IT IS SO ORDERED.

Dated: January 7, 2026

Tyson A. Crist
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	
	:	Case No. 24-32499
Donald Lee,	:	Chapter 13
	:	Judge Crist
Debtor.	:	
	:	
	:	

ORDER DENYING DEBTOR'S AMENDED MOTION TO MODIFY PLAN POST-CONFIRMATION (DOC. 37), WITHOUT PREJUDICE

I. Introduction

This matter concerns a chapter 13 debtor's attempt to modify his confirmed plan to surrender a 2014 Ford Escape and change the treatment of the secured creditor's Class 1 "910 claim," to a Class 2 secured claim, a secured claim with no designated specific monthly payments. As the Amended Motion (as defined below) still identifies the former creditor, even though it was served on the current creditor, and does not state whether the "deficiency" secured claim would be paid "in full" with interest at the rate provided for in the confirmed Amended Plan (also as defined below), the Court is hereby denying the Amended Motion, without prejudice to the Debtor revising the proposed modification and filing and properly serving another motion to modify to address these issues.

II. Background

Debtor Donald Lee (the "Debtor" and "Mr. Lee") filed his Second Amended Chapter 13 Plan (Doc. 20) (the "Amended Plan") on February 5, 2025. Therein, he proposed to treat a claim held by Capital Auto Finance,[1] secured by a 2014 Ford Escape purchased in November 2024, as a "910 Claim" to be paid the estimated amount of $18,300 with interest at the rate of 7.75%. *See* Am. Plan at 4, ¶ 5.1.3. The Amended Plan was confirmed on March 17, 2025. *See* Order Confirming Chp. 13 Plan (Doc. 20) and Awarding Att'y Fees (Doc. 28).[2]

Close to six (6) months later, on September 3, 2025, Mr. Lee, by and through his counsel, filed *Debtor's Motion to Modify Plan Post-Confirmation* (Doc. 34) (the "Motion"). The Motion sought to modify Debtor's confirmed Amended Plan to surrender his 2014 Ford Escape (the "Vehicle") to "Capital Auto Credit with any deficiency balance to be paid in full as a Class 2 debt."[3] Mot. at 1, ¶ 2. In conjunction, Capital Auto Credit would "have 90 days from date of the order on this [M]otion to file a deficiency claim." *Id.* The reason given for surrender is that "[t]he [V]ehicle is in poor condition." *Id.* But the Motion does not cite any legal authority for this type of modification beyond a passing reference to 11 U.S.C. § 1329. *Id*. at 2. Otherwise, the Amended Plan would remain the same, such that Debtor would continue to make a $515 monthly payment "and the unsecured dividend would remain 1%." *Id.* at 1, ¶ 1.

The Motion was served on the Debtor's mailing matrix by first class mail in accordance with Rules 2002(a)(5) and 3015(h)(1) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), but the Debtor did not provide service to the directly affected creditor in accordance with Local Bankruptcy Rules 3015-2(b) and 9013-3(d) which, together, require service of the Motion on "all adversely affected parties, and all parties whose specifically described treatment has changed through the modified plan" (LBR 3015-2(b)), "by a method authorized or required by

[1] As discussed below, Tribute Capital Partners, LLC filed Proof of Claim 8-1 on January 28, 2025, prior to Debtor filing his Amended Plan, such that, as with the Motion and Amended Motion, the Amended Plan did not identify and was not served on the current holder of the claim secured by Debtor's 2014 Ford Escape.

[2] Under Paragraph 5.1.7 of the Amended Plan, Debtor's counsel has a total claim of $3,900 for attorney fees, which suggests this chapter 13 case is a simpler case that mainly concerned the Debtor's vehicle.

[3] Although not discussed in the Motion (or the subsequent Amended Motion), the Amended Plan provides that Class 2 is comprised of "Secured Claims with No Designated Specific Monthly Payments and Domestic Support Obligations (Arrearages)." Am. Plan at 3, ¶ 5. The "Payment/Distribution by Trustee" for Class 2 secured claims under the Amended Plan is "[p]aid second and pro rata with other Class 2 claims."

[Bankruptcy] Rule 7004 or Rule 5(b) Fed. R. Civ. P." (LBR 9013-3(d)). No counsel has appeared for the current or prior holders of the claim secured by Mr. Lee's Vehicle.

