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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:

VIDANGEL, INC.,

Debtor.

Case No. 17-29073

Chapter 11

Judge Kevin R. Anderson

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTOR TO MAINTAIN EXISTING
INSURANCE POLICIES AND PAY ALL POLICY
PREMIUMS ARISING THEREUNDER**

VidAngel, Inc., the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**VidAngel**”) hereby moves the Court (the “**Motion**”) under sections 105, 363, and 364 of Title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) for entry of interim and final orders (the “**Interim Order**” and “**Final Order**,” respectively) authorizing but not requiring the Debtor to maintain existing insurance policies and pay in the ordinary course of business all policy premiums for the policies set forth in Exhibit A hereto (collectively, the “**Policies**”). This Motion is supported by the arguments and authorities set forth below, the *Declaration of Patrick Reilly in Support of the Debtor’s Chapter 11 Petition and Requests for First-Day Relief* (the

“**First-Day Declaration**”), and the entire record before the Court in this Chapter 11 case (this “**Case**”).

I.
SUMMARY OF RELIEF REQUESTED

By this Motion, the Debtor requests entry of interim and final orders in the form attached as Exhibit B and Exhibit C hereto, respectively, authorizing, but not directing, the Debtor to (a) pay or honor obligations owed on account of its pre-petition insurance policies, (b) continue to maintain and administer its pre-petition insurance policies and revise, extend, renew, supplement or replace such policies, as needed, and (c) pay or honor pre-petition obligations outstanding on account of the pre-petition insurance policies related thereto, if any.

The statutory predicates for the relief sought herein are Sections 105, and 363 of the Bankruptcy Code and Bankruptcy Rule 6003.

II.
JURISDICTION

This Court has jurisdiction to consider the relief requested in this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b) and venue is proper in the District of Utah under 28 U.S.C. §§ 1408 and 1409.

III.
RELEVANT BACKGROUND

A. General.

1. On the date hereof (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under the Bankruptcy Code. The Debtor continues in possession of its properties and is operating and managing its businesses as a debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and a creditors’ committee has not yet been appointed in this Case.

2. The Debtor is the worldwide leader in video filtering technology. The Debtor's services allow its subscribers to filter potentially objectionable content (such as profanity, nudity, and violence) in motion pictures (including television shows) and stream such content for its subscribers' private viewing. The Debtor is also an original content provider, and it provides a streaming service to view the content it produces. The Debtor's original comedy series, Dry Bar Comedy, has had more than 16 million minutes viewed in the 7 days prior to the Petition Date. The Debtor's services give subscribers and their families choice over the content they view and share with their families.

3. From late 2014 through late December 2016, VidAngel used a purchase model to provide video to its customers (the "**Disc Ownership Model**"). Under the Disc Ownership Model, VidAngel purchased DVDs and Blu-ray discs and sold them to its customers. VidAngel would decrypt the contents of the purchased discs and stream the content to the owner of such discs, filtered as each customer individually requested. VidAngel's proprietary technology enabled (and required) users to filter the video for various types of potentially objectionable content, which were silenced or deleted when the video was streamed. Once purchased, a customer could opt to sell the video disc back to VidAngel, or keep the actual physical disc, which VidAngel would ship to purchasers, on request, or store for the customer in a secure vault.

4. VidAngel's Disc Ownership Model was popular and growing, with more than 1 million viewers as of December 2016. However, in June 2016, Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment Inc. (the "**Studios**") sued VidAngel in the United States District Court for the Central District of California, Case No. 2:16-cv-04109-AB-PLA (the "**Copyright Action**"), for copyright infringement of approximately 80 of the Studios' copyrighted works. The Studios alleged that VidAngel's decryption of its works was a technical violation of the Digital Millennium

Copyright Act (“DMCA”), 17 U.S.C. § 1201(a), and that VidAngel’s filtering and streaming violated their exclusive rights to make copies of and publicly perform their works in violation of 17 U.S.C. § 106. On December 12, 2016, the District Court granted the Studios’ Motion for a Preliminary Injunction. VidAngel complied with the preliminary injunction, shutting down VidAngel’s and its customers’ use of the Disc Purchase Model. The Studios have amended their complaint to add additional plaintiffs and allege the infringements of additional motion pictures before pursuing the Copyright Action to a judgment. The Studios rejected VidAngel’s Statutory Offer to Allow the Entry of Judgment against it.

