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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

FILED August 23, 2018

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re) Case No. 18-11570-B-13
)
ETHAN NICOLAS APARICIO,) DC No. MHM-2
)
Debtor.)
)

MEMORANDUM DECISION

INTRODUCTION

Nearly ten years after the dissolution of her 18 year marriage to Ethan Aparicio, Olivia (Aparicio) Reyes applied to the Superior Court of California for the County of Tulare ("Superior Court" or "State Court") thereby renewing the dissolution judgment which, in part, incorporated a marital settlement agreement ("MSA"). Under the MSA, Ethan was to pay Olivia for support, equalization, home repair, and expenses for a business they both owned and operated during marriage.

Ethan disputes his liability under the judgment claiming, among other things, the MSA is partially invalid and that he is entitled to credits against the judgment for his support payments, "in kind" payments for their child, and an offset because Olivia sold the business. Ethan also concedes that he owes Olivia for specific items.

Before the State Court ruled on his challenges to the judgment, Ethan filed this Chapter 13 bankruptcy case. The Chapter 13 Trustee moved to dismiss the case because the amount Olivia claims is due under the judgment exceeds the eligibility

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limits for unsecured debts under 11 U.S.C. § 109(e).¹ Ethan contends Olivia's claim is unliquidated and largely should not be counted as "debts" included in the eligibility determination. This court disagrees, and finds Ethan ineligible for Chapter 13 relief at this time.

FACTS

Ethan and Olivia Aparicio were married for 18 years. They resided in Porterville, Tulare County, California and have one child. Ethan was an exclusive property and casualty insurance agent for Allstate Insurance.² Sometime during the marriage, Olivia became the exclusive agent and Ethan became a personal financial representative for Allstate Financial Services, LLC.

In February 2007, Ethan filed a marital dissolution proceeding in the Superior Court. Ethan prepared a draft agreement containing terms to settle support and property division issues. Olivia's attorney prepared a MSA which was incorporated into a dissolution judgment on August, 10, 2007.

Pertinent MSA Provisions.

The MSA had many provisions, many of which are not in dispute. However, the components that are in dispute are summarized here.

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, all "Civil Rule" references are to the Federal Rules of Civil Procedure, and all "LBR" or "Local Rules" references are to the Local Rules for the United State Bankruptcy Court for the Eastern District of California.

² For ease of reference, this memorandum will refer to the litigants as "Ethan" and "Olivia." No disrespect is intended.

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1 Child Support. Ethan agreed to pay child support until
2 their child was 18.

3 Spousal Support. Ethan agreed to pay spousal support of
4 \$2,000.00 per month. The parties agreed to end the spousal
5 support by stipulation dated June 7, 2011.

6 Business Expenses. Olivia, instead of maintaining the
7 property and casualty business, elected to return to school to
8 become a dental hygienist. The parties agreed that Olivia's
9 exclusive agency would be transferred to Ethan in February 2011.
10 Until then, and effective January 2008, Ethan was required to
11 pay salaries of staff, office insurance, a telephone bill, lease
12 expenses and office supplies.

13 Home Repairs. Ethan agreed to pay to paint the interior and
14 exterior of the family home in Porterville, and install both new
15 carpet and a new composition roof. He also agreed to pay for the
16 repair of a wood fence in the backyard. These tasks were to be
17 completed three months after the State Court entered the
18 dissolution order.

19 Equalization Payment. Ethan agreed to pay Olivia a
20 community property equalization payment of \$25,000.00 on or
21 before February 2009.

22 Over the next ten years, Olivia and Ethan's child reached
23 18, Olivia remarried and moved to Florida, and Ethan moved to
24 Bakersfield, Kern County, California. Except for the stipulation
25 terminating spousal support in June 2011, neither Olivia nor
26 Ethan returned to the Superior Court to either enforce the terms
27 of the MSA or to ask for relief from the order. Just before the
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1 judgment incorporating the MSA was about to expire, Olivia
2 pursued her rights.

3
4 *Olivia's Application to Renew the Dissolution Judgment.*

5 In July 2017, Olivia filed an application for renewal of
6 the dissolution judgment with the Superior Court. Olivia stated
7 that Ethan paid some but not all of the child support under the
8 MSA but still owed approximately \$108,000.00 in child support.
9 She also stated that contrary to the MSA, Ethan paid no spousal
10 support, business expenses, home repair costs, nor the
11 equalization payment. In sum, Olivia stated that Ethan owed
12 \$541,631.00 in unpaid principle and \$391,513.00 in interest for
13 a total owed of approximately \$933,000.00.

