No. 24-5156

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: JENNA DENISE HILLARD,
Debtor.

_____

JERRY DUARTE,
Plaintiff-Appellant,
v.

JENNA DENISE HILLARD,
Defendant-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

AMICI CURIAE BRIEF OF THE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER AND THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF APPELLEE

February 7, 2025

/s/ *James J. Haller*
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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Duarte v. Hillard, No. 24-5156

Pursuant to Fed. R. App. P. 26.1, *Amici Curiae*, the National Consumer Bankruptcy Rights Center and the National Association of Consumer Bankruptcy Attorneys, makes the following disclosure:

1) Is party/amicus a subsidiary or affiliate of a publicly owned corporation? If yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party. NO

2) Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list below the identity of the corporation and the nature of the financial interest. NO

This day of 7th February 2025.

/s/ *James J. Haller*
James J. Haller
Attorney for *Amici* Curiae

RULE 29(a)(2) STATEMENT

Counsel for *Amici* has contemporaneously filed a motion seeking leave of this Court to file this brief in support of the Appellant. *Amici* endeavored to obtain the consent of all parties to the filing of the brief before moving the Court for permission to file the proposed brief.

This day of 7th February 2025.

/s/ *James J. Haller*
James J. Haller
Attorney for *Amici Curiae*

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INTEREST OF *AMICI CURIAE*

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 1,500 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

The National Consumer Bankruptcy Rights Center ("NCBRC") is a non-profit organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. To those ends, it provides assistance to consumer debtors and their counsel in cases likely to impact consumer bankruptcy law importantly. Among other things, it submits amicus curiae briefs when in its view resolution of a particular case may affect consumer debtors throughout the country, so that the larger legal effects of courts' decisions will not depend solely on the parties directly involved in the case.

NCBRC and NACBA have filed amicus curiae briefs in numerous cases seeking to protect the rights of consumer bankruptcy debtors. See, e.g., *Lac du Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689 (2023); *Evans v. McCallister* (*In re Evans*), 69 F.4th 1101 (9th Cir. 2023);

Numa Corp. v. Diven, 2022 U.S. App. LEXIS 32224, 2022 WL 17102361 (9th Cir. 2022).

NCBRC, NACBA and NACBA's members have a vital interest in the outcome of this case to ensure the fair and just application of bankruptcy laws. A ruling in the case at bar will affect the administration of many consumer cases in this Circuit. The decision in this case will directly impact the integrity and predictability of the Chapter 13 claims process, which is essential for debtors and creditors alike. Allowing an informal proof of claim to be created through a debtor's amended schedules and plan would undermine the requirement that creditors must take affirmative action to file a timely proof of claim, creating uncertainty and potential abuse in the bankruptcy system.

Amici believe that, in their roles as a national advocates for consumer debtors, they bring a unique perspective to this case that will be helpful to the court in deciding this matter.

INTRODUCTION

Appellant Jerry Duarte (Duarte) received notice of Appellee/debtor Jenna Denise Hillard's (debtor's) chapter 13 bankruptcy filing and also received notice of the bar date for filing proofs of claim (the "bar date"), which had to be filed in order to receive distributions under the debtor's chapter 13 plan (the "Plan"). Notwithstanding this undisputed adequate notice, Duarte failed to file a timely

proof of claim. Only after the chapter 13 trustee filed a Notice of Filed Claims after the bar date expired, which showed "NO CLAIM FILED" for Duarte, did he file a late claim. Notably, he did not move for an extension of time to file the claim, as allowed under Rule 3002(c)(6)[1], presumably because he could not qualify for such an extension. Because his proof of claim was late, Duarte was not entitled to receive distributions under the Plan.

