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**IN THE UNITED STATES DISTRICT COURT
DIVISION OF UTAH**

<p>In re:</p> <p>VIDANGEL, INC.,</p> <p style="text-align: center;">Debtor.</p>	<p style="text-align: center;">Related Chapter 11 Case</p> <p style="text-align: center;">Case No. 17-bk-29073-KRA</p> <p style="text-align: center;">Chapter 11</p>
<p>VidAngel, Inc.</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, Warner Bros. Entertainment Inc., MVL Film Finance LLC, New Line Productions, Inc. and Turner Entertainment Co.</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">COMPLAINT FOR DECLARATORY RELIEF AND DISALLOWANCE OF CLAIMS</p> <p style="text-align: center;">Adv. Case No. 18-ap-____-KRA</p> <p style="text-align: center;">Judge Kevin R. Anderson</p>

INTRODUCTION

VidAngel, Inc., (“**VidAngel**” or the “**Debtor**”), the debtor and debtor in possession in the above-captioned chapter 11 case (the “**Chapter 11 Case**”), hereby submits its Complaint for

Declaratory Relief and Disallowance of Claims against Disney Enterprises, Inc. (Claim 7-1), Lucasfilm Ltd. LLC (Claim 5-1), Twentieth Century Fox Film Corporation (Claim 11-1), Warner Bros. Entertainment Inc. (Claim 6-1), MVL Film Finance LLC (Claim 10-1), New Line Productions, Inc. (Claim 8-1), and Turner Entertainment Co. (Claim 9-1) (collectively, the “**Studios**”). VidAngel brings this adversary proceeding seeking disallowance of the Studios’ claims (the “**Claims**”) and declaratory relief pursuant to Fed. R. Bankr. P. 7001, and states as follows:

COMPLAINT

I. PARTIES AND VENUE

1. On October 18, 2017 (the “**Petition Date**”), the Debtor filed its petition for relief under title 11, chapter 11 of the United States Code (the “**Bankruptcy Code**”), commencing the Chapter 11 Case. The Debtor continues to operate its business and manage its property as a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code.

2. VidAngel’s principal place of business and corporate offices are located in Provo, Utah.

3. VidAngel is the worldwide leader in video filtering technology. VidAngel’s streaming-based filtering service allows 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.

4. The Debtor continues to operate its business and manage its property as a debtor-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

5. The Studios are alleged owners of copyrights of motion pictures and television shows.

6. Prior to the Petition Date 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.

7. Under the Disc Ownership Model, 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.

8. VidAngel’s Disc Ownership Model was popular and growing, with more than 1 million viewers as of December 2016.

9. 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 110 of their copyrighted works. The Studios also alleged that VidAngel’s decryption of their works incident to the Disc Ownership Model was a technical violation of the Digital Millennium Copyright Act (“**DMCA**”).

10. The Copyright Action was stayed by the automatic stay of section 362(a) of the Bankruptcy Code.

11. On February 14, 2018, the Studios filed proofs of claim in Debtor’s Bankruptcy Case as follows:

Claimant	Proof of Claim Number
Disney Enterprises, Inc.	Claim 7-1
Lucasfilm Ltd. LLC	Claim 5-1
Twentieth Century Fox Film Corporation	Claim 11-1
Warner Bros. Entertainment Inc.	Claim 6-1
MVL Film Finance LLC	Claim 10-1

New Line Productions, Inc.	Claim 8-1
Turner Entertainment Co.	Claim 9-1

12. The Studios' seven proofs of claim are substantially identical. Each of them attaches a printout of the docket of the Copyright Action. The Studios' Claims are entirely duplicative of and co-extant with the Copyright Action.

13. Under controlling United States Supreme Court precedent, by filing their proof of claim, the Studios have consented to adjudication of their Claims and any counterclaims against them by the Utah Bankruptcy Court. *Langenkamp v. Culp*, 498 U.S. 42, 44-45, 111 S.Ct. 330, 112 L.Ed.2d 343 (1990). (“[B]y filing a claim against a bankruptcy estate the creditor triggers the process of ‘allowance and disallowance of claims,’ thereby subjecting himself to the bankruptcy court's equitable power.”) (citing *Granfinanciera, S. A. v. Nordberg*, 492 U. S. 33, 58-59, and n.14 (1989)).

14. Accordingly, under 28 U.S.C. § 1334(b), this Bankruptcy Court has jurisdiction over all civil proceedings (1) “arising under title 11,” *i.e.*, any proceedings to enforce rights created by the Bankruptcy Code, (2) “arising in” a bankruptcy case, *i.e.*, other proceedings that would not exist outside a bankruptcy case, such as case administration, or (3) “related to” a bankruptcy case, *i.e.*, any proceedings the outcome of which could “conceivably” have any effect on the bankruptcy estate. *In re Harris*, 590 F.3d 730, 737 (9th Cir. 2009).

15. This matter is a core matter under 28 U.S.C. § 157(b)(2)(B) and (C).

16. Venue is proper in this district because the Debtor's Chapter 11 Case is pending in this District. 28 U.S.C. § 1409(a).

CAUSES OF ACTION

17. For its causes of action, VidAngel states as follows:

FIRST CAUSE OF ACTION

Disallowance of Claims – 11 U.S.C. § 502(b)(1)

18. VidAngel re-alleges and incorporates by reference each preceding paragraph of this Complaint as if set forth fully herein.

19. Under 11 U.S.C. § 502(b)(1), a claim against the debtor may be disallowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.”

20. The Studios’ Claims are not enforceable under applicable law.

21. The Studios’ Claims are set forth in the Copyright Action, Case No. 2:16-cv-04109-AB-PLA.

22. VidAngel denies that the Claims are enforceable against the Debtor or the property of the Debtor under applicable law.

23. VidAngel incorporates by reference its Amended Answer, Affirmative Defenses and First Amended Counterclaims, as set forth in the Copyright Action, Case No. 2:16-cv-04109-AB-PLA, dkt no. 77, filed September 16, 2016 and attached as Exhibit A.

24. The Court should disallow the Claims under 11 U.S.C. § 502(b)(1) and grant such other relief as the Court deems proper.

SECOND CAUSE OF ACTION

Declaratory Relief – 28 U.S.C. § 2201 under the Copyright Act (17 U.S.C. § 101, et seq.), Family Movie Act of 2005 (17 U.S.C. §110(11))

25. VidAngel re-alleges and incorporates by reference each preceding paragraph of this Complaint as if set forth fully herein.

26. VidAngel incorporates by reference its Amended Answer, Affirmative Defenses and First Amended Counterclaims, as set forth in the Copyright Action, Case No. 2:16-cv-04109-

AB-PLA, dkt no. 77, filed September 16, 2016, and attached as Exhibit A, specifically Paragraphs 119-134 thereof.

27. Under 28 U.S.C. § 2201, “In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

28. An actual controversy exists between VidAngel and the Studios.

29. VidAngel incorporates by reference its Amended Answer, Affirmative Defenses and First Amended Counterclaims, as set forth in the Copyright Action, Case No. 2:16-cv-04109-AB-PLA, dkt no. 77, filed September 16, 2016 and attached as Exhibit A.

30. VidAngel contends that the Disc Ownership Model does not infringe on the Studios’ copyrights, that they are not harmed thereby, and that they are owed no damages.

31. The Studios in the Copyright Action, assert that the Disc Ownership Model violated their copyrights.

32. Accordingly, VidAngel seeks a declaration that the Disc Ownership Model does not infringe on the Studios’ copyrights, that the Studios are not harmed thereby, that they have sustained no damages, and that VidAngel owes no liability to the Studios for alleged infringement.

REQUEST FOR RELIEF

33. WHEREFORE, VidAngel respectfully requests that this Court award the following relief:

- a. Disallowance of the Studios’ Claims under 11 U.S.C. § 502(b)(1);
- b. Declaratory relief under 28 U.S.C. § 2201 that the Disc Ownership Model does not infringe the Studios’ rights under the Copyright Act, that the Studios are not harmed thereby, that they have sustained no damages, and that VidAngel owes no liability to the Studios for alleged infringement or violation of the DMCA; and

c. Such further relief as this Court deems just and appropriate.

Respectfully submitted this 15th day of February, 2018

/s/ Brian M. Rothschild

J. Thomas Beckett

Brian M. Rothschild

Grace S. Pusavat

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EXHIBIT A

ANSWER AND COUNTERCLAIM

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 TWENTIETH CENTURY FOX FILM
 CORPORATION; AND WARNER
 BROS. ENTERTAINMENT, INC.,

Plaintiffs,

vs.

VIDANGEL, INC.,
 Defendant.

CASE NO. 2:16-cv-04109-AB-PLA

**VIDANGEL, INC.'S AMENDED
 ANSWER AND AFFIRMATIVE
 DEFENSES TO COMPLAINT; AND
 FIRST AMENDED
 COUNTERCLAIMS**

[DEMAND FOR JURY TRIAL]

Judge: Hon. André Birotte Jr.
 Courtroom 4

1 VIDANGEL, INC.,
 2 Counterclaimant,
 3 vs.
 4 DISNEY ENTERPRISES, INC.;
 5 LUCASFILM LTD. LLC;
 6 TWENTIETH CENTURY FOX FILM
 CORPORATION; WARNER BROS.
 ENTERTAINMENT, INC., AND
 7 DOES 1-100,
 8 Counterclaim-Defendants.

9 **AMENDED ANSWER**

10 Defendant VidAngel, Inc. (“VidAngel”) hereby answers plaintiffs Disney
 11 Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation and
 12 Warner Bros. Entertainment, Inc.’s (collectively, “Plaintiffs”) Complaint.

13 **INTRODUCTORY STATEMENT**

14 Plaintiffs’ carefully selected and misleading allegations distort relevant facts
 15 and law.

16 Plaintiffs repeatedly suggest that VidAngel needs their permission to offer a
 17 filtering service, despite Congressional law which expressly authorizes VidAngel’s
 18 service without need for any such consent. In enacting the Family Movie Act
 19 (“FMA”), Congress protected the right of families to filter and view content
 20 according to their personal preferences. This right is codified in Copyright Act
 21 Section 110 (“Limitations on exclusive rights: Exemption of certain performances
 22 and displays”). That section provides that “making imperceptible (*i.e.*, filtering) . . .
 23 at the direction of a member of a private household, of limited portions of audio or
 24 video content of a motion picture [defined to include television programs, as well],
 25 during a performance in or transmitted [*e.g.*, streamed] to that household for private
 26 home viewing, from an authorized copy of the motion picture” does not violate the
 27 Copyright Act. Because the Digital Millennium Copyright Act is part of the
 28 Copyright Act, it is subject to the same exemption. Hence, VidAngel is well within

1 its rights to legally decrypt DVDs and Blu-rays for the purpose of allowing families
2 to view filtered movies.

3 In asking this Court to impose a consent requirement on VidAngel’s filtering
4 service, Plaintiffs are effectively asking that the Court repeal a federal statute enacted
5 to protect American families.

6 Plaintiffs further suggest they do not derive financial benefit from VidAngel’s
7 business. In fact, the opposite is true. VidAngel spends one-third of all capital raised
8 to lawfully purchase thousands of DVD and Blu-ray discs, which are then re-sold to
9 VidAngel users. Shown below is the manager of VidAngel’s storage vault pictured
10 with lawfully purchased copies of *The Revenant*.



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26 VidAngel’s inventory of *The Revenant*, one of over 2,000 titles available

1 The majority of VidAngel’s purchases represent sales that would not occur but for its
2 filtering service, because most of VidAngel’s customers would not acquire and watch
3 a particular film without filtering.

4 Plaintiffs’ repeated characterization of VidAngel’s service as a “rental” service
5 is yet another deliberate mischaracterization. As shown in the picture below, each
6 disc lawfully purchased by VidAngel is assigned an individual bar code.



VidAngel’s discs are marked with individual bar codes

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1 These specific, identifiable discs are re-sold by VidAngel to its customers. Once a
2 VidAngel customer purchases a disc, that disc is no longer available for sale. The
3 purchasing customer may request that the physical disc be mailed to him or her or
4 may allow VidAngel to maintain custody of it. The discs are maintained in a physical
5 vault, which is kept locked and protected by round-the-clock electronic monitoring.
6 When a customer purchases one episode of a television show available on a disc
7 containing multiple episodes, VidAngel cannot sell any other episode for an obvious
8 reason – the entire disc is in its vault and the entire disc belongs to that one customer.