14 Ethan hired counsel who filed a Motion to Vacate Renewed
15 Judgment in October 2017.³ In support of his motion, Ethan filed
16 a lengthy declaration, which is a part of the record on this
17 motion. Where pertinent, his responses to Olivia's Application
18 to Renew the Dissolution Judgment are summarized here.

19 Child Support. Ethan conceded that approximately \$42,000.00
20 was owed for unpaid child support, but he also claims that
21 between July 2012 and June 2013, he paid that support "in kind."
22 Ethan stated that he paid for an automobile and gasoline for
23 their child. He also claims that Olivia agreed that their child
24 should have a new car and that Ethan should pay for that car in
25 lieu of support for that period. Ethan also claimed that he had
26 no obligation for child support when their child turned 18.

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³ These facts are taken from the exhibits Ethan filed in opposition to
the Chapter 13 Trustee's Motion to Dismiss (Doc. No. 32).

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1 Spousal Support. Ethan conceded that he owed some of the
2 spousal support, but not the amount Olivia claimed.

3 Business Expenses. This claim is the most sharply disputed.⁴
4 In sum, Ethan claims that the MSA and accompanying judgment is
5 not an accurate reflection of his and Olivia's 2007 agreement,
6 the agreement is unconscionable and enforcing the agreement
7 would result in Olivia Reyes' unjust enrichment.

8 Ethan claims that before the MSA was signed, he and Olivia
9 had an understanding which Ethan memorialized and gave to the
10 attorney drafting the MSA. However, there was a drafting error.
11 He claims that Olivia and he agreed that Olivia was to pay the
12 salaries, office insurance and telephone bill for the insurance
13 business since she was the exclusive agent.

14 Ethan claims the MSA was also unconscionable because Olivia
15 received all the commissions from the property and casualty
16 portion of the insurance business through December of 2010, plus
17 30% of Ethan's earned commissions as a financial advisor from
18 referrals from the property and casualty department of their
19 insurance business. Also, Ethan claims that Olivia had the sole
20 financial control of agency monies. Ethan says it was impossible
21 for him to pay the expenses of the property and casualty
22 division from only the commissions earned from the financial
23 services division and both he and Olivia knew that. He claimed
24 that he never did read the MSA before he signed it and that it

25
26 ⁴ In opposition to the Chapter 13 Trustee's Motion to Dismiss, Ethan
27 offered his own declaration and the declaration of Michelle L. Hatherley-Parr
28 who is one of Ethan's attorneys in the family law matter. Ms. Hatherley-Parr
opines that the business expense claim of Olivia Reyes is "most tenuous"
because the MSA is silent about how the claim was to be determined or how the
claim was going to be recorded. The court is not sure the relevance of how
the claim was to be recorded. (See Doc. No. 31).

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1 was not explained to him. Finally, he claims Olivia never asked
2 him to pay the expenses, except the office rent, when he moved
3 into the property and casualty office to manage it while Olivia
4 was attending school beginning in February 2007.

5 Ethan also claims that enforcing the agreement would lead
6 to Olivia's unjust enrichment. Ethan contends that Olivia wanted
7 to attend hygienist school and he needed to move in to the
8 property and casualty office and devote time managing the
9 office. He was familiar with the business because he used to be
10 the exclusive property and casualty agent before Olivia became
11 the exclusive agent. While Olivia completed school, she was only
12 at that office about one time per week and had complete control
13 of the finances.

14 Alternatively, Ethan claims that if the business expenses
15 portion of the MSA is enforced, he could not have any
16 responsibility for anything before January 1, 2008 when he and
17 Olivia agreed that he would take over the business. He also
18 states that the proposed office wages portion was overstated by
19 approximately \$15,000.00 and that he paid for all office
20 supplies through December 2010.

21 Home Repair Expenses. Ethan concedes that he agreed to
22 repaint their Porterville family residence, replace the carpet
23 and the roof. Olivia claims she expended over \$26,000.00 for
24 those services. That is undisputed. But Ethan does not agree
25 that he should be charged over \$3,000.00 to replace a back fence
26 since he only agreed to repair the fence. He also says that
27 because of the substantial passage of time (approximately ten
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years) Olivia should be barred from recovering any fence repair costs by the Doctrine of Laches.