There was no objection to the Motion; however, on October 10, 2025, Debtor's counsel filed *Debtor's Amended Motion to Modify Plan Post Confirmation* (Doc. 37) (the "Amended Motion"), which was exactly the same as the original Motion. The Amended Motion still identified the secured creditor as Capital Auto Credit, even though the secured claim had twice been assigned since the original Chapter 13 Plan (Doc. 6) was filed on December 20, 2024. Further, the Amended Motion proposed the exact same modification. Am. Mot. at 1-3. The Amended Motion was, however, served by both first-class mail and certified mail addressed to Jefferson Capital Systems, the current holder of the secured claim. According to Proof of Claim 8-1 (the "Secured Claim") filed by Tribute Capital Partners, LLC ("Tribute") on January 28, 2025, Tribute acquired the Claim from Capital Auto Credit, LLC. Subsequently, Tribute sold and assigned the Secured Claim to Jefferson Capital Systems, LLC, as reflected in the *Transfer of Claim Other Than for Security* (Doc. 21), filed on February 17, 2025.

Debtor's counsel presumably filed the Amended Motion after recognizing that Capital Auto Credit was no longer the secured creditor, and that Bankruptcy Rule 7004 service on the affected secured creditor was necessary. In other words, it appears the sole purpose for amending the Motion was to serve the current holder of the Secured Claim pursuant to Bankruptcy Rule 7004; however, Debtor's Amended Motion still proposed to surrender the vehicle to Capital Auto Credit and to give Capital Auto Credit 90 days to file a "deficiency claim" that, if timely filed, would be "paid in full as a Class 2 debt." Am. Mot. at 1, ¶ 2.

III. Analysis

The Debtor's Amended Plan (Doc. 20), which was confirmed on March 18, 2025 (Doc. 28), treats the Secured Claim as a Class 1 "910 Claim." Doc. 20, ¶ 5.1.3; s*ee* 11 U.S.C. § 1325(a) (hanging paragraph). Now, through the modification proposed in the Amended Motion pursuant to § 1329, the Debtor seeks to surrender the Vehicle to the secured creditor and have any deficiency claim, after sale of the collateral, reclassified as a Class 2 secured claim. However, the modification: (1) does not identify the current holder of the Secured Claim; and (2) does not state whether the Class 2 "deficiency" secured claim would be paid in full with interest at the rate provided for in the confirmed Amended Plan, which is 7.75%. *See* Am. Plan at 4, ¶ 5.1.3.

Under the Mandatory Form Chapter 13 Plan adopted in this District, Class 2 claims, which are secured claims with no designated monthly payment, are often not paid interest. "The interest rate in Paragraph 7 does not apply to claims in this Paragraph [5.2.1]." Am. Plan at 5, ¶ 5.2.1. Thus, Class 2 claims do not receive the *Till* interest rate identified in Paragraph 7 of the Plan. And in this case, the Modification to Confirmed Chapter 13 Plan attached to the Amended Motion, as well as the Amended Motion, simply states that "any deficiency balance [will] be paid in full as a Class 2 debt." Am. Mot. at 1, ¶ 2, and 3 (Modification to Confirmed Chapter 13 Plan).

Based on the foregoing, it is unclear whether Debtor intends on paying "post-surrender interest" to the current holder of the Secured Claim, or if by proposing to reclassify the Secured Claim from a Class 1 "910 Claim" to a Class 2 Claim the intention was to pay the Secured Claim "in full" but without further interest. At this time, the Court takes no position on which approach is appropriate, but notes that this issue has been briefed to, and is presently pending before, the Bankruptcy Appellate Panel for the Sixth Circuit in *In re Bain* (*Bain v. Exeter Finance LLC*), Appeal No. 25-8009.[4]

Perhaps the statement that the deficiency balance is to be "paid in full" is intended to mean that Debtor will pay the same 7.75% interest provided for this Secured Claim in the confirmed Amended Plan. But, in this circumstance, the Debtor needs to tell the Court and give fair notice to the secured creditor of how the Debtor is proposing to treat the Secured Claim in the proposed modification. Any future proposed modification to the Amended Plan needs to explicitly address this interest issue and needs to correctly identify and serve the current holder of the Secured Claim.

IV. Conclusion

For the foregoing reasons, the Amended Motion is hereby **DENIED,** without prejudice to Debtor refiling and properly serving a motion to approve a modification of the confirmed Amended Plan that addresses the issues discussed in this Order.

IT IS SO ORDERED.

[4] In June 2025, Bankruptcy Judge Nancy B. King issued a decision approving a plan modification that provided for surrender of the secured creditor's collateral, interestingly a 2015 Ford Escape (also because of "mechanical issues with the vehicle"), that had been treated as a "910 Claim" in the confirmed plan, which permitted the debtor to pay no further interest on the secured creditor's amended (deficiency) claim – no "post-surrender interest." *See In re Bain*, 672 B.R. 119, 127-28 (Bankr. M.D. Tenn. 2025) (finding the proposed modification was "sufficiently distinguishable" from the modifications denied in *Chrysler Fin. Corp. v. Nolan* (*In re Nolan*), 232 F.3d 528 (6th Cir. 2000) and *Ruskin v. DaimlerChrysler Servs. N. Am.* (*In re Adkins*), 425 F.3d 296 (6th Cir. 2005)).

Copies to:

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