9 After VidAngel lawfully acquires DVDs for a particular title, it prepares the
10 DVD's content for filtering by tagging a digital copy of each film to identify over 80
11 categories of content – such as profanity, nudity and violence. To use VidAngel's
12 service, users must first purchase movies and may view them only after selecting
13 their desired content filters. Works are filtered as requested by each customer and
14 transmitted to each household privately, at the direction of a member of the
15 household. VidAngel never makes a fixed copy of any filtered work. Once a
16 VidAngel user has viewed a filtered film he or she purchased, the user may, at his or
17 her option, keep the title or sell it back to VidAngel.

18 VidAngel's business model is predicated on providing a filtering service in a
19 completely lawful manner. VidAngel wrote to Plaintiffs and other content owners
20 over a year ago to describe its service and request feedback regarding any concerns
21 with respect to copyright or other issues. In those letters, VidAngel promised that if
22 any of the studios raised an issue with VidAngel's service, VidAngel would attempt
23 to modify it to address the purported infirmity. Although neither the Plaintiffs nor
24 any other copyright owner raised any issue in response to the letters, at least one of
25 the Plaintiffs signed up for VidAngel's service shortly after receiving VidAngel's
26 letter. Using an alias name, Albert Podrasky, Plaintiff Disney Enterprises, Inc.'s
27 worldwide anti-piracy head, opened a VidAngel account on August 6, 2015. He then
28 purchased and sold back numerous DVDs. Plaintiffs Twentieth Century Fox and

1 Time Warner also responded to VidAngel’s offer to meet, but they did not raise any
2 concerns regarding VidAngel’s model.

3 Plaintiffs disingenuously imply that, following a year of inaction, they have
4 sued now only because VidAngel changed its business model. (Complaint ¶ 47.)
5 The truth is that during a 2014 beta test, VidAngel used an earlier business model (a
6 Google Play “plug-in” and HD Chromecast support), which required Google’s active
7 assistance. After initially supporting VidAngel, Google notified VidAngel that the
8 method being tested violated YouTube’s Terms and Conditions and withdrew
9 Chromecast support. When VidAngel wrote to the Plaintiffs and other studios (in
10 July 2015), it was already using its current business model, which Mr. Podrasky
11 began examining early last August. Given their delay, Plaintiffs cannot credibly
12 argue that VidAngel’s service has irreparably harmed them.¹

13 Plaintiffs’ complaint is not surprising in light of Plaintiffs’ longstanding
14 hostility toward any form of filtering under the FMA, as the framers of the FMA
15 acknowledges in its legislative history. It appears that Plaintiffs also complain
16 because VidAngel’s service is damaging their relationships with “streaming service
17 licensees” to whom Plaintiffs have sold lucrative streaming licenses that do not
18 permit filtered streaming.² But Plaintiffs cannot demand a separate license for
19 filtering their content when doing so is specifically authorized by the FMA, which
20 Congress enacted to protect the right of families to enjoy the cinematic arts in their

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22 ¹ Moreover, courts may not enjoin a technology, such as VidAngel’s, that has
23 “substantial non-infringing uses.” *Sony Corp. of America v. Universal City Studios,*
24 *Inc.*, 464 U.S. 417 (1984). Plaintiffs nowhere dispute that VidAngel’s technology has
25 such uses.

26 ² In fact, Plaintiffs have interfered with VidAngel’s attempts to partner with
27 streaming content providers to filter movies. Plaintiffs have also sought to
28 improperly expand their copyright monopoly, seeking to deprive consumers of their
right to buy and sell copyrighted works. As alleged in VidAngel’s Amended
Counterclaims, Plaintiffs should be held accountable for their improper actions.

1 homes while omitting offensive or otherwise objectionable content. VidAngel exists
2 to provide families a means to implement the spirit and purpose of the FMA. This
3 Court should protect the FMA and reject Plaintiffs’ renewed effort to render that
4 important legislation meaningless.

5 **RESPONSES TO SPECIFIC ALLEGATIONS**

6 1. Paragraph 1 contains legal arguments, opinions and conclusions that
7 require no response. VidAngel otherwise denies the allegations of this paragraph.

8 2. VidAngel admits the image in paragraph 2 appears to be a screenshot
9 from VidAngel’s website. Additionally, VidAngel admits its users can search for
10 content by popularity, genre and other categories. Among other things, users can
11 search for content by a motion picture’s “inspiring score,” which is the average score
12 given by users on a rating scale of 1 to 100 as to whether a motion picture is
13 inspiring. VidAngel denies the remaining allegations in this paragraph.

14 3. Paragraph 3 contains legal arguments, opinions and conclusions that
15 require no response. VidAngel otherwise denies the allegations of this paragraph.

16 4. VidAngel admits the image in paragraph 4 appears to be an
17 advertisement that previously appeared on VidAngel’s website. Paragraph 4 contains
18 legal arguments, opinions and conclusions that require no response. VidAngel
19 otherwise denies the allegations of this paragraph.

20 5. VidAngel admits the images in paragraph 5 appear to be screenshots
21 from VidAngel’s website. The remainder of this paragraph contains legal arguments,
22 opinions and conclusions that require no response. VidAngel otherwise denies the
23 allegations of this paragraph.

24 6. Paragraph 6 contains legal arguments, opinions and conclusions that
25 require no response. VidAngel otherwise denies the allegations of this paragraph.

26 7. Paragraph 7 contains legal arguments, opinions and conclusions that
27 require no response. VidAngel otherwise denies the allegations of this paragraph.

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1 8. VidAngel is without sufficient information or knowledge to form a
2 belief as to the truth of the allegations of paragraph 8.

3 9. VidAngel is without sufficient information or knowledge to form a
4 belief as to the truth of the averment that Disney has obtained Certificates of
5 Copyright Registration for the Copyrighted Works. The remainder of Paragraph 9
6 contains legal arguments, opinions and conclusions that require no response.
7 VidAngel otherwise denies the allegations of this paragraph.

8 10. VidAngel is without sufficient information or knowledge to form a
9 belief as to the truth of the allegations of paragraph 10.

10 11. VidAngel is without sufficient information or knowledge to form a
11 belief as to the truth of the averment that Lucasfilm has obtained Certificates of
12 Copyright Registration for the Copyrighted Works. The remainder of Paragraph 11
13 contains legal arguments, opinions and conclusions that require no response.
14 VidAngel otherwise denies the allegations of this paragraph.

15 12. VidAngel is without sufficient information or knowledge to form a
16 belief as to the truth of the allegations of paragraph 12.

17 13. VidAngel is without sufficient information or knowledge to form a
18 belief as to the truth of the averment that Fox has obtained Certificates of Copyright
19 Registration for the Copyrighted Works. The remainder of Paragraph 13 contains
20 legal arguments, opinions and conclusions that require no response. VidAngel
21 otherwise denies the allegations of this paragraph.

22 14. VidAngel is without sufficient information or knowledge to form a
23 belief as to the truth of the allegations of paragraph 14.

24 15. VidAngel is without sufficient information or knowledge to form a
25 belief as to the truth of the averment that Warner Bros. has obtained Certificates of
26 Copyright Registration for the Copyrighted Works. The remainder of Paragraph 15
27 contains legal arguments, opinions and conclusions that require no response.
28 VidAngel otherwise denies the allegations of this paragraph.

1 16. VidAngel admits that it is a Delaware corporation with its principal
2 place of business at 249 N. University Avenue, Provo, Utah 84601. VidAngel
3 otherwise denies the allegations of this paragraph.

4 17. VidAngel admits that this Court has subject matter jurisdiction over the
5 Complaint.

6 18. VidAngel admits that venue is proper in this district.

7 19. VidAngel lacks sufficient information or knowledge to form a belief as
8 to the truth of the allegations of paragraph 19.

9 20. VidAngel lacks sufficient information or knowledge to form a belief as
10 to the truth of the allegations of paragraph 20.

11 21. VidAngel lacks sufficient information or knowledge to form a belief as
12 to the truth of the allegations of paragraph 21.

13 22. VidAngel lacks sufficient information or knowledge to form a belief as
14 to the truth of the allegations of paragraph 22.

15 23. VidAngel lacks sufficient information or knowledge to form a belief as
16 to the truth of the allegations of paragraph 23.

17 24. VidAngel is without sufficient information or knowledge to form a
18 belief as to the truth of the averments in the preamble of paragraph 24.

19 (a) VidAngel is without sufficient information or knowledge to form
20 a belief as to the truth of the allegations of paragraph 24(a).

21 (b) VidAngel is without sufficient information or knowledge to form
22 a belief as to the truth of the allegations of paragraph 24(b).

23 (c) VidAngel is without sufficient information or knowledge to form
24 a belief as to the truth of the allegations of paragraph 24(c).

25 (d) VidAngel is without sufficient information or knowledge to form
26 a belief as to the truth of the allegations of paragraph 24(d).

27 VidAngel admits that it has previously offered each of the motion picture titles listed
28 in paragraph 24 for sale and online filtering.

1 25. VidAngel lacks sufficient information or knowledge to form a belief as
2 to the truth of the allegations of paragraph 25.

3 26. VidAngel lacks sufficient information or knowledge to form a belief as
4 to the truth of the allegations of paragraph 26.

5 27. VidAngel lacks sufficient information or knowledge to form a belief as
6 to the truth of the allegations of paragraph 27.

7 28. VidAngel lacks sufficient information or knowledge to form a belief as
8 to the truth of the allegations of paragraph 28.

9 29. Paragraph 29 contains legal arguments, opinions and conclusions that
10 require no response. VidAngel otherwise denies the allegations of this paragraph.

11 30. VidAngel admits that it operates an online video service located at
12 <http://vidangel.com>, which is also available through a mobile application users may
13 access on their internet-connected smartphones, tablets and televisions (apps for
14 televisions can only be used through a set-top box like Roku, Apple TV and Amazon
15 Fire TV). Additionally, VidAngel admits that it currently offers users the ability to
16 skip or mute content within certain filter categories, including language,
17 sex/nudity/immodesty, violence/blood/gore and alcohol or drug use. Users must
18 apply at least one filter in order to view a video. VidAngel otherwise denies the
19 allegations of this paragraph.

20 31. Paragraph 31 contains legal arguments, opinions and conclusions that
21 require no response. VidAngel otherwise denies the allegations of this paragraph.

22 32. VidAngel admits that DVDs and Blu-ray discs are optical discs that
23 contain recorded material in digital form. VidAngel lacks sufficient information or
24 knowledge to form a belief as to the truth of the remainder of this paragraph.
25 VidAngel otherwise denies the allegations of this paragraph.

26 33. VidAngel lacks sufficient information or knowledge to form a belief as
27 to the truth of the allegations of paragraph 33.

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1 34. Paragraph 34 contains legal arguments, opinions and conclusions that
2 require no response. VidAngel otherwise denies the allegations of this paragraph.

3 35. Paragraph 35 contains legal arguments, opinions and conclusions that
4 require no response. VidAngel otherwise denies the allegations of this paragraph.

5 36. VidAngel admits that the image in Paragraph 36 is an advertisement that
6 previously appeared on the Internet. VidAngel otherwise denies the remaining
7 allegations of Paragraph 36.

8 37. Paragraph 37 contains legal arguments, opinions and conclusions that
9 require no response. VidAngel otherwise denies the allegations of this paragraph.

10 38. Paragraph 38 contains legal arguments, opinions and conclusions that
11 require no response. VidAngel otherwise denies the allegations of this paragraph.

12 39. VidAngel admits VidAngel’s “How Does VidAngel’s Sellback Work?”
13 page contains the question and response quoted in footnote 1. The remainder of
14 paragraph 39 contains arguments, opinions and legal conclusions that require no
15 response. VidAngel otherwise denies the allegations of this paragraph.

16 40. VidAngel admits the screenshot and language from a “how-to” use
17 VidAngel video posted on the service’s homepage contains the picture and quoted
18 language contained in paragraph 40. The remainder of this paragraph contains
19 arguments, opinions and legal conclusions that require no response. VidAngel
20 otherwise denies the allegations of this paragraph.

21 41. VidAngel admits VidAngel sells copyrighted content and permits users
22 to sell that content back to VidAngel. VidAngel further admits the image in
23 paragraph 41 appears to be a screenshot from VidAngel’s website. VidAngel admits
24 that it previously allowed users to select between auto or manual sell-back when a
25 user purchased video content. VidAngel admits that, when watching from a desktop
26 or laptop web browser, the system is designed to show the user a sell-back button
27 over the closing credits of the film. The remainder of this paragraph contains
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1 arguments, opinions and legal conclusions that require no response. VidAngel
2 otherwise denies the allegations of this paragraph.

3 42. Paragraph 42 contains legal arguments, opinions and conclusions that
4 require no response. VidAngel otherwise denies the allegations of this paragraph.

