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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 APPLICATION FOR INTERIM AND FINAL
ORDERS AUTHORIZING THE EMPLOYMENT AND
RETENTION OF GIL MILLER AND ROCKY MOUNTAIN
ADVISORY, LLC AS FINANCIAL ADVISOR FOR THE
DEBTOR**

VidAngel, Inc., the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**VidAngel**”) respectfully represents and sets forth as follows:

**I.
SUMMARY OF RELIEF REQUESTED**

By this application (the “**Application**”), the Debtor requests entry of interim and final orders, substantially in the form attached hereto as Exhibit A and Exhibit B, respectively, under sections 327(a) and 328(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing the Debtor to employ and retain Rocky Mountain Advisory, LLC (“**RMA**”) as financial advisor in the Debtor’s chapter 11 case.

The statutory predicates for the relief sought herein are Sections 105, 327(a), and 328(a) of the Bankruptcy Code and Rules 2004, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

II. **JURISDICTION**

This Court has jurisdiction to consider the relief requested in this Application 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. 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 services give subscribers and their families choice over the content they wish to view and share with their families.

2. 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, 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 would be 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 disc (including the actual physical disc), which VidAngel would ship to purchasers, on request, or store for the customer in a secure vault.

3. VidAngel's Disc Ownership Model was popular and growing, with more than 1 million unique users 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 additional infringements before pursuing the Copyright Action to a judgment. The Studios rejected VidAngel's Statutory Offer to Allow the Entry of Judgment against it.

4. Upon 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. Under the Stream-Based Model, VidAngel's subscribers pay a monthly fee that allows them to filter content from other streaming providers. Subscribers who use the Stream-Based Model select video content from third-party services such as Amazon, Netflix, and Hulu using their own accounts with the 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.

5. To ensure that the new Stream-Based Model does not violate the DMCA, 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 joined the Studios and other 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.

6. At this time, the Debtor requires the breathing space of the Automatic Stay of section 362(a) of the Bankruptcy Code. The Studios are pressing forward with the 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 of the Studios’ copyrights. Further, the Stream-Based Model, which is profitable, will provide sufficient revenue to enable the Debtor to reorganize its business and pay its creditors.

7. Further detail concerning the Debtor’s businesses, operations, financial condition, and the facts and circumstances of this Case are found in the Declaration of Patrick Reilly in Support of Chapter 11 Petition and First-Day Motions (the “**First-Day Declaration**”), which is incorporated herein in its entirety by this reference.²

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

² All capitalized terms not otherwise defined herein have the meanings given in the First-Day Declaration.

IV.
ARGUMENTS & AUTHORITIES

A. Retention of RMA.

The Debtor seeks authority under section sections 327(a) and 328(a) of the Bankruptcy Code to employ and retain RMA as a financial advisor in connection with its chapter 11 case in accordance with its customary terms of engagement as described herein. Specifically, RMA will perform the following services, among others as reasonably necessary (collectively, the “Services”):

- a. preparation of the Debtor’s schedules, statement of financial affairs, and other disclosures required by the Bankruptcy Code or the U.S. Trustee in connection with the Debtor’s chapter 11 case;
- b. assisting with the accounting and periodic reporting and preparation of such reports as are required for the DIP budgets and monthly operating reports, including assisting the Debtor with cash management issues such as arise in chapter 11;
- c. assistance with financial projections, accounting, and other advice to facilitate the process for the sale of substantially all of the Debtor’s assets;
- d. preparation and presentation of financial projections and in connection with the formulation of a chapter 11 plan;
- e. advising the Debtor’s management and counsel regarding avoidable transfers and other litigation matters;
- f. advising the Debtor’s management and counsel regarding the extent, value, and priority of liens and security interest in property of the Debtor;

- g. investigating claims of the Debtor and assisting in the analysis necessary to pursue such claims to the extent that it is in the best interest of the Debtor's estate to do so;
- h. investigating claims of creditors scheduled by the Debtor or filed against the Debtor, including claims by insiders, and in consultation with the Debtor's management and counsel objecting to or seeking other relief as to such claims to the extent it is in the best interest of the Debtor's estate;
- i. investigating and advising the Debtor and its management regarding strategies to reduce costs and increase revenue;
- j. such other tasks as the Debtor may request or require from time to time.

B. Disinterestedness of RMA Under Bankruptcy Rule 2019.

To the best of the Debtor's knowledge, RMA does not have any connection with, or any interest adverse to the Debtor, its creditors, or any other party in interest, or their respective counsel and attorneys, except as might be set forth in the Declaration of Gil A. Miller (the "**Miller Declaration**") filed contemporaneously herewith. In addition, to the best of the Debtor's knowledge and information, RMA has no connection to any employee of the Office of the United States Trustee for the District of Utah (the "**U.S. Trustee**") or the Office of the Clerk of the United States Bankruptcy Court for the District of Utah.

