS	\$6,071.00	\$5,843.28	\$5,843.28
Total	\$325,472.62	\$299,104.75	\$322,448.48

(*See* 3-ER-309–314 [initial schedule E/F]; 3-ER-288 at § 3.14 [initial plan]; 3-ER-224–228 [attachment to notice of filed claims]; 3-ER-193–197 [amended schedule E/F]; 3-ER-183 at § 3.14 [first amended plan]; 3-ER-176 at § 3.14 [second amended plan].)

B. Debtor changes course, objects to Appellant's claim, and the Bankruptcy Court sustains the objection.

Three months later, Debtor changed course and filed an objection to Appellant's claim. (3-ER-114–115.) Appellant opposed the objection and Debtor filed a response. (3-ER-102–104; 3-ER-99–101.) The Bankruptcy Court heard and sustained the objection, holding that a creditor's claim cannot be allowed unless the creditor files a proof of claim under Rule 3002, regardless of what happens after the Rule 3002 deadline passes. (3-ER-96 at lines 6–10.)

Appellant seeks review of the Bankruptcy Court's Order entered February 24, 2023. (1-ER-7.) Appellant timely filed a notice of appeal. (3-ER-344–345.)

C. The District Court affirms the Bankruptcy Court's Order.

On appeal to the District Court, Appellant filed an opening brief and Debtor filed a response. On the date Appellant's reply brief was due, but before Appellant filed a reply, the District Court issued its order denying the appeal and affirming the Bankruptcy Court's Order sustaining the objection to Appellant's claim. (1-ER-2–6.) Appellant timely filed a notice of appeal. (3-ER-357.)

V. SUMMARY OF THE ARGUMENT

Appellant's proof of claim was timely submitted under Rule 3004, which permits a debtor to submit a proof of claim on behalf of any creditor within 30 days after the Rule 3002 period closes. The Bankruptcy Court erroneously held that a creditor must meet the Rule 3002 deadline, otherwise their claim must be disallowed regardless of what occurs after. That holding is erroneous as a matter of law because Rule 3004, by its plain and express language, authorizes a debtor to submit a creditor's claim if the creditor does not timely submit the claim under Rule 3002.

The District Court affirmed the Bankruptcy Court's Order on different grounds, but erred as well by holding that (1) the informal claims doctrine does not apply to Rule 3004 submissions and, as a result, (2) Debtor did not submit Appellant's claim under Rule 3004.

The informal claim doctrine applies to Rule 3004 and Debtor satisfied the requirements for submitting the claim under Rule 3004. Debtor received notice that Appellant did not timely submit a claim under Rule 3002. Then, in the time prescribed by Rule 3004:

1. Appellant submitted a detailed proof of claim establishing the nature, basis, and discrete amount of the claim, which was more than \$27,000 higher than the debt Debtor identified in her initial schedules;
2. Debtor amended her schedules to incorporate Appellant's claim, increasing the debt from approximately \$87,000 to \$114,000;
3. Debtor filed a First Amended Chapter 13 Plan including the claims timely filed under Rule 3002 and no others, *except* Appellant's claim;
4. Debtor filed a Second Amended Chapter 13 Plan, including only the claims timely filed under Rule 3002 (two of which had been mistakenly omitted from the first amended plan), Appellant's claim, and no others; and
5. Debtor gave notice of her intent to seek confirmation of her Second Amended Chapter 23 Plan.

In short, after receiving notice that Appellant had not met Rule 3002's deadline, Debtor took discrete steps to incorporate Appellant's proof of claim, present it to the Court, and demonstrate her

intent that Appellant's claim be asserted against the bankruptcy estate, to be paid under the plan.

The Bankruptcy Court's Order sustaining the objection to Appellant's claim should be reversed.

VI. STANDARD OF REVIEW

This appeal concerns the disallowance of a proof of claim on the basis of timeliness as well as satisfaction of the proof of claim requirement under the informal proof doctrine. "Whether a claim may be disallowed in a bankruptcy proceeding on the ground that the proof of claim was not timely filed... is a question of law subject to de novo review." *In re Barker*, 839 F.3d 1189, 1193 (9th Cir. 2016) ("*Barker*"). "Whether a document satisfies the requirements for an informal proof of claim is a question of law that [courts] review de novo." *In re Avitable*, CC-16-1118-LNTa, 2017 Bankr. LEXIS 410 (9th Cir. BAP Feb. 13, 2017), at *7–*8.