5 43. Paragraph 43 contains legal arguments, opinions and conclusions that
6 require no response. VidAngel otherwise denies the allegations of this paragraph.

7 44. Paragraph 44 contains legal arguments, opinions and conclusions that
8 require no response. VidAngel otherwise denies the allegations of this paragraph.

9 45. Paragraph 45 contains legal arguments, opinions and conclusions that
10 require no response. VidAngel otherwise denies the allegations of this paragraph.

11 46. VidAngel admits that users previously were able to filter out opening
12 and closing credits. Additionally, VidAngel lacks sufficient information or
13 knowledge to form a belief as to the truth of the averment that “some people already
14 have started to make social media postings touting the fact they can use VidAngel to
15 watch movies and television shows essentially unfiltered.” Paragraph 46 also
16 contains legal arguments, opinions and conclusions that require no response.
17 VidAngel otherwise denies the allegations of this paragraph.

18 47. VidAngel admits that, as part of beta testing, it previously distributed an
19 internet web browser “plug-in” that muted and skipped content streamed from other
20 services. VidAngel denies the remaining allegations in paragraph 47.

21 48. VidAngel admits that it currently offers more than 2,000 titles, which
22 includes television episodes and movies. VidAngel otherwise denies the allegations
23 of paragraph 48.

24 49. Deny.

25 50. VidAngel is without sufficient information and knowledge to form a
26 belief as to the truth of the allegations of paragraph 50.

27 51. VidAngel lacks sufficient information or knowledge to form a belief as
28 to the truth of the allegations of paragraph 51.

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AFFIRMATIVE DEFENSES

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, VidAngel further pleads the following separate and additional defenses. By pleading these defenses, VidAngel does not in any way agree or concede that it has the burden of proof or persuasion on any of these issues. VidAngel reserves the right to assert such additional affirmative defenses as discovery indicates are proper.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Legal Authorization)

VidAngel’s business is authorized by the Family Movie Act of 2005, codified as 17 U.S.C. §110(11).

THIRD AFFIRMATIVE DEFENSE

(Fair Use)

The complaint is barred, in whole or in part, by the doctrine of fair use.

FOURTH AFFIRMATIVE DEFENSE

(Comparative Fault)

The complaint is barred, in whole or in part, based on the doctrine of comparative fault.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

The complaint is barred, in whole or in part, based on Plaintiffs’ failure to mitigate damages.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

The complaint is barred, in whole or in part, based on the principles of estoppel.

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SEVENTH AFFIRMATIVE DEFENSE

(Laches)

The complaint is barred, in whole or in part, by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The complaint is barred, in whole or in part, by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

The complaint is barred, in whole or in part, by the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE

(First Amendment)

The complaint is barred, in whole or in part, because application of the Copyright Act to impose liability in this case would violate the First Amendment to the United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

(Copyright Abandonment)

The complaint is barred, in whole or in part, to the extent any Plaintiffs have forfeited or abandoned copyright or failed to comply with all necessary formalities.

TWELFTH AFFIRMATIVE DEFENSE

(Innocent Infringers)

The complaint is barred, in whole or in part, to the extent any persons, based on whose behavior seek to hold VidAngel liable, are innocent infringers.

THIRTEENTH AFFIRMATIVE DEFENSE

(Supervening Events)

The complaint is barred, in whole or in part, because any alleged injury or loss sustained by Plaintiffs was caused by intervening or supervening events over which VidAngel had and has no control.

FOURTEENTH AFFIRMATIVE DEFENSE

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(Responsibility of Third Parties)

The complaint is barred, in whole or in part, because any alleged injury or loss sustained by Plaintiffs was the fault and responsibility of third parties over whom VidAngel had and has no control, and for whose actions VidAngel had and has no responsibility.

FIFTEENTH AFFIRMATIVE DEFENSE

(Express or Implied License)

The complaint is barred, in whole or in part, because Plaintiffs have granted an express or implied license in their copyrighted works to VidAngel.

SIXTEENTH AFFIRMATIVE DEFENSE

(First Sale Doctrine)

The complaint is barred, in whole or in part, by the first sale doctrine.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Copyright Misuse)

The complaint is barred, in whole or in part, by the copyright misuse doctrine.

ADDITIONAL AFFIRMATIVE DEFENSE

(Subsequently Discovered Defense)

VidAngel has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses, and reserves the right to assert additional defenses if and as it learns of facts that may support such defenses.

WHEREFORE, VidAngel prays for relief as follows:

1. That the complaint be dismissed, with prejudice and in its entirety;
2. That Plaintiffs take nothing by this action and that judgment be entered against Plaintiffs and in favor of VidAngel;
3. That VidAngel be awarded its costs incurred in defending this action;

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VIDANGEL’S FIRST AMENDED COUNTERCLAIMS

For its Amended Counterclaims against Plaintiffs Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment, Inc.’s (collectively “Counterclaim-Defendants”), VidAngel avers as follows:

THE PARTIES

1. Counterclaimant VidAngel, Inc. is a corporation duly incorporated under the laws of the State of Delaware with its principal place of business in Provo, Utah. VidAngel is the leading entertainment platform empowering users to filter movies and television shows as expressly authorized by Congress. Using VidAngel’s proprietary technology, consumers view content they own in a customized experience that offers the greatest degree of personal choice in the entertainment marketplace – all as expressly authorized by Congress in the Family Home Movie Act of 2005, as explained more fully below.

2. Counterclaim-Defendant Disney Enterprises, Inc. (“Disney”) is a Delaware corporation with its principal place of business in Burbank, California.

3. Counterclaim-Defendant Lucasfilm Ltd., LLC (“Lucasfilm”) is a limited liability company organized under the laws of the State of California with its principal place of business in San Francisco, California. Lucasfilm is a wholly-owned subsidiary of Disney.

4. Counterclaim-Defendant Twentieth Century Fox Film Corporation (“Fox”) is a Delaware corporation with its principal place of business in Los Angeles, California.

5. Counterclaim-Defendant Warner Bros. Entertainment Inc. (“Warner Bros.”) is a Delaware corporation with its principal place of business in Burbank, California.

6. VidAngel does not presently know the true names and capacities of the Counterclaim-Defendants sued herein as DOES 1 through 100 and therefore is suing

1 those Counterclaim-Defendants by fictitious names pursuant to Federal Rule of Civil
2 Procedure 19. VidAngel will amend its Counterclaims to allege the true identities of
3 DOES 1 through 100 once they are ascertained. VidAngel is informed and believes
4 each of the Counterclaim-Defendants sued as DOES 1 through 100 is in some manner
5 responsible for the occurrences, injuries and other damages alleged in these
6 Counterclaims.

7 **JURISDICTION AND VENUE**

8 7. This Court has original and exclusive jurisdiction over these Amended
9 Counterclaims pursuant to 28 U.S.C. §§ 1331, 1337(a), 1338, 2201 and 15 U.S.C. §§
10 1, 15, 26.

11 8. Venue is proper in this District pursuant to 15 U.S.C. §§ 22 and 28
12 U.S.C. §§ 1391(b) and 1400(a). Many of the unlawful acts alleged herein were
13 performed and occurred in material part within this District.

14 **SUMMARY OF COUNTERCLAIMS**

15 9. There exists a demand for a service which allows parents to filter motion
16 pictures and television content to eliminate objectionable material, such as violence,
17 sex and profanity. In response to that demand, Congress enacted the Family Home
18 Movie Act (“FMA”) to allow filtering without violating legitimate copyright
19 protection. Counterclaimant VidAngel founded its business on providing such
20 filtering services consistent with the FMA. Contrary to the spirit and purpose of the
21 FMA, Counterclaim-Defendants have each executed an agreement with the Directors
22 Guild of America (“DGA”) which the industry understands as prohibiting the
23 filtering of motion picture and television content except in very limited
24 circumstances. Counterclaim-Defendants, and their unnamed studio co-conspirators,
25 have relied on this agreement to justify their anticompetitive conduct designed to
26 prevent VidAngel from fulfilling its mission to filter such content. When entering
27 into this agreement with the DGA, each Counterclaim-Defendant knew that every
28 other studio (*i.e.*, each of its competitors) would be asked to and required to sign a

1 similar agreement; in fact, Counterclaim-Defendants insisted that they do so to insure
2 that no entity would secure a competitive advantage. In furtherance of the
3 combination to eliminate filtering—and contrary to their own economic self-
4 interest—Counterclaim-Defendants then refused to enter into licensing agreements to
5 allow VidAngel to stream and filter content, rejected VidAngel’s offers to buy
6 enormous quantities of DVDs from Counterclaim-Defendants, and interfered with
7 YouTube and Google Play’s efforts to expand VidAngel’s platform, viability and
8 customer base. In fact, Counterclaim-Defendants and their unnamed co-conspirators
9 have deliberately and repeatedly thwarted the efforts of VidAngel, and other filtering
10 services, at every turn. In so doing, Counterclaim-Defendants have frustrated the will
11 of Congress, effectively eviscerated the ability of parents to shield their children from
12 objectionable material, and seriously diminished VidAngel’s ability to function in the
13 market. Moreover, having forced VidAngel to an awkward and cumbersome method
14 of operation, as described more fully herein, Counterclaim-Defendants have now
15 conjured up a copyright infringement claim against VidAngel. These Amended
16 Counterclaims, based on the Sherman and Clayton Antitrust Acts, seek damages for,
17 and injunctive relief against, the unlawful collusive acts described herein.

18 **FACTUAL ALLEGATIONS**

19 **The Family Movie Act of 2005**

20 10. Many parents struggle to find ways to shield their children and others
21 within their homes from viewing or listening to violence, sex, profanity and other
22 content they find objectionable in television programs and motion pictures. There is
23 great demand for services that allow them to filter out these objectionable elements.
24 A recent survey conducted for VidAngel found that approximately 47% of parents
25 want online filtering services. Unsurprisingly, many are not sufficiently technology-
26 savvy to filter content on their own; instead, they must and do rely on third-party
27 services, including but not limited to VidAngel.

28 11. In response to the demand from parents and other consumers to control

1 the content they view in the privacy of their homes, Congress enacted the Family
2 Home Movie Act of 2005. The FMA, codified at 17 U.S.C. § 110(11), specifically
3 provides that it is *not* a violation of copyright to create or provide a “computer
4 program or other technology that enables” filtering “by or at the direction of a
5 member of a private household, of limited portions of audio or video content of a
6 motion picture, during a performance in or transmitted to that household for private
7 home viewing, from an authorized copy of the motion picture.” As used in the FMA,
8 “motion picture” is defined to include television programs. The FMA immunized
9 from copyright infringement and expressly authorizes: (1) a third party to create a
10 computer program or other technology; (2) that enables a member of a private
11 household to make imperceptible limited portions of an authorized copy of a motion
12 picture’s audio or video content; (3) to transmit that technology or computer program
13 to a household at the direction of a member of a private household; and (4) if no fixed
14 copy of the altered version is created.

15 12. The legislative history of the FMA describes the origin of the FMA as
16 follows:

17 The Committee strongly believes that, subject to certain conditions,
18 copyright and trademark law should not be used to limit a parent’s right
19 to control what their children watch in the privacy of their own home. A
20 dispute involving this issue is currently being heard in the U.S. District
21 Court for the District of Colorado [*Huntsman v. Soderbergh*, No. Civ.
22 A02CV01662RPMMJW (D. Colo.)]. Testimony provided by the
23 Register [of Copyright] on June 17, 2004, makes clear that some parties
to the suit should not face liability for their current actions, while others
appear to be in violation of existing copyright law. The “Family Movie
Act” clarifies the liability, if any, for the companies that are a party to
this case and to other companies not a party to this case that may be
interested in providing such services in the future.

24 H.R. Rep. 109-33 at 5.

25 13. The FMA does not dictate what type of content families may make
26 imperceptible. The FMA was “drafted in a content-neutral manner so that its
27 operation and impact do not depend upon whether the content . . . made imperceptible
28 contains items that are often viewed as offensive, such as profanity, violence, or

1 sexual acts. . . .The goal of the legislation [is] to give the viewer the ability to make
2 imperceptible limited portions of [a] work that he or she chooses not to see for
3 themselves or their family, whether or not the skipped content is viewed as
4 objectionable by most, many, few, or even one viewer.” *Id.* at 224.

5 14. The Director’s Guild of America is an entertainment guild of some
6 16,000 motion picture and television directors and members of directorial teams in
7 the United States. The Motion Picture Association of America (“MPAA”) is a trade
8 organization that represents the major studios and “serves as the voice and advocate
9 of the American motion picture, home video and television industries.” Each
10 Counterclaim-Defendant, or its parent, is a member of the MPAA. Both the DGA
11 and MPAA vigorously opposed the FMA. *Id.* at 69.