In this appeal, Duarte argues futilely for an exception to the rules. He asserts that the amendments the debtor made to her bankruptcy schedules and Plan after he filed the late claim qualified as an informal proof of claim filed by the debtor under Rule 3004 that was both sufficient and timely. He cites no case law in support of his theory that a debtor can file an informal proof of claim for a creditor under Rule 3004 because none exists. Moreover, he cannot demonstrate that a *debtor* would ever be capable of demonstrating the requisite *intent of a creditor* to make a claim against a debtor or bankruptcy estate in the purported informal proof of claim. This whole appeal boils down to Duarte's attempt to bootstrap an inconsequential statement from the seminal case, *Spokane Law*

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 and "Rule" references are to the Federal Rules of Bankruptcy Procedure. PLEASE NOTE: The Federal Rules of Bankruptcy Procedure were amended and restyled effective December 1, 2024. The Rule language referenced in this brief is that in effect prior to those amendments and restyling.

Enforcement Federal Credit Union v. Barker (In re Barker), 839 F. 3d 1189 (9th Cir. 2016), into precedent that would allow a debtor's schedules to qualify as an informal proof of claim. That assertion failed at the Bankruptcy Court and the District Court. It should similarly fail before this Court.

JURISDICTIONAL STATEMENT

Amici agree with the Jurisdictional Statement in Appellant's Opening Brief.

ISSUE PRESENTED

Amici assert that the following statement of the issue in this case more simply and clearly presents the issue before the Court.

Did the Bankruptcy Court err when it concluded that no timely Proof of Claim – either formal or informal - was submitted by or on behalf of Appellant Jerry Duarte?

STATEMENT OF THE CASE

1. On August 19, 2022, the debtor filed her chapter 13 bankruptcy petition and initial schedules. (3-ER-291).[2] The debtor's Schedule E/F showed Duarte had an unsecured claim for $87,068.89 (3-ER-311.)

[2] The references to the Record are to the Record filed by Appellant and in the same format as in his opening brief.

2. An unsecured creditor, such as Duarte, must file a proof of claim in a chapter 13 case to share in distributions under the plan except as provided in Rules 1019(3), 3003, 3004, or 3005. Rule 3002(a).
3. Under Rule 3002 and pursuant to the notice given by the Bankruptcy Court, the deadline for Duarte to file a proof of claim (the bar date) was October 28, 2022. Rule 3002(c).
4. On October 31, 2022, the trustee filed a Notice of Filed Claims, which showed that no claim had been filed by Duarte. (3-ER-225.)
5. On October 31, 2022, Duarte filed a late unsecured proof of claim in the amount of $114,320.00. (2-ER-22-80; 3-ER-229-283.)
6. On November 5, 2022, the debtor filed an amended Schedule E/F which showed Duarte had an unsecured claim for $114,320.00. (3-ER-186, 193-200.)
7. On November 5, 2022, the debtor filed a First Amended Plan which adjusted the total amount of Class 7 nonpriority unsecured claims upward. (3-ER-179, 183 at § 3.14.)
8. On November 17, 2022, the debtor filed a Second Amended Plan with the same adjustment to Class 7 claims. (3-ER-172, 176 at § 3.14.)
9. On January 4, 2023, the debtor objected to Duarte's Proof of Claim on the grounds that it was late-filed. (3-ER-114-115.)

10. On February 9, 2023, the Bankruptcy Court held a hearing on the objection and orally announced it was sustaining the objection. (3-ER-96 at lines 6-10.)

11. On February 24, 2023, the Bankruptcy Court entered an order sustaining the objection. (1-ER-7.)

12. Duarte filed a timely Notice of Appeal to the District Court, which affirmed the Bankruptcy Court in the Order on Appeal filed on July 15, 2024.

13. Duarte filed a timely Notice of Appeal to this Court.

SUMMARY OF ARGUMENT

Duarte asserts that the debtor, through her amended Schedule E/F and Plan, presented an informal proof of claim on his behalf under Rule 3004, which provides that a debtor may "file a proof of the claim" when a creditor does not timely file and that the "clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee." First, there is no statutory authority nor case law precedent for a proof of claim described in Rule 3004 to be presented informally. In fact, the wording of the rule, particularly the part about the clerk giving notice of the filing, is contrary to the concept that a Rule 3004 claim can be presented informally. The cases that concluded an informal proof of claim was

sufficient all arose when the creditor took a timely affirmative step to present that claim.