Equalization Payment. Ethan concedes that he did not make the equalization payment of \$25,000.00 and is liable to Olivia for \$25,000.00 plus interest of \$21,226.03 for a total of \$46,226.03.

Ethan's Claimed Offset. Olivia sold the property and casualty business to Allstate in either December 2010 or January 2011. She received, according to Ethan, monthly payments of approximately \$10,000.00 over a period of one year. The total of those payments plus interest is over \$200,000.00. Ethan contends that the property and casualty part of the insurance business was his book of business. Because she sold that business and did not pay Ethan, he contends he is entitled to an offset of over \$200,000.00 against Olivia's claims under the MSA.

The Superior Court has yet to rule on Ethan's Motion to Vacate the Renewed Judgment. Attempts at mediation have failed. The motion is now stayed because of this bankruptcy case.

The Bankruptcy Case.

Ethan filed this Chapter 13 case on April 20, 2018, nearly nine months after Olivia filed the Application to Renew Judgment. Ethan's schedules list Olivia Reyes as having a claim of \$867,883.38. The components of that claim includes almost \$236,000.00 in domestic support obligations [child support and spousal support] and approximately \$632,000.00 in claims other than domestic support obligations. Ethan also lists his offset of over \$200,000.00. The only portion of Olivia's claim Ethan

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1 lists as "contingent unliquidated and disputed" is approximately
2 \$556,000.00 of the "business expenses" and approximately
3 \$3,100.00 of the "home repairs."⁵

4 The Chapter 13 Trustee filed this Motion to Dismiss in June
5 2018. Ethan opposes the motion.
6

CONTENTIONS OF THE PARTIES

7
8 The trustee contends that based on Ethan's schedules he is
9 over the debt limit by an excess of \$500,000.00. The trustee
10 claims that Olivia's claim is both non-contingent and
11 liquidated. The trustee also contends that even if Ethan
12 disputes all or a portion of Olivia's claim, the dispute does
13 not affect the eligibility determination and that what may
14 happen after the petition was filed is not relevant. The trustee
15 points to not only Ethan's bankruptcy schedules, but upon review
16 of the debtor's opposition, it appears that even at its lowest,
17 the unsecured debt is well-over the Chapter 13 debt limit.

18 Ethan contends that because he filed a Motion to Vacate the
19 Renewed Judgment, Olivia's claims are unliquidated for purposes
20 of eligibility and cannot be readily determined. He also claims
21 that an extensive and contested evidentiary hearing will be
22 necessary in State Court before Olivia's claim can be liquidated
23 and that there is a substantial dispute between him and Olivia
24 regarding liability and the amount of the claims. Finally, Ethan
25 contends that a fundamental purpose of Chapter 13 will be
26 frustrated if the motion is granted because conversion to
27 Chapter 11 is too expensive and cumbersome. So, Ethan contends,

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⁵ This amount represents the portion of the home repairs claim relating
to the repair of the back fence at the Porterville home.

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any doubt should weigh in favor of denying the Motion to Dismiss.

JURISDICTION

The United States District Court for the Eastern District of California has jurisdiction of this proceeding under 28 U.S.C. § 1334(b) as this is a civil proceeding arising under Title 11 of the United States Code. The district court has referred this matter to this court under 28 U.S.C. § 157(a) and (b)(1). This is a "core" proceeding under 28 U.S.C. § 157(b)(2)(A).

ANALYSIS

1. Framework for determining eligibility.

Eligibility for Chapter 13 relief is based upon the amount of "debts" a debtor owes on the date of filing the petition. Section 109(e) provides in part as follows:

Only an individual with regular income that owes, on the date of filing of the petition, non-contingent, liquidated, unsecured debts of less than \$394,725 . . . may be a debtor under 13 of this title.

