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TOPDEVZ, LLC and TYLER DAVIS
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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO

10 In re
11 ASHKAN MIRFAKHR RAJAEI and NASSIM
12 RAJAEI,
13 Debtors.

Case No. 24-00617-CL11

Chapter 11

OPPOSITION FILED BY CREDITORS,
TYLER DAVIS AND TOPDEVZ, LLC, TO
TRUSTEE'S PROPOSED ABANDONMENT
OF THE ESTATE'S INTERESTS IN THE
ARBITRATION CONFIRMATION
APPEAL, THE ARBITRATION, THE
ARBITRATION CONFIRMATION
ACTION, THE ARBITRATION-RELATED
ACTIONS, AND ALSO THE DEBTORS
LLC MEMBER INTEREST IN TOPDEVZ
[DK. NO. 197]

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19 Date: To Be Set By Separate Notice
Time: To Be Set By Separate Notice
Place: Dept. 1, Room 218
325 West F Street
San Diego, CA 92101
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21 Judge: Hon. Christopher B. Latham
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23 TO THE HONORABLE CHIEF JUDGE CHRISTOPHER B. LATHAM, UNITED STATES
24 BANKRUPTCY COURT JUDGE, THE DEBTORS AND THEIR COUNSEL OF RECORD, THE
25 OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED PARTIES:

26 Creditors, TOPDEVZ, LLC ("TopDevz" / "LLC") and Tyler Davis ("Davis," and together
27 with TopDevz, "Creditors" / "Judgment Creditors"), file this Opposition ("Opposition") in response
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to Chapter 7 Trustee’s Motion for Hearing Re: Trustee’s Proposed Abandonment of the Estate’s Interests in the Arbitration Confirmation Appeal, the Arbitration, the Arbitration Confirmation Action, the Arbitration-Related Actions, and also the Debtors LLC Member Interest in TopDevz, filed by Christopher R. Barclay (“Trustee”) on February 6, 2025, as Dk. No. 197 (“Motion”).

1. Summary of Opposition

A trustee may abandon property that is burdensome or of inconsequential value to a bankruptcy estate. In this case, the Trustee proposes to abandon the estate’s interest in the Debtor’s pending appeal of the state court’s confirmation of an arbitration award and related claims. But, the Creditors offer to purchase or settle the subject claims for \$80,000 (which is more than the \$50,000 that the Trustee estimates will cost to complete the appeal). Good cause thus exists for the Trustee to withdraw the motion to abandon or, in the alternative, for the Court to deny abandonment.

2. Pertinent Factual Background

In this Opposition, Creditors fully incorporate the background facts included by the Trustee in the Motion and incorporate the Trustee’s definitions and add the following facts.

Upon the filing of the bankruptcy, the Debtor’s defensive appellate rights, including the claims sought to be abandoned, consisting of the Arbitration Confirmation Action, the Arbitration Confirmation Appeal, and Arbitration-Related Actions (“Appellate Rights”), became property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a). Courts uniformly agree that defensive appellate rights are property of a bankruptcy estate that can be sold including to the judgment creditor. The cases generally arise under situations similar to this case. Specifically, the Creditors find value in purchasing a debtor’s appellate rights to minimize their risks and bankruptcy estates generate funds from which to pay creditors by monetizing these property rights. *See, Martin v. Monumental Life Ins. Co.*, 240 F.3d 223, 232 (3rd Cir. 2001); *Fridman v. Anderson (In re Fridman)*, 2016 Bankr. Lexis 2608 (9th Cir. BAP 2016); *McCarthy v. Goldman (In re McCarthy)*, 2008 Lexis 4688, (9th Cir. BAP 2008), *aff’d by McCarthy v. Goldman (In re McCarthy)*, 320 F. App’x 518 (9th Cir. 2009); *Mozer v. Goldman (In re Mozer)*, 302 B.R. 892, 896 (C.D. Cal. 2003); *Croft v. Lowry (In re Croft)*, 737 F.3d 372 (5th Cir. 2013).

1 The Debtor's membership interest in TopDevz, LLC likewise become property of the estate
2 upon the filing of the voluntary petition.

3 On May 9, 2024, the Trustee was appointed and became the sole and exclusive representative
4 of the Debtors' bankruptcy estate and all of its property pursuant to 11 U.S.C. § 323.

5 On August 9, 2024, Creditors filed a non-dischargeability complaint against Debtors,
6 initiating adversary proceeding known as *Davis et al v. Rajae*, Case No. 3:24-ap-90066-CL
7 ("Adversary"). The Adversary includes claims to deny discharge 11 U.S.C. § 727 (a)(2) for
8 fraudulent transfers and concealment, 11 U.S.C. § 727 (a)(4) for false oaths, and for 11 U.S.C. § 727
9 (a)(5) for failure to explain loss of assets.

10 On February 6, 2025, the Trustee filed the Motion containing the requisite Notice of
11 Proposed Abandonment of Property, seeking to abandon the estate's interest in the Arbitration
12 Confirmation Appeal, the Arbitration, the Arbitration Confirmation Action, the Arbitration-Related
13 Actions, and the Debtors' LLC member interest in TopDevz ("Proposed Property to Abandon").
14 Dk. No. 197. In the Motion, the Trustee states that "the Trustee expects that Rajae will aggressively
15 pursue the Arbitration Confirmation Appeal post-abandonment."