Based upon the Miller Declaration, the Debtor submits that RMA is a "disinterested person," as such term is defined in Bankruptcy Code Section 101(14), as modified by Bankruptcy Code Section 1107(b). The Debtor's knowledge, information and belief regarding the matters set forth herein are based, and made in reliance, upon the Miller Declaration.

RMA has informed the Debtor that RMA will conduct periodic reviews of its files to ensure that RMA continues to be a "disinterested person." In the event the circumstances change

from those presented in the Miller Declaration, RMA will promptly supplement its disclosure as required by Bankruptcy Rule 2019.

The Debtor firmly believes that RMA, because of its experience in chapter 11 cases and standing with the Parties and their counsel, is well qualified and uniquely situated to provide the Services in this case. In addition, RMA assisted the Debtor prepetition to prepare its chapter 11 filing, and so RMA has become familiar with the Debtor's financial affairs. Accordingly, the Debtor believes it will be unduly prejudiced if it were forced to find and retain a financial advisor other than RMA to perform the Services in connection with its chapter 11 case, and the Debtor, its estate, and all parties in interest would suffer harm as a result.

C. Compensation.

The Debtor requests that all fees and related costs and expenses incurred by the Debtor on account of services rendered by RMA in this case be paid as administrative expenses of the estate under sections 328, 330(a), 331, 503(b), and 507(a)(1) of the Bankruptcy Code. Subject to this Court's approval, RMA will charge the following hourly fees, subject to Bankruptcy Code Sections 328(a) and 330:

<u>Professional</u>	<u>Rate</u>
Gil Miller	\$385
David Bateman	\$270
John Curtis	\$270
Matt Connors	\$270
Dan Johnson	\$245
Managers	\$225
Senior Associates	\$210
Associates	\$200
Paraprofessionals	\$130
Administrative Staff	\$80

The Debtor believes RMA's fees to be consistent with market rates for comparable services from comparable professionals. RMA will maintain detailed records of expenses

incurred in connection with the advisory services described above. RMA will keep detailed time records similar to those customarily kept by attorneys. Prior to the filing of the bankruptcy petition, RMA received a retainer in the amount of \$50,000. RMA will not draw on this retainer unless and until approved to do so by the Court.

The Debtor understands that RMA is customarily reimbursed for all expenses incurred in connection with the advisory services rendered to a client in a given matter, including, without limitation, travel expenses, photocopying services, printing, delivery charges, filing fees, postage, and computer research expenses.

Under section 328(a) of the Bankruptcy Code, the Debtor may retain RMA on any reasonable terms and conditions. The Debtor submits that the terms and conditions and fees charged by RMA to the Debtor, as set forth herein, are reasonable and comparable to the terms and conditions and fees charged to other clients on a daily basis in a competitive market.

The Debtor further submits that the relief requested herein is necessary and appropriate, is in the best interests of the Debtor, its estate, and its creditors, and should be granted in all respects.

The Debtor further requests that the Court authorize the Debtor, upon receiving any invoice from RMA, to pay to RMA 80 percent of the requested fees and 100 percent of the requested expenses. Upon approval of an interim application (which may be sought on a quarterly basis) or a final fee application, the Debtor is authorized to pay all unpaid fees and expenses up to 100 percent of the approved fees and expenses.

D. Interim and Final Relief.

The Debtor requires the Services provided by RMA immediately, including, without limitation, to (a) prepare the schedules and statement of financial affairs, which are due 14 days after the Petition Date; (b) assist the Debtor with the marketing and sale process for its assets,

which is ongoing and at a sensitive stage; and (c) to control and track cash flow and comply with all conditions of the proposed DIP Loan, which is crucial to sustaining the Debtor's operations during the first month and beyond in this chapter 11 case. Thus, the Debtor seeks immediate approval on an interim basis as set forth in the Interim Order to retain RMA immediately after an interim hearing is held as soon as possible after the Petition Date. Further, the Debtor requests final approval by entry of the Final Order after full notice and a hearing has been given to allow parties in interest to review and comment on the proposed retention of RMA on a final basis.

V.
NOTICE

The Debtor has provided notice of this Application 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 Application, the Debtor respectfully submits that no further notice is necessary.

VI.
CONCLUSION

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

Respectfully submitted,

/s/Brian M. Rothschild

Brian M. Rothschild

J. Thomas Beckett

PARSONS BEHLE & LATIMER

Proposed Attorneys for VidAngel, Inc.

