The relief described hereinbelow is SO ORDERED.

SIGNED this 15th day of March, 2024.

Robert D. Berger
United States Bankruptcy Judge

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

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

[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.