12 15. In drafting the FMA, Congress specifically considered whether the
13 public would benefit from having for-profit companies offer such filtering services.
14 Following subcommittee hearings, the House Copyright Committee (the
15 “Committee”) concluded that:

16 The for-profit nature of the entities providing services to the public that
17 the legislation addresses has no bearing on the operation of the immunity
18 from liability. The Committee is unable to discern a credible basis for
creating a distinction between the for-profit or non-profit nature of
companies that offer services covered by the Act.

19 *Id.* at 225. Thus, Congress understood that the content filtering permitted by the
20 FMA would likely be provided by for-profit companies.

21 16. Likewise, federal courts have recognized that the FMA protects filtering
22 services from the studios’ infringement claims: “the effect of the Family Movie Act is
23 that Congress made a policy decision that those who provide the technology to enable
24 viewers to edit films for their private viewing should not be liable to the copyright
25 owners for infringing their copyright. . . .” *Huntsman v. Soderbergh*, No. Civ.
26 A02CV01662RPMJW, 2005 WL 1993421 (D. Colo. 2005).

27 17. VidAngel’s Counterclaims are brought to give the FMA efficacy and
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1 defeat the collaborative efforts of the studios, and particularly the anticompetitive
2 actions taken by Counterclaim-Defendants and the DGA to prevent filtering and
3 thereby circumvent Congress’ intent and neuter the FMA.

4 **The Studios’ Hostility Toward Filtering**

5 18. Unfortunately, due to the hostility of the major motion picture studios,
6 the commercial market for online filtering services has been slow to develop.
7 VidAngel is one of few companies that enable consumers to filter out violence,
8 profanity, nudity, sexual acts and other content in motion pictures and television
9 programs. In fact, VidAngel allows consumers to choose to filter any combination of
10 over 80 categories of content. All of the market participants, including VidAngel,
11 have had their growth stunted by the studios, including the Counterclaim-Defendants.
12 As a result, many – if not most – consumers have been unable to realize the promise
13 and benefits of the FMA.

14 19. But for the conduct described herein, there would be a vibrant “filtering”
15 industry with numerous for-profit entities competing with VidAngel and others.
16 Counterclaim-Defendants, the DGA and/or the other major studios have sued nearly
17 every filtering company over the years. Nearly all of the targeted companies, which
18 operated with business models different than VidAngel’s, have since ceased
19 operations.

20 20. The major motion picture studios, and the directors they employ,
21 historically have been hostile to any alterations made to a director’s final cut. They
22 have long argued that a director’s “moral right” should prohibit any alterations to the
23 director’s work. As members of Congress have noted in rejecting that contention,
24 such concern for artistic integrity does not extend to opportunities to sell product
25 placements in films, the use of test audiences to modify their works to make them
26 “more commercial,” and other “assaults” on artistic integrity.

27 21. The studios and others opposing the FMA also argue that parents should
28 not allow children to watch a movie unless the parent approves the content of the

1 entire movie. Congress also rejected that contention.

2 22. In 2014, all major motion picture and television studios, including those
3 named as Counterclaim-Defendants herein as well as those not named, entered into a
4 written agreement with the DGA (the “DGA Agreement”). That agreement is
5 understood and implemented by the parties to prohibit the studios from entering into
6 distribution agreements that allow secondary editing or filtering of movies or
7 television programs, save for a few narrow exceptions.

8 23. In particular, Section 7-509 of the DGA Agreement, entitled “Editing
9 Theatrical Motion Pictures,” prohibits *any* alteration to a motion picture, including
10 such nuances as the “placement of or changes in commercial breaks,” without the
11 involvement, consultation or final approval of the director. These provisions of the
12 DGA Agreement, standing alone, are an unreasonable restraint on trade in violation
13 of Section 1 of the Sherman Act.

14 24. Section 7-509 of the DGA Agreement has been understood and enforced
15 by the studios as prohibiting all filtering. For example, when VidAngel approached
16 the studios to obtain licensing to stream filtered movies, non-party Lionsgate
17 Entertainment, Inc., (“Lionsgate”) advised VidAngel that it could not enter into such
18 an agreement with VidAngel unless VidAngel got permission from the DGA first. In
19 2014, VidAngel approached non-party Google Inc. (“Google”) to discuss the
20 possibility of streaming filtered content through Google Play. As detailed below, the
21 negotiations ended when Mark Fleming, a Google representative, informed VidAngel
22 on December 14, 2015 that Google was concerned a “blocker” to the deal was that
23 the “directors won’t let this happen” and that even if the studios were interested,
24 “their existing deals with the production companies/directors/etc. may not allow for it
25 . . . and therefore those [contracts] will need to get renegotiated first. . .” Conversely,
26 a local distributor in Utah, who started negotiations in May 2016, agreed to a
27 licensing deal with VidAngel because it is not a signatory to the DGA Agreement and
28 can permit filtering of content.

1 25. Each Counterclaim-Defendant and each non-defendant studio
2 voluntarily signed the DGA Agreement knowing full well that every other studio
3 would be asked to and would sign the same agreement so that all studios agreed there
4 would be no filtering of motion pictures save for in a few narrow and well-defined
5 exceptions (*i.e.* in-flight entertainment). Indeed, to avoid any studio(s) getting a
6 competitive advantage, each studio sought and received DGA assurance that *all*
7 studios would be required to and would sign the same agreement. Accordingly, the
8 studios have each agreed with the DGA and further have agreed with every other
9 studio that each would abide by the industry agreement not to filter.

10 26. On July 1, 2014, over 150 studios, production companies and other
11 entities, including Counterclaim-Defendants and/or their parents and subsidiaries,
12 signed the DGA Agreement.

13 27. The studios entered the DGA Agreement as part of a concerted effort to
14 prohibit the lawful provision of online filtering services pursuant to the FMA. The
15 studios were, or should have been, aware that the DGA Agreement could and would
16 be used in an anticompetitive manner, as alleged above, to restrict or extinguish the
17 market for online filtering services within the United States and this is exactly what
18 they contemplated and have accomplished.

19 28. Moreover, and perhaps more importantly, the studios license film
20 content only on the express written condition that the licensee not filter. In
21 furtherance of the studios' concerted effort to prohibit lawful provision of online
22 filtering services, the studios, including Counterclaim-Defendants, have entered into
23 anticompetitive agreements with the major digital content distributors which include
24 standard terms and conditions that restrict content editing and filtering of any kind
25 without their prior written consent. At least one of those agreements, involving non-
26 parties Google and Sony Pictures Entertainment ("Sony"), included the following
27 language:
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1 **CUTTING, EDITING AND INTERRUPTION.** Licensee [Google]
2 shall not make, or authorize any others to make, any modifications,
3 deletions, cuts, alterations or additions in or to any Included Program
4 without the prior written consent of Licensor [Sony]. For the avoidance
5 of doubt, no panning and scanning, time compression or similar
6 modifications shall be permitted, provided, however, Licensee may
7 make reasonable adjustments to size, color, brightness, contrast, etc. of
8 any of the Included Programs as necessary to preserve the integrity of
9 the original picture of the Copy as delivered by Licensor to Licensee.
10 Without limiting the foregoing, Licensee shall not delete the copyright
11 notice or credits from the main or end title of any Included Program or
12 from any other materials supplied by Licensor hereunder. No
13 exhibitions of any Included Program hereunder shall be interrupted for
14 intermission, commercials or any other similar commercial
15 announcements of any kind. Notwithstanding the foregoing, Licensee
16 shall be entitled to insert a promotional card displaying Licensee's logo
17 or brand name prior to the Included Program provided that such
18 promotional card runs for no longer than 3 seconds.

19 29. Likewise, when the studios, including Counterclaim-Defendants, sign a
20 deal for the rights to a specific movie title, the studios are required to include the
21 following language in all of their agreements. For example, in Sony's agreement for
22 the movies *Fury* and *American Hustle*, the following language binds Sony:

23 [Sony] shall have the right...to make any and all changes and
24 modifications in the Picture; provided, [Sony] shall comply with any
25 contractual right of first opportunity to make such changes granted to
26 Director.

27 30. This language (or requirements just like it) ultimately trickles down
28 through all agreements and purports to hand the authority to make any changes back
to the director. Indeed, all of Counterclaim-Defendants' agreements with major
digital content distributors contain similar standard terms and conditions which
restrict content filtering of any kind without the studios' prior consent.
Counterclaim-Defendants are, or should have been, aware that such agreements are
anticompetitive.

31. To avoid any studio having a competitive advantage, it is reasonable and
plausible to infer that each of the studios has entered agreements with the major
content distributors that contain terms and conditions similar to those mentioned
above, extending the restrictions on editing and filtering found in the DGA
Agreement to the major content distributors. This network of vertical DGA-studio

1 agreements operates to substantially restrict, if not eliminate, competition and
2 therefore violates the antitrust laws.

3 32. During congressional deliberations over the FMA, the House Copyright
4 Committee acknowledged that it was “aware of concerns regarding the legislation’s
5 impact upon moral rights, particularly those of movie directors.” While preserving
6 the directors’ right to control the editing of content in the public sphere, the
7 Committee granted individual viewers the right to filter content for viewing within
8 the privacy of their homes, with the assistance of remote technology offered by for-
9 profit companies. It wrote:

10 The Committee had hoped to receive testimony from a representative of
11 the director’s community on this issue [of moral rights] at one of the
12 Committee hearings on the issue, but no director was willing to testify.
13 The Committee is aware of numerous motion pictures being edited for
14 screen size, content, and time purposes with or without the director’s
15 consent so that a motion picture can be displayed on the 48-3 aspect
16 ratios of standard definition televisions, on an airplane with
objectionable language removed, and on television channels in the
traditional 90 or 120 minute time slots. The Committee sees no
difference between the impact upon the moral rights of directors of such
modifications and someone wanting to prevent certain content from
being displayed on their television.

17 H.R. Rep. 109-33 at 225. Thus, Congress fairly protected the directors and studios
18 from the threat of public censorship, while simultaneously granting individuals the
19 right to customize content in a private setting.

20 33. The Committee weighed the studios’ objection to filtering content and
21 determined that neither copyright nor trademark law should be used to limit a
22 parent’s right to control what his or her family watches in private. Accordingly, for-
23 profit companies and private individuals have the right to filter motion pictures in
24 accordance with the FMA, notwithstanding the hostility of the motion picture
25 industry to this type of alteration of their content.

26 **The United States Market for Online Filtering of**
27 **Film and Television Content**

28 34. When the FMA was enacted in 2005, physical media was king in the

1 home entertainment world. DVDs were by far the most popular video format for
2 Americans. According to the Digital Entertainment Group (the “DEG”), in 2006
3 Americans spent \$22.8 billion on DVD sales and rentals, representing 99% of home
4 entertainment spending. *DEG Year-End 2006 Home Entertainment Sales Update*,
5 The Digital Entm’t Grp. (Jan. 8, 2007), [http://degonline.org/wp-](http://degonline.org/wp-content/uploads/2014/02/f_4Q06.pdf)
6 [content/uploads/2014/02/f_4Q06.pdf](http://degonline.org/wp-content/uploads/2014/02/f_4Q06.pdf). At that time, most households had DVD
7 players and almost every desktop or laptop computer had a DVD drive.

8 35. Today, the home entertainment landscape is dramatically different.
9 Sales of DVDs and Blu-ray discs have steadily declined in recent years. In 2014, the
10 DEG reported that for the first time, Americans spent more on digital video providers
11 than physical discs.

12 36. Americans are also using new methods to view video content, as
13 consumers shift from physical discs to digital content that may be viewed on a
14 number of different devices. In 2015, the Pew Research Center reported that 68% of
15 American adults owned smartphones and 45% owned tablet computers.
16 Unsurprisingly, it has become increasingly difficult to purchase laptops with DVD
17 drives, as consumers demand lightweight portable devices and as digital delivery of
18 content becomes more feasible and prevalent.

19 37. As a result, there is a nationwide demand for online filtering services
20 that transmit filtered content over the internet, at the direction of heads of household,
21 to personal computers and other devices, including mobile applications, smart phones
22 and remote streaming devices. The market for filtered movies is, according to
23 National Research Group, 56 million people. Improvements in internet access and
24 speed have enabled viewers to unplug and rely heavily on streaming as a main source
25 of video consumption. From 2010 to 2015, the increasing prevalence of
26 smartphones, tablets and other internet-connected devices has mirrored and largely
27 been driven by the increased effectiveness and reliability of streaming video. Many
28 Americans rely upon these devices to watch their media content. Thus, the demand

1 for movies and television programs available for online remote filtering is larger
2 today than ever.