VII. ARGUMENT

- A. The Bankruptcy Court’s finding—that a creditor’s claim cannot be allowed unless the creditor satisfied Rule 3002—is inconsistent with the plain language of Rule 3004, which expressly authorizes a debtor to submit a claim *only* in cases where the creditor did not timely file a claim under Rule 3002.**

A Chapter 13 bankruptcy provides for payment of creditors according to the debtor’s Chapter 13 plan. Before a creditor may receive payments under the plan, a proof of claim must be submitted, either by the creditor or on the creditor’s behalf. *In re Lane*, 959 F.3d 1226, 1229–30 (9th Cir. 2020).

The proof of claim may be submitted by the creditor within the time specified in Rule 3002. 11 U.S.C. § 501(a); Fed. R. Bankr. P. 3002. If a creditor fails to submit a proof of claim by Rule 3002’s deadline, the trustee or debtor may submit the proof of claim within the following 30 days. 11 U.S.C. § 501(c); Fed. R. Bankr. P. 3004. Compliance with either Rule 3002 or Rule 3004 entitles the creditor to participate in the plan payments, absent some other valid objection to the claim. *In re Lane*, 959 F.3d at 1230, citing 11 U.S.C. § 502.

Here, the Bankruptcy Court erred by holding that a creditor must file a proof of claim pursuant to Rule 3002, regardless of whether a

proof of claim is submitted pursuant to Rule 3004, and on that basis the Bankruptcy Court sustained the objection to Creditor's claim as untimely. (See 3-ER-96 at lines 7–10 ["I do think that there is still an obligation on the creditor to file a claim. And what the debtor did afterward, in my view, doesn't change that result, so the objection is sustained."].) The District Court did not explicitly agree with the Bankruptcy Court on this issue.¹

The Bankruptcy Court's holding is inconsistent with the plain language of the Bankruptcy Code and Rules. The general rule of statutory construction is that the Code and Rules are to be applied according to their plain language. *In re Kagenveama*, 527 F.3d 990, 999 (9th Cir. 2008). The plain language of Section 501, Rule 3002, and Rule 3004 establishes multiple, independently sufficient means of

¹ Instead, the District Court acknowledges a debtor can submit the claim under Rule 3004. (1-ER-4 at lines 3–4.) Even so, the District Court's discussion of Rule 3004 and the informal claim doctrine returns to concepts of the *creditor's* timely action, which could be construed as agreement with the Bankruptcy Court's finding that the creditor must assert its claim under Rule 3002 regardless of what occurs after. (See, e.g., 1-ER-5 at lines 5–6, 15–17, and 21–22.) To the extent the District Court's Order could be construed as holding that a creditor must meet Rule 3002 even where Rule 3004 is satisfied, it would be erroneous for the same reasons that the Bankruptcy Court's holding is.

submitting a proof of claim, one of which happens to be submission by the creditor themselves.

Section 501(a) provides for a creditor to submit the proof of claim and Rule 3002 prescribes the time within which the creditor may do so. *See* 11 U.S.C. § 501(a) and Fed. R. Bankr. P. 3002. If a creditor does not timely file a claim, section 501(b)–(c) authorize other persons to file the claim, such as the debtor, a co-debtor, or the trustee. *See* 11 U.S.C. § 501(b)–(c). In fact, a debtor’s right to submit a claim on a creditor’s behalf is expressly conditioned on the creditor having not timely submitted the claim themselves. 11 U.S.C. § 501(c) (“If a creditor *does not* timely file a proof of such creditor’s claim...”) (emphasis added).

Similarly, the Bankruptcy Rules define alternative means of submitting a claim. The creditor gets first right under Rule 3002. Fed. R. Bankr. P. 3002. But, if the creditor does not timely file, then the trustee and debtor have a 30-day right to submit the claim for inclusion in the Chapter 13 plan. Fed. R. Bankr. P. 3004 (“If a creditor *does not* timely file a proof of such creditor’s claim...”) (emphasis added).

There is no basis for departing from the plain language of the Code and Rules in this instance. A creditor’s claim must be allowed if

submitted by *someone* within the period provided for *that person* to submit the creditor's claim. *In re Lane*, 959 F.3d at 1230, citing 11 U.S.C. § 502.