Exhibit A

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 AUTHORIZING THE EMPLOYMENT AND
RETENTION OF ROCKY MOUNTAIN ADVISORY, LLC AS
FINANCIAL ADVISOR FOR THE DEBTOR**

Upon the Application (the “**Application**”)¹ filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”) for entry of an interim order this “**Interim Order**”) under sections 327(a) and 328(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2014 and 6003(a) of the Federal Rules of Bankruptcy Procedure authorizing the Debtor to retain and employ Rocky Mountain Advisory (“**RMA**”) as its financial advisor to provide the “**Services**” described in the Application, and upon the Court’s consideration of the Miller Declaration and the First-Day Declaration; and it appearing that this Court has jurisdiction to consider the Application under 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Application in this district is proper under 28 U.S.C. §§ 1408 and 1409;

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

and it appearing that this matter is a core proceeding under 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and after due deliberation thereon; and a hearing having been held to consider the relief requested in the Application on an interim basis; and upon due deliberation on the Application, the record of the hearing, and all of the proceedings heard before the Court; and any objections to the Application having been withdrawn or overruled; and the Court having found and determined that the relief sought in the Application is in the best interests of the Debtor, its estate and creditors, and all parties in interest; and it appearing that Gil Miller and the other professional persons at RMA who will perform services on behalf of the Debtor in this chapter 11 case are duly qualified to do so; and the Court finding, based on the advisements made in the Application and the Miller Declaration that RMA does not represent any interest adverse to the Debtor and/or the Debtor's estate with respect to the matters upon which it is to be engaged, that it is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code as modified by section 1107(b) of the Bankruptcy Code, that its employment is necessary and in the best interests of the Debtor's estate, and sufficient cause appearing,

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Application to employ RMA in this case is APPROVED under section 327(a) of the Bankruptcy Code, on an interim basis, pending the final hearing as set forth below.
2. RMA shall apply for compensation and reimbursement of costs pursuant to sections 330 and 331 of the Bankruptcy Code, as set forth in the Application for services rendered and costs incurred on behalf of the Debtor.
3. Upon receiving any invoice from RMA, the Debtor is authorized to pay to RMA 80 percent of the requested fees and 100 percent of the requested expenses. Upon approval of an interim application (which may be sought on a quarterly basis) or a final fee application, the

Debtor is authorized to pay all unpaid fees and expenses up to 100 percent of the approved fees and expenses.

4. Any objection to the Application 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 Application 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 Application, this Court may enter a Final Order on the Application without holding the Final Hearing.

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

1. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

[END OF DOCUMENT]

Exhibit B

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 AUTHORIZING THE EMPLOYMENT AND
RETENTION OF ROCKY MOUNTAIN ADVISORY, LLC AS
FINANCIAL ADVISOR FOR THE DEBTOR**

Upon the Application (the “**Application**”)¹ filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”) for entry of a final order (this “**Final Order**”) under sections 327(a) and 328(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2014 and 6003(a) of the Federal Rules of Bankruptcy Procedure authorizing the Debtor to retain and employ Rocky Mountain Advisory (“**RMA**”) as its financial advisor to provide the “**Services**” described in the Application, and upon the Court’s consideration of the Miller Declaration and the First-Day Declaration; and it appearing that this Court has jurisdiction to consider the Application under 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Application in this district is proper under 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding under 28 U.S.C. § 157(b); and it appearing

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

that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and after due deliberation thereon; and a hearing having been held to consider the relief requested in the Application; and upon due deliberation on the Application, the record of the interim hearing and the final hearing, and all of the proceedings heard before the Court; and any objections to the Application having been withdrawn or overruled; and the Court having found and determined that the relief sought in the Application is in the best interests of the Debtor, its estate and creditors, and all parties in interest; and it appearing that Gil Miller and the other professional persons at RMA who will perform services on behalf of the Debtor in this chapter 11 case are duly qualified to do so; and the Court finding, based on the advisements made in the Application and the Miller Declaration that RMA does not represent any interest adverse to the Debtor and/or the Debtor's estate with respect to the matters upon which it is to be engaged, that it is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code as modified by section 1107(b) of the Bankruptcy Code, that its employment is necessary and in the best interests of the Debtor's estate, and sufficient cause appearing,

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Application to employ RMA in this case is APPROVED in its entirety under section 327(a) of the Bankruptcy Code.
2. RMA shall apply for compensation and reimbursement of costs under sections 330 and 331 of the Bankruptcy Code for services rendered and costs incurred on behalf of the Debtor.
3. Upon receiving any invoice from RMA, the Debtor is authorized to pay to RMA 80 percent of the requested fees and 100 percent of the requested expenses. Upon approval of an interim application (which may be sought on a quarterly basis) or a

final fee application, the Debtor is authorized to pay all unpaid fees and expenses up to 100 percent of the approved fees and expenses.

4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

[END OF DOCUMENT]