

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Thursday, November 17, 2016

Hearing Room 302

9:30 AM

1:10-18651 Bachan Kaur

Chapter 11

■

#1.00 Motion To Reopen Case To Obtain Entry Of Discharge
and Final Decree

Docket No: 173

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Motion GRANTED only to reopen case. Debtor must bring a separate motion to obtain entry of discharge. This motion can be brought using the procedure of LBR 9013-1(d) or (o).

APPEARANCE is WAIVED on November 17, 2016.

Party Information

Debtor(s):

Bachan Kaur

Represented By
Anthony Obehi Egbase

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9:30 AM

1:14-12529 John M Genga and Hilary B Genga

Chapter 11

#2.00 Post Confirmation Status Conference

fr. 8/7/14, 1/22/15, 1/29/15, 4/23/15; 5/28/15,
8/13/15, 10/15/15, 10/29/15; 3/3/16; 4/7/16; 6/16/16,
9/15/16

Docket No: 1

***** VACATED *** REASON: Ntc. of continuances filed to 12/15/16
9:30am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Having considered Debtors' status report, and for good cause appearing, the status conference is continued to December 15, 2016 at 9:30 a.m. to be heard with U.S. Trustee's Motion to Dismiss or Convert.

APPEARANCE WAIVED on November 17, 2016. Debtors to give notice of continued status conference.

Party Information

Debtor(s):

John M Genga

Represented By
M Jonathan Hayes

Joint Debtor(s):

Hilary B Genga

Represented By
M Jonathan Hayes

Movant(s):

Hilary B Genga

Represented By
M Jonathan Hayes

John M Genga

Represented By
M Jonathan Hayes

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1:14-15412 14520 Hesby, LLC

Chapter 11

#3.00 Trustee Motion Under 11 U.S.C. § 1112(b)
To Dismiss Or Convert Case With An Order
Directing Payment Of Quarterly Fees
And For Judgment Thereon

fr. 10/20/16

Docket No: 135

*** VACATED *** REASON: Ntc. of w/drawal filed 11/15/16 (eg)

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Hearing was continued for Debtor to provide an insurance declaration for real property located at 3392 Venture Dr., Huntington Beach, CA 92649. Nothing new has been filed. What is the status of US Trustee's motion?

APPEARANCE REQUIRED.

Party Information

Debtor(s):

14520 Hesby, LLC

Represented By
William H Brownstein

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1:14-15412 14520 Hesby, LLC and DEBORAH CHEN

Chapter 11

#4.00 Confirmation of the Chapter 11 Plan of Reorganization

fr. 3/17/16; 3/24/16, 6/2/16; 8/18/16

Docket No: 64

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The currently pending plan is unconfirmable. The value of the property is, by debtor's own admission, incorrect. The debtor has provided no legal basis for the court to allow it to assume the loan with the secured creditor. The court will not mandate mediation where the plan treatment is a simple legal issue the debtor needs to properly brief.

Confirmation DENIED

Party Information

Debtor(s):

14520 Hesby, LLC

Represented By
William H Brownstein

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1:14-15412 14520 Hesby, LLC

Chapter 11

#5.00 Motion for relief from stay

THE BANK OF NEW YORK MELLON FKA

fr. 7/20/16; 8/18/16, 9/29/16

Docket No: 109

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On December 5, 2014, 14520 Hesby, LLC. ("Hesby LLC" or Debtor") filed for chapter 11 relief. Bank of New York Mellon ("Bank of NY" or "Movant") filed a motion for relief from stay. At the July 20, 2016 hearing, the Court continued the hearing for parties to conduct a full appraisal of the Venture Property to ascertain the equity cushion.

Petition Date: 12/5/14

Chapter: 11

Service: Proper. Response filed 7/6/16. Reply filed 7/13/16.

