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8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 LOS ANGELES DIVISION

11 In re:

12 LUIS A. MORALES,

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16
17 Debtor.

Case No. 2:08-bk-11017 ER

Chapter 7

**MEMORANDUM OF DECISION RE:
VEHICLE VALUATION UNDER
11 U.S.C. § 506(a)(2)**

Date: April 30, 2008

Time: 10:00 A.M.

Place: Ctrm. 1568, 15th Fl.
255 E. Temple Street
Los Angeles, CA 90012

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20 This case requires the Court to determine the appropriate
21 method for calculating the replacement value of a vehicle under
22 the retail value standard of the second sentence of 11 U.S.C. §
23 506(a)(2). For the reasons discussed infra in Part III, the
24 Court concludes that, absent unusual circumstances, the retail
25 value for vehicles under § 506(a)(2) should be calculated by
26 adjusting either the Kelley Blue Book retail value or the
27 National Automobile Dealers Association ("N.A.D.A.") Guide
28 retail value by a reasonable amount in light of evidence

1 presented regarding condition, the retail market, and other
2 relevant factors. In this case, the Court sets the retail value
3 of the Vehicle for purposes of § 506(a)(2) at \$10,126.00 in
4 consideration of the limited evidence presented.

5 6 **I. Jurisdiction**

7 As a general principle, bankruptcy courts exercise
8 jurisdiction by referral over all core bankruptcy proceedings.
9 The Court has jurisdiction over this matter pursuant to 28
10 U.S.C. § 1334(a), 28 U.S.C. § 157, and General Order No. 266 of
11 the U.S. District Court for the Central District of California.
12

13 14 **II. Statement of Facts and Procedural History**

15 On January 25, 2008, Debtor Luis A. Morales ("Debtor")
16 filed a voluntary Chapter 7 petition. See Dkt. 1.

17 On March 9, 2008, the Debtor filed the Debtor's Motion for
18 Authority to Redeem Personal Property and Approval of
19 Associated Financing Under 11 U.S.C. § 722 ("Motion"). In the
20 Motion, the Debtor seeks to redeem a 2006 Chrysler Sebring
21 Touring 4D ("Vehicle") from Creditor HSBC Auto Finance ("HSBC")
22 pursuant to § 722. The Debtor does not address directly the
23 condition of the Vehicle and submits no declaration in support
24 of the Motion. The information included on Exhibit 1 of the
25 Motion suggests, however, that the Vehicle was in "fair"
26 condition on February 18, 2008, and has mileage of
27 approximately 47,600 miles. The Debtor asserts that redemption
28 is allowed under § 722 because the Vehicle is personal property

1 intended primarily for personal, family, or household use, the
2 Debtor's interest in the Vehicle is exempt, and the debt
3 represents a dischargeable consumer debt. See Motion at 2, ¶¶
4 3, 5.

5 The Debtor argues that the appropriate retail value of the
6 Vehicle under § 506(a)(2) for purposes of redemption is
7 \$8,995.00. In support of this proposed valuation, the Debtor
8 submits two valuation reports from Collateral Valuation
9 Services, LLC ("Collateral Valuation Services"). The valuation
10 reports were prepared in reliance on an AutoTrader.com
11 advertisement and a Manheim report. The AutoTrader.com
12 advertisement lists a purchase price of \$8,995.00 for a car of
13 the same age and model with mileage of 26,543 miles. The
14 AutoTrader.com advertisement is dated February 18, 2008. The
15 Manheim report lists an estimated retail price of \$8,950.00 for
16 a car of the same age and model. The retail value of the
17 Manheim report is based on transactions from the week of
18 February 18 to February 25, 2008.

19 On March 19, 2008, HSBC filed the Opposition to Debtor's
20 Motion to Redeem Personal Property Under 11 U.S.C. § 722
21 ("Opposition"). See Dkt. 22. In the Opposition, HSBC does not
22 challenge the Debtor's assertion that redemption is allowed,
23 but argues that the proposed redemption value of \$8,995.00 is
24 not an accurate retail price for purposes of § 506(a)(2).
25 Rather, HSBC asserts that the appropriate value of the Vehicle
26 for purposes of redemption is \$13,550.00. Opposition at 2. In
27 support of this proposed valuation, HSBC submits a Kelley Blue
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1 Book value, which lists a suggested retail value of \$13,550.00
2 for a car of the same age and model with mileage of 35,028
3 miles. The Kelley Blue Book retail value presupposes that the
4 car is in "excellent" condition. HSBC alleges that the Debtor
5 has based his proposed value on an advertisement at the extreme
6 low end of advertised retail prices.

7 HSBC argues further that the new § 506(a)(2) overturned
8 prior caselaw interpreting § 506(a) to the extent that it
9 permitted the value of personal property acquired for personal,
10 family, or household use in individual Chapter 7 and 13 cases
11 to be determined based on the property's wholesale value
12 instead of its retail value. Opposition at 2.

13 On April 23, 2008, the Debtor filed the Reply Memorandum
14 in Support of Debtor's Motion to Redeem Personal Property and
15 Approval of Associated Financing Under 11 U.S.C. 722 ("Reply").
16 See Dkt. 25. In the Reply, the Debtor emphasizes that the plain
17 language of § 506(a)(2) does not require a court to select a
18 retail value at the average or high end of the retail spectrum.
19 Reply at 2. Accordingly, the Debtor reasons that the original
20 AutoTrader.com advertisement submitted with the Motion, even if
21 at the low end of the spectrum, represents an appropriate value
22 for purposes of § 506(a)(2).

23 In addition, the Debtor submits two new AutoTrader.com
24 advertisements in support of his proposed valuation. The first
25 additional AutoTrader.com advertisement lists a purchase price
26 of \$9,995.00 for a car of the same age and model with mileage
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1 of 32,925 miles. The advertisement is dated March 15, 2008.¹
2 Next, the second additional AutoTrader.com advertisement lists
3 a purchase price of \$8,999.00 for a car of the same age and
4 model with mileage of 69,165 miles. The advertisement is dated
5 March 18, 2008.

6 Finally, the Debtor further submits a Kelley Blue Book
7 value which lists a suggested retail value of \$12,515.00 for a
8 car of the same age and model with mileage of 46,000 miles. The
9 Debtor argues that even if the Kelley Blue Book retail value
10 were the appropriate standard, the Kelley Blue Book value
11 submitted by HSBC is inaccurate. Reply at 5.

12 The Court held a hearing on the Motion on April 30, 2008.
13 In advance of the hearing, the Court issued a tentative ruling
14 as to its preliminary determination of value. The Debtor
15 submitted on the Court's tentative ruling and did not appear at
16 the hearing. HSBC appeared at the hearing but presented only
17 brief arguments. At the close of the hearing, the Court adopted
18 its tentative ruling and determined the value of the Vehicle to
19 be \$10,126.00.

20
21 The Court issues this opinion in order to explain in full
22 its approach to vehicle valuation under the retail value
23 standard of § 506(a)(2).
24

25 ¹ The Debtor notes that identical vehicle identification numbers and
26 AutoTrader.com identification numbers are listed in both the \$9,995.00
27 advertisement and the original \$8,995.00 advertisement. The Debtor
28 acknowledges that the advertisements may be selling the same car at different
prices. The advertisements, however, list different exterior colors,
different interior colors, different mileage, and different sellers. As a
result, the ultimate reliability of these two advertisements as distinct
advertisements remains open to some doubt.

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2 **III. Discussion**
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4 A. The Bankruptcy Code Allows Individual Debtors to
5 Redeem Certain Vehicles Intended for Personal,
6 Family, or Household Use Under 11 U.S.C. § 722

7 The Bankruptcy Code authorizes individual debtors to
8 redeem personal property intended for personal, family, or
9 household use in certain circumstances by paying the lienholder
10 the full amount of the allowed secured claim at the time of
11 redemption. 11 U.S.C. § 722. Section 722 provides in full:

12 An individual debtor may, whether or not the debtor
13 has waived the right to redeem under this section,
14 redeem tangible personal property intended primarily
15 for personal, family, or household use, from a lien
16 securing a dischargeable consumer debt, if such
17 property is exempted under section 522 of this title
18 or has been abandoned under section 554 of this title,
19 by paying the holder of such lien the amount of the
20 allowed secured claim of such holder that is secured
21 by such lien in full at the time of redemption.

22 11 U.S.C. § 722. This Court has previously articulated its
23 general approach to redemption under § 722 in the case of In re
24 Lopez, 224 B.R. 439 (Bankr. C.D. Cal. 1998). Under that
25 approach, the proper date for valuation of property under § 722
26 is the date of the hearing on the redemption motion. In re
27 Lopez, 224 B.R. at 444. But see In re Eagle, 51 B.R. 959, 962
28 (Bankr. N.D. Ohio 1985) (date of valuation is petition date).

Here, as a general matter, the Debtor and HSBC agree that
the Debtor is eligible to redeem the Vehicle under § 722. The
parties do not dispute that the Debtor is an individual debtor

1 in Chapter 7, that the Vehicle is personal property intended
2 primarily for personal, family, or household use, and that the
3 interest of the Debtor in the Vehicle is exempt.

4
5 B. Valuation Under 11 U.S.C. § 506(a) Generally

6 11 U.S.C. § 506(a) governs the valuation of allowed claims
7 in bankruptcy cases. The current version of § 506(a) was
8 substantially amended as part of the Bankruptcy Abuse
9 Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub.
10 L. No. 109-8, 119 Stat. 23 (2005). In full, § 506(a) provides
11 as follows:

12
13 (a)(1) An allowed claim of a creditor secured by a
14 lien on property in which the estate has an interest,
15 or that is subject to setoff under section 553 of this
16 title, is a secured claim to the extent of the value
17 of such creditor's interest in the estate's interest
18 in such property, or to the extent of the amount
19 subject to setoff, as the case may be, and is an
20 unsecured claim to the extent that the value of such
21 creditor's interest or the amount so subject to setoff
22 is less than the amount of such allowed claim. Such
23 value shall be determined in light of the purpose of
24 the valuation and of the proposed disposition or use
25 of such property, and in conjunction with any hearing
26 on such disposition or use or on a plan affecting such
27 creditor's interest.

28 (2) If the debtor is an individual in a case under
chapter 7 or 13, such value with respect to personal
property securing an allowed claim shall be determined
based on the replacement value of such property as of
the date of the filing of the petition without
deduction for costs of sale or marketing. With respect
to property acquired for personal, family, or
household purposes, replacement value shall mean the
price a retail merchant would charge for property of

1 that kind considering the age and condition of the
2 property at the time value is determined.

3 11 U.S.C. § 506(a). As of yet, the changes, if any, made by §
4 506(a)(2) to the method for determining the value of personal
5 property acquired for personal, family, or household use in
6 individual Chapter 7 and Chapter 13 cases have received only
7 modest consideration in the published caselaw, as discussed
8 infra in Part III.D.