Second, *In re Barker,* 839 F. 3d. 1189 (9th Cir. 2016), held that a creditor who wishes to participate in a chapter 13 plan has an affirmative duty to file a proof of claim and that the debtor's schedules do not satisfy that duty. In addition, *Barker* and other cases state that two requirements must be met for a document to qualify as an informal proof of claim one of which is that the creditor, by filing the document *prior* to the filing deadline, must show an intent to hold the debtor liable. *Id.* at 1196. The facts here fail to meet that standard in two respects: (1) Duarte took no affirmative action to present an informal proof of claim *prior to* the bar date; (2) the debtor's schedules could not "evidence [the creditor's] intent to hold the debtor liable" or the requirement of Rule 3002(a) that a creditor file a proof of claim would be meaningless.

Third, the entire thrust of Duarte's argument turns on one sentence in *Barker:* "Therefore, Rule 3004 requires that debtors make an additional showing of their desire to include an unasserted claim in their Chapter 13 plan after receiving notice of which creditors intend to enforce their claims." *Id* at 1197. This sentence merely reiterates that a debtor must comply with Rule 3004 to make such a showing. Otherwise, the statement is inconsistent with *Barker's* mandate that the *creditor* must take some affirmative act prior to the bar date for there to be

an informal proof of claim; the statement also fails to recognize the need for the creditor to express intent to hold the estate liable. How could the debtor's schedule E/F and Plan do the creditor's job?

Finally, there are sounds reasons why a debtor might want to file a claim under Rule 3004: to add a nondischargeable debt; to make certain a secured creditor receives payments to cure an arrearage or achieve a cram down; to pay priority debt; or to assure that a student loan creditor receives steady payments during the plan period. Paying an unsecured claim which is subject to discharge does not meet the purpose of the Rule. One must ask: why would a debtor ever do that?

ARGUMENT

A. CHAPTER 13 OVERVIEW

A debtor initiates a chapter 13 by filing a voluntary petition along with schedules of the debtor's assets and debts and various other required papers. Rules 1002, 1007. Within fifteen days of the petition, the debtor must file a plan which follows the requirements of § 1322. Rule 3015. The plan in general may provide for the payment of priority, secured, and unsecured debts from the debtor's future disposable income, usually over a three to five-year period. Plan payments are made to the chapter 13 trustee in amounts established by the terms of a confirmed plan and the chapter 13 trustee uses those plan payments to make distributions to

creditors as specified in the plan. §§ 1302, 1322, 1325, and 1326. However, notwithstanding the debtor's schedules and the terms of the plan, in order to share in distributions under the plan a creditor must file a valid proof of claim before the bar date set by Rule which is subjected to the claims allowance process. § 502; Rule 3002(a) and (c). *Barker*, 839 F. 3d 1195-96.

Once the bar date has passed, the trustee will sometimes file a Notice of Filed Claims which lists all the claims that were timely filed. This form gives notice that if a creditor has not filed a timely claim, that creditor will not receive payments under the plan. A creditor may file for an extension of time to file a proof of claim under Rule 3002(c)(6), but the bankruptcy court can only grant an extension if it finds that the notice given to that creditor was insufficient to allow it to file a timely claim. Often the amount of the allowed claims and how they are treated under the plan will have a substantial impact on whether a bankruptcy court can confirm the plan. §§ 1322, 1325. A confirmed plan is binding on the debtor, trustee, and all creditors. § 1327.

