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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

In re Matterhorn Group, Inc.,	)	
	)	2:10-cv-02849-GEB-EFB
Debtor.	)	
	)	<u>ORDER DENYING EX PARTE</u>
_____	)	<u>APPLICATION TO SHORTEN TIME</u>
	)	<u>AND REQUIRING RESPONSE TO</u>
Vitafreeze Frozen Confections,	)	<u>DEBTORS' NOTICE OF MOOTNESS</u>
Inc.,	)	<u>OF THE MOTION FOR WITHDRAWAL</u>
	)	<u>OF REFERENCE</u>
Debtor.	)	
	)	
_____	)	
Deluxe Ice Cream Company,	)	
	)	
Debtor.	)	
	)	
_____	)	

On October 28, 2010, the undersigned was made aware of the Creditors' "Ex Parte Application to Shorten Time to Hear Motion for Withdrawal of Reference and Request for Stay of Bankruptcy Hearing" ("Ex Parte Application"), which was filed on October 21, 2010. The apparent reason why the undersigned was not made aware of the Ex Parte Application earlier is because it was filed as pages 28-32 of the Motion to Withdraw the Reference, not as a separate filing. (ECF No. 1, 28-32.)

The Creditors state in their Ex Parte Application:

1. [Creditors] hereby apply for an order setting a hearing on shortened notice on their Joint Motion To Withdraw The Reference Of Debtors' Motion To Modify Or Reject Collective Bargaining

1 Agreements With [the Creditors] ("Motion to  
2 Withdraw"), filed herewith on October 19, 2010.

3 . . . .

4 4. . . . Debtors' filed their Motion To  
5 Modify Or Reject Collective Bargaining Agreements  
6 with the [Creditors] ("Motion to Reject") on  
7 October 11, 2010 noticing an October 25, 2010  
8 hearing date.

9 5. [Creditors] filed an opposition to the  
10 Motion to Reject on October 18, 2010 in the  
11 Bankruptcy Court and are herewith filing a Motion  
12 to Withdraw in this Court . . . .

13 . . . .

14 9. Shortening the time of notice is  
15 appropriate in the interests of judicial economy  
16 and fairness, in order that the question of whether  
17 to withdraw the matter can be heard prior to the  
18 hearing on the matter now set in the bankruptcy  
19 court for October 25, 2010. The Motion to Reject  
20 was filed with 14-day notice to [Creditors], and  
21 [Creditors] filed their opposition thereto within a  
22 week of its receipt. [Creditors] have provided  
23 verbal notice to the Debtors that the Motion to  
24 Withdraw would be filed in this Court. Only with a  
25 shortened notice period and a stay of the contested  
26 matter in the bankruptcy court may the [Creditors']  
27 position, that this matter must be heard and  
28 resolved by this Court, be given fair appraisal.

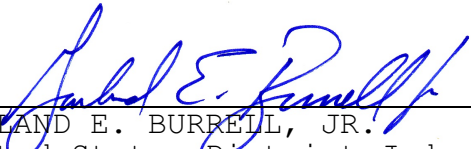
18 Id. at 30-31.

19 Debtors' filed a "Notice of Mootness of the [Creditors']  
20 Motion for Withdrawal of Reference" on October 28, 2010, in which they  
21 state "[Debtors' Motion to Reject] was already heard by the Bankruptcy  
22 Court on October 25, 2010, and denied without prejudice on October 26,  
23 2010 . . . . Accordingly, the Withdrawal Motion has been rendered moot."  
24 (ECF No. 2, 2:11-16.)

25 Since the Bankruptcy Court heard Debtor's Motion to Reject on  
26 October 25, 2010, and no other reason was given for hearing the Motion  
27 to Withdraw on shortened time, Creditors' Ex Parte Application is  
28 denied.

1 Further, Creditors shall respond to Debtors' Notice of  
2 Mootness no later than November 5, 2010. If no response is filed,  
3 Creditors' Motion to Withdraw (ECF No. 1) will be deemed moot and denied  
4 as such.

5 Dated: October 28, 2010

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9 GARLAND E. BURRELL, JR.  
10 United States District Judge  
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