3 38. Counterclaim-Defendant Disney recognizes the need and demand for
4 online filtering services to control the content of what is available to children in
5 particular. Disney owns and markets a device called “Circle” which, according to its
6 website (<https://meetcircle.com/circle/filter/>) allows parents to set and customize
7 filters to ensure their children are not exposed to unwanted content on the internet,
8 social media or streaming television services.

9 **VidAngel’s Three Early Business Models and**
10 **Counterclaim-Defendants’ Anticompetitive Conduct**

11 39. To address the substantial demand for online filtering, VidAngel was
12 formed in October 2013 to provide customers the ability to control the content they
13 view at home. Using innovative and proprietary software, VidAngel created a
14 catalog of videos that could be filtered by users. Once a video is selected, a user can
15 choose from over 80 categories of filters, including sex, violence and profanity, to
16 mute or skip portions of the audio or video to permit a family-friendly viewing
17 experience.

18 40. Method 1: Traditional Streaming License. VidAngel solicited each of
19 the studios for a traditional streaming license, inducing the Counterclaim-Defendant
20 studios, but each and every studio declined. This unanimity could not exist in a
21 competitive environment and the unanimous and consistent declination to license
22 streaming content evidences and supports the inference that the studios have agreed
23 to “kill off” filtering.

24 41. Method 2: Buying discs straight from the studios. VidAngel requested
25 to buy DVDs and Blu-rays from the studios directly, thus funneling revenue straight
26 to the studios without any profits siphoned off by an intermediate retailer, such as
27 Walmart. Further evidencing collusion and acting contrary to their best business
28 interests, each studio declined or ignored these requests.

1 42. Method 3: Streaming through YouTube and Chromecast. Because the
2 studios refused to grant it a traditional streaming license and would not otherwise sell
3 physical DVDs to it, VidAngel developed a website to allow customers to filter
4 movies and videos available on YouTube and the Google Play Hollywood library.³
5 In 2012, Google launched Google Play to provide movies, TV shows, music and
6 books to Google and Android users. Importantly, the movies on Google Play were
7 delivered using YouTube’s infrastructure, meaning that every movie and show
8 available on Google Play was also available for purchase and/or rent on YouTube.
9 This was important because YouTube ran in a user’s web browser using a type of
10 software (called a Javascript API) that made it possible for VidAngel to manipulate
11 the playback of ordinary (but not high-definition) video and audio on a user’s desktop
12 computer. One limitation of this method was that without the official collaboration of
13 Google, the Javascript API would not work on Google Play apps, mobile devices,
14 Roku and other mobile platforms. At that time, though, Google supported the
15 technical capabilities for VidAngel to deliver a filtered HD movie to a family’s TV.

16 43. For some time, customers also could use VidAngel’s Chrome extension
17 (an additional piece of software that can be loaded into a user’s Google Chrome web
18 browser) and VidAngel.com to stream filtered movies that appeared on YouTube to
19 their computers. They could also use a Chromecast (a small piece of hardware that
20 plugs into newer HDTVs) to stream HD filtered movies to their HDTVs.

21 44. From approximately November 2013 to February 3, 2014, while
22 Chromecast was undergoing its own private beta test, VidAngel was able to access
23 technical features within the Chromecast private beta that allowed VidAngel to filter
24 high-definition titles available on Google Play to a user’s HDTV. During this time,

25 _____

26 ³ At all relevant times, Google Play’s Hollywood library was made available on
27 YouTube (although Hollywood movies were only available on YouTube in standard
28 definition format). Google was and is the owner of YouTube.

1 VidAngel reached out to Google to ask whether VidAngel could purchase
2 Chromecast devices at wholesale and then sell them to families who wanted to use
3 VidAngel’s filtering services. Google responded that it would consider a bulk
4 purchase agreement only after VidAngel successfully launched a public beta of its
5 Software Development Kit on February 3, 2014.

6 45. Once Chromecast launched on February 3, 2014, however, VidAngel
7 discovered that Google had removed the technology that made the filtering service
8 possible on native Chromecast. Google did not notify VidAngel or publicly
9 announce the removal of its technology. As a result of these abrupt changes,
10 VidAngel no longer had any support for its high-definition product on Chromecast
11 and lost the time, resources and energy that had gone into developing VidAngel’s
12 technology for use of this platform.

13 46. Counterclaim-Defendants, and the studios acting collectively, induced
14 and persuaded Google to terminate all technical support offered to VidAngel for its
15 Chromecast application for filtering HD content by contending that such support
16 violated the studios’ contracts with Google. Google stood to profit from VidAngel’s
17 purchase, promotion and distribution of the Chromecast device and offered no
18 justification, business or otherwise, for suddenly eliminating the technical features
19 that allowed VidAngel’s services to function with Chromecast.

20 47. The studios also induced and persuaded other major digital content
21 distributors (*e.g.*, Google Play, Netflix, Amazon, and Hulu) to refuse to support
22 VidAngel’s online filtering service. On or about December 5, 2013, VidAngel
23 received a notice from YouTube’s legal department averring that VidAngel was
24 breaking its terms of use because the VidAngel application was designed to “modify
25 the audio or visual components of . . . content.” YouTube took the position that
26 VidAngel’s content filtering, even as authorized by the FMA, violated YouTube’s
27 terms of use.

28 48. Shortly after VidAngel filed its original Counterclaims, Google changed

1 its terms of use and/or protocol on YouTube to introduce more restrictive terms
2 which make YouTube less practicable and useable for filtering.

3 49. Counterclaim-Defendants combined with one another (and others) to
4 unlawfully pressure Google to withhold its Chromecast and YouTube support
5 services from VidAngel. Counterclaim-Defendants did so, at least in part, in
6 furtherance of a conspiracy to prevent filtered streaming of their works.

7 **Google Play Sought to Partner with VidAngel Then Abruptly Terminates**
8 **Negotiations After Interference from the Studios**

9 50. The studios again pressured Google to withdraw support of VidAngel in
10 late 2014 and early 2015. In November 2014, a Google Play representative Mark
11 Fleming (who was a customer of VidAngel and a fan of the product) reached out to
12 VidAngel and expressed interest in a partnership between Google and VidAngel to
13 allow consumers to use VidAngel's filtering technology directly on Google Play's⁴
14 various platforms. On or about December 12, 2014, VidAngel's CEO met with Mr.
15 Fleming and other Google representatives to discuss the viability of VidAngel's
16 filters on Google Play's various streaming platforms. Google Play's representatives
17 informed VidAngel that Google was interested in this partnership, but Google Play
18 was concerned that their licensing agreements with the studios prohibited secondary
19 editing of any kind, which could interfere with an otherwise positive business
20 relationship.

21 51. Mr. Fleming and VidAngel's CEO exchanged several emails after the
22 meeting and continued negotiations until March 2015. On December 14, 2014, Mr.
23 Fleming expressed concern in an email to VidAngel's CEO that the studios'

24 _____
25 ⁴ Google Play is Google's official store for digital content distribution. It can be
26 accessed through web browsers, smartphones and various other modern devices.
27 Google Play sells and rents movie and television content pursuant to license
28 agreements with the movie and television studios.

1 agreements with the directors prohibited filtering, and in order to comply with the
2 terms of these agreements, Google would need to get approval from the director of
3 each and every movie VidAngel wanted to filter, or alternatively, wait until a “painful
4 cascade” of renegotiations occurred between each studio and the DGA and/or each
5 studio and each director.

6 52. In March 2015, Mr. Fleming met with executives from non-party Sony
7 to discuss the opportunity to use VidAngel’s online filtering service on Google Play’s
8 platforms. Mr. Fleming insisted that none of the negotiations with VidAngel and
9 Sony be in writing. After meeting with Sony, Mr. Fleming informed VidAngel’s
10 CEO that Sony and the rest of the MPAA member studios refused to allow Google to
11 partner with VidAngel. After March 2015, Google Play ceased all negotiations of a
12 partnership with VidAngel.

13 53. Google has an extensive library of movies and television shows
14 available for purchase or rent on Google Play. Google Play’s “Movies & TV”
15 website has a section dedicated to motion pictures produced by major studios. In this
16 section, it promotes, sells and rents motion pictures from Counterclaim-Defendants
17 Warner Bros., Disney and Fox, among others. Google depends on the studios to
18 supply content for this library.

19 54. In the absence of the DGA Agreement and in a competitive market, at
20 least one or more the studios, including Counterclaim-Defendants, would agree to a
21 streaming license with VidAngel to provide filtering services because such an
22 agreement would be profitable for the studios. Nonetheless, as a result of the studios’
23 collective agreement, the market for online remote filtering has been “killed off” and
24 is virtually non-existent – despite being protected by the FMA. VidAngel is the only
25 significant company in the United States that presently provides online filtering
26 services for high-definition motion pictures and television shows over the internet,
27 whether the consumer is using a laptop, smart phone, tablet or other device capable of
28 streaming video. Counterclaim-Defendants have frustrated the will of Congress and

1 the American people as expressed by the adoption of the FMA.

2 **VidAngel Launches Its Current Business Model**

3 55. Contrary to Plaintiffs’ allegations (Complaint ¶ 47), prior to VidAngel
4 developing its current model, there was no effective way to deliver filtered content
5 pursuant to the FMA to the overwhelming majority of viewers without the
6 cooperation of Google and other content distributors. By 2014, the traditional ways
7 of filtering movies were no longer available to the overwhelming majority of
8 consumers.

9 56. Alternatives to VidAngel’s current model are cumbersome, expensive
10 and often ineffective. ClearPlay, for example, offers a DVD filtering experience
11 which requires the purchase and installation of a \$249.99 DVD-player in addition to
12 an \$8/month subscription fee. Consumers must acquire a DVD on their own,
13 purchase and install the additional equipment, subscribe to the service, place the
14 physical DVD in the player, and download filters just to view a filtered title. At
15 times, differences between the content a consumer purchased (*e.g.*, a director’s cut
16 with bonus footage additions or a separate edition of the film) and the content upon
17 which the ClearPlay filters are based cause ClearPlay’s filters to fail.

18 57. Even VidAngel’s pioneering filtering software, which functioned on top
19 of Google Play streaming content, was fraught with problems. That software worked
20 only with standard definition content, not the popular high-definition format. More
21 importantly, as noted above, Google Play began to prevent VidAngel’s software from
22 functioning properly on the Chromecast. Because VidAngel’s software was not
23 officially supported by Google, changes to YouTube caused the filters to fail. When
24 that happened, users would see content that they did not want to see until VidAngel
25 updated its software. Those experiences damaged VidAngel’s credibility. Finally,
26 slower computers could not process both the video and the filter at the same time,
27 resulting in missed profanity or nudity filters. The end result was that – without
28 Google’s technical support and cooperation – no method enabled a consistent

1 filtering experience for the majority of VidAngel users and no method would provide
2 a high-definition filtering experience for any VidAngel users.

3 58. Unable to use Google Play and YouTube’s platform due to
4 Counterclaim-Defendants’ opposition to VidAngel’s online filtering service,
5 VidAngel built its current proprietary platform, and developed software and other
6 technology to enable private persons to engage lawfully in personal movie filtering as
7 contemplated and expressly authorized by the FMA. Its technology allows the
8 owners of digital video discs or Blu-ray discs (collectively referred to as “DVDs”) to
9 filter objectionable content.

10 59. At present, VidAngel has more than 2,500 movies and television
11 episodes currently available for purchase in its library. VidAngel has lawfully
12 purchased and owns physical copies of each of these titles in DVD format before
13 selling the DVDs to VidAngel customers. VidAngel spends one-third of all capital
14 raised just to purchase those DVDs lawfully. VidAngel acquires numerous DVDs for
15 each of its titles from various public and private sellers. Plaintiffs falsely allege that
16 they receive no payment from VidAngel as a result of its service (Complaint ¶¶ 49-
17 50), Plaintiffs in truth receive the same payment for each of these first sales to
18 VidAngel as they would receive from any lawful first purchaser.

19 60. Following its purchase from VidAngel’s suppliers, VidAngel enters each
20 DVD it has purchased into an inventory management application database and
21 assigns a unique barcode to each physical disc case. When a consumer purchases a
22 DVD, that particular DVD is held in VidAngel’s vault for the customer and VidAngel
23 records the purchase by assigning the unique barcode for the DVD to its owner. Only
24 a customer who owns a DVD in the vault may access the title for filtering. The vault
25 is locked and under 24-hour surveillance using multiple video cameras.

26 61. VidAngel’s trained personnel and contractors carefully review all titles
27 available for resale for potentially objectionable content. VidAngel has developed
28

1 more than 80 codes or tags for different kinds of content that a viewer might prefer
2 not to hear or see.