Property: 3392 Venture Dr., Huntington Beach, CA 92649-2551 (the "Venture Property")

Property Value: \$ 2,800,000.00 (per Movant's motion)

Amount Owed: \$ 2,423,863.42

Equity Cushion: 5.4%%

Equity: \$0.00

Total Delinquency: \$ 768,593.27 (76 payments of \$10,723.43)

I. 11 U.S.C. §362(d)(2)

Under Section 362(d)(2), stay relief is available to a secured creditor if a debtor lacks equity in the collateral, but only if it is also shown that the collateral is

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not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). The party requesting such relief has the burden of proof on the issue of debtor's equity in property. 11 U.S.C. § 362(g)(1).

a. Equity Cushion

Attaching an appraisal from Northstar Appraisal Services, Movant asserts that the Venture Property has a market value of \$1,800,000. Decl in Support of Residential Appraisal Report, ¶5. Debtor at different junctures of the case has listed various values. At first, it valued the Venture Property at \$2,800,000 in its schedules. It then valued it at \$1,600,000 in its disclosure statement. First Amended Chapter 11 Disclosure Statement, Exhibit D. Attaching Movant's appraisal to its own Supplemental Declaration of Ahron Zilberstein, Debtor appears to concede that the property value is \$1,800,000. See Supp. Decl. of Ahron Zilberstein, Exh. 1.

Debtor has had nearly four months to conduct an appraisal and still has not substantiated its various valuations with competent evidence. It has caused delay not only for Movant, but for all creditors as its Chapter 11 plan of reorganization hinges on the valuation of the Venture Property. As the Court has given significant leeway to Debtor, it will take Movant's appraisal report at face value. Taking Movant's valuation of the Venture Property at \$1,800,000, Bank of NY's \$2,423,863.42 claim clearly overencumbers the equity in the property.

b. Necessary for an Effective Reorganization

Once the movant under §362(d)(2) establishes that he is an undersecured creditor, it is the burden of the debtor to show that the collateral is necessary for an effective reorganization. 11 U.S.C. §362(g)(1). "Effective reorganization" requires debtor to prove that a proposed plan "is not patently unconfirmable and has a realistic chance of being confirmed." In re Sun Valley Newspaper, Inc., 171 B.R. 71, 75 (B.A.P. 9th Cir. 1994). In the early stage of the case, "the burden of proof [...] is satisfied if the debtor can offer sufficient evidence to indicate that a successful reorganization within a reasonable time is 'plausible.'" Id.

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Chapter 11

Debtor is no longer in the "early stages." The case has been ongoing for two and a half years. Debtor's plan of reorganization is devoid of any real strategy. It submits that the Venture Property is the "foundation for the pending Plan of Reorganization," but does not specify why it is necessary for reorganization. Response, 5. Presumably, it intends to sell the property. Yet Debtor also states that Debtor intends to "own the real property free and clear of liens." First Amended Chapter 11 Disclosure Statement, Exhibit F, ¶14.

Debtor has however taken one large step towards reorganization: it has settled the remanded state court action, *Eric and Deborah Chen v. Ahron Zilberstein, 14250 Hesby LLC and Does 1 through 25*, Case No. 30-2013-00630523, where Ahron Zilberstein paid \$450,000 to Plaintiffs Eric and Deborah Chen in exchange for release of their claims on the Venture Property. Order Granting Motion to Approve Compromise under Rule 9019, ECF No. 57; Motion to Approve Compromise under Rule 9019, ECF No. 53, ¶8(a), ¶9. By clearing title on the property, Debtor's plan, while outdated, is not patently unconfirmable and actually has a realistic chance of being confirmed. Instead of bifurcating the Movant's claim at \$1,600,000, it will do so at \$1,800,000. An amended plan will need to reflect increased monthly payments to account for this enlarged claim. The Venture Property is essential to Debtor's reorganization. Without it, the unsecured pool of a combined claim of nearly \$1 million will likely receive no distribution.

As the second prong of 11 U.S.C. §362(d)(2) has not been met, Bank of NY is not entitled to relief from stay.

II. 11 U.S.C. §362(d)(1)

Section 362(d)(1) directs the bankruptcy court to grant relief from stay "for cause," which includes the inadequate protection of a creditor's interest in the collateral. Adequate protection is intended to "compensate a secured creditor whose collateral declines in value while it is in the possession of, and being used by, a chapter 11 debtor." 11 U.S.C. §362(g); In re Big3D, 438 B.R. 214, 221 (B.A.P. 9th Cir. 2010). The Debtor has the burden of proof. Gauvin v. Wagner (In re Gauvin), 24 B.R. 578, 580 (B.A.P. 9th Cir. 1982).

