

**United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar**

Wednesday, March 27, 2024

Hearing Room 301

11:00 AM

6:13-22713 Abel Solorzano and Irma Solorzano

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

[Tele. appr. Jason M. Rund, Successor Chapter 7 Trustee]

Docket 651

Tentative Ruling:

3/27/2024

Service: Proper

Opposition: Response filed by Howard Grobstein

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, and noting the absence of opposition, which the Court deems consent to the relief requested pursuant to Local Rule 9013-1(h), the Court is inclined to APPROVE the proposed distribution and the following administrative expenses:

Successor Trustee Fees: \$ 37,955.07

Successor Trustee Expenses: \$ 173.77

Successor Trustee Attorney Fees: \$298,233.29

Successor Trustee Attorney Costs: \$4,953.22

Successor Trustee Accountant Fees: \$8,844

Successor Trustee Accountant Costs: \$366.80

Court Costs: \$293

APPEARANCES REQUIRED.

Party Information

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CONT... Abel Solorzano and Irma Solorzano

Chapter 7

Debtor(s):

Abel Solorzano

Represented By
Byron Z Moldo
Howard Camhi

Joint Debtor(s):

Irma Solorzano

Represented By
Byron Z Moldo
Howard Camhi

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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6:23-14368 Nathan James Freeman

Chapter 7

#2.00 Motion to Dismiss Debtor Pursuant To 11 U.S.C. § 707(a) & Contingent Motion To Extend Dismissal And Discharge Deadlines; Memorandum Of Points And Authorities; Declaration Of Cameron Ridley In Support Thereof (Motion filed 3/1/24)

EH__

[Tele. appr. Cameron Ridley, rep. Movant US Trustee, Peter Anderson]

Docket 25

Tentative Ruling:

3/27/2024

BACKGROUND

On September 26, 2023, Nathan Freeman ("Debtor") filed a Chapter 7 voluntary petition. The meeting of creditors was initially scheduled for November 2, 2023.

The meeting of creditors has been continued on *nine* occasions. On December 27, 2023, Debtor entered into a stipulation with UST to extend the §§ 707 and 727 deadlines until March 2, 2024.

On March 1, 2024, UST filed a motion to dismiss the case with a 180-day refiling bar. UST asserts that Debtor failed to attend his meeting of creditors on February 22 and 29, 2024.

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CONT... Nathan James Freeman

Chapter 7

DISCUSSION

The Court notes that 11 U.S.C. § 521(a) contains certain duties of a debtor in bankruptcy, including the duty to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3).

A debtor's duty to cooperate includes the duty to appear at the meeting of creditors, and the Court can strictly enforce attendance at these meetings. Local Rule 1017-2(b) provides: "[t]he failure of a chapter 7 debtor to appear at the initial meeting of creditors and any continuance thereof is cause for dismissal of the case." Therefore, pursuant to Local Rule 1017-2(b), and for the reasons stated in UST's motion, dismissal of the case is warranted.

The court notes that it empowered to impose a refiling bar under 11 U.S.C. § 349(a). As COLLIER notes, courts' analysis of this section is somewhat confused due to confounding "dismissal with prejudice" with "dismissal with injunction against future filings." COLLIER ON BANKRUPTCY ¶ 349.02[3]. At a minimum, however, the Court is empowered to impose a refiling bar under § 349(a) for the reasons set forth in § 109(g) --- including "failure to appear before the court in proper prosecution of the case" and "failure of the debtor to abide by orders of the court."

Here, multiple failures to attend the meeting of creditors satisfies the § 349(a) and § 109(g) standard for dismissal with a re-filing bar. *See, e.g., In re Wen Hua Xu*, 386 B.R. 451, 456-57 (Bankr. S.D.N.Y. 2008) (failure to attend meeting of creditors is both failure to abide by orders of the court and failure to appear before the court in proper prosecution of the case); *see also In re Montgomery*, 37 F.3d 413 (8th Cir. 1994) ("Failure to attend a creditors meeting is a failure to obey a court order within the meaning of section 109(g)(1).").