Eligibility debt limits are strictly construed. Soderlund v. Cohen (In re Soderlund), 236 B.R. 271, 274 (9th Cir. BAP 1999). Eligibility determinations under § 109 involve issues of statutory construction and conclusions of law, including interpretation of the bankruptcy code and are reviewed *de novo*. Smith v. Rojas (In re Smith), 435 B.R. 637, 642 (9th Cir. BAP

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2010)). The liquidated amount of a particular claim is a factual finding reviewed for clear error. In re Loya, 123 B.R. 338, 340 (9th Cir. BAP 1991); Nicholes v. Johnny Appleseed (In re Nicholes), 184 B.R. 82, 85 (9th Cir. BAP 1995).

The term "debt" means liability on a claim. Section 101(12). The term "claim" means ". . . right to payment" Section 101(5)(A). Thus there is no "unsecured debt" unless the creditor has a right to payment. Free v. Malaier (In re Free), 542 B.R. 492, 496 (9th Cir. BAP 2015). Both "debt" and "claim" are terms used by Congress and the courts in determining eligibility for Chapter 13 relief.

There is no dispute here that Olivia's claim is unsecured. The dispute arises because Ethan contends his Motion to Vacate the Renewed Judgment raises enough issues to dispute both liability and whether Olivia's claim is contingent and unliquidated. The court will examine these issues next.

2. Olivia's claim is non-contingent.

A claim is non-contingent if "it is based on and arises from events that occurred entirely pre-petition." Loya, 123 B.R. at 340; Nicholes, 184 B.R. at 88. If all events giving rise to the alleged liability occurred pre-petition, the claim is non-contingent. Fostvedt v. Dow (In re Fostvedt), 823 F.2d 305, 306-7 (9th Cir. 1987). A contingent debt is "one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor. (Citations omitted). Where a contract was entered into by parties who did not contemplate

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1 that any further act had to be completed in order to trigger
2 contractual liability, then such liability would not be
3 contingent." *Id.* at 306-07. The fact that a claim has not been
4 reduced to judgment does not render it contingent. Nicholes, 184
5 B.R. at 88 citing In re Dill, 30 B.R. 546, 549 (9th Cir. BAP
6 1983) aff'd 731 F.2d 629 (9th Cir. 1984). Even a bona fide
7 dispute over liability does not make a debt contingent.
8 Nicholes, 184 B.R. at 88, citing Dill, 30 B.R. at 549.

9 All events giving rise to Olivia's claim occurred pre-
10 petition. The original MSA was made part of a dissolution order
11 in 2007. Olivia filed an Application to Renew the Judgment
12 within the ten year period while that judgment was valid. After
13 the Application to Renew was filed, Ethan filed his Motion to
14 Vacate the Renewed Judgment raising numerous defenses to the
15 amount of the judgment. But Ethan's motion did not make his
16 liability on the judgment contingent.

17 Under California law, Olivia's filing of the Application to
18 Renew actually renewed the judgment. Cal. Civ. Proc. Code §
19 683.120(b)(Deerings 2018); 683.150(a)(Deerings 2018). The Motion
20 to Vacate does not invalidate the judgment but asks the court to
21 vacate the renewed judgment. Cal. Civ. Proc. Code § 683.170;
22 Marriage of Thompson, 41 Cal. App. 4th 1049, 1057; 48 Cal. Rptr.
23 2d 882 (Cal. Ct. App. 1996). When Olivia filed the Application
24 to Renew the Judgment, the judgment was renewed for the dollar
25 amounts included in her application. So on the petition date, no
26 contingencies to the claim remained. To be sure, Ethan now
27 contests liability but that does not change the status of
28 Olivia's claim to contingent. See Nicholes and Dill.

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1 3. Olivia's claim is liquidated for eligibility purposes.

2 In the Ninth Circuit, a debt is liquidated for purposes of
3 calculating Chapter 13 eligibility if the amount of the debt is
4 readily determinable. Slack v. Wilshire Ins. Co. (In re Slack),
5 187 F.3d 1070, 1073-75 (9th Cir. 1999); Guastella v. Hampton (In
6 re Guastella), 341 B.R. 908, 916 (9th Cir. BAP 2006). In Slack
7 the Ninth Circuit also held:

8
9 Whether the debt is subject to "ready
10 determination" will depend on whether the amount
11 is easily calculable or whether an extensive
12 hearing will be needed to determine the amount of
13 the debt, or the liability of the debtor.
14 (Citations omitted). Therefore, the mere assertion
15 by the debtor that he is not liable for the claim
16 will not render the debt unliquidated for the
17 purposes of calculating eligibility under §
18 109(e). Slack, 187 F.3d at 1074.