5. Six months after the issuance of the preliminary injunction, VidAngel launched a new streaming-based service (the “**Stream-Based Model**”), which avoids any decryption of the Studios’ copyrighted works, and does not involve any physical video discs. Subscribers who use the Stream-Based Model select video content from third-party services such as Amazon, Netflix, and HBO using their own accounts with those third-party streaming services.¹ Using VidAngel’s proprietary technology, subscribers can elect to have VidAngel remove or silence various types of potentially objectionable content when they view the selected video.

6. To ensure that the new Stream-Based Model does not violate the any provision of the Copyright Act, VidAngel initiated a declaratory relief action in the United States District Court for the District of Utah, Case No. 2:17-cv-00989-EJF (the “**Declaratory Relief Action**”), and named various copyright owners whose copyrighted works might be streamed and filtered. The Declaratory Relief Action is in its early stages, and none of the defendants have answered.

7. At this time, the Debtor requires the breathing space of the Automatic Stay of section 362(a) of the Bankruptcy Code after the disruption of its previous business and to reorganize around the new Stream-Based Model. The Studios are pressing forward with the

¹ Users must maintain and pay the third-party content providers directly.

preliminary injunction in the California District Court, attempting to apply it to enjoin VidAngel's new Stream-Based Model. The Declaratory Relief Action is in its early stages, and the Utah District Court needs an opportunity to consider the issues and confirm that the Stream-Based Model does not violate any rights of motion picture copyright owners. Further, the Stream-Based Model, which is profitable, will provide sufficient revenue to enable the Debtor to reorganize its business and pay its creditors.

B. Facts Specific to the Motion.

8. In the ordinary course of the Debtor's business, the Debtor maintains the Policies providing coverage for, among other things, general commercial liability, commercial auto, workers compensation, property, management and professional liability, and directors & officers liability, all set forth in Exhibit A hereto. These Policies are essential to preservation of the Debtor's business, properties, and assets, and, in many cases, such insurance coverages are required by regulations, laws, contracts, and the United States Trustee Operating Guidelines and Reporting Requirements for Chapter 11 Cases (the "**U.S. Trustee Guidelines**").

9. The Debtor purchases its insurance products directly, and so does not pay brokers' fees.

10. The Debtor believes it is in the best interest of its estate to permit the Debtor to honor its obligations under its current Policies. Any other alternative would likely require considerable additional cash expenditures and would be detrimental to the Debtor's effort to preserve and maximize the value of its estate.

IV.
ARGUMENTS & AUTHORITIES

A. Section 363 of the Bankruptcy Code Authorizes the Debtor to Maintain Insurance Policies in the Ordinary Course of Business.

Continuing pre-petition insurance practices is continuing the Debtor’s “ordinary course of business” and, therefore, should not require Court approval. Nevertheless, to the extent doing so could be viewed as a use of property outside the ordinary course of business or payment of a pre-petition claim, however, Section 363 of the Bankruptcy Code authorizes the debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). “The touchstone of ‘ordinariness’ is . . . the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business. So long as the transactions conducted are consistent with these expectations, creditors have no right to notice and hearing” *In re James A. Phillips, Inc.*, 29 B.R. 391, 394 (S.D.N.Y. 1983). *See also In re Husting Land & Dev., Inc.*, 255 B.R. 772, 779-80 (Bankr. D. Utah 2000), *aff’d*, 274 B.R. 906 (D. Utah 2002) (concluding that the test set forth in *Phillips* is “the appropriate legal standard to apply in determining whether [the] debt owed . . . was incurred in the ordinary course of business”). “The aim of the ordinary-course standard under § 364(a) is to determine whether a postpetition transaction is so ‘ordinary’ that creditors, to whom the debtor owes fiduciary duties need not receive notice of its existence.” *In re C.W. Min. Co.*, 798 F.3d 983, 988 n.3 (10th Cir. 2015) (citation omitted).

