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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:)	Case No.	<u>08-41689</u>	Chapter 7
H. V. CARTER CO., INC.)			
)			
debtor,)			
Defendants,)			
)		MOTION TO ALLOW	
)		ADMINISTRATIVE	
)		PRIORITY CLAIM	

Creditor LANDLORD, lessor of the debtor, submits the following motion for an order of this Court allowing administrative priority claim:

I. STATEMENT OF FACTS

Moving party LANDLORD (hereinafter "LANDLORD") entered into a written lease (hereinafter "Lease") with Debtor HV CARTER CO., INC. (hereinafter "CARTER" or "Debtor"). A true and correct copy of the Lease is attached to the Declaration of LANDLORD submitted herewith, as Exhibit A. Under said Lease, LANDLORD leased to CARTER premises located at 4119 N. Freeway Blvd., Suite C, Sacramento, California (hereinafter "the Premises"). LANDLORD has filed a proof of claim for post-petition rent and non-administrative priority rent. Under the

1 terms of the Lease, the sum of \$6396 was due monthly for rent of the Premises.
2 Debtor's petition initiating this case was filed on April 9, 2008. The Court entered
3 its Order Rejecting Commercial Lease By Trustee on May 12,2008 under which
4 Debtor's Lease with LANDLORD was rejected effective as of May 8, 2008, one
5 month after the filing of the petition herein.
6

7 Under the terms of the Lease and its Extension, the rent due for the period of
8 April 9, 2008 through May 8, 2008, totals \$6396. Also due under the Lease is the
9 pro rata share of the water bill. Water connection is required for fire sprinklers &
10 restrooms. Debtor is required to pay utilities under paragraph 11 of the Lease. All
11 monetary obligations of Debtor are included as "rent", as provided in paragraph 4.1
12 of the Lease. The water bill was \$255.66; total due **\$6651.66**.
13

14 Consequently, one month of post-petition rent had accrued. As is set forth in
15 the Declaration of LANDLORD submitted herewith, at the time of the filing of the
16 petition herein and through May 8, 2008 (and thereafter), the Premises was full of
17 personal property assets of the estate. Also, motor vehicles belonging to the estate
18 were stored in the parking area adjacent to the Premises. Debtor's counsel is informed
19 and believes that the Trustee was able to sell said vehicles, generating benefit for the
20 estate.
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II. LEGAL ARGUMENT

Bankruptcy Code § 365(d)(3) requires timely payment by the Trustee of obligations under a lease until the lease is assumed or rejected.

Bankruptcy Code § 503(b)(1)(A) provides that, after notice and hearing, a creditor may be allowed as an administrative expense the actual necessary costs and expenses of preserving the estate. As is set forth in the LANDLORD Declaration, rent accrued post-petition and prior to rejection of the subject lease for a period of one month. During that time, the Premises were occupied by property belonging to the estate, including but not limited to motor vehicles and business records of the Debtor. As is also set forth in the LANDLORD Declaration, rent for the one-month period prior the rejection of the Lease totaled \$6396. The water bill was \$255.66; total due **\$6651.66**.

The 9th Circuit has ruled that rent accrued on nonresidential lease post petition and pre-rejection gives rise to an administrative claim for the full amount of the rent accrued. *In re Pacific-Atlantic Trading Co.* 27 F.3d 401, 403. Here, as an owner of real property, moving party LANDLORD had expenses relating to the Premises and also did not receive revenue by reason of his inability to re-let the Premises prior to rejection of the Lease. It is submitted here that creditor LANDLORD has provided value in the form of occupancy of real property premises by property of the estate prior to rejection of the subject lease.

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CONCLUSION

The Court is therefore respectfully requested to allow an administrative
priority claim to moving party LANDLORD in the amount of **\$6651.66**.

Dated: October 2, 2008

LAW OFFICE OF JAMES J. FALCONE

/S/ James J. Falcone

JAMES J. FALCONE, ESQ.