The Bankruptcy Court erred in holding that *the only way* for a creditor's claim to be allowed is for *the creditor* to submit his or her claim under Rule 3002. (See 3-ER-96 at lines 7–10 [“I do think that there is still an obligation on the creditor to file a claim. And what the debtor did afterward, in my view, doesn't change that result, so the objection is sustained.”].) As a result, the Bankruptcy Court's Order sustaining the objection should be reversed.

B. The District Court erred in finding that the debtor did not submit Appellant's claim under Rule 3004.

The District Court affirmed the Bankruptcy Court's Order, but for different reasons. The Bankruptcy Court did not evaluate whether the claim was timely submitted under Rule 3004. (1-ER-7; 3-ER-91–97.) In contrast, the District Court did, but held that the informal claim doctrine does not apply to claims submitted a creditor's behalf under Rule 3004 and, therefore, Debtor had not submitted Appellant's claim. (1-ER-3–6.) The District Court erred.

The Bankruptcy Code and Rules exist first and foremost for the benefit of creditors. *See Cent. Va. Cmty. College v. Katz*, 546 U.S. 356, 373–74 (2006) (Bankruptcy Act was “chiefly a measure designed to benefit creditors”); *see also Harrington v. Purdue Pharma L.P.*, 219 L. Ed. 2d 721, 743 (2024) (Kavanaugh, J., dissenting) (“underscores that the bankruptcy system is designed to benefit creditors”); *see also Fed. R. Bankr. P. 3004* advisory committee’s note 1983 (“It is the policy of the Code that debtors’ estates should be administered for the benefit of creditors without regard to the dischargeability of their claims.”). To that end, bankruptcy law provides multiple ways for submitting a claim, authorizes multiple people to submit a creditor’s claim (*see* 11 U.S.C. § 501(a)–(c)), and, as evinced by the informal claim doctrine, claim submissions are liberally construed in favor of allowing claims. *See, e.g., In re Edelman*, 237 B.R. 146, 154 (9th Cir. B.A.P. 1999) (discussing variety of circumstances where actions in and out of court were deemed informal proofs of claim).

In the Ninth Circuit, the informal claim doctrine has two requirements: “(1) the document ‘must state an explicit demand showing the nature and amount of the claim against the estate,’ and

(2) the document must ‘evidence an intent to hold the debtor liable.’” *Barker*, 839 F.3d at 1196 (quoting *In re Sambo’s Rests., Inc.*, 754 F.2d 811, 815 (9th Cir. 1985)). Case law typically describes the informal claim doctrine in terms of a creditor’s submission under Rule 3002. *See, e.g., Barker*, 839 F.3d at 1196. As a result, the intent element is generally described in terms of the *creditor’s* intent to hold the debtor liable. *Ibid.* That makes sense in the context of Rule 3002 because Rule 3002 applies creditors submitting a claim in their own right as opposed to Rules 3003 and 3004, which apply to other persons submitting on behalf of a creditor. *Compare* Fed. R. Bankr. P. 3002 *with* Fed. R. Bankr. P. 3003 and 3004.

But, because the case law typically addresses informal claims under Rule 3002, the District Court concluded that the informal claim doctrine does not apply to a submission on a creditor’s behalf under Rule 3004. (1-ER-4–6.) That conclusion is misplaced.

Rule 3004 allows a claim to be submitted on behalf of a creditor. Fed. R. Bankr. P. 3004 advisory committee notes 1983 (recognizing “Section 501(c)... permits the filing by the debtor... *on behalf of any creditor.*”) (emphasis added). And the ability to informally submit a

claim on behalf of a creditor has been recognized in this circuit. *See, e.g., In re Avitable*, 2017 Bankr. LEXIS 410, at *8 (“To constitute an informal proof of claim, a document must... be asserted by *or on behalf of* the creditor...”) (emphasis added).

This Court’s decision in *Barker* similarly recognized that a claim may be submitted under Rule 3004 without adherence to the formal proof of claim form. *Barker*, 839 F.3d at 1197. True, in *Barker*, the Court found that the debtor had not submitted the creditor’s claim, but *Barker* should be read as acknowledging that a debtor can submit an informal proof of claim and the factual differences between *Barker* and this case are material. (*Ibid.*)

In *Barker*, the creditor did not file a proof of claim within the period prescribed by Rule 3002, but argued that an informal proof of claim had been submitted because the debt owed to the creditor was listed in the debtor’s initial bankruptcy schedules. *Barker*, 839 F.3d at 1196. Because the informal claim argument relied on the debtor’s submission alone, this Court evaluated it under Rule 3002 as well as Rule 3004. *Id.* at 1196–97