16 On February 20, 2025, Debtors filed Application for Order Providing for Continued Meeting
17 of Creditors to Be Held in Private and Under Seal ("Request for Private 341(a)"). Dk. No. 210. The
18 Request for Private 341(a) was filed with Debtor's declaration in which Debtor declared, *inter alia*,
19 that in 2022, he signed over Debtors' power of attorney to persons ("Alleged Con Men") whom he
20 describes as having defrauded him and his wife in the amount of "nearly \$2 million." The Debtors,
21 however, fail to provide any documentation evidencing the alleged loss or deficiency of assets to
22 meet their liabilities. See, 11 U.S.C. § 727(a)(5). Given the lack of disclosed assets or their proven
23 disposition, a sale of the Proposed Property to Abandon is in the best interests of the Estate.

3. Legal Argument

a. The Trustee is now presented with an \$80,000 offer from Creditors to purchase the Appellate Rights rendering the property neither burdensome nor of inconsequential value

Creditors concur in the Trustee's cited legal authority that abandonment may not be approved unless the Court finds that the property proposed to be abandoned is either "(1) burdensome to the estate" or "(2) of inconsequential value and inconsequential benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). Creditors also acknowledge that a party opposing abandonment must show some likely benefit to the estate, not mere speculation about possible scenarios in which there might be a benefit to the estate. *In re Moore* (Bankr.D.N.J. Sep. 25, 2015, No. 15-10174 VFP) 2015 Bankr. LEXIS 3260, at *1.).

In his Motion, the Trustee notes his apprehension about pursuing the appeal since he had been advised by "prospective appellate counsel [...] that it will likely take more than a year and cost \$50,000 to complete the appeal." But, if the Trustee withdraws or if the Court denies abandonment, then the \$80,000 offered to purchase the claims and interests creates a \$130,000 swing in favor of the estate. Instead of the Trustee expending \$50,000 to pursue the appeal, the estate will instead receive an \$80,000 cash infusion and not have to pursue it.

Further, selling Appellate Rights to Creditors allows the Trustee not to deal with any aspects of pursuing the appeal which the Trustee argues is burdensome. The Trustee acknowledges that "the likelihood of the Arbitration Confirmation Appeal is low." Instead of carving out any of estate resources to pursue a low-prospect appeal, the Trustee can sell it to Creditors. The \$80,000 offered provides a significant, tangible benefit to the Estate which easily clears the bar of proving a "likely benefit."

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1 **4. Conclusion**

2 For all the foregoing reasons, the Creditors respectfully request that the Trustee either
3 withdraw the Motion to Abandon or, in the alternative, that the Court deny it.

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6 Dated: February 20, 2025

MARSHACK HAYS WOOD LLP

/s/ D. Edward Hays

7 By: _____
8 D. EDWARD HAYS
9 ALINA MAMLYUK
10 Attorneys for Creditors,
11 TOPDEVZ, LLC and TYLER DAVIS
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case. My business address is: 870 Roosevelt, Irvine, CA 92620. I am not a party to this action.

A true and correct copy of the foregoing document entitled: **OPPOSITION FILED BY CREDITORS, TYLER DAVIS AND TOPDEVZ, LLC, TO TRUSTEE'S PROPOSED ABANDONMENT OF THE ESTATE'S INTERESTS IN THE ARBITRATION CONFIRMATION APPEAL, THE ARBITRATION, THE ARBITRATION CONFIRMATION ACTION, THE ARBITRATION-RELATED ACTIONS, AND ALSO THE DEBTORS LLC MEMBER INTEREST IN TOPDEVZ [DK. NO. 197]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 20, 2025**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On **February 20, 2025**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

DEBTOR –

ASHKAN MIRFAKHR RAJAE
1968 S. COAST HWY, #3550
LAGUNA BEACH, CA 92651

JOINT DEBTOR –

NASSIM RAJAE
1968 S. COAST HWY, #3550
LAGUNA BEACH, CA 92651

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 20, 2025
Date

Layla Buchanan
Printed Name

/s/ Layla Buchanan
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): CONTINUED:

- **CHAPTER 7 TRUSTEE:** Christopher R. Barclay admin@crb7trustee.com, mlcunanan@crb7trustee.com; QCRBARCLAY2@ecf.axosfs.com
ATTORNEY FOR CITIBANK, N.A.: Kellie Madeleine Brown kelbrown@raslg.com
- **ATTORNEY FOR DEBTOR ASHKAN MIRFAKHR RAJAEI and JOINT DEBTOR NASSIM RAJAEI:** Allan Cate allan@acatelaw.com
- **INTERESTED PARTY COURTESY NEF:** Leslie A. Cohen leslie@lesliecohenlaw.com, jaime@lesliecohenlaw.com; olivia@lesliecohenlaw.com
- **ATTORNEY FOR CLAIMANT CITIBANK, N.A.:** Sean C Ferry sferry@raslg.com, sean.ferry7@ecf.courtdrive.com
- **ATTORNEY FOR CHAPTER 7 TRUSTEE:** Jesse S. Finlayson jfinlayson@ftrfirm.com, hkader@ftrfirm.com
- **ATTORNEY FOR CREDITOR, DEFENDANT, AND PLAINTIFF TOPDEVZ LLC and CREDITOR, DEFENDANT, AND PLAINTIFF TYLER DAVIS:** David Edward Hays ehays@marshackhays.com, cmendoza@marshackhays.com; ehays@marshackhays.com; alinares@ecf.courtdrive.com
- **ATTORNEY FOR DEBTOR ASHKAN MIRFAKHR RAJAEI and JOINT DEBTOR NASSIM RAJAEI: Donald Reid** don@blc-sd.com, 5969661420@filings.docketbird.com
- **ATTORNEY FOR US TRUSTEE:** Elvina Rofael elvina.rofael@usdoj.gov, Tiffany.L.Carroll@usdoj.gov; USTP.Region15@usdoj.gov
- **US TRUSTEE:** United States Trustee ustp.region15@usdoj.gov

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