Taking Movant's valuation of \$1,800,000 and cost of sale at 8%, the equity

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calculation is as follows:

$$\begin{aligned} &(\text{FMV} - (\text{Cost of Sale [8\%] + lien}) / \text{FMV} = \text{Equity Cushion} \\ &(\$1,800,000 - (\$224,000 + \$144,000)) / \$2,800,000 = -6.7\% \end{aligned}$$

Bank of NY is clearly not adequately protected with a negative equity cushion. See In re Timbers of Inwood Forest, 793 F.2d 1380, 1387 (5th Cir. 1986)(holding that at least 20% is required); See also, In re Le May, 18 B.R. 659 (Bankr. D. Mass. 1982) (holding that a 7% equity cushion is insufficient); See also Suntrust Bank v. Denmark Constr., Inc., 406 B.R. 683, 700-701 (E.D. N.C. 2009)(where an 11% equity cushion was deemed insufficient after the court considered Debtor's other problems – most notably large monthly interest payments). Along with the lack of an equity cushion, Debtor has also missed seventy-six (76) payments of \$10,723.43, amounting to \$768,593.27.

The property is also at risk of declining in value. The appraiser asserts that the property appears to have been "purposefully damaged, broken into and trashed," and that had it not been, the property would be valued at about \$2,500,000. Decl in Support of Residential Appraisal Report, ¶6. The appraiser asserts that had the property been maintained, it would be valued at \$2,500,000. Id. The appraisal report clearly shows physical damage to the living room walls, bathroom floor. Id. at Exh. 1, 19. The report also shows signs of mold and termites, missing electrical sockets, broken doors and broken windows. Id. at Exh 1, 20-21.

Debtor avers it had nothing to do with the interior damages. Debtor was responsible for upkeep, but, regardless, the fact of the matter is that the property shows signs of deterioration with mold and termites. With the risk of permanent damage to the property, along with the lack of adequate protection for Movant, relief from stay "for cause" is appropriate under 11 U.S.C. §362(d)(1) unless significant adequate protection in other forms can be provided to Movant. Frankly, it is unclear how debtor can adequately protect the asset it has neglected for so long at this point.

Relief from the automatic stay under 11 U.S.C. 362(d)(1) is GRANTED unless significant adequate protection is provided to Movant. Relief GRANTED per paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); and 7 (waiver of 14-day stay); DENIED as to 9 (relief

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under 362(d)(4); **10** (binding and effective against any debtor who claims an interest in the Property for 180 days); and **11** (binding and effective in any future bankruptcy no matter who the debtor may be) |

Party Information

Debtor(s):

14520 Hesby, LLC

Represented By
William H Brownstein

Movant(s):

The Bank of New York Mellon FKA T

Represented By
Mark D Estle

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1:14-15412 14520 Hesby, LLC and DEBORAH CHEN

Chapter 11

#6.00 Status and Case Management Conference

fr. 2/12/15; 7/30/15; 10/22/15, 12/17/15, 3/17/16,
3/24/16, 6/2/16; 8/18/16, 9/29/16

Docket No: 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Party Information

Debtor(s):

14520 Hesby, LLC

Represented By
William H Brownstein

Movant(s):

14520 Hesby, LLC

Represented By
William H Brownstein

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1:15-14124 Ignacio Ramirez

Chapter 11

#7.00 Status and Case Management Conference

fr. 2/4/16; 6/16/16, 7/28/16, 9/29/16

Docket No: 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Party Information

Debtor(s):

Ignacio Ramirez

Represented By
Anthony Obehi Egbase

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9:30 AM

1:15-14124 Ignacio Ramirez

Chapter 11

#8.00 Chapter 11 Plan Confirmation

Docket No: 60

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Debtor has not responded to well taken objections by the U.S. Trustee to the feasibility of the plan. The October MOR has not been filed.

Party Information

Debtor(s):

Ignacio Ramirez

Represented By
Anthony Obehi Egbase
Crystle J Lindsey

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9:30 AM

1:16-12066 Muntaser A. Ammari

Chapter 11

#9.00 Motion for relief from stay

JINHE ROSA HO

fr. 9/8/16

Docket No: 29

*** VACATED *** REASON: Cont'd to 1/19/17 per order #83. If

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Appearance required. No tentative to be posted

Party Information

Debtor(s):

Muntaser A. Ammari

Represented By
Mark S Horoupian
Mark S Horoupian
Mark S Horoupian
Jason Balitzer
Jason Balitzer
Jason Balitzer

Movant(s):

Jinhe Rosa Ho

Represented By
Henry D Paloci

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1:16-12066 Muntaser A. Ammari

Chapter 11

#10.00 Scheduling and Case Management Conference

fr. 9/8/16

Docket No: 1

*** VACATED *** REASON: Cont'd to 1/19/17 per order #83. If

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Debtor should submit order for Claims bar date of November 11, 2016
Continued s/c and disclosure statement hearing will be January 19, 2017 at
9:30 am unless debtor has a conflict with that date

Party Information

Debtor(s):

Muntaser A. Ammari

Represented By

Mark S Horoupian

Mark S Horoupian

Mark S Horoupian

Jason Balitzer

Jason Balitzer

Jason Balitzer

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9:30 AM

1:16-12603 Rade Raicevic

Chapter 11

#11.00 Status and Case Management Conference

Docket No: 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

claim bar date already set: 11/7/16

Objections to claims deadline: 12/30/16

Avoidance actions deadline: 1/30/17

Proposed disclosure statement filing deadline: 1/30/17

Proposed disclosure statement hearing: 2/9/17 or 3/2/17 at 9:30 am -
debtor's choice

DEBTOR TO LODGE SCHEDULING ORDER WITHIN 7 DAYS OF THE
INITIAL STATUS CONFERENCE

Party Information

Debtor(s):

Rade Raicevic

Represented By
Mark J Markus

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9:30 AM

1:16-12791 Menco Pacific, Inc.

Chapter 11

#12.00 Debtor's Final hearing on use of cash collateral

Docket No: 16

*** VACATED *** REASON: Order entered continuing hearing to
12/15/16 at 9:30 am. - CW

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Menco Pacific, Inc.

Represented By
Jeffrey S Shinbrot

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9:30 AM

1:16-12791 Menco Pacific, Inc.

Chapter 11

#12.01 Hearing on Setting/Increasing
Insider Compensation

Docket No: 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Having considered the Debtor's status report, the Notice of Setting/ Increasing Insider Compensation, and Creditor Jon Blumenthal's objection, and Debtor's reply thereto, for good cause appear, this hearing is continued to **December 15, 2016 at 9:30 a.m.** to be heard with the Motion for Use of Cash Collateral and the status conference.

APPEARANCE Waived in November 17, 2016. Debtor to give notice of continued hearing.

Party Information

Debtor(s):

Menco Pacific, Inc.

Represented By
Jeffrey S Shinbrot

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1:16-12791 Menco Pacific, Inc.

Chapter 11

#13.00 Status and Case Management Conference

Docket No: 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Having considered the Debtor's status report, Motion for Use of Cash Collateral, and Stipulation to Continue Hearing on Use of Cash Collateral, along with Creditor Jon Blumenthal's Opposition to the Continuance of Cash Collateral Hearing, for good cause appearing, the status conference is continued **December 15, 2016** at 9:30 a.m. to be heard with the Motion for Use of Cash Collateral.

APPEARANCE Waived in November 17, 2016. Debtor to give notice of continued hearing.

Party Information

Debtor(s):

Menco Pacific, Inc.

Represented By
Jeffrey S Shinbrot

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9:30 AM

1:14-12971 Michael T Stoller

Chapter 11

#14.00 Motion for relief from stay

CAPITAL ONE AUTO FINANCE

fr. 10/20/16

Docket No: 96

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Hearing was continued from October 20, 2016 for parties to work out an adequate protection. Nothing new has been filed. What is the status of this motion?

Tentative Posted

Petition Date: 6/13/14

Chapter: 11

Service: Proper. No opposition.

Property: 2010 Mercedes-Benz C Class

Property Value: \$ 24,000 (per Debtor's schedules)

Amount Owed: \$ 29,081.12

Equity Cushion: 0%

Equity: \$0.00

Post-Petition Delinquency: Not Listed

Disposition: GRANT relief under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraphs **2** (proceed under non-bankruptcy law; and **6** (waiver of 14-day stay).