3 62. Using VidAngel's proprietary tagging application, customers are able to
4 select their own filtering options and stream content they own to their personal
5 devices. Users are shown a listing of the various types of potentially objectionable
6 content identified in the purchased work, as well as the number of occurrences of
7 each such type of content within the work. The user then selects the types of content
8 he or she wishes to have silenced or deleted. The user has access to set any
9 combination of filters in the following categories: profanity, sex/nudity/immodesty,
10 violence, drug/alcohol use, and objectionable/disturbing. The user's unique selection
11 of filters creates a custom filter. Filters may be modified before and during the
12 viewing process and are saved to the user's unique customer ID.

13 63. Before watching a particular movie or television episode, a customer
14 must purchase a physical DVD containing the complete, unaltered version of the title
15 from VidAngel. Every DVD available for purchase by a customer was first lawfully
16 acquired by VidAngel as described above. VidAngel typically maintains the physical
17 DVD on behalf of the purchasers, but purchasers may request that the DVD be sent to
18 them or retrieve the DVD from VidAngel's offices. VidAngel will not provide its
19 filtering service, however, if the DVD is not in its or the customer's possession. That
20 requirement ensures that the one-to-one correspondence between the disc and the user
21 is maintained.

22 64. Users are able to access the contents of their DVDs only by owning
23 them. The purchase price for each DVD is \$20. To purchase a disc, users must log-
24 on to the VidAngel website. First-time users are required to provide an email address
25 to establish a unique user ID and create a password. Upon providing this
26 information, users have the ability to access the current inventory of disks available to
27 purchase.

28

1 65. Once a purchase transaction has occurred, the disc is removed from
2 available inventory and the title is transferred to that customer’s unique user ID.
3 After a customer purchases a physical DVD and selects his or her desired filters, the
4 user is permitted to play a filtered version of the work on one device screen at a time.
5 VidAngel filters the specific content identified by its customer to be screened as the
6 content is streamed to the customer but makes no permanent fixed copy of the work
7 as streamed. Neither VidAngel nor its users make any alteration to the underlying
8 work.

9 66. A subscriber is able to view the stream instantaneously on any
10 VidAngel-supported device, including Roku, Apple TV, Smart TV, Amazon Fire TV,
11 Android, Chromecast, iPad/iPhone and desktop or laptop computers.

12 67. VidAngel’s service relies on HTTP Live Streaming (“HLS”) encryption
13 to let customers enjoy video over HTTP for playback on devices running iOS,
14 including the iPhone, iPad, iPod Touch, Roku, Chromecast, and desktop and laptop
15 computers. VidAngel’s service utilizes the Advanced Encryption Standard (“AES”),
16 as well as other technologies, to seamlessly protect content from non-authorized
17 streaming, piracy, and redistribution by others, with no detectable difference to video
18 playback. VidAngel employs a one-screen policy for playback based on the user’s
19 account, IP address and other information.

20 68. Once a user has viewed it, the user may re-sell a movie or television
21 program back to VidAngel for a partial credit of the \$20 purchase price. The sell-
22 back price decreases \$1 per night for standard definition (SD) purchases and \$2 per
23 night for high-definition (HD) purchases. Once a user sells the movie back to
24 VidAngel, the user’s access is immediately terminated. If the user decides to sell the
25 disk back, the remaining balance is credited back to the user’s VidAngel account.
26 The credit can be used towards future purchases. For example: A \$20 SD disk is
27 owned for 2 nights at \$1 per night and sold back for \$18 in sell-back credit. If a
28 VidAngel customer keeps a DVD for more than 20 days, he or she can now view it

1 through the VidAngel platform in perpetuity or sell it back for \$1 or \$2 in credit. Or,
2 VidAngel will send the DVD to the customer upon request at any time.

3 69. VidAngel has designed and engineered its filtering service to promote
4 compliance with copyright law and the FMA. For example, just as a physical DVD
5 could not be played simultaneously on multiple devices, VidAngel restricts a user's
6 playback to one device at a time. VidAngel also streams a filtered work to just one of
7 a user's registered devices at a time.

8 **VidAngel Reached Out to Counterclaim-Defendants to Explain Its Service**

9 70. Before VidAngel made its new service available to the public at large,
10 VidAngel wrote to the general counsels of each of the Counterclaim-Defendants, as
11 well as other content owners, on July 23, 2015, with follow-up letters on August 21,
12 2015, introducing its business model and offering to meet with them to discuss the
13 distribution of their content for filtering under the FMA. Attached as Exhibits A and
14 B are true and correct copies of letters sent to Counterclaim-Defendants (or their
15 parents), in July and August of 2015. VidAngel had over 750 titles available when it
16 sent its letters to Counterclaim-Defendants asking for their input or offering to
17 discuss VidAngel's business model.

18 71. Unbeknownst to VidAngel at the time, Counterclaim-Defendant Disney
19 almost immediately accessed VidAngel's service after receiving VidAngel's first
20 letter. On August 6, 2015, a Disney employee signed up for a VidAngel account
21 using a non-descript Gmail account and providing payment information for the
22 Director of Antipiracy Operations at Disney. Between August 2015 and April 2016,
23 this Disney employee purchased and sold back 17 titles using VidAngel's services.
24 Despite this apparent interest in VidAngel, Disney did not respond to VidAngel's
25 offer to meet or discuss VidAngel's business.

26 72. Also in response to VidAngel's letters and growing user base,
27 Counterclaim-Defendants, including Fox, sought guidance from the MPAA and each
28 other concerning VidAngel's filtering services in or around July and August 2015. In

1 fact, 59 employees of Counterclaim-Defendants, the MPAA, or other MPAA studios
2 exchanged 124 messages concerning VidAngel in August 2015 alone. During early
3 2016, Fox again discussed VidAngel’s services with the MPAA, and consulted with
4 co-Counterclaim-Defendants Disney and Warner Bros. on the issue. Although it was
5 seemingly interested and possibly concerned about VidAngel, Fox never met with
6 VidAngel to discuss VidAngel’s service or operations. In fact, although Fox and
7 Time Warner, Inc. (Warner Bros.’ parent) were the only Counterclaim-Defendants to
8 respond to VidAngel’s offer to meet, Fox failed to appear for two scheduled
9 appointments. Likewise, Time Warner cancelled a conference call at the last minute
10 and then failed to reschedule.

11 73. Overall, Counterclaim-Defendants’ in-house counsel and outside counsel
12 discussed VidAngel over 1,300 times by email alone before finally filing suit. At no
13 point did any Counterclaim-Defendant send VidAngel a cease-and-desist letter, seek
14 an injunction or any other type of relief.

15 **The Studios’ Choice to Enforce Their Anticompetitive Agreements**

16 74. Because unfiltered content falls outside the FMA, a service streaming
17 unfiltered content (*i.e.* Netflix) is required to negotiate and pay for a streaming
18 license with each studio. The studios generally charge \$3.50 per title to allow third
19 party services to stream unfiltered content for 24 to 48 hours. After the third parties
20 add their own mark-up, consumers usually pay around \$5.00 to watch new releases
21 through these streaming services.

22 75. VidAngel has sought a streaming license from the studios, including
23 Counterclaim-Defendants. Because of the restrictive and exclusionary terms of the
24 DGA Agreement, the studios, including Counterclaim-Defendants, have refused to
25 grant VidAngel a streaming license that would permit filtering. As a result, under
26 VidAngel’s current business model, the studios profit from VidAngel’s initial
27 purchase of each DVD title, but not each time that title is re-sold and streamed to a
28 new customer. This allows VidAngel to offer consumers lower prices than unfiltered

1 streaming services, typically \$1.00-2.00 net cost per title.

2 76. Not only are VidAngel's prices lower, but its apps also are rated higher
3 by users than the leading distribution platforms endorsed by the studios. For
4 example, the VidAngel rating on Google Play is 4.8 stars whereas Netflix is 4.4 stars,
5 Hulu is 4.1 stars, and Disney Movies Anywhere is 3.9 stars. For all ratings on the
6 Apple App Store, VidAngel has 5 stars, Netflix has 3.5 stars, Hulu has 2 stars, and
7 Disney Movies Anywhere has 3.5 stars. On Roku, VidAngel has 4.5 stars, Netflix
8 has 3 stars, Hulu has 3.5 stars and Disney Movies Anywhere has 3.5 stars.

9 77. About 96% of VidAngel's purchases have come from users who chose
10 more than one filter. This filtered-only viewership adds to the studios' bottom lines
11 because these purchases would not have occurred but for VidAngel and its filtering
12 services. Nonetheless, the studios have economic and other control motives to
13 subvert VidAngel's business because VidAngel's DVDs are re-sold and streamed to a
14 new customer an average of 16 times each in the first four weeks of the new release.
15 Because Counterclaim-Defendants have denied VidAngel a streaming license, they
16 do not receive a profit from each instance a title is re-sold and streamed like they
17 would from a service, such as Netflix, that has a streaming license. Although this
18 could be easily remedied by granting VidAngel a streaming license with a per use
19 charge, Counterclaim-Defendants have instead chosen to enforce their
20 anticompetitive agreements which prohibit filtering by denying VidAngel such a
21 license rather than confronting the DGA or changing the terms of their contracts with
22 the directors who produce their motion picture and television content.

23 78. In addition to the studios' economic and control motivations,
24 VidAngel's success has also detracted from Counterclaim-Defendant Disney's
25 reputation and brand as the longstanding guardian of children and family interests in
26 the industry.

27 79. There are significant drawbacks to VidAngel's current business model
28 because it does not have a streaming license. For example, VidAngel spends one-

1 third of all capital raised on the purchase of DVDs and has high overhead costs
2 stemming from the maintenance of its secure vault. It also sustains losses when it
3 overstocks its inventory with a particular title that its customers ultimately do not
4 purchase, or is forced to send “out of stock” notices when its inventory on a
5 particularly popular title is too low. VidAngel sent over 250,000 out of stock notices
6 in August 2016 alone – meaning VidAngel turned away 250,000 potential purchases
7 it could have consummated if it had a standard streaming distribution agreement that
8 allowed for filtering. Despite its attempts to cooperate, collaborate and consult with
9 each studio, VidAngel has been forced into this inefficient business model by virtue
10 of their collective anticompetitive conduct.

11 **FIRST COUNTERCLAIM FOR RELIEF**

12 **By VidAngel against All Counterclaim-Defendants**

13 **(Violation of Section 1 of the Sherman Act (15 U.S.C. § 1))**

14 80. VidAngel incorporates herein by reference each and every averment
15 contained in all preceding paragraphs.

16 **Relevant Product/Service Market**

17 81. The relevant product/service market for antitrust purposes in this case is
18 the implementation of online remote filtering services for high-grossing motion
19 picture productions and high-rated television productions, including without
20 limitation, the implementation of filtering services for digital content applications
21 available on modern mobile devices, including smartphone and remote streaming
22 devices.

23 82. There is extremely low cross-elasticity of demand and/or no reasonably
24 interchangeable substitutes for online remote filtering services. Over VidAngel’s
25 entire history, nearly 96% of VidAngel’s purchasers selected multiple filters,
26 demonstrating the fact that the version of the motion picture or television show
27 VidAngel streams is of a different character than the version available through other
28

1 non-filtering streaming services like Google Play, Amazon Video, VUDU and
2 iTunes.

3 **Relevant Geographic Market**

4 83. The relevant geographic market for antitrust purposes in this case is the
5 entire United States which is the area of effective competition in which the parties
6 operate and to which customers can practically turn for online remote filtering
7 services.

8 **Antitrust Standing**

9 84. VidAngel has the requisite standing to assert antitrust claims against
10 these Counterclaim-Defendants because VidAngel is a participant and competitor in
11 the relevant market and has suffered injury by reason of the unreasonable restraints
12 and concerted exclusionary conduct of the Counterclaim-Defendants.

13 **Contracts and Combination to Unreasonably Restrain Competition**

14 85. Even without consideration or aggregation of their unnamed co-
15 conspirators, Counterclaim-Defendants represent nearly 57% percent of motion
16 picture revenue, and over a period of many decades, have established collective and
17 total control over motion picture, film and television productions in the U.S. – the
18 raw material needed to effectively compete in the relevant online remote filtering
19 services market. To date in 2016, each Counterclaim-Defendant enjoys the following
20 market shares based on overall gross revenue in the motion picture industry: Fox,
21 14.1%; Warner Bros., 16.5%; and Disney (through its subsidiary Buena Vista),
22 26.2%. The production and distribution of all motion pictures accounts for
23 approximately \$11.5 billion dollars annually. Accordingly, Counterclaim-Defendants
24 collectively have market power because of their ability to exclude competition and/or
25 control prices or output in the filtering services market.