Moreover, Debtor's failure to oppose is deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

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CONT... Nathan James Freeman

Chapter 7

TENTATIVE RULING

The Court is inclined to either GRANT the motion to the extent of imposing a 180-day re-filing bar, and otherwise DENY the contingent motion as MOOT.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Nathan James Freeman

Represented By
Neil R Hedtke

Movant(s):

United States Trustee (RS)

Represented By
Cameron C Ridley

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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11:00 AM

6:23-14749 Hussein Abd Wehbe

Chapter 7

#3.00 CONT. Order to Show Cause why Rajiv Jain should not be held in contempt for violating the Court's orders

From: 2/28/24

EH__

[Tele. appr. Abram Feuerstein, rep. Office of The United States Trustee]

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hussein Abd Wehbe

Represented By
Rajiv Jain

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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11:00 AM

6:22-14723 Better Nutritionals, LLC

Chapter 7

#4.00 CONT. Motion of Impact Networking, LLC For Allowance and Payment of Chapter 11 Administrative Priority Claim; \$108419.99 (Motion filed 9/28/23)

From: 11/1/23, 1/31/24

EH__

Docket 626

***** VACATED *** REASON: CONTINUED TO 5/29/24 BY ORDER
ENTERED 3/13/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Better Nutritionals, LLC

Represented By
John N Tedford IV
Aaron E. DE Leest
Danielle R Gabai

Movant(s):

Impact Networking, LLC

Represented By
David W. Meadows

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Michael A Sweet
Daniel A Lev

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11:00 AM

6:22-14723 Better Nutritionals, LLC

Chapter 7

#5.00 CONT. Motion By Goli Nutrition Inc For Allowance Of Chapter 11 Administrative Priority And Super priority Claims
(Motion filed 9/28/23)

From: 11/1/23, 1/31/24

EH__

Docket 633

***** VACATED *** REASON: CONTINUED TO 5/29/24 BY ORDER
ENTERED 3/7/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Better Nutritionals, LLC

Represented By
John N Tedford IV
Aaron E. DE Leest
Danielle R Gabai

Movant(s):

Goli Nutrition, Inc.

Represented By
Eve H. Karasik
Joseph M Rothberg
Daniel H Reiss
Todd M Arnold
Carmela Pagay

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang

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CONT... Better Nutritionals, LLC

Chapter 7

Michael A Sweet
Daniel A Lev

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11:00 AM

6:22-14723 Better Nutritionals, LLC

Chapter 7

#6.00 CONT. Notice of Motion and Motion of Allied Universal Security Services for Allowance of an Administrative Priority Expense Claim; \$78,525.46 (Motion filed 9/29/23)

From: 11/1/23/ 1/31/24

EH__

Docket 646

***** VACATED *** REASON: CONTINUED TO 5/29/24 BY ORDER
ENTERED 3/22/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Better Nutritionals, LLC

Represented By
John N Tedford IV
Aaron E. DE Leest
Danielle R Gabai

Movant(s):

Allied Universal Security Services

Represented By
Jamie L Edmonson

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Michael A Sweet
Daniel A Lev

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11:00 AM

6:22-14723 Better Nutritionals, LLC

Chapter 7

#7.00 Alpha Packaging, Inc.'s Motion for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. 503
(Motion filed 11/9/23)

From: 2/8/24

EH__

Docket 782

***** VACATED *** REASON: CONTINUED TO 5/29/24 BY ORDER
ENTERED 3/27/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Better Nutritionals, LLC

Represented By
John N Tedford IV
Aaron E. DE Leest
Danielle R Gabai

Movant(s):

Alpha Packaging, Inc.

Represented By
Claudia Coleman

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Michael A Sweet
Daniel A Lev

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6:22-14723 Better Nutritionals, LLC

Chapter 7

#8.00 Application to Employ Greenspoon Marder LLP as Special Avoidance Power
Litigation Counsel
(Application filed 2/13/24)

[Placed on calendar by order entered 3/8/24]

EH__

**[Tele. appr. Daniel A. Lev, Proposed Special Avoidance Power Litigation
Counsel for Larry D. Simons Chapter 7 Trustee for the Estate of Debtor
Better Nutritionals LLC]**

[Tele. appr. Tinho Mang rep. Larry D. Simons Chapter 7 Trustee]

[Tele. appr. Larry D. Simons Chapter 7 Trustee]

Docket 911

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Better Nutritionals, LLC

Represented By
John N Tedford IV
Aaron E. DE Leest
Danielle R Gabai

Movant(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Michael A Sweet
Daniel A Lev

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CONT... Better Nutritionals, LLC

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Michael A Sweet
Daniel A Lev

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2:00 PM

6:14-22067 Gary S. Hann

Chapter 7

Adv#: 6:21-01018 Hann v. Sakaya et al

#9.00 Pre-Trial Conference re: Complaint by Gary S Hann against Francis P Sakaya , Jacqueline Mbville, Babalao Investors LLC, Collis Griffor & Hendra PC , Stuart M Collis. (\$350.00 Fee Not Required). (Attachments: #(1) Part 2 of 4 #(2) Part 3 of 4 #(3) Part 4 of 4) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) ,(21 (Validity, priority or extent of lien or other interest in property)) ,(72 (Injunctive relief - other)) ,(91 (Declaratory judgment))

[Grants motion dismissing counts one through two and seven through ten, without leave to amend]

[Denied as to counts four and five]