B. STANDARD OF REVIEW

There are no disputed facts in this case and therefore no factual findings. Whether the bankruptcy court properly disallowed Duarte's claim as untimely and whether the debtor submitted an informal proof claim are questions of law which

are reviewed de novo. *In re Baroni,* 36 F. 4th 958, 965 (9th Cir. 2022); *Barker*, 839 F. 3d at 1193; *In re Avitabile*, 2017 Bankr. LEXIS 410 at 7-8 (9th Cir. BAP 2017).

C. ARGUMENT

1. On its Face Duarte's Untimely Claim Should not be Allowed

Duarte filed his proof of claim after the bar date. He did not seek an extension of time, presumably because he received adequate notice. One ground for objecting to the allowance of a proof of claim is that it was untimely filed. *See,* § 502(b)(9), which provides in relevant part that the bankruptcy court shall allow a proof of claim except if the

> (9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure…[none of which apply here.]

The debtor filed an objection to Duarte's proof of claim as untimely.

The debtor, at her discretion, was entitled to file a proof of the claim on behalf of Duarte under Rule 3004, but she chose not to do so. That is no surprise. Duarte's debt was dischargeable and filing a proof of claim would provide no benefit to the debtor. Therefore, there was no timely proof of claim filed by or on behalf of Duarte on the court's docket.

2. Debtor's Amended Schedules and Plan Do not Qualify as an Informal Proof of Claim Filed Under Rule 3004.

Duarte argues that the debtor filed an informal proof claim under Rule 3004 by amending her schedules and Plan within the thirty days of the bar date, which would make such proof of claim timely under the Rule. Recognizing that the Ninth Circuit in *Barker* rejected his assertion on its face when it held that a debtor's scheduling of prepetition debts owed to creditors did not qualify as an informal proof of claim, Duarte centers his argument on an inconsequential statement by the *Barker* court:

> Therefore, Rule 3004 requires that debtors make an additional showing of their desire to include an unasserted claim in their Chapter 13 plan after receiving notice of which creditors intend to enforce their claims. Barker never made this additional showing. Therefore, the filing requirements of Rule 3004 have not been satisfied, and Barker's bankruptcy schedules do not constitute a debtor's proof of claim.

Barker, 839 F. 3d at 1197.

To understand the concept of an informal proof of claim, it is helpful to look at its genesis in Ninth Circuit case law. As early as 1923, this Court embraced the idea that an affirmative writing by a creditor requesting payment from a bankruptcy estate might qualify as an informal proof of claim when no formal claim was filed. *See,* for example, *In re Patterson-MacDonald Shipbldg, Co.* 293 F. 190, 191 (9th Cir. 1923). The most noteworthy case on this issue is *County of Napa v. Franciscan Vineyards, Inc. (In re Franciscan Vineyards, Inc.),* 597 F. 2d 181, 182-83 (9th Cir. 1979) which established the criteria for an informal proof of

claim: a document must (1) be presented in writing; (2) be presented within the time frame 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.

This doctrine has been used almost exclusively in circumstances where the creditor has missed a bar date but argues that it took the requisite affirmative action to satisfy the stated criteria by writing a letter or sending some other written document to the trustee or debtor. The two cases cited by Duarte as supporting a right to an informal proof of claim are both of that variety. The creditor in *In re Edelman*, 237 B.R. 146 (9th Cir BAP 1999) had missed the bar date because the Northridge earthquake of 1994 occurred the prior day and prevented creditor's attorney from entering his office to timely file the claim. The BAP affirmed the bankruptcy court's decision to deny the creditor's untimely claim because the circumstances did not fall within any of the accepted exceptions; the BAP also concluded there were no grounds for accepting an informal proof of claim. The BAP noted some written instrument must have been presented on behalf of the creditor which brought to the court's attention the nature and amount of the claim. The creditor in *Edelman* did not present a written instrument. This case makes no mention of the debtor filing a Rule 3004 claim.