26 86. Counterclaim-Defendants also have significant television-related
27 ventures. Warner Bros.’s television outlets produced more than 70 series in the 2015-
28 2016 season and comprise the largest television production company measured by

1 revenue and library. Disney’s television portfolio includes the Disney Channel, ABC
2 Television Network, 50% ownership of A&E Network, and an 80% stake in ESPN.
3 Disney and Fox, among others, are co-owners of the streaming television service
4 Hulu. In addition to Hulu, Fox’s television ventures also include FOX News, Fox
5 Sports Networks, FOX Sports, FX, and National Geographic.

6 87. As evidenced above, the motion picture and television production and
7 distribution markets are controlled by an oligopoly of entrenched and vertically-
8 integrated enterprises. As a result, there are high barriers to entry, including capital
9 and access to talent, which limit access to potential new entrants. Further,
10 Counterclaim-Defendants’ restrictions, threats and arrangements have created a
11 barrier that precludes effective entry by other competitors. As a result, the quality
12 and variety of offerings in the online remote filtering market have been reduced and
13 constrained.

14 88. As set forth above, Counterclaim-Defendants and their unnamed co-
15 conspirators entered into one or more agreements that unreasonably restrained
16 interstate trade in violation of Section 1 of the Sherman Act and Section 4 of the
17 Clayton Act, 15 U.S.C. §§ 1, 15.

18 89. Counterclaim-Defendants voluntarily entered into a written contract with
19 the DGA on July 1, 2014, as described above, in which they agreed to prohibit
20 secondary editing or filtering of motion pictures or television programs and which
21 prohibits Counterclaim-Defendants from entering into distribution agreements that
22 permit such filtering. These agreements impose vertical non-price restraints on
23 distributors, exhibitors, and other companies in the market for online remotefiltering
24 services of motion pictures and television shows and amount to a group boycott or
25 other concerted refusal to deal with VidAngel in violation of the antitrust laws.

26 90. Counterclaim-Defendants have entered into licensing agreements with
27 Google Play and other digital content distributors. In furtherance of their
28 combination to restrain the market for online filtering services, Counterclaim-

1 Defendants have inserted provisions into those license agreements which prohibit
2 these distributors from implementing filtering services for digital content applications
3 available on modern mobile devices, including smartphones and remote streaming
4 devices.

5 91. In furtherance of their combination to restrain the market for online
6 filtering services, Counterclaim-Defendants placed pressure on Google Play to not
7 enter into a partnership with VidAngel and to deny VidAngel access to Google Play’s
8 services. Counterclaim-Defendants orchestrated this boycott of VidAngel to further
9 their own commercial profit, artificially raise prices, reduce output and force
10 VidAngel out of business.

11 92. The actions complained of herein will continue to restrain and adversely
12 affect interstate commerce in that provision of filtering services crosses state lines.
13 Each Counterclaim-Defendant and VidAngel purchase a substantial volume of goods,
14 services, and supplies in interstate commerce which are, or are threatened to be,
15 adversely affected by the unlawful conduct alleged herein.

16 **Antitrust Injury and Damage to VidAngel**

17 93. The anticompetitive scheme and plan of the Counterclaim-Defendants to
18 unreasonably restrain trade in the above-described trade and commerce has been done
19 with the intent to specifically eliminate online filtering of motion picture and
20 television productions as a viable industry.

21 94. A copyright holder enjoys a “distribution right” and may initially sell, or
22 not sell, copies of a copyrighted work to others on such terms as he or she sees fit.
23 However, the copyright holder’s distribution right is limited to the first sale of the
24 copyrighted item. Under the “first sale” doctrine, codified at 17 U.S.C. § 109(a), “the
25 distribution right may be exercised solely with respect to the initial disposition of
26 copies of a work, not to prevent or restrict the resale or other further transfer of
27 possession of such copies.”

28 95. Counterclaim-Defendants’ right to control distribution of a copy of a

1 copyrighted movie release *ends* once the copy has been sold. The distribution right
2 may not lawfully be exercised after the initial sale, “to prevent or restrict the resale or
3 further transfer of possession of such copies.”

4 96. Counterclaim-Defendants’ attempts to prevent and restrict VidAngel
5 from offering its buy-sell-back service to customers constitute an attempt to
6 unlawfully restrict the resale of goods. Any such attempt is an illegal restraint of
7 trade.

8 97. Counterclaim-Defendants’ collusive conduct and unlawful contracts
9 have produced antitrust injury, and unless enjoined by this Court, will continue to
10 produce at least the following actual and demonstrative anticompetitive, exclusionary
11 and injurious effects upon competition and consumers in interstate commerce:

12 (a) competition and output in the relevant filtering market has been
13 substantially and reasonably restricted, lessened, foreclosed and eliminated;

14 (b) barriers to entry into the relevant filtering market have been raised
15 which has prevented or delayed the entry of new filtering competitors;

16 (c) consumer choice has been, and will continue to be, significantly
17 reduced, limited and constrained as to selection, price and quality of filtering services
18 in the United States;

19 (d) consumer access to VidAngel’s competitive filtering services has
20 been artificially restricted and reduced and its filtering service offerings will continue
21 to be excluded from the market; and

22 (e) the will of the people and of Congress in enacting the FMA has
23 been frustrated, subverted and thwarted.

24 98. As a result of Counterclaim-Defendants’ concerted activity, VidAngel
25 was denied access to Google Play’s digital distribution service and therefore has
26 suffered antitrust injury. Counterclaim-Defendants’ conduct has had an
27 anticompetitive effect on the development of the market for online filtering services
28 for high-quality video content within the United States; in fact, their misconduct has

1 substantially deprived and actually threatens to effectively extinguish that market.

2 99. There are no business, technological or other efficiencies that require or
3 justify Counterclaim-Defendants' imposition of such exclusionary and
4 anticompetitive conditions and restrictions.

5 100. By reason of, and as a direct and proximate result of the violations
6 alleged herein, Counterclaimant VidAngel has suffered and may continue to suffer
7 substantial financial injury in its business and property by Counterclaim-Defendants'
8 and unnamed co-conspirators continuing violations of the antitrust laws.
9 Counterclaim-Defendants' unlawful conduct was calculated to eliminate
10 Counterclaimant as a viable competitor in the filtering market. Due to Counterclaim-
11 Defendants' contract and combination, VidAngel lost substantial profits and profit
12 opportunities. Counterclaim-Defendants' coordinated and focused anticompetitive
13 conduct has cumulatively, incrementally, and unreasonably restricted competition and
14 devastated VidAngel's business. As a result, VidAngel has been deprived of
15 revenues and profits they would have otherwise made, suffered diminished market
16 growth and sustained a loss of goodwill and going concern value. Counterclaim-
17 Defendants' conduct has decreased VidAngel's business volume and substantially
18 diminished its business value.

19 101. VidAngel does not yet know the precise extent of its past damages and
20 when ascertained will ask leave of this Court to insert said sum herein.

21 **SECOND COUNTERCLAIM FOR RELIEF**

22 **By VidAngel against All Counterclaim-Defendants**

23 **(Intentional Interference with**

24 **Prospective Economic Advantage)**

25 102. VidAngel incorporates herein by reference each and every averment
26 contained in all preceding paragraphs.

27 103. This Court has jurisdiction over this Second Counterclaim for Relief
28 based on the doctrine of supplemental jurisdiction (28 U.S.C. § 1367) because this

1 Counterclaim for Relief arises from the same transactions and from a common
2 nucleus of operative facts as alleged in the federal causes of action.

3 104. VidAngel has developed advantageous prospective business and
4 economic relationships with business partners to expand VidAngel's business,
5 visibility and availability to consumers, and which promise a continuing probability
6 of future economic benefit to VidAngel. Counterclaim-Defendants knew, or
7 reasonably should have known, of the existence of those prospective economic
8 advantages.

9 105. Counterclaim-Defendants, with the intent of disrupting and destroying
10 VidAngel's business relationships, have deliberately undertaken the illegal practices
11 described herein thereby inducing VidAngel's actual and prospective partners, such
12 as YouTube and Google Play, not to enter into such prospective contractual
13 relationships with VidAngel. As such Counterclaim-Defendants' conduct was
14 wrongful.

15 106. By means of the alleged actions, including but not limited to the unfair,
16 anticompetitive and/or predatory acts set herein, Counterclaim-Defendants intended
17 to pressure and induce these customers to end or disrupt their prospective economic
18 relationships with VidAngel. As a direct and proximate result of Counterclaim-
19 Defendants' actions as alleged herein, many of the economic benefits from
20 Counterclaimant's prospective customers have been lost. Counterclaim-Defendants
21 knew these disruptions or interferences were substantially certain to occur as a result
22 of their conduct.

23 107. Counterclaim-Defendants' conduct was a substantial factor in causing
24 financial injury to VidAngel and has rendered it more difficult for VidAngel to
25 remain and survive as a viable competitor. VidAngel has sustained and will continue
26 to sustain damages, the exact amount of which is extremely difficult to calculate, and
27 presently unknown, but which will be proven at trial.

28 108. Counterclaim-Defendants' wrongful conduct in interfering with such

1 prospective business contractual relations is intentional, malicious and without
2 justification and such conduct and overall scheme was undertaken solely to hinder, if
3 not eliminate, competition. Their anticompetitive conduct was not privileged or
4 excused and was without any legitimate business justification. Counterclaim-
5 Defendants have knowingly engaged in such wrongful conduct for the purpose of
6 excluding competition, damaging VidAngel's goodwill, and to deprive consumers of
7 the benefits of free and open competition. Counterclaim-Defendants committed each
8 of the foregoing acts willfully, fraudulently, oppressively, maliciously and with the
9 wrongful intention of injuring VidAngel's prospective business relationships.
10 Accordingly, VidAngel is entitled to punitive and exemplary damages sufficient to
11 serve as an example and to punish Counterclaim-Defendants.

12 109. As a result of the foregoing acts, VidAngel has suffered, and will
13 continue to suffer, irreparable injury for which there is no adequate remedy at law
14 unless Counterclaim-Defendants are enjoined by this Court.

15 **THIRD COUNTERCLAIM FOR RELIEF**

16 **By VidAngel against All Counterclaim-Defendants**

17 **(Unfair Competition in Violation of**

18 **Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

19 110. VidAngel incorporates herein by reference each and every averment
20 contained in all preceding paragraphs.

21 111. This Court has jurisdiction over this Third Counterclaim for Relief based
22 on the doctrine of supplemental jurisdiction (28 U.S.C. § 1367) because this
23 Counterclaim for Relief arises from the same transactions and from a common
24 nucleus of operative facts as alleged in the federal causes of action.

25 112. Section 17200 *et seq.* of the California Business & Professions Code is
26 written in the disjunctive and broadly covers three varieties of unfair competition –
27 acts that are unlawful, or unfair, or fraudulent. The statute's intent and purpose is to
28 protect both consumers and competitors by promoting fair competition in commercial

1 markets for goods and services.

2 113. Counterclaimant VidAngel is a “person” within the meaning of
3 California Business & Professions Code § 17201.

4 114. As alleged herein, Counterclaim-Defendants’ conduct constitutes
5 “unfair” business practices. A practice may be deemed unfair even if not specifically
6 proscribed by some other law although here the conduct violates both the FMA and
7 the Sherman Act. Conduct that significantly threatens or harms competition, or
8 threatens an incipient violation of an antitrust law, may be deemed to be “unfair.”

9 115. As alleged herein, Counterclaim-Defendants’ anticompetitive conduct is
10 also “unlawful.” Within the meaning of § 17200, virtually any violation of any civil
11 or criminal federal, state or municipal, statutory, regulatory, court-made, or local law
12 can serve as a predicate for an “unlawful” claim.

13 116. By reason of, and as a direct and proximate result of Counterclaim-
14 Defendants’ unfair and unlawful practices and conduct, Counterclaimant VidAngel
15 has suffered and will continue to suffer, economic injury to its business and property.

16 117. Counterclaim-Defendants’ unfair and unlawful conduct has caused
17 economic harm to Counterclaimant VidAngel, competition and consumers.

18 118. Pursuant to Section 17203, the entry of permanent and mandatory
19 injunctive relief against Counterclaim-Defendants is necessary to enjoin the ongoing
20 wrongful business conduct. An injunction is needed to enable and restore
21 competition in the online filtering market.

22 **FOURTH COUNTERCLAIM FOR RELIEF**

23 **By VidAngel against All Counterclaim-Defendants**

24 **(Declaratory Relief Regarding VidAngel’s Current System)**

25 119. VidAngel incorporates herein by reference each and every averment
26 contained in all preceding paragraphs.