DENY as to **5** (termination of co-debtor stay – *Vanessa Stoller*) as no co-debtor stay arises under Chapter 11.

Party Information

Debtor(s):

Michael T Stoller

Represented By
Matthew Abbasi

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CONT... Michael T Stoller

Chapter 11

Movant(s):

Capital One Auto Finance, a division of

Represented By
Timothy J Silverman

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9:30 AM

1:09-16565 David Schwartzman

Chapter 11

#15.00 Post confirmation status conference

fr. 10/27/11, 11/1/12, 5/23/13, 12/5/13,
4/24/14, 9/4/14, 2/26/15, 5/7/15, 11/5/15; 5/5/16; 11/16/16

Docket No: 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Having considered Debtor's status report and for good cause appearing, the post-confirmation status conference is continued to April 6, 2016 at 9:30 a.m.

APPEARANCE IS WAIVED on November 17, 2016. Debtor to give notice of the continued hearing.

Party Information

Debtor(s):

David Schwartzman

Represented By
Victor A Sahn
Mark S Horoupian
Steven Werth

Movant(s):

David Schwartzman

Represented By
Victor A Sahn
Mark S Horoupian
Steven Werth

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9:30 AM

1:16-10159 Samuil Preys

Chapter 11

#16.00 Motion for relief from stay

WILMINGTON SAVINGS FUND SOCIETY

Docket No: 106

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Petition Date: 1/19/16
Chapter: 11
Service: Proper. No opposition.
Property: 17420 1114th St. E. Bonney Lake WA 98390-8192
Property Value: Not Listed; No appraisal from Movant
Amount Owed: \$ 546,965.29
Equity Cushion: N/A
Equity: N/A
Delinquency: \$232,270.12 (94 payments of \$3,775.78)

Disposition: GRANT relief under 11 U.S.C. 362(d)(1) and (d)(4). GRANT seeks relief in paragraphs **2** (proceed under non-bankruptcy law); **4** (confirmation that there is no stay in effect); **7** (waiver of 14-day stay); **9** (relief under 11 U.S.C. §362(d)(4) – *transfer of interest without consent or court approval*); and **10** (binding and effecting against any debtor for 180 days).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Samuil Preys

Represented By
Lewis R Landau

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1:16-13035 Laura Eileen Sanchez

Chapter 11

#17.00 Motion in Individual Case for Order Imposing
a Stay or Continuing the Automatic Stay as
the Court Deems Appropriate

Docket No: 11

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On October 21, 2016, Debtor filed this chapter 11 case. Debtor has one previous bankruptcy case that was dismissed within the previous year. The Filing, 9:16-bk-10963-PC, was a chapter 13 that was filed on 5/23/16 and dismissed on 9/16/16 for failure to make plan payments.

Debtors now move for an order continuing the automatic stay as to all creditors. Debtors argue that the present case was filed in good faith notwithstanding the dismissal of the previous case for failure to make plan payments. Debtor has obtained a tenant and additional rental income will enable her to make payments to her secured creditors. Debtor claim that the presumption of bad faith is overcome as to all creditors per 11 U.S.C. 362(c)(3)(C)(i) because she now receives sufficient income to provide adequate protection to secured creditors and pay operating costs associated with the real property.

Service proper. No opposition filed.
MOTION GRANTED. NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

Laura Eileen Sanchez

Represented By
Daniel King

Movant(s):

Laura Eileen Sanchez

Represented By
Daniel King

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11:00 AM

1:16-13171 Regla Vera

Chapter 13

#18.00 Motion for relief from stay

NUVISION FEDERAL CREDIT UNION

Docket No: 10

*** VACATED *** REASON: Moved to 11/16/16 at 11:00 per Order #15.

If

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Regla Vera

Represented By
Glenn Ward Calsada

Movant(s):

NuVision Federal Credit Union, succes

Represented By
Timothy J Silverman

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:30 AM

1:16-12518 Ireland Needlecraft, Inc.

Chapter 11

#19.00 Motion To Authorize Debtor To Enter Into
Post-Petition Financing With Cycling Sports
Group, Inc.

Docket No: 87

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

terms are fine. No Opposition.. Motion GRANTED as requested. NO
appearance required.

Party Information

Debtor(s):

Ireland Needlecraft, Inc.

Represented By
Steven R Fox