The one other case addressed by Duarte, the nonprecedential case *Avitabile v. Rocheleau (In re Avitabile),* 2017 Bankr. LEXIS 410 (9th Cir. BAP 2017), also made no reference to Rule 3004. The only issue before the bankruptcy court and on appeal was whether a letter sent by the creditor to the chapter 7 trustee had been brought to the attention of the bankruptcy court. There was no question that the creditor there had timely taken an affirmative step in writing to advise the trustee that it had a claim against the estate in a set amount. The BAP concluded that the letter had been attached to a trustee's motion filed with the court which resolved the "attention of the court" issue. *Id.,* 2017 WL 586430 at *4. Duarte's brief stretches a few words that are at most dicta in the case far beyond the facts of the case. *Avitable* cannot even be read to hold that the trustee filed the informal proof of claim. The case only held that, because the *creditor's* letter was attached to a motion filed by the trustee, it met the requirement that an informal claim be filed with the court. The case provides no support for Duarte's assertion that a Rule 3004 claim can ever be submitted informally.

Barker, therefore, is the only case that addresses the possibility that a Rule 3004 claim may be submitted informally and it was decided directly contrary to Duarte's argument. The opinion commences with an abrupt and precise statement:

> If a creditor wishes to participate in the distribution of a debtor's assets under a Chapter 13 plan, it must file a timely proof claim. The debtor's acknowledgement of debt owed to

> the creditor in a bankruptcy schedule does not relieve the creditor of this affirmative duty.

Barker, 839 F. 3d at 1191-92. The opinion then proceeds to discuss normal chapter 13 procedures, emphasizing that Rule 3002 requires a creditor to file a valid proof of claim which goes through the claims allowance process before it can be paid under a plan. *Id.* at 1193. The applicable statutes place a burden on each chapter 13 creditor to file a timely proof of claim. *Id.* at 1194. Nothing in the statutes or existing case law provides that the debtor's schedules can take the place of a filed proof of claim. *Id.* at 1195.

The creditor in *Barker* had argued that the schedules were sufficient as a claim, but the this Court rejected that argument by referring to the necessary elements for an informal proof of claim as set forth in *Franciscan Vineyards* above, shortening them to state that the necessary document (1) must state an explicit demand as to the nature and amount of the claim and (2) must evidence an intent to hold the debtor liable. The opinion noted that the debtor's schedules would never serve the purpose of showing a creditor's intent. *Id.* at 1196. And it reiterated that creditors must have taken "some affirmative action to demonstrate their intent to enforce their claims *prior to* the filing deadline." *Id. (*emphasis added.) A debtor's schedules failed the intent element.

Duarte's entire argument focuses on one sentence later in the *Barker* opinion:

> Therefore, Rule 3004 requires that debtors make an additional showing of their desire to include an unasserted claim in their Chapter 13 plan after receiving notice of which creditors intend to enforce their claims.

Barker, 839 F. 3d at 1197.

He asserts that by amending her schedules after the claim was filed late and also filing a First and Second Amended Plan, the debtor has shown a desire to pay him. This argument fails for multiple reasons. First, the quoted sentence itself clearly states that Rule 3004 sets the requirements for a proof of claim filed by the debtor. That rule *requires the debtor to file a proof of claim*. The debtor in this case did not file a proof of claim and therefore did not meet that requirement. Moreover, as noted in *Barker* itself, schedules, whether original or amended, cannot show the *creditor's* intent to hold the debtor's estate liable since they are a statement by the *debtor*. That leaves just the amended plan, an issue not addressed in *Barker.*

Duarte's brief misstates the significance of the Plan amendment. A close look at the First and Second Amended Plans (ER 3-ER-179, 183; 3-ER-172, 176) reveals only one reference to the payment of nonpriority unsecured claims in Class 7, at paragraph 3.14 on page 5, where it makes the statement "[t]hese claims total approximately $322,338.48," that figure being inserted on a preprinted line on the form. The earlier plan had a slightly lower figure on that line. That single change in the approximate total of Class 7 claims does not demonstrate a desire of the debtor to pay Duarte's claim. In addition, the plan form itself at paragraph 3.01,

page 2, (3-ER-179, 180) states "with the exception of the payments required by [inapplicable], a claim will not be paid pursuant to this plan unless a proof of claim is filed by or on behalf of a creditor…" No creditor could believe the Plan shows a desire by the debtor to pay its claim when the Plan itself says the opposite. Neither the amended schedules nor the amended Plan meets the elements of an informal proof of claim.