Maintaining the Policies is necessary to preserve the Debtor’s estate. Failure to maintain the Policies could harm the Debtor’s estate in several ways. Specifically, under their respective agreements, certain insurers may have the ability to terminate the Policies. Moreover, the Debtor is required to maintain insurance coverage during this Case. *See United States Trustee Manual*, § 3-3.2.3. From an administrative standpoint, it would be extremely difficult for the Debtor to

secure replacement insurance coverage in the post-petition period if the Policies are allowed to lapse. Termination of coverage would shift risk of loss in the event of casualty, natural disaster, or other unforeseen events onto the Debtor's estate's stakeholders, including members, vendors, customers, and employees. The foregoing happenstance would have a devastating impact on the Debtor's ability to operate its businesses and maximize its estate for the benefit of its stakeholders. In light of the foregoing, the continued payment on the Policies and any obligations related thereto is necessary to maintain and preserve the Debtor's business operations.

Moreover, not only are some of the Policies required by the various regulations, laws, and contracts that govern the Debtor's business, but also Section 1112(b)(4)(C) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public," is "cause" for mandatory conversion or dismissal of a Chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). The U.S. Trustee Guidelines further require the Debtor to maintain appropriate insurance coverage for all estate property. Accordingly, the Debtor submits that the use of estate funds to continue and maintain the Policies and to pay the insurance obligations related thereto in the ordinary course of business and consistent with past practice, is not only appropriate under the circumstances, but also is authorized and required by the Bankruptcy Code.

B. The Relief Requested Herein Should Be Granted Pursuant to Bankruptcy Code Section 105(a) and the Doctrine of Necessity.

To the extent amounts are outstanding as of the Petition Date under the Policies, arising from the pre-petition period (which the Debtor believes is not the case), the Court may nonetheless authorize payment of such pre-petition claims under Section 105(a) of the Bankruptcy Code. Section 105(a) empowers the bankruptcy court to "issue any order, process,

or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Courts have consistently held that Section 105(a) authorizes the bankruptcy court to exercise its broad grant of equitable powers to permit payment of pre-petition obligations. *See United States v. Energy Resources*, 495 U.S. 545, 549 (1990) (holding that Section 105(a) confers broad powers that are consistent with the “traditional understanding” that bankruptcy courts are courts of equity); *In re Richards*, 994 F.2d 763, 765 (10th Cir. 1993) (recognizing “the ‘supplementary equitable powers’ granted bankruptcy courts under 11 U.S.C. § 105(a)”); *In re Gurney*, 192 B.R. 529, 537 (B.A.P. 9th Cir. 1996).

In some instances, courts have labeled their equitable power to satisfy pre-petition claims under Section 105(a) as the “necessity of payment” doctrine. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) (citing *Miltenberger v. Logansport, C. & S. W. R. Co.*, 106 U.S. 286 (1882)). Based on the bankruptcy courts’ equitable powers, the “doctrine of necessity” principle has been explained as “permit[ting] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid.” *In re Penn Central Transportation Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972).

As noted previously, maintaining the Policies is necessary to preserve the Debtor’s estate. Again, not only are some of the Policies required by the various regulations, laws and contracts that govern the Debtor’s business, but also Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public,” is “cause” for mandatory conversion or dismissal of a Chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Accordingly, the Debtor submits that the use of estate funds to continue and maintain the Policies is in the best interests of the estate and, as such, it is within the appropriate use of the Court’s equitable power to satisfy pre-petition claims to grant this Motion.

Since the Debtor is current (within one billing cycle) on its payment obligations with respect to the premiums on all Policies, the Debtor believes that the pre-Petition Date portion of any payments authorized as a result of this Motion should be relatively minor, especially compared to the size of the Debtor's operations and the potential liability exposure to the Debtor absent insurance coverage. Based upon the foregoing, the relief requested herein is justified.