[Granted as to counts three and six, with leave to amend]

From: 4/20/21,6/8/21,1/18/22, 4/6/22, 5/4/22, 6/1/22, 8/17/22, 10/26/22, 1/18/23, 3/29/23, 8/16/23, 9/6/23, 9/27/23, 12/13/23

[HOLDING DATE]

EH__

[Tele. appr. Defendant, Jacqueline Mbville Sakaya Pro per]

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary S. Hann

Pro Se

Defendant(s):

Francis P Sakaya

Represented By
Sanaz Sarah Bereliani

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CONT... **Gary S. Hann**
Jacqueline Mbville

Chapter 7

Represented By
Sanaz Sarah Bereliani

Babalao Investors LLC

Represented By
Sanaz Sarah Bereliani

Plaintiff(s):

Gary S Hann

Pro Se

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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2:00 PM

6:23-11535 Okaysou Corporation

Chapter 7

Adv#: 6:23-01111 Okaysou Corporation v. Souxing Information Technology Company

#10.00 CONT. Status Conference re Adversary case 6:23-ap-01111. Complaint by Okaysou Corporation against Souxing Information Technology Company (Chongqing) Co., Ltd., Fudong Cao. (\$350.00 Fee Charge To Estate). to Avoid and Recover Preferential and Fraudulent Transfers, For Imposition of Constructive and resulting Trusts; Turnover and Unjust Enrichment (Attachments: # 1 Adversary Cover Sheet # 2 Summons) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)), (12 (Recovery of money/property - 547 preference)), (13 (Recovery of money/property - 548 fraudulent transfer))

From: 1/10/24

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Okaysou Corporation

Represented By
Vahe Khojayan

Defendant(s):

Souxing Information Technology

Pro Se

Fudong Cao

Pro Se

Plaintiff(s):

Okaysou Corporation

Represented By
Vahe Khojayan

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CONT... Okaysou Corporation

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Pro Se

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2:00 PM

6:23-12911 Shalena Denise Elise Armstrong

Chapter 7

Adv#: 6:23-01099 Red Target LLC dba SCJ Commercial Financial Servic v. Armstrong

#11.00 Plaintiff's Motion for Default Judgment
(Motion filed 3/1/24)

EH__

[Tele. appr. S. Christopher Yoo, rep. Creditor Red Target LLC]

Docket 17

Tentative Ruling:

3/28/2024

BACKGROUND

On June 30, 2023, Shalena Armstrong ("Debtor") filed a Chapter 7 voluntary petition. On October 10, 2023, Debtor received a discharge.

On September 29, 2023, Red Target LLC ("Plaintiff") filed a non-dischargeability adversary proceeding against Debtor. The complaint includes three causes of action: (1) § 523(a)(2)(A); (2) § 523(a)(4); and (3) § 523(a)(6). On November 22, 2023, the clerk entered Debtor's default.

On March 1, 2024, Plaintiff filed a motion for default judgment. Plaintiff asserts that Debtor --- through an LLC --- purchased seven trailers and two trucks (collectively, the "Vehicles") and entered into five equipment finance agreements that were personally guaranteed. Plaintiff alleges that Debtor sub-leased the Vehicles, stopped making payments to Plaintiff, and has not providing the identity of the individuals in possession of the Vehicles or the location of the Vehicles. The motion for default

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CONT... Shalena Denise Elise Armstrong

Chapter 7

judgment indicates that Debtor has asserted that one of the Vehicles was stolen and another was involved in an accident and was towed.

DISCUSSION

A. Entry of Default

FED. R. CIV. P. Rule 55 states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Local Rule 7055-1 provides further requirements relating to a motion for entry of default judgment, and those requirements have been substantially satisfied here.

B. Motion for Default Judgment

1. Proper Service of Summons and Complaint

FED. R. BANKR. P. Rule 7004(b)(1) states, in part:

[S]ervice may be made within the United States by first class mail postage prepaid as follows:

- (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

Here, service appears proper as Debtor was served at 24460 Rimview Road, Moreno

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CONT... Shalena Denise Elise Armstrong

Chapter 7

Valley, CA, 92557, the address listed on the petition as their current mailing address.

2. Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); *see also Almog v. Golden Summit Investors Group, Ltd.*, 2012 WL 12867972 at *4 (C.D. Cal. 2012) ("When reviewing a motion for default judgment, the Court must accept the well-pleaded allegations of the complaint relating to liability as true.").

