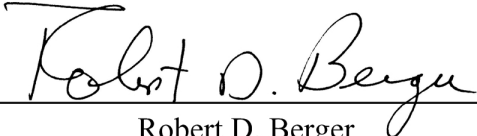




The relief described hereinbelow is **SO ORDERED**.

**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 Sorensens' second amended Chapter 13 plan<sup>1</sup> for failure to comply with § 1325(a)(4) of the Bankruptcy Code. Under that provision, known as

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<sup>1</sup> 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<sup>2</sup>

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.<sup>3</sup>

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).<sup>4</sup> 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).<sup>5</sup> 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<sup>6</sup> (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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<sup>2</sup> 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”).

<sup>3</sup> 11 U.S.C. § 1325(a)(4) (emphasis added).

<sup>4</sup> 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)”).

<sup>5</sup> See *In re Engen*, 561 B.R. at 551.

<sup>6</sup> 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,”<sup>7</sup> is optional when student loans are involved.

If the Sorensens’ case were in Chapter 7, each of their unsecured creditors would receive a *pro rata* share of \$21,406. Under the Sorensens’ 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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<sup>7</sup> 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.