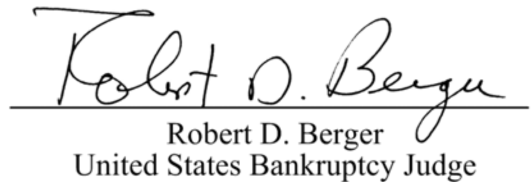
**The relief described hereinbelow is SO ORDERED.**

**SIGNED this 15th day of March, 2024.**



Robert D. Berger
United States Bankruptcy Judge

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**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF KANSAS**

In re:

**JACOB RYAN SORENSON and**
**NORMA JEAN SORENSON,**

Debtors.

Case No. 23-21023
Chapter 13

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**ORDER SUSTAINING TRUSTEE'S OBJECTION TO CONFIRMATION**

This matter comes before the Court on the Chapter 13 trustee's objection to confirmation of the Sorensons' second amended Chapter 13 plan[1] for failure to comply with § 1325(a)(4) of the Bankruptcy Code. Under that provision, known as

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[1] ECF 38 (objecting to confirmation of ECF 36).

the "liquidation test" or the "best interest of creditors test," a Chapter 13 plan cannot be confirmed unless[2]

> the value, as of the effective date of the plan, of property to be distributed under the plan on account of *each allowed unsecured claim* is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.[3]

The Trustee argues that the plan at issue fails the liquidation test because it proposes to pay the entire liquidation value of the debtors' non-exempt assets ($21,406) to their student loan creditor(s).[4] The Sorensons respond that according to this Court's decision in *In re Engen*, 562 B.R. 523 (Bankr. D. Kan. 2016), their proposal is permissible.

The Trustee is correct. *Engen* held that separate classification of student loan debt in a Chapter 13 plan did not "discriminate unfairly" against other unsecured claims for purposes of § 1322(b)(1).[5] It was not about § 1325(a)(4)'s liquidation test. Indeed, the plan at issue in *Engen* provided that the debtors' non-exempt assets had zero liquidation value[6] (such that general unsecured creditors would receive nothing in Chapter 7). In other words, the Engens' plan *passed* the liquidation test. Nothing

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[2] *See Wachovia Dealer Servs. v. Jones (In re Jones)*, 530 F.3d 1284, 1290 (10th Cir. 2008) (holding that "the provisions of § 1325(a) are mandatory requirements for the confirmation of a Chapter 13 plan").

[3] 11 U.S.C. § 1325(a)(4) (emphasis added).

[4] ECF 38 ¶ 3; *see* ECF 36 § 15 (providing that liquidation value of non-exempt assets is $21,406), § 18 (providing that "[a]ll the dividend to the general unsecured creditors will be paid to the student loan creditor(s)").

[5] *See In re Engen*, 561 B.R. at 551.

[6] *See In re Engen*, Case No. 15-20184, ECF 52 ¶ 15.

about *Engen* should be read to suggest that compliance with § 1325(a)(4), which applies the liquidation test to "*each* allowed unsecured claim,"[7] is optional when student loans are involved.

If the Sorensons' case were in Chapter 7, each of their unsecured creditors would receive a *pro rata* share of $21,406. Under the Sorensons' proposed Chapter 13 plan, some of those creditors (i.e., the ones with non-student-loan claims) would receive nothing. That does not comply with § 1325(a)(4). For that reason, the Trustee's objection to confirmation is hereby sustained.

IT IS SO ORDERED.

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[7] Contrast § 1325(a)(4) with § 1325(b)(1)(B), which requires application of the debtor's "projected disposable income" to "payments to unsecured creditors under the plan" without mention of how such payments are allocated.