3. Other Rule Provisions and Advisory Committee Comments Reinforce Amici's Arguments.

Rule 3004, which allows a debtor to file a claim for a creditor after the bar date has passed, was intended to assist the debtor to accomplish the purposes of her plan. The Original Advisory Committee Note to that Rule explains why a debtor may wish to file a claim on behalf of a creditor:

> After their estates have been closed, however, discharged debtors may find themselves saddled with liabilities, particularly for taxes, which remain unpaid because of the failure of creditors holding nondischargeable claims to file proof of claim and receive distributions thereon. The result is that the debtor is deprived of an important benefit of the Code without any fault or omission on the debtor's part.

A debtor might wish to file a proof of claim not only for nondischargeable debt but also for a secured debt on which a default is being cured under the plan, priority tax or domestic support obligation claims that the debtor wishes to have paid before other creditors, and student loans to show a continuous stream of payments

to such creditors to demonstrate the debtor's good faith effort to repay. A debtor would have no reason to file a Rule 3004 proof of claim for a nonpriority unsecured dischargeable debt such as that owed to Duarte.

Congress adopted a different Rule for the treatment of claims in chapter 11, Rule 3003. Rule 3003(b)(1) provides that the schedule of liabilities

> "shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as [inapplicable.]"

This Rule, implementing Code section 1111(a), is different than Rule 3002, which is applicable in chapter 7 and 13 cases and compels a creditor to file a proof of claim. Chapter 13 includes no counterpart to section 1111(a). Congress knew how to make the schedules serve the purpose of a proof a claim, as it did so for chapter 11 cases. The omission of a similar provision in chapter 13 reinforces the conclusion that schedules alone do not qualify as a proof of claim. To adopt Duarte's argument would contravene the distinction enacted by Congress.

Prior to 2017, there was a split in the case law about whether a secured creditor needed to file a proof of claim to be paid through a chapter 13 plan. Some courts had held that if a secured creditor was provided for in the plan, it could be paid even if it had not filed a proof of claim. *See* Bankruptcy Rules Advisory

Committee minutes of September 2011 Meeting, p.4.[3] In 2017, Rule 3002(a) was amended to clarify that a secured creditor must file a proof of claim to be paid through a plan. This amendment further supports the argument that inclusion in a plan is not sufficient for a creditor that has not filed a proof of claim to be paid through a chapter 13 plan.

4. There are Additional Policy and Practical Reasons That Amended Schedules and Plan Provisions Do Not Qualify as a Proof of Claim.

Bankruptcy Schedules serve many purposes, but first and foremost, they are a disclosure under penalty of perjury by debtors of their assets and liabilities to the best of their knowledge. Rule 1007. Debtor listed Duarte's debt in the amount she believed it to be when she filed her initial Schedule E/F. Amendments to schedules are allowed at any time and are encouraged whenever a debtor learns that information included in them is inaccurate. Rule 1009. When the debtor received notice that Duarte had filed a claim in an amount which differed from her Schedule E/F, she likely felt she had a duty to correct the Schedule to that amount and she promptly did so, without regard to whether the claim would be allowed. To suggest that the act of a debtor trying to perform her duties under Rules 1007 and 1009 to list liabilities to the best of her knowledge is an informal proof of

[3] The Bankruptcy Rules Advisory Committee's Minutes for September 2011 can be found at https://www.uscourts.gov/sites/default/files/fr_import/BK09-2011-min.pdf

claim under Rule 3004 for a creditor is nonsensical. Allowing amendments to schedules to qualify as informal proofs of claim would discourage accurate disclosures in the schedules by debtors.

Most importantly, accepting Duarte's argument that a debtor can file an informal proof of claim on behalf of a creditor without filing a real proof of claim under Rule 3004 would create a dangerous trap for unwary consumer debtors, especially those who are pro se. They might, in attempting to comply with the rules, take actions that inadvertently harm, or even, eliminate their chance for a bankruptcy fresh start. For example, the Code normally requires a plan to propose full payment of priority claims in order for the plan to be confirmed. § 1322(a)(2). If a debtor's actions are deemed to be the filing of an informal priority proof of claim, even though the creditor did not file a proof of claim and the debtor did not file a proof of claim under Rule 3004, the debtor's plan could well become unconfirmable because the debtor does not have sufficient income to pay that priority claim. And there are many other circumstances that could lead to the same result. This Court should not adopt a new rule, unsupported by the statute or rules, that creates such a trap.

Any filed proof of claim is deemed allowed under § 502(b) unless a party objects. For the purposes of plan confirmation, many chapter 13 trustees demand that debtors in proposed plans account for all filed claims, notwithstanding any

potential objections to their allowance. In calculating a necessary plan payment for a percentage plan (as was the debtor's here), the trustee will use the highest possible amount for unsecured claims based on the claims filed. If all claims are allowed, then the plan payment will be sufficient to account for them. If later some claims are disallowed by court order, then the payment can be adjusted downward, which is much easier than adjusting it upward after confirmation. The record here establishes no reason why the debtor amended her plan on November 5, 2022. As noted previously, as to unsecured creditors the only change was increasing the number in the blank of paragraph 3.14 by a few thousand dollars. Maybe this was done to accommodate insistence by the chapter 13 trustee that the number reflect the total of filed unsecured claims, whether or not objectionable, but the record allows only speculation as to the reason. Such amendment by the debtor cannot be presumed to be a showing of the debtor's desire to pay the late claim. It may have merely met a practical demand by a trustee to assure proper calculation of the required plan payment.

Rule 3004 requires two things. First, the debtor or trustee must file a proof of the claim. Second, the clerk must give notice of the fling to the creditor, the debtor and the trustee. Neither happened in this case. Per *Barker,*

> [t]he Ninth Circuit has made it clear that this straightforward language should be given its "plain meaning" and enforced accordingly. *Gardenhire v IRS (In re Gardenhire),* 209 F. 3d 1145, 1148 (9th Cir. 2000).

> In addition, "in a highly statutory area such as bankruptcy," the Ninth Circuit prescribes "[c]lose adherence to the text of the relevant statutory provisions." [citation omitted.]

Barker at 1194.

This passage pertained to Rule 3002(a). The text of Rule 3004 should similarly be given its plain meaning and adhered to closely. The Bankruptcy Code and the Bankruptcy Rules simply do not support the creditor's argument that a debtor can file an informal proof of claim on behalf of a creditor.

CONCLUSION

For the reasons stated above, *Amici* urge this Court to affirm the decision of the courts below that no timely proof of claim was filed by or on behalf of Duarte.

Respectfully submitted this 7th Day of February 2025,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS
9th Cir. Case Number(s) 24-5156

I am the attorney or self-represented party.

This brief contains 4,990 words, including zero (0) words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

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Signature /s/ *James J. Haller* **Date: February 7, 2025**

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 7, 2025. All participants that are registered as CM/ECF users will receive service via appellate CM/ECF system.

In addition, I hereby certify that that I served the brief via email to all registered case participants on this date. I also certify that I served the brief via United States Mail to Jenna Denise Hillard at 507 Lassen Way, Oakley, CA 94561.

s/ James J. Haller
James J. Haller
Attorney for *Amici Curiae*

STATEMENT UNDER FED. R. APP. P. 29(a)(4)(E)

No party's counsel authored this amicus curiae brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person, other than the *amici curiae*, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

s/ James J. Haller
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