This Court held that the creditor could not satisfy the informal claim doctrine under Rule 3002 because Rule 3002 requires the creditor to submit the claim and the *debtor's* filing of its initial bankruptcy schedules does not evince the *creditor's* intent to hold the debtor liable. *Barker*, 839 F.3d at 1196–97. Rule 3002 requires the creditor to do something (Fed. R. Bankr. P. 3002), but the creditor did nothing during that period or apparently at any time after to submit its claim. *Ibid.*

Concluding that Rule 3002 was not satisfied, this Court then looked to compliance with Rule 3004. *Barker*, 839 F.3d at 1197. There, the Court found that Rule 3004 had not been met for two reasons.

First, a debtor can only submit a proof of claim during the 30-day window prescribed by Rule 3004. *Barker*, 839 F.3d at 1197. By its express language, Rule 3004 does not permit a debtor to submit a proof of claim until the Rule 3002 period has expired. Fed. R. Bankr. P. 3004. The debtor's schedules were not filed during the Rule 3004 period. *Barker*, 839 F.3d at 1197.

Second, Rule 3004 requires the debtor to “make an additional showing of their desire to include an unasserted claim in their Chapter 13 plan”—something more than the filing of their initial

schedules—“after receiving notice of which creditors intend to enforce their claims.” *Barker*, 839 F.3d at 1197. An additional showing requires something more than merely carrying over the creditor’s claim, unchanged, from the debtor’s initial bankruptcy schedules. *Id.* at 1192, 1197. In *Barker*, the debtor did not do anything beyond listing the debts in its schedules and plan. *Id.* at 1197.

So, Rule 3004 was not met in *Barker* both because the debtor did not file anything in the Rule 3004 time to submit and because the debtor did nothing beyond listing the debt in its initial bankruptcy schedules. *Barker*, 839 F.3d at 1197. This case is completely different from *Barker* in both respects and the facts here meet the informal claim doctrine’s requirements.

To be sure, a debtor can submit a formal proof of claim, i.e., Official Form 410, but an informal proof of claim will suffice. *In re Avitable*, 2017 Bankr. LEXIS 410, at *8 (informal claim may “be asserted by *or on behalf of* the creditor”) (emphasis added). “To constitute an informal proof of claim, a document must: (1) be preserved via a writing; (2) be presented within the time for the filing of claims; (3) be asserted by or on behalf of the creditor; (4) be brought to the

attention of the bankruptcy court; [and] (5) indicate an intent to assert a claim against the estate in a set or determinable amount.” *Ibid.*, citing *In re Franciscan Vineyards, Inc.*, 597 F.2d 181, 182–83 (9th Cir. 1979), *In re Fish*, 456 B.R. 413, 417 (9th Cir. BAP 2011), and *In re Edelman*, 237 B.R. at 154. Again, where the debtor submits a creditor’s claim, the debtor must also make some additional showing of their intent to include the creditor’s claim. *Barker*, 839 F.3d at 1197. Each of these requirements was satisfied in this case.

First, Appellant’s claim was preserved in writing, through Appellant’s formal proof of claim, Debtor’s incorporation of that information into her amended schedules, and her inclusion of the increased claim amount in her First and Second Amended Plans. (2-ER-22–80 and 3-ER-229–283 [proof of claim]; 3-ER-193–197 [amended schedules]; 3-ER-183 at § 3.14 [first amended plan]; 3-ER-176 at § 3.14 [second amended plan].)

Second, each of these writings were presented within the time allowed for a debtor to submit a proof of claim under section 501(c) and Rule 3004. The 30-day period ran from October 29, 2022 through November 27, 2022.

On October 31, 2022, Debtor was notified that Appellant did not file a proof of claim by the Rule 3002 deadline. (3-ER-221–225.) That same day, Appellant submitted a formal proof of claim with a breakdown of the claim amount and basis on October 31, 2020. (2-ER-22–80; 3-ER-229–283.)

On November 5, 2022, Debtor filed an amended Schedule E/F, incorporating Appellant’s \$114,320.00 proof of claim, replacing the \$87,068.89 figure used in Debtor’s initial schedules. (3-ER-186, 189.) That same day, Debtor also filed a First Amended Chapter 13 Plan that incorporated Appellant’s \$114,320.00 claim in her proposed payment of Class 7 nonpriority unsecured creditors. (3-ER-179, 183.)