The complaint includes three causes of action. The first cause of action is 11 U.S.C. § 523(a)(2)(A), which states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –
 - (2) for money, property, services, or an extension, renewal, or refinancing of creditor, to the extent obtained by –
 - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

Here, the motion for default judgment does not clearly specify the specific actions by Debtor that fit within § 523(a)(2)(A). The Court notes that the first financing agreement was entered into by Debtor in July 2019 --- and it appears Debtor did not stop making payments until October 2022. Because: (a) the motion for default judgment does not specify any particular false pretense or false representation; and (b) it does not appear Plaintiff suffered any damage until more than three years after the first agreement was entered into, the Court is reluctant to impute fraud to Debtor with regard to the loan transaction itself.

The second cause of action is § 523(a)(4), which provides that an individual debtor is

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CONT...

Shalena Denise Elise Armstrong

Chapter 7

not entitled to discharge for debt that constitutes "fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Specifically, Plaintiff has correctly characterized the actions of Debtor as embezzlement. The elements of an embezzlement claim under § 523(a)(4) are: "(1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which it was entrusted; and (3) circumstances indicating fraud." *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991) (quoting *In re Hoffman*, 70 B.R. 155, 162 (Bankr. W.D. Ark. 1986)).

Here, Plaintiff has adequately alleged the elements of embezzlement. The Vehicles were --- pursuant to the financing agreements --- rightfully in the possession of Debtor. Plaintiff alleges that Debtor subleased the Vehicles in contravention of the financing agreements. And Debtors failure to cooperate or furnish information regarding the whereabouts of the Vehicles constitutes a circumstance indicating fraud.

The third cause of action is § 523(a)(6) --- willful and malicious injury. Where Plaintiff has already satisfied the elements for embezzlement, Plaintiff need only show "wrongful intent" to succeed on the § 523(a)(6) claim. *See, e.g., In re Thiara*, 285 B.R. 420, 429 (B.A.P. 9th Cir. 2002) ("Even though a conversion occurred, creditor still had to prove that Debtor converted the proceeds with 'wrongful intent.'").

Here the Court has little direct evidence of Debtor's intent, but given: (1) the uncooperativeness in responding to Plaintiff's requests for information; and (2) the failure to participate in this proceeding, the Court concludes that the circumstantial evidence indicates that Debtor acted with wrongful intent in subleasing the Vehicles.

Finally, Debtor has provided detailed statements of accounts supporting the damage amounts specified in the motion for default judgment.

TENTATIVE RULING

The Court is inclined to GRANT the motion as to §523(a)(4) and (6) and DENY the motion as § 523(a)(2)(A).

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CONT... Shalena Denise Elise Armstrong
APPEARANCES REQUIRED.

Chapter 7

Party Information

Debtor(s):

Shalena Denise Elise Armstrong

Represented By
Keith Q Nguyen

Defendant(s):

Shalena Denise Elise Armstrong

Pro Se

Plaintiff(s):

Red Target LLC dba SCJ

Represented By
S Christopher Yoo

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:23-13800 Best Rock Quarry, Inc.

Chapter 11

#12.00 Order to Show Cause why Case Should not be Dismissed or Converted

EH__

Also #13

[Tele. appr. Caroline Djang, Subchapter V Trustee]

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Best Rock Quarry, Inc.

Represented By
Lazaro E Fernandez

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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6:23-13800 Best Rock Quarry, Inc.

Chapter 11

#13.00 CONT. Order (1) Setting Scheduling Hearing and Case Management
Conference And (2) Requiring Status Report

From: 10/3/23, 12/12/23, 2/13/24

EH__

[Tele. appr. Caroline Djang, Subchapter V Trustee]

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Best Rock Quarry, Inc.

Represented By
Lazaro E Fernandez

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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6:23-14734 Joshua Tongco

Chapter 11

Adv#: 6:23-01123 Tongco v. Blue Rock Capital Group et al

#14.00 CONT. Plaintiff's Motion for Default Judgment
(Motion filed 1/24/24)

From: 3/13/24

[Placed on calendar by order entered 2/15/24]

EH__

[Tele. appr. Andy Warshaw, rep. Plaintiff]

[Tele. appr. Martha Warriner, only if Mr. Warshaw is unavailable]

Docket 8

Tentative Ruling:

Party Information

Debtor(s):

Joshua Tongco

Represented By
Andy C Warshaw

Defendant(s):

Blue Rock Capital Group

Pro Se

C T Corporation System

Pro Se

Movant(s):

Joshua Tongco

Represented By
Andy C Warshaw

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CONT... Joshua Tongco

Chapter 11

Plaintiff(s):

Joshua Tongco

Represented By
Andy C Warshaw

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros

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6:23-14734 Joshua Tongco

Chapter 11

#15.00 CONT. Order (1) Setting Scheduling Hearing and Case Management
Conference And (2) Requiring Status Report

From: 11/28/23, 1/16/24, 3/12/24

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 5/14/24 BY ORDER
ENTERED 3/13/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua Tongco

Represented By
Andy C Warshaw

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros