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4 UNITED STATES BANKRUPTCY COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
6 SACRAMENTO DIVISION  
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10 In re ) Case No. 05-90426-A-13  
11 FRANCISCO J. ARRONA and ) Docket Control No. MET-1  
12 CYNTHIA R. ARRONA, )  
13 Debtors. ) Date: June 20, 2005  
14 ) Time: 2:00 p.m.  
15 )

15 **MEMORANDUM**

16 The motion for relief from the automatic stay filed by  
17 American Honda Finance Corporation included a demand for  
18 attorney's fees. The vehicle lease between the movant's  
19 predecessor and the debtors includes an attorney's fee provision.  
20 While the court concluded at the hearing on June 20, 2005 that a  
21 similarly situated lessor would have filed a motion for relief  
22 from the automatic stay, insofar as attorney's fees were  
23 requested in the motion, the motion was deficient.

24 First, there was no evidence with the motion regarding the  
25 time and charges necessary to prosecute the motion. Without this  
26 evidence, as well as evidence regarding the rate at which the  
27 time of counsel should be compensated, the court had no factual  
28 basis for awarding fees.

1       Second, the motion concerned a vehicle leased to the debtor  
2 by the movant. In other words, the movant is not a secured  
3 creditor.

4       In ruling on a motion for relief from the automatic stay,  
5 this court does not apply California contract law. Therefore,  
6 California law on attorneys' fees is not applicable. Rather,  
7 such a motion presents "issues peculiar to federal bankruptcy  
8 law." Fobian v. Western Farm Credit Bank (In re Fobian), 951  
9 F.2d 1149, 1153 (9<sup>th</sup> Cir. 1991). The recovery of fees for  
10 services related to prosecuting a motion for relief from the  
11 automatic stay is a matter of federal law. Id.; Collingwood  
12 Grain, Inc. v. Coast Trading Co. (In re Coast Trading Co.), 744  
13 F.2d 686, 693 (9<sup>th</sup> Cir. 1984).

14       Thus, the Bankruptcy Code must provide for the award of  
15 fees. The only provision in the Bankruptcy Code that is remotely  
16 applicable is 11 U.S.C. § 506(b). It, however, is applicable  
17 only to a secured creditor, and for it to be applicable to  
18 creditor holding a secured claim, that creditor must be over-  
19 secured. Kord Enterprises II v. California Commerce Bank (In re  
20 Kord Enterprises II), 139 F.3d 684, 689 (9<sup>th</sup> Cir. 1998); In re  
21 Fobian, 951 F.2d at 1153; Johnson v. Righetti (In re Johnson),  
22 756 F.2d 738, 740-41 (9<sup>th</sup> Cir. 1985).

23       In this case, however, the movant is not the holder of a  
24 secured claim. It is a lessor. And, the court has been given no  
25 authority (even though the movant was given the opportunity to  
26 file a post-hearing brief on the issue) permitting the award of  
27 fees to a lessor who has incurred fees bringing a motion for  
28 relief from the automatic stay.

1           Therefore, a separate order denying the motion and the  
2 requested fees will be entered.

3 Dated:

4   By the Court

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7 Michael S. McManus, Chief Judge  
8 United States Bankruptcy Court  
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