Relief similar to that requested in this Motion has been granted in comparable Chapter 11 cases. See *In re Naartjie Custom Kids, Inc.*, Case No. 14-29666 (Bankr. D. Utah, September 18, 2014) [Docket No. 62]; *In re Marion Energy*, Case No. 14-31632 (Bankr. D. Utah March 24, 2016); *In re Electric Trans. Engineering Corp.*, Case No. 2:13-bk-16126-MCW (Bankr. D. Ariz. October 3, 2013) [Docket No. 130]; *In re Electrical Components Int'l, Inc.*, Case No. 10-11054 (KJC) (Bankr. D. Del. April 1, 2010) [Docket No. 34]; *In re NTK Holds., Inc.*, Case No. 09-13611 (KJC) (Bankr. D. Del. Oct. 23, 2009) [Docket No. 401]; *In re Freedom Comm'ns Holds., Inc.*, Case No. 09-13046 (BLS) (Bankr. D. Del. Sept. 2, 2009) [Docket No. 35]; *In re Cynergy Data, LLC*, Case No. 09-13038 (KG) (Bankr. D. Del. Sept. 2, 2009) [Docket No. 46]; *In re World Health Alternatives, Inc.*, Case No. 06-10166 (PJW) (Bankr. D. Del. Mar. 15, 2006) [Docket No. 150].

Accordingly, the Debtor submits that the use of estate funds to continue and maintain the Policies is in the best interests of the Debtor, the estate, and its creditors, and therefore this Motion should be granted.

V.
BANKRUPTCY RULE 6003 IS SATISFIED

The Debtor further submits that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein and in the

First-Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; . . .

Fed. R. Bankr. P. 6003. *See In re WorldSpace, Inc.*, No. 08–12412 (PJW), 2008 WL 8153639, at *2 (Bankr. D. Del. Oct. 20, 2008) (granting emergency motions for post-petition financing, adequate protection, and modification of the stay where the court found that the relief was necessary to avoid irreparable harm to the debtors and their estates because such relief was essential for the continued operations of the debtors’ businesses); *see also In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (finding that “immediate and irreparable harm” exists where loss of the business threatens the ability to reorganize).

The effect of potential cancellation of the Policies, or even litigation regarding the same, would be devastating to the Debtor’s estate, particularly at this early stage of this Case. Moreover, cancellation of the insurance policies would render the Debtor in violation of both the U.S. Trustee Guidelines and various state laws, as well as put the Debtor’s assets at risk.

VI.
DEBTOR’S RESERVATION OF RIGHTS

Nothing in this Motion is (a) an admission as to the validity or priority of any claim against the Debtor, (b) a waiver of the Debtor’s rights to dispute any claims, or (c) an approval or assumption of any agreement, contract, or lease, under Section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court’s

order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently.

VII.
NOTICE

The Debtor has provided notice of this Motion to (a) the Office of the United States Trustee for the District of Utah; (b) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); and (c) all ECF notice parties and parties who have requested notice on the Court's docket. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

VIII.
CONCLUSION

For the reasons stated above, the Debtor requests that the Court grant the Motion and enter the Interim Order lodged herewith and, after holding the Final Hearing, the Final Order.

Respectfully submitted,

/s/ Brian M. Rothschild

J. Thomas Beckett

Brian M. Rothschild

PARSONS BEHLE & LATIMER

Proposed Attorneys for VidAngel, Inc.

EXHIBIT A

List of Policies

Type of Policy	Insurance Company	Term	Addresses/Telephone/ Fax	Amount of Annual Premium	Expiration Date
Property Insurance for Rental Equipment	Auto-Owners Insurance	01/19/17 to 01/19/18	13968 S. Bangerter Pkwy Draper, Utah 84020 (801) 816-0080	\$414.00	01/19/18
Media Occurrence Coverage	QBE Management Liability & Professional Liability	03/24/16 to 03/24/19	One General Drive Sun Prairie, WI 53596 (608) 825-5160	\$3,500 over three years	03/24/19
Directors & Officers Liability	RSUI Indemnity Company	08/18/17 to 08/18/18	945 East Paces Ferry Road Suite 1800 Atlanta, GA 30326 (404) 231-2336	\$50,000.00	08/18/18
Workers Compensation Liability	Security National Insurance Company	03/10/17 to 03/10/18	P.O. Box 57220 Salt Lake City, UT 84157 (800) 574-7117	\$2,070.00	03/10/18
General Liability Insurance	James River Insurance Company	03/01/17 to 03/01/18	P.O. Box 27648 Richmond, VA 23261-7648 (804) 289-2700	\$12,750.00	03/01/18

EXHIBIT B

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:

