DECLARATION OF D. EDWARD HAYS

I, D. EDWARD HAYS, declare and state as follows:

1. I am an individual over 18 years of age and competent to make this declaration.

2. If called upon to do so, I could and would competently testify as to the facts set forth in this Declaration. The facts set forth below are true of my personal knowledge.

3. I am an attorney at law duly admitted to practice before this Court and all courts of the State of California.

4. I am a partner of the law firm of Marshack Hays Wood LLP, attorneys for Creditors, TOPDEVZ, LLC and TYLER DAVIS, and maintain offices at 870 Roosevelt, Irvine, California 92620.

5. I make this declaration in support of Creditors' opposition ("Opposition") to Debtor Ashkan Rajaee's motion to disqualify Attorney D. Edward Hays for unauthorized representation; conflicts of interest; misconduct ("Motion"), filed on July 11, 2025 as Dk. No. 515.

6. In my 33-year career as an attorney, this Motion is the first time an opposing party has attempted to disqualify (Debtor's Motion to Disqualify filed in one of the appeals in this case is virtually identical to this Motion). I am certified as a bankruptcy law specialist by the State Bar of California and regularly speak at national, statewide, and local bar association programs on a variety of issues including bankruptcy law and ethics.

I declare that the foregoing is true and correct under the penalty of perjury. Executed July 28, 2025.

Dated: July 29, 2025

MARSHACK HAYS WOOD LLP

By: *_/s/ D. Edward Hays_*
D. EDWARD HAYS
ALINA MAMLYUK
Attorneys for Creditors,
TOPDEVZ, LLC and TYLER DAVIS

EXHIBIT 120

Ninth Circuit Case No. 25-8172 DE. 33.1 and 40.1

Ninth Circuit Case No. 25-8172

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United States Court of Appeals

FOR THE NINTH CIRCUIT

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In re: ASHKAN MIRFAKHR RAJAEE AND NASSIM RAJAEE
Debtor,

ASHKAN MIRFAKHR RAJAEE,

Appellant,

v.

CHRISTOPHER R. BARCLAY, CHAPTER 7 TRUSTEE, TOPDEVZ, LLC, TYLER DAVIS

Appellees.

On Appeal from the United States District Court
USDC No. 3:25-cv-00667-RSH-KSC
Assigned to District Judge Robert S. Huie/
Referred to: Magistrate Judge Karen S. Crawford
United States Bankruptcy Court No. 3:24-bk-00617-CL7
Assigned to Chief Judge Christopher B. Latham

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APPELLEES' OPPOSITION IN RESPONSE TO MOTION TO STRIKE

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Attorneys for Appellees, Tyler Davis and TopDevz, LLC

Appellees, Tyler Davis ("Davis") and TopDevz, LLC ("TopDevz" and, together with Davis, "Appellees"), submit this opposition ("Opposition") in response to the so-called "Motion to Strike, or Alternatively to Disregard for Their Truth, Improper Hearsay and Judicial-Notice Factual Assertions in Appellees' Responsive Briefs" ("Motion" or "Motion to Strike") filed by Appellant, Ashkan Rajaee ("Rajae" or "Appellant"), on May 1, 2026, as Dkt. No. 22.

SUMMARY OF OPPOSITION

Rajaee filed the Motion to Strike purportedly to excise from Appellees' brief any mention of facts unfavorable to Rajaee by either labeling these facts "hearsay" or "judicial-notice overreach." At the outset, Rajaee's evidentiary objections with respect to the record on this appeal are untimely because Rajaee failed to make the objection in the bankruptcy court. As such, he has failed to preserve the objection.

Further, the Motion is flawed because Rajaee fails to specify the legal grounds for striking or disregarding each one of what he identifies as a "challenged passage," inappropriately putting the burden on the Appellees to determine whether such passage is challenged under hearsay or judicial notice rules. This Opposition makes the best possible response given the lack of specificity.

On the merits, Rajaee misses the mark in calling statements hearsay when they are, in fact, acts that have legal operative effect. Likewise, Rajaee fails to recognize that documents Appellees requested to be judicially noticed are significant because of their existence and not for the factual findings recited within.

As set forth below, there are no legal grounds to strike any portions of the Appellees' brief. The Motion must be denied.

LEGAL ARGUMENT

I. Rajaee Forfeited Hearsay Objections at the Bankruptcy Court Level

"In order to preserve a hearsay objection, a party must either move to strike the affidavit *or* otherwise lodge an objection with the district court." *Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1003 (9th Cir. 2002) (internal cites omitted). In other words, to preserve an evidentiary objection for appellate review, a party must raise it at the trial level which, in Rajaee's case, would have been at the bankruptcy court. Fed. R. Evid. 103(a)(1): "Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and: (1) if the ruling admits evidence, a party, on the record: (A) timely objects or moves to strike; and (B) states the specific ground, unless it was apparent from the context." Furthermore, "[b]y failing to object to evidence at trial and request a ruling on such an objection, a party waives the right to raise admissibility issues on appeal." *Murrelet v. Pac. Lumber Co.*, 83 F.3d 1060, 1066 (9th Cir. 1996).

Before this Court, Rajaee is appealing the bankruptcy court's denial of his motion for reconsideration. There is nothing in the excerpts of the record (either Rajaee's or the three Appellees') that shows Rajaee raising a hearsay objection at the trial level during adjudication of the reconsideration motion.[1] Rajaee also waived any hearsay objections regarding the subject Arbitration Award which he himself included in its entirety in his excerpts of record, AER-0403 – AER-0496. This Court is not obligated to make evidentiary rulings when the appellant waived them per *Murrelet*.