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10 C. Pre-BAPCPA Valuation of Vehicles Under 11 U.S.C. §
11 506(a)

12 Prior to BAPCPA, the Bankruptcy Code and caselaw had
13 established that the value of a vehicle was to be determined
14 based on its replacement value. Cf. Assocs. Commercial Corp. v.
15 Rash, 520 U.S. 953 (1997) (adopting a replacement value
16 standard under § 506(a) for purposes of Chapter 13 cram down).
17 In Rash, the U.S. Supreme Court adopted a replacement value
18 standard under § 506(a), and defined replacement value as "the
19 price a willing buyer in the debtor's trade, business, or
20 situation would pay a willing seller to obtain property of like
21 age and condition." Assocs. Commercial Corp. v. Rash, 520 U.S.
22 at 959, n.2. Although the Rash Court established the general
23 standard, the Court entrusted to bankruptcy courts the
24 appropriate method for determining replacement value on a case-
25 by-case basis:

26
27 Our recognition that the replacement-value standard,
28 not the foreclosure-value standard, governs in cram
down cases leaves to bankruptcy courts, as triers of

1 fact, identification of the best way of ascertaining
2 replacement value on the basis of the evidence
3 presented. Whether replacement value is the equivalent
4 of retail value, wholesale value, or some other value
5 will depend on the type of debtor and the nature of
6 the property.

7 Assocs. Commercial Corp. v. Rash, 520 U.S. at 965, n.6
(citations omitted).

8 In the Ninth Circuit, bankruptcy courts have generally
9 determined the value of vehicles under § 502(a) on a case-by-
10 case basis. See Taffi v. United States (In re Taffi), 96 F.3d
11 1190, 1193 (9th Cir. 1996) (en banc), cert. denied, 521 U.S.
12 1103 (1997). Previously, in the case of General Motors
13 Acceptance Corp. v. Mitchell (In re Mitchell), 954 F.2d 557
14 (9th Cir. 1992), overruled by Taffi v. United States (In re
15 Taffi), 96 F.3d 1190, 1193 (9th Cir. 1996) (en banc), cert.
16 denied, 521 U.S. 1103 (1997), the U.S. Court of Appeals for the
17 Ninth Circuit had concluded that a vehicle's value under §
18 506(a) should be calculated based on wholesale value instead of
19 retail value. In re Mitchell, 954 F.2d at 560. The Ninth
20 Circuit subsequently overruled In re Mitchell and established
21 that courts were to determine value in light of the fair market
22 value. In re Taffi, 96 F.3d at 1193. The Taffi court thereby
23 overruled the then-existing wholesale standard for vehicle
24 valuation under In re Mitchell, but declined to establish a set
25 approach for vehicle valuation. See id. Rather, the Taffi court
26 cautioned as follows: "We make no judgment whether the fair
27 market value of an automobile is high blue book or low blue
28 book or some other value; that value is to be determined by the

1 facts presented to the bankruptcy court." Id. As a result, In
2 re Taffi left the determination of value under § 506(a) to
3 bankruptcy courts in light of the factual considerations
4 identified in each case.

5 Traditionally, the date of valuation under § 502(a)
6 depends on the particular context of the valuation. See 4
7 Collier on Bankruptcy ¶ 506.03[10], p. 506-99 (rev. 15th ed.
8 2006). Courts disagree, however, as to the appropriate dates to
9 be used in a variety of contexts. In the context of redemption,
10 as noted supra in Part III.A, this Court has valued property as
11 of the hearing date on the redemption motion. In re Lopez, 224
12 B.R. 439, 444 (Bankr. C.D. Cal. 1998); see In re King, 75 B.R.
13 287, 290 (Bankr. S.D. Ohio 1987). By contrast, other courts
14 have concluded that property should be valued as of the
15 petition date. In re Eagle, 51 B.R. 959, 962 (Bankr. N.D. Ohio
16 1985).

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18 D. Post-BAPCPA Valuation of Vehicles Under 11 U.S.C. §
19 506(a)(2)

20 In 2005, under the BAPCPA amendments, Congress refined the
21 approach to valuation of personal property in individual
22 Chapter 7 and Chapter 13 cases by adding the new § 506(a)(2).
23 Section 506(a)(2) ostensibly follows the general replacement
24 standard articulated by Rash but the second sentence provides
25 that the "replacement value" for property acquired for
26 personal, family, or household use is defined as "the price a
27 retail merchant would charge for property of that kind
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1 considering the age and condition of the property at the time
2 value is determined." 11 U.S.C. § 506(a)(2).

3 The Bankruptcy Code, however, does not articulate a
4 specific method for calculating the retail value of a vehicle
5 or any other personal property. Similarly, the legislative
6 history sheds little insight on the correct valuation method.
7 See H.R. REP. No. 109-31, pt. 1 (2005); In re Carlson, No. 06-
8 40402, 2006 WL 4811331, at *2 (Bankr. W.D. Wash. Dec. 8, 2006).
9 As a result, the courts are faced with the task of interpreting
10 the meaning of retail value under § 506(a)(2) and determining
11 the appropriate method for calculating such value for vehicles.

12 13 1. Retail Value Under 11 U.S.C. § 506(a)(2)

14 The appellate courts of the Ninth Circuit have not yet
15 established a specific post-BAPCPA method for calculating the
16 retail value of vehicles under the second sentence of §
17 506(a)(2). See In re Carlson, 2006 WL 4811331, at *2. At least
18 two bankruptcy courts, however, have articulated approaches for
19 valuation under § 506(a)(2). See In re Cheatham, No. 07-40509-
20 13-abf, 2007 WL 2428046 (Bankr. W.D. Mo. June 19, 2007)
21 (calculating retail value of car by reducing the N.A.D.A. Guide
22 retail value by 5%); In re Coleman, 373 B.R. 907, 912-13
23 (Bankr. W.D. Mo. 2007) (decision by the same court as In re
24 Cheatham, following its earlier decision); In re Carlson, 2006
25 WL 4811331, at *2-3 (calculating retail value of mobile home
26 under § 506(a)(2) in reliance on N.A.D.A. Guide retail value).
27 It is too soon to know whether these decisions herald a
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1 specific trend in the Ninth Circuit. Nonetheless, In re
2 Carlson, In re Cheatham, and In re Coleman all rely on the
3 N.A.D.A. Guide retail value as an appropriate starting point
4 for determining retail value under § 506(a)(2).