19 Post-petition events do not change the debt limit analysis.
20 Slack, 187 F.3d at 1072. Eligibility should normally be
21 determined by the debtor's originally filed schedules checking
22 only to see if the schedules were made in good faith. Scovis v.
23 Henrichson (In re Scovis), 249 F.3d 975, 982 (9th Cir. 2001). A
24 debt can be readily ascertainable "even though liability on the
25 debt had not been finally decided." *Id.*, citing Slack, 187 F.3d
26 at 1074-75. The trustee has not argued here that there is any
27 bad faith by the debtor in preparing his schedules. The Ninth
28 Circuit BAP has urged that the bankruptcy court must determine
whether the debts in question are subject to ready determination
and whether computation of the amount due is a simple matter.
Nicholes, 184 B.R. at 91. If they are not readily determinable,

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1 then they are unliquidated and excluded from the eligibility
2 tally. *Id.* Those determinations depend on an analysis of the
3 facts. *Id.*

4 The facts here show the claim is liquidated. On the date of
5 the filing of the petition, Olivia had filed the Application to
6 Renew the Judgment setting forth specific amounts due under the
7 judgment. Ethan significantly disputes some of those amounts.
8 But disputes as to the debtor's liability for a debt does not
9 render a debt unliquidated unless the dispute precludes the
10 ready determination of the debt. Ho v. Dowell (In re Ho), 274
11 B.R. 867, 873 (9th Cir. BAP 2002). In Ho for example, there were
12 pre-petition allegations of the debtor's liability for
13 contractual and tort claims, but there was no judgment. There,
14 the dispute itself brought into question the debtor's liability
15 and what portion of the contract for which the debtor could have
16 been found responsible. No such facts are present here. Ethan
17 may contend he is not responsible for the entirety of the debt
18 Olivia asserts. Indeed, there may be substantial defenses to
19 enforcement of the judgment. But on the date of the petition,
20 that judgment was entered. Under California law, as discussed in
21 the previous section, the judgment was liquidated when Olivia
22 filed the renewal application. In the end, this court need not
23 engage in a lengthy or complicated hearing to determine
24 eligibility.

25 Ethan's claimed setoff does not change the analysis. The
26 right of setoff – even if it exceeds the amount and therefore
27 negates the amount owed a creditor – does not make a liquidated
28 debt unliquidated. Sylvester v. Dow Jones and Co. (In re

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1 Sylvester), 19 B.R. 671, 672 (9th Cir. BAP 1982); Quintana v.
2 IRS (In re Quintana), 107 B.R. 234 (9th Cir. BAP 1989), aff'd
3 915 F.2d 513, 517 (9th Cir. 1990) [Counterclaim cannot be used
4 to set off debt for a Chapter 12 debtor to determine
5 eligibility].

6 The cases Ethan cites on liquidated claims for eligibility
7 purposes either do not support his position or can be easily
8 distinguished. In In re Wenberg, 94 B.R. 631 (9th Cir. BAP 1988)
9 aff'd 902 F.2d 768 (9th Cir. 1990) when the bankruptcy was filed
10 there was a pre-petition judgment for declaratory relief against
11 the debtor that did not liquidate the claim. The bankruptcy
12 court conducted hearings examining the claim and determined that
13 liability for attorney's fees and costs could be liquidated.
14 This court need not go as far here as the renewed judgment
15 liquidated the amounts Olivia claims are owed in this case. In
16 fact, in Wenberg, the bankruptcy appellate panel rejected a
17 similar argument raised by Ethan here that disputes by the
18 debtor as to the amount of the claim asserted should be
19 considered by the court in finding a claim unliquidated. The
20 Wenberg court said "such final determinations are more
21 appropriately addressed in a proceeding to determine the
22 allowance of a specific claim under § 502 and should be separate
23 from the application of § 109(e)." *Id.* at 635.

