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3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5 SACRAMENTO DIVISION  
6

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8 In re ) Case No. 07-21431-A-13G  
9 DAVID COHRS, ) Docket Control No. FW-1  
10 ) Date: June 25, 2007  
11 Debtor. ) Time: 9:00 a.m.  
12 )

13 *On June 25, 2007 at 9:00 a.m., the court considered the*  
14 *debtor's motion to value the collateral of Americredit as well as*  
15 *Americredit's objection to that motion. The court's ruling on*  
16 *the motion and the objection is appended to the amended minutes*  
17 *of the hearing. Because that ruling constitutes a "reasoned*  
*explanation" of the court's decision, it is also posted on the*  
*court's Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-*  
*searchable format as required by the E-Government Act of 2002.*  
*The official record, however, remains the ruling appended to the*  
*minutes of the hearing.*

18 **AMENDED FINAL RULING**

19 The motion will be denied and the objection will be  
20 sustained.

21 The court first notes that it invited further briefing from  
22 the debtor to address in greater detail the arguments raised in  
23 an objection to the motion. Nothing was filed.

24 On October 13, 2005, the debtor financed the purchase of a  
25 2005 pickup truck with a loan provided by the objecting creditor.  
26 On March 5, 2007, less than 910 days after the truck was  
27 purchased, the debtor filed this chapter 13 petition.

28 The debtor's proposed plan provides for the creditor's

1 secured claim in Class 2. Class 2 claims are paid in full.  
2 However, because the plan is accompanied by a motion to value the  
3 truck, the debtor is seeking a determination that the creditor's  
4 secured claim is limited to the value of its collateral, the  
5 truck. See 11 U.S.C. § 506(a)(2).

6 The creditor objects to this treatment, contending that its  
7 claim cannot be "stripped down" to the value of the truck because  
8 the "hanging paragraph" following 11 U.S.C. § 1325(a)(9)  
9 [hereafter, "section 1325(a)(\*)"] prohibits the application of  
10 section 506(a)(2) to its claim. That is, it maintains that its  
11 secured claim is the amount actually owed by the debtor as of the  
12 petition date and it is not subject to reduction because the  
13 truck happens to be worth less than the amount owed.

14 Section 1325(a)(\*) provides that "section 506 shall not  
15 apply to a claim described in [section 1325(a)(5)] if the  
16 creditor has a purchase money security interest," the secured  
17 debt was incurred within 910 days of the filing of the petition,  
18 and the collateral is a motor vehicle acquired for the personal  
19 use of the debtor.

20 The dispute concerning the applicability of section  
21 1325(a)(\*) to this case boils down to whether the creditor holds  
22 a purchase money security interest. While there is no dispute  
23 that its loan financed the purchase of the truck, it also  
24 provided the debtor with the funds, approximately \$6,000,  
25 necessary to pay a loan secured by the vehicle the debtor traded-  
26 in when purchasing the truck. The debtor maintains that the  
27 inclusion of these funds with the amount necessary to purchase  
28 the truck destroys the purchase money character of the loan from

1 the creditor and the security interest given in connection with  
2 the transaction.

3 The Bankruptcy Code includes no definition of the phrase,  
4 "purchase money security interest." The logical place to look  
5 for a definition is the nonbankruptcy law applicable to the  
6 contract between the parties.

7 Cal. Comm. Code § 9103 provides in relevant part:

8 (a) In this section:

9 (1) "Purchase money collateral" means goods ... that  
secure[] a purchase money obligation incurred with  
respect to that collateral.

10 (2) "Purchase money obligation" means an obligation of  
11 an obligor incurred as all or part of the price of the  
collateral or value given to enable the debtor to  
12 acquire rights in or use of the collateral if the value  
is in fact so used.

13 (b) A security interest in goods is a purchase money  
security interest as follows:

14 (1) to the extent that the goods are purchase money  
collateral with respect to that security interest.

15 So, California's version of the Uniform Commercial Code ties  
16 the definition of a "purchase money security interest" to the  
17 definition of "purchase money security collateral," which in turn  
18 is dictated by the definition of "purchase money obligation."  
19 Not only is the "price" paid for the collateral a purchase money  
20 obligation, so is "value given to enable the debtor to acquire  
21 rights in" the collateral. The "value given to enable" language  
22 is broad enough to include the "negative equity" financed by the  
23 creditor that enabled the debtor to purchase the truck.

24 This interpretation is supported by official comment of the  
25 drafters of the Uniform Commercial Code. Note 3 to section 9103  
26 provides in part:

27 Subsection (a) defines 'purchase-money collateral'  
28 and 'purchase-money obligation.' These terms are  
essential to the description of what constitutes a

1 purchase-money security interest under subsection (b).  
2 As used in subsection (a)(2), the definition of  
3 'purchase-money obligation,' the 'price of collateral'  
4 or the 'value given to enable' includes obligations for  
5 expenses incurred in connection with acquiring the  
6 rights in the collateral, sales taxes, duties, finance  
7 charges, interest, freight charges, costs of storage in  
8 transit, demurrage, administrative charges, expenses of  
9 collection and enforcement, attorney's fees, and other  
10 similar obligations.