5 In other circuits, courts interpreting the second sentence
6 of § 506(a)(2) have adopted a variety of methods for
7 calculating retail value. This caselaw, although still
8 developing, offers at least some further insight on valuation
9 under § 506(a)(2). See In re De Anda-Ramirez, 359 B.R. 794, 796
10 (B.A.P. 10th Cir. 2007) (holding that bankruptcy court's use of
11 Kelley Blue Book private party value instead of Kelley Blue
12 Book retail value not reversible error without determining
13 appropriate method); In re Clark, No. 06-31965, 2007 WL 671346
14 (Bankr. N.D. Ohio Feb. 27, 2007) (calculating retail value of
15 car as the midpoint between two proffered retail values); In re
16 Kidwell, No. 06-14087, 2007 WL 2934866, at *5 (Bankr. E.D.
17 Tenn. Oct. 4, 2007) (calculating retail value of car based on
18 Kelley Blue Book private party value based on appraiser
19 testimony that private party value approximates retail price if
20 paid in cash in full); In re Ortiz, No. 06-16243-BKC-RBR, 2007
21 WL 1176019, at *2-3 (Bankr. S.D. Fla. Fed. 27, 2007)
22 (calculating retail value of car by deducting the hypothetical
23 cost of repairs from the retail value established by expert
24 testimony); In re Brown, No. 06-00197-JW, 2006 WL 3692609, at
25 *3 (Bankr. D.S.C. April 24, 2006) (calculating retail value of
26 car in reliance on appraiser's report submitted by creditor);
27 In re Eddins, 355 B.R. 849, 852 (Bankr. W.D. Okla. 2006)
28 (calculating retail value of car by reducing N.A.D.A. Guide

1 retail value by appropriate amount based on any evidence
2 submitted by parties in interest); In re Mayland, No. 06-10283,
3 2006 WL 1476927, at *3 (Bankr. M.D.N.C. May 26, 2006)
4 (calculating retail value of car as 90% of N.A.D.A. Guide
5 retail value, less cost of necessary repairs); see also In re
6 Finnegan, 358 B.R. 644, 650 (Bankr. M.D. Pa. 2006) (discussing
7 valuation under § 506(a)(2) generally but concluding that the
8 vehicle at issue was not acquired for personal, family, or
9 household use, and thus valuing the vehicle under the first
10 sentence instead of the second sentence). These cases present a
11 range of different, though often similar, approaches to
12 valuation. In general, however, these cases suggest that the
13 emergent approach to valuation under § 506(a)(2) requires
14 bankruptcy courts to reduce the N.A.D.A. Guide retail value, or
15 other appropriate retail value, by an amount appropriate in
16 light of evidence concerning the vehicle's condition.

17 The leading appellate case on this issue is In re De Anda-
18 Ramirez, 359 B.R. 794 (B.A.P. 10th Cir. 2007), in which the
19 Bankruptcy Appellate Panel for the Tenth Circuit held that a
20 bankruptcy court's use of the Kelley Blue Book private party
21 value of a car instead of the Kelley Blue Book retail value for
22 valuation under § 506(a)(2) was not reversible error. In re De
23 Anda-Ramirez, 359 B.R. at 796. Although the De Anda-Ramirez
24 court declined to establish a specific method for determining
25 retail value, id. at 797, n.3, the court analyzed and rejected
26 the argument that the Kelley Blue Book retail value is
27 necessarily equivalent to the retail value of § 506(a)(2), id.
28 at 797. Rather, the In re De Anda-Ramirez court emphasized that

1 the Kelley Blue Book retail value should not be adopted
2 automatically as the § 506(a)(2) retail value:

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4 Other than both containing the word "retail," the Code
5 and [the Kelley Blue Book] definitions have little in
6 common. The Bankruptcy Code's definition of "retail"
7 includes an adjustment for the age and condition of
8 the vehicle; KBB defines "retail" as the price for a
9 vehicle that is in "excellent condition" with the
10 proviso that less than 5% of vehicles for sale qualify
11 as "excellent." Clearly, these two are not equivalent
12 and . . . reliance on the KBB retail value is
13 misplaced.

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15 Id. at 797.

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2. Valuation Date Under 11 U.S.C. § 506(a)(2)

16 The new § 506(a)(2) also requires courts to determine the
17 correct date of valuation, *i.e.*, the date as of which the value
18 of the property is to be calculated. The majority of courts to
19 consider § 506(a)(2) have not expressly addressed this issue.
20 At first glance, the date of valuation for personal property
21 acquired for personal, family, or household use in individual
22 Chapter 7 or Chapter 13 cases may appear readily ascertainable
23 based on the plain language of the statute. A second glance, by
24 contrast, reveals that § 506(a)(2) remains open to two
25 plausible interpretations. See In re Ortiz, 2007 WL 1176019, at
26 *2-3. The first sentence of § 506(a)(2) establishes that if the
27 property is personal property in an individual Chapter 7 or
28 Chapter 13 case then replacement value should be calculated "as
of the date of the filing of the petition." 11 U.S.C. §

1 506(a)(2). The second sentence, however, provides that if the
2 property was acquired for personal, family, or household
3 purposes, then "replacement value shall mean the price a retail
4 merchant would charge for property of that kind considering the
5 age and condition of the property *at the time value is*
6 *determined.*" 11 U.S.C. § 506(a)(2) (emphasis added).

7 The issue is whether the clause "at the time value is
8 determined" changes the date of valuation for property valued
9 under the second sentence of § 506(a)(2). Courts must determine
10 the proper interaction between the two sentences and set the
11 correct date of valuation.

12 On the one hand, some courts have concluded that valuation
13 under the retail value standard of § 506(a)(2) requires
14 valuation as of the petition date. See In re Brown, 2006 WL
15 3692609, at *3 (calculating value as of the petition date); In
16 re Mayland, 2006 WL 1476927, at *3 (same); see also In re
17 Kidwell, 2007 WL 2934866, at *4 (holding that petition date is
18 correct date of valuation but using post-petition appraisals to
19 determine value because only evidence available). Under this
20 reasoning, the first sentence uniformly establishes the
21 valuation date as "the date of the filing of the petition" for
22 all replacement values calculated under the aegis of §
23 506(a)(2). Although the second sentence further specifies the
24 retail value sub-standard for property acquired for personal,
25 family, or household purposes, the date of valuation for the
26 sub-standard remains controlled by the date of valuation
27 specified in the super-standard of the first sentence. In order
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1 to give meaning to the clause "at the time value is determined"
2 without establishing a new valuation date, this interpretation
3 reads the clause as referring back to the petition date
4 standard of the first sentence, *i.e.*, "at the time *as of which*
5 value is determined."

6 On the other hand, other courts have concluded that
7 valuation under the retail value standard of the second
8 sentence of § 506(a)(2) requires valuation as of the valuation
9 hearing. See In re Cheatham, 2007 WL 2428046, at *2 (using the
10 retail value "at the time the determination is being made"); In
11 re Coleman, 373 B.R. at 912 (same court, same holding); see
12 also 4 Collier on Bankruptcy ¶ 506.03[10], p. 506-100 (rev.
13 15th ed. 2006); cf. In re Ortiz, 2007 WL 1176019, at *2
14 (calculating value as of the hearing date, without resolving
15 the issue, because parties submitted no evidence of value at
16 the petition date). Under this reasoning, the first sentence
17 establishes a valuation date that applies only for personal
18 property in individual Chapter 7 and Chapter 13 cases that was
19 not acquired for personal, family, or household purposes. See
20 In re Finnegan, 358 B.R. at 648 (concluding that where
21 individual debtor in Chapter 13 purchased vehicle for her
22 husband to use in his business the value of the vehicle was to
23 be determined at the petition date under the first sentence of
24 § 506(a)(2) instead of the second sentence). By contrast, when
25 the personal property at issue was acquired for personal,
26 family, or household purposes, then the second sentence of §
27 506(a)(2) displaces the valuation date of the first sentence
28 and provides that the valuation date is "at the time value is

1 determined." This interpretation reads the clause as referring
2 to the date of the valuation hearing, *i.e.*, "at the time value
3 is determined *by the court.*"²

4 The legislative history of BAPCPA offers only modest
5 additional insight as to the correct date of valuation for
6 property under § 506(a)(2). In general, the legislative
7 discussion of the scope and effect of § 506(a) mirrors the
8 statutory language. Some legislative guidance, however, may be
9 available to the extent that the legislative history uses
10 language different from the statutory language:

11
12 Section 327 of the Act amends section 506(a) of the
13 Bankruptcy Code to provide that the value of an
14 allowed claim secured by personal property that is an
15 asset in an individual debtor's chapter 7 or 13 case
16 is determined based on the replacement value of such
17 property as of *the filing date of the bankruptcy case*
18 without deduction for selling or marketing costs. With
19 respect to property acquired for personal, family, or
20 household purposes, replacement value *is* the price a
21 retail merchant would charge for property of that kind
22 considering the age and condition of the property at
23 the time *its* value is determined.

24 H.R. REP. No. 109-31, pt. 1, at 83 (2005) (emphasis added to
25 highlight differences between the legislative history and the
26 statutory language). For courts that conclude that the
27 statutory language of § 506(a)(2) is ambiguous, the nuances of
28 the legislative history may suggest some limited guidance.

² More precisely, the retail value would be calculated as of "the time value is determined," which refers to the date on which the court makes its final value determination. In some cases, this date could be after the hearing date if the court took the matter of valuation under submission or required the parties to submit additional evidence after the hearing.

1 On the whole, § 506(a)(2) raises a variety of questions
2 regarding the appropriate method for calculating the retail
3 value of personal property acquired for personal, family, or
4 household use in individual Chapter 7 and Chapter 13 cases.
5 Neither the courts of the Ninth Circuit nor the courts of other
6 circuits have established a uniform method for calculating the
7 retail value of vehicles under the second sentence of §
8 506(a)(2).

9
10 E. This Court Concludes that the Retail Value of
11 Vehicles Valued Under the Second Sentence of
12 U.S.C. § 506(a)(2) Should Be Calculated by
13 Adjusting the Kelley Blue Book or N.A.D.A. Guide
14 Retail Value By a Reasonable Amount Based on
Evidence Presented Regarding the Vehicle's
Condition and Other Relevant Factors

15 After reviewing the statute, the available caselaw, and
16 the arguments of the parties, this Court concludes that the
17 correct method for calculating the retail value of a vehicle
18 under § 506(a)(2) ultimately depends on the facts presented in
19 each case. Cf. Taffi v. United States (In re Taffi), 96 F.3d
20 1190, 1193 (9th Cir. 1996), cert. denied, 521 U.S. 1103 (1997).
21 As a general principle, however, this Court further concludes
22 that, absent unusual circumstances,³ the retail value should be
23 calculated by adjusting the Kelley Blue Book or N.A.D.A. Guide
24 retail value for a like vehicle by a reasonable amount in light

25
26 ³ The Kelley Blue Book and the N.A.D.A. Guide retail values may be
27 inappropriate as starting points in some cases, such as where a party in
28 interest demonstrates that the guide retail value is "not useful in the area
in which the vehicle would be sold, or . . . is not appropriate in a
particular instance." In re Coleman, 373 B.R. 907, 912-13 (Bankr. W.D. Mo.
2007).

1 of any additional evidence presented regarding the condition of
2 the vehicle and any other relevant factors. See In re Coleman,
3 373 B.R. 907, 912-13 (Bankr. W.D. Mo. 2007); In re Carlson, No.
4 06-40402, 2006 WL 4811331, at *2 (Bankr. W.D. Wash., Dec. 8,
5 2006); In re Eddins, 355 B.R. 849, 852 (Bankr. W.D. Okla.
6 2006). Value should be calculated as of the petition date, not
7 the valuation hearing. The burden in proving the reasonableness
8 of any deviation from the guide retail value rests with the
9 debtor because the debtor has the best access to information
10 about the condition of the vehicle. See In re Coleman, 373 B.R.
11 at 913; In re Eddins, 355 B.R. at 852. This general approach
12 offers the benefits of standardization and predictability to
13 parties without automatically conflating the artificial guide
14 retail value with the actual retail value of the vehicle.

15 The Court's decision brings it into line with the general
16 approach of most bankruptcy courts interpreting § 506(a)(2) and
17 with the bankruptcy courts of the Ninth Circuit, as well as the
18 traditional case-by-case approach to valuation established by
19 the Ninth Circuit in In re Taffi. Although the Court declines
20 to adopt a set automatic reduction of the guide retail value,
21 see, e.g., In re Coleman, 373 B.R. at 912-13 (calculating
22 retail value of car by reducing the N.A.D.A. Guide retail value
23 by 5%), the Court agrees with the De Anda-Ramirez court that
24 the Kelley Blue Book retail value is rarely equivalent to the
25 retail value of § 506(a)(2), see In re De Anda-Ramirez, 359
26 B.R. 794, 797 (B.A.P. 10th Cir. 2007).

1 In most cases, the showing necessary to justify a downward
2 adjustment from the guide retail value will be minimal because
3 few vehicles have been maintained in the high-quality condition
4 contemplated by the guide retail values. Evidence in support of
5 an adjustment of the guide retail value may include, inter
6 alia, declarations, testimony, see In re Ortiz, No. 06-16243-
7 BKC-RBR, 2007 WL 1176019, at *2-3 (Bankr. S.D. Fla., Fed. 27,
8 2007) (expert testimony), vehicle advertisements, see In re
9 Clark, No. 06-31965, 2007 WL 671346, at *4 (Bankr. N.D. Ohio,
10 Feb. 27, 2007) (advertisements), expert or appraisal reports,
11 see In re Brown, No. 06-00197-JW, 2006 WL 3692609, at *3
12 (Bankr. D.S.C., April 24, 2006) (appraiser report), and even
13 private party values, as appropriate. In any declaration in
14 support of a proposed vehicle valuation under § 506(a)(2), a
15 debtor should, if possible, include the following basic
16 information: (1) a description of the vehicle, including any
17 options installed and special features; (2) a description of
18 the condition of the vehicle as of the petition date, including
19 any damage, general deterioration, and past or necessary
20 repairs; (3) the vehicle's mileage as of the petition date; and
21 (4) the age of the vehicle as of the petition date. A debtor
22 may also wish to submit photographs of the vehicle and evidence
23 as to the retail values of other like vehicles for sale by
24 retail merchants in the debtor's geographic area. Evidence of
25 this nature will assist the court in determining whether an
26 adjustment to the guide retail value is warranted.

27 Nonetheless, the Kelley Blue Book and N.A.D.A. Guide
28 retail values represent the appropriate starting point in

1 determining retail value under the second sentence of §
2 506(a)(2) because the plain language of the statute
3 contemplates "the price a retail merchant would charge" instead
4 of the price a private party would charge. The first sentence
5 of § 506(a)(2) provides that the replacement value should be
6 calculated "without deduction for costs of sale or marketing."
7 11 U.S.C. § 506(a)(2). Although the second sentence remains
8 silent as to the costs of sale and marketing, the super-
9 standard of the first sentence should continue to control the
10 calculation of replacement value to the extent that the second
11 sentence does not articulate a different sub-standard.

12 Unlike the private party value, the retail value better
13 approximates a price that includes the "costs of sale and
14 marketing," as well as other costs generally included as part
15 of a merchant's retail price, by taking into consideration the
16 cost of sale, the cost of marketing, and the dealer's profit.⁴
17 Whatever the wisdom of this valuation approach, compare 11
18 U.S.C. § 506(a)(2) with Assocs. Commercial Corp. v. Rash, 520
19 U.S. 953, 956, n.6 (1997) (discussing adjustments to retail
20

21 ⁴ The Kelley Blue Book defines its retail value as follows: "The Kelley Blue
22 Book Suggested Retail Value is representative of dealers' asking prices and
23 is the starting point for negotiation between a consumer and a dealer. This
24 Suggested Retail Value assumes that the vehicle has been fully reconditioned
25 and has a clean title history. This value takes into account the dealers'
26 profit, costs of advertising, sales commissions and other costs of doing
27 business. The final sale price will likely be less depending on the vehicle's
28 actual condition, popularity, type of warranty offered and local market
conditions." By contrast, the Kelley Blue Book defines its private party
value as follows: "Private Party Value is what a buyer can expect to pay when
buying a used car from a private party. The Private Party Value assumes that
the vehicle is sold "As Is" and carries no warranty (other than the
continuing factory warranty). The final sale price may vary depending on the
vehicle's actual condition and local market conditions. This value may also
be used to derive Fair Market Value for insurance and vehicle donation
purposes."