24 Smith v. Rojas (In re Smith), 435 B.R. 637 (9th Cir. BAP
25 2010) is easily distinguishable. The trial court there had
26 before it the question as to how to count both fully unsecured
27 and partially secured claims encumbering the debtor's primary
28 residence for Chapter 13 eligibility purposes. The trial court

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1 ruled that partially secured claims encumbering the debtor's
2 residence should not be counted. The bankruptcy appellate panel
3 affirmed. There is no issue here about how to count claims. All
4 the claims Olivia asserts are unsecured. The appellate panel
5 opinion in Smith cited Slack in responding to the debtor's
6 argument that post-petition events ("stripping liens") could not
7 be counted in an eligibility determination. The appellate panel
8 analyzed Slack and opined the question was whether a claim was
9 sufficiently non-contingent and unliquidated, which was the case
10 in Smith. *Id.* at 646.

11 The earlier cases Ethan cites on the issue are also
12 unpersuasive. In In re King, 9 B.R. 376 (Bankr. D. Or. 1981) the
13 debtors scheduled two large debts which were disputed. The
14 bankruptcy court in King reasoned that the term "claim" is
15 broader than the term "debt." *Id.* at 378. Without a finding of
16 liability for the claim, the King court opined there could be no
17 "debt." King is inconsistent with Sylvester which held that
18 where the amount of debt was readily ascertainable the fact that
19 the debt was disputed would not preclude its use in determining
20 eligibility under § 109(e).

21 In re Lambert, 43 B.R. 913 (Bankr. D. Utah 1984) relied
22 heavily on the reasoning of King in concluding that a disputed
23 debt is unliquidated. *Id.* at 915. Two significant facts put the
24 continued vitality of Lambert in this circuit in doubt. First,
25 the Lambert decision was distinguished and its validity
26 questioned by the Ninth Circuit Bankruptcy Appellate Panel in In
27 re Quintana. Second, Lambert is factually distinguishable
28 because there was no pre-petition judgment in Lambert but rather

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1 a dispute regarding a settlement between the debtors and the
2 claimant which was to be decided in the bankruptcy court in an
3 adversary proceeding.

4 Whether the court relies only on bankruptcy schedules filed
5 here as in Scovis or examines other facts as in Loya or
6 Guastella, Olivia's claim against Ethan was liquidated for
7 purposes of a Chapter 13 eligibility determination.⁶ The court
8 stresses that it is by no means determining that Olivia's claim
9 should be allowed as filed. That is a separate issue subject to
10 separate state court proceedings.

11
12 4. Finding Ethan ineligible for Chapter 13 relief is consistent
13 with the bankruptcy code.

14 Ethan's final argument relies on his interpretation of the
15 "policy" of Chapter 13. Ethan urges that he is a small business
16 man and cannot afford the cost of a Chapter 11 reorganization.
17 Also, because of the "absolute priority rule" it will be
18 difficult to confirm a Chapter 11 Plan. Any doubt as to his
19 eligibility, Ethan urges should be resolved in his favor so he
20 can receive a fresh start.

21 The Chapter 13 eligibility threshold of \$394,725.00 "non-
22 contingent, liquidated, unsecured debts" is a specific
23 congressional directive. This court is not empowered to change
24 that statutory debt limit. The Ninth Circuit Bankruptcy
25 Appellate Panel declined the invitation to challenge the debt

26
27 ⁶ Slack, Wenberg, and Guastella all examine Chapter 13 debt limits with
28 partially concluded state court proceedings existing before bankruptcy. But
in all cases, either the state court record (Slack and Guastella) or the
bankruptcy judge (Wenberg) marshalled enough facts to establish debts to
calculate Chapter 13 eligibility.

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1 threshold during the middle of the "housing crisis." The
2 appellate panel in Smith, a case cited by Ethan here, summarized
3 the Chapter 13 debt limit issue succinctly:

4
5 Chapter 13 debt limits are mandated by statute.
6 Bankruptcy courts are required to apply the
7 provisions of the Bankruptcy Code as they are
8 written. To the extent the existing Chapter 13
9 debt limits are too low to provide Chapter 13
relief to homeowners impacted by the current
economic climate, that is a matter within the
purview of Congress. Smith, 435 B.R. at 649.

CONCLUSION

10
11
12 For the foregoing reasons, the Chapter 13 Trustee's Motion
13 to Dismiss this Chapter 13 case on the grounds that the debtor,
14 Ethan Aparicio, is ineligible shall be and hereby is GRANTED.
15 The court will stay the effectiveness of this order until
16 September 6, 2018, so Ethan can review his bankruptcy options. A
17 separate order shall issue.

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**Instructions to Clerk of Court
Service List - Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked X , via the U.S. mail.

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