On November 17, 2022, Debtor filed a Second Amended Chapter 13 Plan, which again incorporated Appellant’s \$114,320.00 claim in her proposed payment of Class 7 nonpriority unsecured creditors. (3-ER-176 at § 3.14; *see also* Table, *supra*, at p. 11.) At the same time, Debtor gave notice of her intent to seek confirmation of the Second Amended Chapter 13 Plan, which incorporated Duarte’s \$114,320.00 claim in the nonpriority unsecured creditors to be paid under the plan. (3-ER-161.)

Third, these writings assert Appellant's claim. Unlike *Barker*, Debtor did not merely carryover the claim amount from her initial bankruptcy schedules.

Fourth, the writings were brought to the Bankruptcy Court's attention, through the formal proof of claim submission and the filing of Debtor's amended schedules and amended Chapter 13 plans. (2-ER-22–80 and 3-ER-229–283 [proof of claim]; 3-ER-193, 197 [amended schedules]; 3-ER-183 at § 3.14 [first amended plan]; 3-ER-176 at § 3.14 [second amended plan].)

Fifth, the proof of claim form and Debtor's amended schedule indicate the intent to assert a claim for a fixed dollar amount—\$114,320.00. (2-ER-25–26, 69–70; 3-ER-229–230, 272–273 [proof of claim]; 3-ER-193, 197.) Debtor's First and Second Amended Plans implicitly assert that fixed amount as well. (See 3-ER-183 at § 3.14 [first amended plan] and 3-ER-176 at § 3.14 [second amended plan]; see also Table, *supra*, p. 11.)

Lastly, Debtor made an additional showing of an intent to include Appellant's claim for payment under the Chapter 13 plan. *Barker* explains what the showing must be “additional” to. There, the Ninth

Circuit held that it is not enough for a debtor to identify a creditor's claim in their initial bankruptcy schedules and neglect failure to remove the claim amount from the bankruptcy schedules after the creditor's Rule 3002 deadline passes. The debtor must do something more than just leave the claim unaltered in his or her bankruptcy schedules. *Barker*, 839 F.3d at 1192, 1197. Here, Debtor did not merely identify Appellant as a creditor in her initial schedules and neglect to zero-out his claim after the Rule 3002 deadline passed. Instead, after receiving the Trustee's notice that Appellant had not timely submitted a proof of claim (3-ER-221–225), Debtor:

- amended her bankruptcy schedules to reflect the claim amount corroborated in Appellant's proof of claim form (3-ER-311; *see also* 3-ER-229–230);
- amended her proposed Chapter 13 plan to omit all claims that were not filed under Rule 3002 *except* Appellant's claim (3-ER-183 at § 3.14; *see also*, Table, *supra*, p. 11); and
- amended her proposed Chapter 13 plan a second time, adding two overlooked creditors who had filed proofs of claim and once again including Appellant's claim, while excluding

the claims of all other creditors who did not timely file under Rule 3002. (3-ER-176 at § 3.14; *see also*, Table, *supra*, p. 11.)

In short, Defendant took multiple, deliberate steps to incorporate Appellant's proof of claim and present it to the Court for payment under the Chapter 13 plan. In light of Appellant's actually filed proof of claim form, it would have been redundant for Debtor to submit a separate formal proof of claim form on Appellant's behalf. It was sufficient for Debtor to merely incorporate Appellant's submission into her filings.

VIII. CONCLUSION

After receiving notice of the claims submitted under Rule 3002, Debtor timely submitted Appellant's claim under Rule 3004 by amending her schedules to incorporate Appellant's detailed claim information, and twice amending her plan to provide for payment of only the Rule 3002 claims and Appellant's claim, excluding all other unsecured creditors. The Bankruptcy Court's Order sustaining the objection to Appellant's claim should be reversed.

Dated: November 6, 2024

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**STATEMENT OF RELATED CASES PURSUANT
TO CIRCUIT RULE 28-2.6**

9th Cir. Case Number(s)

No. 24-5156

The undersigned attorney or self-represented party states the following:

- I am unaware of any related cases currently pending in this court.
- I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
- I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Dated: November 6, 2024

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Jerry Duarte

CERTIFICATE OF COMPLIANCE

9th Cir. Case No. 24-5156

I certify that this brief contains 4,612 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief complies with the word limit of Cir. R. 32-1.

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