1 value necessary to approximate replacement value), Congress
2 spoke plainly in establishing a retail value standard that
3 includes costs not necessarily associated with the private
4 party value. Ultimately, the guide retail value represents only
5 a starting point in determining retail value under the second
6 sentence of § 506(a)(2), and should be adjusted routinely in
7 light of other evidence presented to the court.

8 The Court further holds that the second sentence of §
9 506(a)(2) requires retail value to be determined as of the
10 petition date, not the hearing date. The Court acknowledges
11 that the statutory language is ambiguous and believes that
12 reasonable jurists can come to different conclusions on this
13 issue, as discussed supra in Part III.D.2. Nonetheless, the
14 Court concludes that a full view of the interaction between the
15 first and second sentences of § 506(a)(2) favors valuation as
16 of the petition date. By its own terms, the second sentence
17 only establishes a specific definition of the general term
18 "replacement value" to be used for certain property. The second
19 sentence thus functions to provide a definition for a single
20 term in the first sentence. No more, no less. This definition
21 does not alter the requirement that courts not deduct for costs
22 of sale or marketing, nor should it alter the valuation date
23 established in the first sentence. If Congress had intended to
24 provide for valuation as of the hearing date, Congress could
25 have done so with greater clarity. The ambiguity of the clause
26 "at the time value is determined" suggests that Congress did
27 not intend to alter the valuation date so much as to refer back
28

1 to its earlier valuation date.⁵ Accordingly, the clause "at the
2 time value is determined," although ambiguous, is best
3 understood within the context of § 506(a)(2) as a whole to mean
4 at the time as of which value is determined, i.e., at the
5 petition date.

6 The Court's approach establishes a single, static date of
7 valuation for all personal property in individual Chapter 7 and
8 Chapter 13 cases. This approach provides greater
9 standardization for valuation under § 506(a)(2), and generally
10 encourages the parties to determine value as promptly as
11 possible. Furthermore, this approach respects the interests of
12 creditors by fixing the value of property, and therefore the
13 extent of any secured claims, as of the earliest date so that
14 creditors need not worry that the secured portion of a claim
15 will fluctuate prior to redemption and throughout the case. The
16 Court notes, however, that in many cases this holding may have
17 little practical effect either because the valuation hearing
18 closely follows the petition date or because the parties
19 provide evidence of value only as of the hearing date.

20
21 F. This Court Concludes that the Retail Value of the
22 Vehicle Should Be Set at \$10,126.00 Based on the
23 Evidence Presented
24

25 ⁵ The Court's conclusion that the statutory language is ambiguous entitles the
26 Court to consider legislative history in determining meaning. Although the
27 legislative history provides some nuance, as discussed supra in Part III.D.2,
28 the Court finds the legislative history to be equally as ambiguous as the
statutory language itself. See H.R. REP. NO. 109-31, pt. 1, at 83 (2005).
However, the fact that the legislative history does not expressly discuss
valuation as of the hearing date reinforces the Court's holding that
valuation is to be determined "as of the date of the filing of the petition."

1 In this case, the Court will use the Kelley Blue Book
2 retail value as the appropriate starting point for calculating
3 the retail value of the Vehicle under the second sentence of §
4 506(a)(2). No unusual circumstances exist to justify a
5 different starting point. The parties have not submitted any
6 N.A.D.A. Guide values, and the Court need not decide how to
7 resolve any discrepancy between the retail values of the Kelley
8 Blue Book and the N.A.D.A. Guide, if both presented. The
9 parties, however, have presented two different Kelley Blue Book
10 retail values: On the one hand, the Debtor submits a Kelley
11 Blue Book retail value of \$12,515.00 for a car of the same age
12 and model with mileage of 46,000 miles. On the other hand, HSBC
13 submits a Kelley Blue Book retail value of \$13,550.00 for a car
14 of the same age and model with mileage of 35,028 miles. It
15 remains unclear whether HSBC listed the lower mileage figure in
16 error or whether HSBC believes there to be an actual dispute
17 regarding mileage. Nonetheless, the Court has no reason to
18 distrust the mileage figures proposed by the Debtor, which
19 range from 46,000 to 47,600 miles. Therefore, the Court rejects
20 the Kelley Blue Book retail value proposed by HSBC and accepts
21 the Kelley Blue Book retail value of \$12,515.00 proposed by the
22 Debtor as the appropriate starting point for determining retail
23 value.⁶

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26 ⁶ The Court notes that the Kelley Blue Book retail value submitted by the
27 Debtor assumes mileage of only 46,000 miles instead of 47,600 miles, which is
28 the mileage listed on the Collateral Valuation Services reports attached to
the Motion. Although the Court will proceed in light of the evidence
presented, it appears clear that the Kelley Blue Book retail value for a
vehicle with mileage of 47,600 miles would be less than the Kelley Blue Book
retail value actually submitted.

1 Next, the Court must determine the Vehicle's condition as
2 of the petition date. The Debtor does not address directly the
3 condition of the Vehicle as of the petition date in either the
4 Motion or the Reply. In general, the condition of a vehicle
5 might easily be established based predominantly on declarations
6 submitted with the motion. The issue is less clear in this case
7 because the Debtor did not submit any declarations in support
8 of either the Motion or the Reply. However, Exhibit 1 of the
9 Motion indicates that the Vehicle was in "fair" condition as of
10 approximately February 18, 2008, less than one month after the
11 petition date of January 25, 2008, though it remains unclear
12 whether this conclusion is based on a visual inspection by
13 Collateral Valuation Services, or on information provided to
14 Collateral Valuation Services by the Debtor. In any event, the
15 Debtor has presented at least some evidence in support of the
16 conclusion that the Vehicle is in "fair" condition.

17 By contrast, HSBC argues that the retail value should be
18 calculated based on "excellent" condition instead of "fair"
19 condition. Opposition at 3. HSBC asserts that the Vehicle was
20 purchased approximately nine months prior to the petition date
21 and was likely in "excellent" condition at the time. Opposition
22 at 3. HSBC further alleges that its contract with the Debtor
23 requires the Debtor to maintain the Vehicle in "good"
24 condition. Opposition at 3. In the Reply, the Debtor contends
25 that there is no reason to assume the Vehicle was in
26 "excellent" condition at the time of purchase, and asserts that
27 the contract included with the Opposition does not contain a
28

1 specific provision requiring the Debtor to maintain the Vehicle
2 in "good" condition. Reply at 3-4.

3 For purposes of valuation and based on the limited
4 evidence presented, the Court concludes that the Vehicle was in
5 approximately "fair" condition as of the petition date.
6 Although the Court agrees with HSBC that the Vehicle was likely
7 in "excellent" or "good" condition when purchased, the former
8 condition of the Vehicle has no bearing on the issue of
9 valuation under § 506(a)(2). Rather, valuation is to be
10 determined as of the petition date and in light of the existing
11 age and condition of the vehicle at that time. Similarly, the
12 Court agrees with the Debtor that HSBC has failed to establish
13 that the Debtor was under a contractual obligation to maintain
14 the Vehicle in "good" condition.⁷ As a result, the only evidence
15 presented on the issue of condition is the reports from
16 Collateral Valuation Services, which list the Vehicle in "fair"
17 condition.

18 The Debtor here bears the burden in establishing the
19 condition of the Vehicle as of the petition date. The Court is
20

21
22 ⁷ It remains unclear whether the Debtor in fact agreed to maintain the Vehicle
23 in "good" condition pursuant to the contract with HSBC. HSBC does not
24 identify a specific provision that imposes such a requirement in the single
25 page of the apparently multi-page contract submitted as Exhibit 1 to the
26 Opposition. The Court's review of Exhibit 1 does not reveal any requirement
27 regarding the Debtor's obligation to maintain the Vehicle in a specific
28 condition. Because language in the contract suggests that additional terms
were included as part of the contract on subsequent pages, it is possible
that HSBC may be correct in its assertions. Nonetheless, in light of the
evidence presented, the Court concludes that HSBC has not established the
existence of a contractual obligation on the part of the Debtor to maintain
the Vehicle in "good" condition. Therefore, the Court need not consider what
effect, if any, such a requirement would have on valuation under § 506(a)(2)
assuming the Debtor has not maintained the Vehicle in "good" condition.

1 satisfied that the Debtor has established some evidence, though
2 minimal, that the Vehicle was not in "excellent" condition and
3 that its condition was likely closer to "fair" condition.

4 As a final step, the Court must determine the reasonable
5 adjustment to the Kelley Blue Book retail value in light of the
6 Vehicle's age and condition as of the petition date. In support
7 of a downward adjustment, the Debtor has submitted three
8 AutoTrader.com advertisements, listing retail prices of
9 \$8,995.00, \$8,999.00, and \$9,995.00, respectively. Although the
10 dates of these advertisements range from February 18 to March
11 15, 2008, they sufficiently approximate examples of retail
12 prices as of the petition date of January 25, 2008, for
13 purposes of valuation. By contrast, HSBC submits the
14 Declaration of Linda Curzan, in which she declares that HSBC
15 conducted an online search for similar vehicles and found 19
16 vehicles for sale within a 25-mile radius of the Debtor's
17 residence. Curzan Declaration at 2-3, ¶ 7. Curzan declares that
18 "[o]f the nineteen vehicles available for sale, only one was
19 priced at \$8,900.00, while thirteen (13) were listed between
20 \$10,000.00 and \$14,480.00." Curzan Declaration at 3, ¶ 7.
21 Curzan does not identify the retail value of the remaining five
22 cars listed, nor explain whether the vehicles listed were of
23 the same condition as the Vehicle. The Debtor appears to
24 acknowledge, however, that the AutoTrader.com advertisements
25 represent retail prices at the low end of the spectrum. See
26 Reply at 2-3.

1 The Court ultimately sets the retail value of the Vehicle
2 at \$10,126.00 in light of the limited evidence presented by the
3 parties. The Court reaches this value as the average of the
4 Kelley Blue Book retail value of \$12,515.00 and the
5 AutoTrader.com retail values of \$8,995.00, \$8,999.00, and
6 \$9,995.00. The Court acknowledges the inherent arbitrariness
7 created by § 506(a)(2). Other cases may require a different
8 adjustment process based on better or worse evidence, as
9 presented. Nonetheless, the Court believes that the Debtor has
10 not presented sufficient evidence regarding the condition of
11 the Vehicle so as to justify a reduction from the Kelley Blue
12 Book retail value to the lowest of the AutoTrader.com retail
13 values. Moreover, a retail value of \$10,126.00 for the Vehicle
14 approximates the highest AutoTrader.com retail value submitted
15 by the Debtor and falls at the low end of the range of retail
16 prices suggested by HSBC. Without better evidence as to the
17 condition of the Vehicle and the full spectrum of retail values
18 of similar vehicles, the Court concludes that \$10,126.00 is an
19 appropriate retail value for purposes of the second sentence of
20 § 506(a)(2).

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IV. Conclusion

In conclusion, the Court sets the replacement value of the Vehicle under the retail value standard of § 506(a)(2) at \$10,126.00. The Debtor may redeem the Vehicle provided that he pays this amount to HSBC at the time of redemption.

The Court will enter an appropriate order.

DATE: May 8, 2008

_____/s/_____
United States Bankruptcy Judge

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