VIDANGEL, INC.,

Debtor,

Case No. 17-29073

Chapter 11

Judge Kevin R. Anderson

**INTERIM ORDER GRANTING DEBTOR'S MOTION FOR ENTRY
OF AN ORDER AUTHORIZING THE DEBTOR TO MAINTAIN
EXISTING INSURANCE POLICIES AND PAY ALL POLICY
PREMIUMS ARISING THEREUNDER**

Upon the motion (the “**Motion**”)¹ filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”) seeking entry of an order authorizing the Debtor to pay pre-petition Policy premiums, if any, necessary to maintain in effect current insurance coverage; and the Court, having reviewed the Motion and having heard the statements of counsel in support of the relief requested in the Motion at the hearing before the Court (the “**Hearing**”), finds that the Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, that this is a core matter under 28 U.S.C. § 157(b)(2), that notice of the Motion and the Hearing were sufficient under the circumstances and that no further notice need be given; and the legal and factual bases set forth

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

in the Motion and at the Hearing establish just cause for the relief granted herein and that such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate,

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis to the extent provided herein pending the hearing on the Final Order granting the Motion.

2. Any objection to the Motion must be filed in the Court and served on counsel to the Debtor so that such objection is received no later than **October 31, 2017, at 5:00 p.m. (Prevailing Utah Time)** (the "**Objection Deadline**"). If any party in interest files an objection, the Court will hold a hearing on the relief sought in the Motion on a final basis on **November 14, 2017, at 10:00 a.m. (Prevailing Utah Time)** (the "**Final Hearing**") at the United States Bankruptcy Court, Frank E. Moss, U.S. Courthouse, 350 South Main Street, Courtroom 376, Salt Lake City, Utah 84101. If no objections are filed to the Motion, this Court may enter a Final Order on the Motion without holding the Final Hearing.

3. Entry of this Interim Order is without prejudice to the rights of any party in interest to interpose an objection to the Motion, and any such objection will be considered on a *de novo* basis at the final hearing.

4. In the interim, the Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

5. The Debtor is authorized, but not required, to honor the terms of its existing Policies and to pay all pre-petition premium payments related thereto.

6. To the extent that the Policies or related agreements may be deemed executory contracts within the meaning of Section 365 of the Bankruptcy Code, the Debtor does not at this time seek authority to assume such contracts, no relief is granted in respect thereof, and no determination is made as to whether any such contracts are executory.

7. Rule 6003 of the Bankruptcy Rules has been satisfied to the extent applicable.
8. Notwithstanding Bankruptcy Rules 6004, 7062, or 9014, the terms and conditions of this Order shall be immediately effective upon its entry.
9. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

[END OF DOCUMENT]

EXHIBIT C

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:

VIDANGEL, INC.,

Debtor,

Case No. 17-29073

Chapter 11

Judge Kevin R. Anderson

**FINAL ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF
AN ORDER AUTHORIZING THE DEBTOR TO MAINTAIN
EXISTING INSURANCE POLICIES AND PAY ALL POLICY
PREMIUMS ARISING THEREUNDER**

Upon the motion (the “**Motion**”)¹ filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”) seeking entry of an order authorizing the Debtor to pay pre-petition Policy premiums, if any, necessary to maintain in effect current insurance coverage; and the Court, having reviewed the Motion and having heard the statements of counsel in support of the relief requested in the Motion at the hearing before the Court (the “**Hearing**”), finds that the Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, that this is a core matter under 28 U.S.C. § 157(b)(2), that notice of the Motion and the Hearing were sufficient under the circumstances and that no further notice need be given; and the legal and factual bases set forth

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

in the Motion and at the Hearing establish just cause for the relief granted herein and that such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate,

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as provided herein on a final basis.
2. The Debtor is authorized, but not required, to honor the terms of its existing Policies and to pay all pre-petition premium payments related thereto.
3. To the extent that the Policies or related agreements may be deemed executory contracts within the meaning of Section 365 of the Bankruptcy Code, the Debtor does not at this time seek authority to assume such contracts, no relief is granted in respect thereof, and no determination is made as to whether any such contracts are executory.
4. Notwithstanding Bankruptcy Rules 6004, 7062, or 9014, the terms and conditions of this Order shall be immediately effective upon its entry.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

[END OF DOCUMENT]