11 The concept of 'purchase-money security interest'  
12 requires a close nexus between the acquisition of  
13 collateral and the secured obligation.

14 While it is true that the drafters did not include amounts  
15 loaned to pay off negative equity owed on a trade-in vehicle  
16 among the charges that can be considered part of the price or  
17 value given, the drafters' list is not an exclusive one. The  
18 drafters are merely giving examples.

19 When a car buyer offers to trade-in a vehicle as part of the  
20 purchase price for another vehicle, the charges incidental to  
21 transferring the trade-in vehicle are part of the purchase price  
22 of the new vehicle. Those charges are incurred to "enable the  
23 debtor to acquire rights in" the new vehicle. Therefore, when a  
24 lender, like the creditor in this case, finances the purchase of  
25 the new vehicle and, as part of the transaction also pays off an  
26 outstanding balance owed on the trade-in vehicle, the loan  
27 extended is a purchase money obligation of the buyer, the new  
28 vehicle is a purchase money collateral, and the lender's security  
interest is a purchase money security interest.

29 To the extent other bankruptcy courts have come to a  
30 contrary conclusion, this court respectfully disagrees with those  
31 courts. See In re Peasley, 358 B.R. 545, 556-58 (Bankr. W.D.N.Y.  
32 2006); In re Acaya, 2007 WL 1492475, \*2-3 (Bankr. N.D. Cal.  
33 2007). These courts apparently read section 9103 and Note 3 to

1 limit the sweep of the phrases, "price of collateral" and the  
2 "value given to enable" a buyer to acquire property, to include  
3 only incidental expenses related to the purchase.

4 This court reads section 9103 and Note 3 to require only a  
5 "close nexus" between the acquisition of the property and the  
6 secured obligation. That is, it must be part of a single  
7 transaction and all components of the obligation incurred must  
8 have been for the purpose of acquiring the property securing the  
9 new obligation.

10 So, if the debtor had borrowed money both to finance the new  
11 car and pay off his old car, but had not traded in the old  
12 vehicle to the seller, this court would conclude that the  
13 inclusion of the pay off amount in the loan would destroy its  
14 purchase money character. But here, the old vehicle was traded  
15 in to the seller as part of the value given to acquire the new  
16 vehicle.

17 Other California law supports the notion that financing  
18 negative equity owed on a vehicle traded in as part of the  
19 purchase of a new vehicle is considered part of the price paid  
20 for the new vehicle. Cal. Civil Code § 2981(e) provides:

21 *'Cash price' means the amount for which the seller*  
22 *would sell and transfer to the buyer unqualified title*  
23 *to the motor vehicle described in the conditional sale*  
24 *contract, if the property were sold for cash at the*  
25 *seller's place of business on the date the contract is*  
26 *executed, and shall include taxes to the extent imposed*  
27 *on the cash sale and the cash price of accessories or*  
28 *services related to the sale, including, but not*  
*limited to, delivery, installation, alterations,*  
*modifications, improvements, document preparation fees,*  
*a service contract, a vehicle contract cancellation*  
*option agreement, and payment of a prior credit or*  
*lease balance remaining on the property being traded*  
*in." [Emphasis added.]*

1 And, not only does section 2981 suggest to the court that  
2 section 9103 should be interpreted consistently to include  
3 negative equity within the definition of a purchase money  
4 obligation, but California's version Article 9 of the Uniform  
5 Commercial Code is expressly made subject to section 2981. Cal.  
6 Comm. Code § 9201(b) provides that "[a] transaction subject to  
7 this division is subject to any applicable rule of law which  
8 establishes a different rule for consumers [including] ... the  
9 Automobile Sales Finance Act, Chapter 2b (commencing with Section  
10 2981)...."

11 The court agrees, given section 9201(b), that sections  
12 9103(a)(2) and section 2981 must be interpreted consistently. To  
13 the extent it might be argued that these definitions conflict, or  
14 that section 2981 does not dictate the interpretation of section  
15 9103, because Cal. Comm. Code § 9201(c) makes section 9103 and  
16 the remainder of Division 9 of the California Commercial Code  
17 subject to section 2981 of the Automobile Sales Finance Act, the  
18 court further concludes that, in the context of auto sales, the  
19 value given to acquire a vehicle includes negative equity in a  
20 vehicle traded in as part of the purchase price of a new vehicle.  
21 Hence, a lender financing such a transaction acquires a purchase  
22 money security interest and the debtor incurs a corresponding  
23 purchase money obligation.

24 Therefore, section 1325(a)(\*) is applicable and the debtor  
25 may not strip down the objecting creditor's secured claim to the  
26 value of the vehicle as of the date of the petition. The motion  
27 will be denied.