II. The "Challenged Passages" are Not Hearsay Offered for Truth but to Demonstrate the Legally Operative Effect of Cited Orders

Rajaee incorrectly labels certain portions of Appellees' Brief as hearsay. "Hearsay is 'a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.' Fed R. Evid. 801(c). Out-of-court statements that are offered as evidence of legally operative verbal conduct, however, are not hearsay. They are considered 'verbal acts.'" *United States v. Pang*, 362 F.3d 1187, 1192 (9th Cir. 2004) (citing *Stuart v. UNUM Life Ins. Co. of America*, 217 F.3d 1145, 1154 (9th Cir. 2000) (insurance policy); *United States v. Arteaga*, 117 F.3d 388, 395-98 (9th Cir. 1997) (money wire transfer forms)). Relying on *Pang*, the Ninth Circuit ruled that a "prior judgment is not hearsay […] to the extent that it is offered as legally operative verbal conduct that determined the rights and duties of the parties." *United States v. Boulware*, 384 F.3d 794, 806 (9th Cir. 2004).

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[1] In the reply to oppositions to the reconsideration motion filed in the bankruptcy court, Rajaee twice mentioned *in passim* that Arbitration Award findings are hearsay but did not lodge any objection with the bankruptcy court. This reply is not a part of Rajaee's or Appellees' excerpts of record filed with this Court.

"A further point is that a judgment, insofar as it fixes property rights, should be admissible as the official record of such rights, just like other documents of title, on which see Fed. R. Evid. 803(14); *Sanitary District v. U.S. Fidelity & Guaranty Co.*, 392 Ill. 602, 611-12, 65 N.E.2d 364, 368 (1946). That was the use made of it by Greycas and the district judge: the state court judgment fixed Greycas's rights, equivalent to title, in Crawford's farm machinery. In addition, there is always the catch-all exception to the hearsay rule to fall back on. See Fed. R. Evid. 803(24). "A [hearsay] statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness" is admissible, subject to conditions that in fact are satisfied here."

Greycas, Inc. v. Proud, 826 F.2d 1560, 1567 (7th Cir. 1987) cited with approval in *United States v. Boulware*, 384 F.3d 794, 806 (9th Cir. 2004).

"Thus, *Perry*[2] supports the proposition that a previous judgment is admissible under Rule 803(14) to show the ownership of assets. To the extent that Boulware offered the judgment simply for the purpose of establishing HIE's ownership of the funds in 1997 and Lee's legal obligation to return those funds, he was offering the judgment not for the truth of the matters asserted in the judgment, but rather to establish

[2] *United States v. Perry*, 857 F.2d 1346 (9th Cir. 1988).

the judgment's legal effect. As this is a nonhearsay purpose, we see no need to resort to the hearsay exception set forth in Rule 803(14)."

United States v. Boulware, 384 F.3d 794, 806-07 (9th Cir. 2004)

The Arbitration Award[3] and the Judgment confirming the Arbitration Award entered by the Superior Court for the State of California, County of San Diego,[4] are arguably the most important documents in the litigation history between Rajaee/Appellees ***precisely*** because they adjudicated rights and changed the legal status of Rajaee and Appellees. The Arbitrator's Award is the classic "legally operative verbal conduct" in that the written statements made by the Arbitrator in her final award "determined the rights and duties of the parties," per *Boulware*. Especially upon the confirmation of the Arbitration Award in San Diego Superior Court, the Arbitration Award indisputably became legally operative verbal conduct which, by definition, is not hearsay. A party that prevails by obtaining a judgment adjudicating rights does not have to re-prove its case to again establish such rights.

Every "challenged passage" that Rajaee seeks to strike in the Motion is included to show its legally operative effect:[5]

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[3] Rajaee included the Arbitration Award in his own excerpts of record.
[4] Capitalized terms that are not defined in this Opposition have the same definition as they do in Appellees' Brief, Dkt. No. 14.
[5] Rajaee does not label the "challenged passages" with numbers or any other easily identifiable markers, so the Appellees will refer to the by the first column identifier from Rajaee's Motion.

"DE 14.1, p. 18" – Arbitrator's determination of ownership percentage is legally operative verbal conduct that determined ownership rights of the parties. This is not hearsay per *Boulware*.

"DE 14.1, p. 19" – Rajaee is not referencing any specific out-of-court statements in this "challenged passage" that could be analyzed as hearsay. To the extent that Rajaee is challenging the inclusion of Appellees' description of the Arbitration Confirmation Action, it is included to refute any allegations of extrinsic fraud. Since Appellees argue that the *Rooker-Feldman* doctrine prevents federal appellate review of the State Court Judgment, Appellees logically must account for any possible exceptions to the doctrine. Because extrinsic fraud is one such exception, Appellees include the fact that Rajaee "had full opportunity to be heard during the Arbitration Confirmation Action" as evidence of the fact that Rajaee was not precluded to present his case by any instances of (nonexistent) extrinsic fraud.

"DE 14.1, p. 22" – Appellees included the Arbitrator's determination that Davis had the right to voluntarily dissolve TopDevz as its majority owner because it is legally operative verbal conduct. This is not hearsay per *Boulware*.

"DE 14.1, p. 22" – Appellees included the Arbitrator's Order No. 4 because it is legally operative verbal conduct that affected the rights of the parties. This is not hearsay per *Boulware*.

"DE 14.1, p. 23" – Appellees included the San Diego Superior Court's denial of Rajaee's request for a TRO as legally operative verbal conduct. Per *Boulware*, a