27 120. An actual controversy has arisen and now exists between VidAngel and
28 Counterclaim-Defendants concerning whether VidAngel’s current system violates

1 copyright law. VidAngel’s system is designed and operates as follows:

- 2 (a) VidAngel lawfully purchases Blu-rays and DVDs (both referred to as
3 “DVD” in this prayer);
- 4 (b) VidAngel uses a commercially available software program to
5 automatically allow read-access for the purpose of mounting the DVD
6 files for uploading onto a computer, in the process removing restrictions
7 on DVD encryption;
- 8 (c) VidAngel extracts the subtitle/caption data files and then creates
9 Matroska files of the feature films;
- 10 (d) VidAngel uploads the subtitle/caption data files and Matroska files
11 (collectively known as the “pre-filter files” or “PF” files) onto a secure
12 folder on a third-party Internet service provider’s cloud storage service
13 (“CSS”) and uploads the subtitle/caption into a separate CSS folder;
- 14 (e) VidAngel destroys the Matroska files;
- 15 (f) VidAngel boots an encoding and segmenting server (“ESS”) to run two
16 scripts, including an encoding script and a segmenting script.
- 17 (g) The encoding script temporarily copies the PF files from the CSS to the
18 ESS, uses ffmpeg to prepare the PF files for tagging and filtering, creates
19 a single mp4 file (640 kilobytes per second bitrate) for tagging (when
20 that is not performed beforehand on YouTube or when corrections need
21 to be made to the tags), copies the mp4 file from the ESS to a secure
22 CSS location, creates four Transport Stream files (“TS files”) at 640,
23 1200, 2040 and 4080 bitrates for filtering, copies the TS files to a secure
24 location on the CSS, and deletes all copies and files on the ESS, and is
25 run once for each title’s Matroska file;
- 26 (h) The segmenting script temporarily copies the TS files from the CSS to
27 the ESS, segments the TS files for adaptive bitrate streaming (the HLS
28 specification) based on both 9-10 second intervals and the locations of

1 each tag for the title (which could be as short as 2 tenths of a second),
2 creates thumbnail files for player scrubbing preview for each non-
3 filterable segment, saves a comma-separated values (CSV) file
4 containing the results of the segmenting process for each segment,
5 uploads the CSV file for use by the filtering system, encrypts each
6 segment of each bitrate with a new and unique encryption key, copies
7 the unencrypted segments from the ESS to a secure location on the CSS,
8 copies the encrypted segments from the ESS onto a publicly accessible
9 location on the CSS, copies the encryption keys from the ESS to a secure
10 location on the CSS, deletes older revision files on the CSS, and deletes
11 all copies and files on the ESS;

- 12 (i) VidAngel lawfully purchases additional DVDs;
13 (j) VidAngel enters the information concerning the additional DVDs into an
14 inventory system;
15 (k) VidAngel applies bar codes to the DVD packages;
16 (l) VidAngel sells specific, individual DVDs to specific customers;
17 (m) VidAngel requires each customer to select one or more filters; and
18 (n) VidAngel streams content from the DVD to each purchaser while
19 applying the filters chosen by that customer.

20 121. Counterclaim-Defendants contend that VidAngel's operating system as
21 described in the preceding paragraph infringes their exclusive rights to copy and
22 make public performances of their copyrighted works in violation of 17 U.S.C. § 101
23 *et seq.*, whereas VidAngel contends that this system is fully consistent with the FMA
24 and otherwise complies with copyright law.

25 122. VidAngel desires a judicial determination of the legality of its current
26 operating system, and the respective rights and duties of the parties. A judicial
27 declaration is necessary and appropriate so that VidAngel and Counterclaim-
28 Defendants may ascertain their rights and duties under copyright law.

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SIXTH COUNTERCLAIM FOR RELIEF
By VidAngel against All Counterclaim-Defendants
(Declaratory Relief Regarding Remote Streaming of
Filtering Technology Under the FMA)

127. VidAngel incorporates herein by reference each and every averment contained in all preceding paragraphs.

128. An actual controversy has arisen and now exists between VidAngel and Counterclaim-Defendants concerning whether the practice of remotely streaming a filtering technology to users is permissible under the FMA. Counterclaim-Defendants contend that such a practice infringes their exclusive right to publicly perform their copyrighted works in violation of 17 U.S.C. § 101 *et seq.* VidAngel contends that such a practice is fully consistent with the FMA and otherwise complies with copyright law.

129. VidAngel contends that the plain language of the FMA endorses the use of remote streaming of filtering technology. The FMA provides that it is not a violation of copyright for a third party, operating at the direction of a member of a private household, to make limited portions of audio or video content imperceptible “during a performance . . . *transmitted* to that household for private home viewing . . .” 17 U.S.C. § 110(11) (emphasis added). Such a transmission is clearly broad enough to include remote streaming; indeed, the Copyright Act states that “[t]o transmit a performance or display is to communicate it by *any device or process* whereby images or sounds are received beyond the place from which they are sent.” 17 U.S.C. § 101 (emphasis added). The legislative history also makes clear that remote streaming of filtering technology is authorized by the FMA:

The bill as proposed in the Senate makes clear that, under certain conditions, “making imperceptible” of limited portions of audio or video content of a motion picture—that is, skipping and muting limited portions of movies without adding any content—as well as the creation or provision of a computer program or other technology that enables

1 such making imperceptible, does not violate existing copyright or
2 trademark laws. That is true whether the movie is on prerecorded
3 media, like a DVD, or is transmitted to the home, as through pay-per-
view and “video-on-demand” services.

4 150 Cong. Rec. S11852-01. Additionally, VidAngel privately transmits its filtering
5 technology to an individual user in his own household consistent with established
6 copyright law. *See Fox Broad. Co. v. Dish Network LLC*, 2015 WL 1137593, at *13
7 (C.D. Cal. Jan. 20, 2015) (holding that transmissions to owners or valid possessors of
8 copyrighted programming are not public performances).

9 130. VidAngel desires a judicial determination of the legality of remotely
10 streaming a filtering technology to users and the respective rights and duties of the
11 parties with respect to this practice. A judicial declaration is necessary and
12 appropriate so that VidAngel and Counterclaim-Defendants may ascertain their rights
13 and duties under copyright law.

14 **SEVENTH COUNTERCLAIM FOR RELIEF**

15 **By VidAngel against All Counterclaim-Defendants**

16 **(Declaratory Relief Regarding Prior Authorization Under the FMA)**

17 131. VidAngel incorporates herein by reference each and every averment
18 contained in all preceding paragraphs.

19 132. An actual controversy has arisen and now exists between VidAngel and
20 Counterclaim-Defendants concerning whether the FMA requires VidAngel to obtain
21 prior authorization from Counterclaim-Defendants before streaming Counterclaim-
22 Defendants’ copyrighted works to individual users pursuant to the FMA.
23 Counterclaim-Defendants contend that without their prior authorization, the
24 streaming of filtered versions of their works infringes their exclusive rights to copy
25 and publicly perform their works in violation of 17 U.S.C. § 101 *et seq.*, whereas
26 VidAngel contends that the FMA requires no such prior authorization.

27 133. VidAngel contends that the FMA expressly allows the filtering and
28

1 streaming of third-party works at the direction of private persons without obtaining
2 authorization from the copyright holder to make limited alterations to the copyrighted
3 content. The plain language of the FMA permits a third party operating “by or at the
4 direction of a member of a private household” to filter audio or video content “from
5 an authorized copy of the motion picture” 17 U.S.C. § 110(11). Nothing in the
6 FMA requires a third party to obtain authorization from copyright holders before
7 making “limited portions of audio or video content” imperceptible for performance in
8 “private home viewing[.]” *Id.*; *see also* 150 Cong. Rec. S11852-01 (stating that
9 “skipping and muting from an unauthorized or ‘bootleg’ copy of a motion picture
10 would not be exempt.”) Consistent with the plain language of the FMA and
11 copyright law, VidAngel contends that it lawfully operates at the direction of
12 members of private households and properly purchased and owned “authorized
13 cop[ies]” of the titles at issue in DVD format before selling the DVDs to its
14 customers.

15 134. VidAngel desires a judicial determination as to whether it is required by
16 the FMA to obtain Counterclaim-Defendants’ prior authorization before providing its
17 filtering service to individuals under the FMA, and the respective rights and duties of
18 the parties with respect to this practice. A judicial declaration is necessary and
19 appropriate so that VidAngel and Counterclaim-Defendants may ascertain their rights
20 and duties under copyright law.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, VidAngel respectfully requests that this Court award the
23 following relief:

- 24 1. That the conduct alleged in the First Counterclaim for Relief herein be
25 adjudged to be in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).
- 26 2. That, pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15),
27 VidAngel recover treble the amount of its actual damages sustained by reason of
28 those federal antitrust violations.

1 3. That, pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15),
2 VidAngel be awarded a reasonable attorneys' fee and costs of litigation.

3 4. That, pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), the
4 Court enjoin Counterclaim-Defendants from their continuing anticompetitive and
5 wrongful conduct.

6 5. That the conduct alleged in the Second Counterclaim for Relief herein be
7 adjudged to constitute intentional interference with prospective advantage.

8 6. That VidAngel be awarded punitive or exemplary damages on its tort
9 claim.

10 7. That the conduct alleged in the Third Counterclaim for Relief herein be
11 adjudged to be unfair and/or unlawful business practice in violation of § 17200 of the
12 California Business & Professions Code.

13 8. That pursuant to § 17203 of the California Business & Professions Code,
14 the unfair and/or unlawful business practices of Counterclaim-Defendants be
15 permanently enjoined.

16 9. That pursuant to Section 1021.5 of the California Code of Civil
17 Procedure, VidAngel be awarded reasonable attorneys' fees.

18 10. Pursuant to 28 U.S.C. § 2201, a declaration that VidAngel's current
19 system does not violate copyright law, to the extent it operates as follows:

20 (a) VidAngel lawfully purchases Blu-rays and DVDs (both referred to as
21 "DVD" in this prayer);

22 (b) VidAngel uses a commercially available software program to
23 automatically allow read-access for the purpose of mounting the DVD
24 files for uploading onto a computer, in the process removing restrictions
25 on DVD encryption;

26 (c) VidAngel extracts the subtitle/caption data files and then creates
27 Matroska files of the feature films;

28 (d) VidAngel uploads the subtitle/caption data files and Matroska files

1 (collectively known as the “pre-filter files” or “PF” files) onto a secure
2 folder on a third-party Internet service provider’s cloud storage service
3 (“CSS”) and uploads the subtitle/caption into a separate CSS folder;
4 (e) VidAngel destroys the Matroska files;
5 (f) VidAngel boots an encoding and segmenting server (“ESS”) to run two
6 scripts, including an encoding script and a segmenting script.
7 (g) The encoding script temporarily copies the PF files from the CSS to the
8 ESS, uses ffmpeg to prepare the PF files for tagging and filtering, creates
9 a single mp4 file (640 kilobytes per second bitrate) for tagging (when
10 that is not performed beforehand on YouTube or when corrections need
11 to be made to the tags), copies the mp4 file from the ESS to a secure
12 CSS location, creates four Transport Stream files (“TS files”) at 640,
13 1200, 2040 and 4080 bitrates for filtering, copies the TS files to a secure
14 location on the CSS, and deletes all copies and files on the ESS, and is
15 run once for each title’s Matroska file;
16 (h) The segmenting script temporarily copies the TS files from the CSS to
17 the ESS, segments the TS files for adaptive bitrate streaming (the HLS
18 specification) based on both 9-10 second intervals and the locations of
19 each tag for the title (which could be as short as 2 tenths of a second),
20 creates thumbnail files for player scrubbing preview for each non-
21 filterable segment, saves a comma-separated values (CSV) file
22 containing the results of the segmenting process for each segment,
23 uploads the CSV file for use by the filtering system, encrypts each
24 segment of each bitrate with a new and unique encryption key, copies
25 the unencrypted segments from the ESS to a secure location on the CSS,
26 copies the encrypted segments from the ESS onto a publicly accessible
27 location on the CSS, copies the encryption keys from the ESS to a secure
28 location on the CSS, deletes older revision files on the CSS, and deletes

- 1 all copies and files on the ESS;
- 2 (i) VidAngel lawfully purchases additional DVDs;
- 3 (j) VidAngel enters the information concerning the additional DVDs into an
- 4 inventory system;
- 5 (k) VidAngel applies bar codes to the DVD packages;
- 6 (l) VidAngel sells specific, individual DVDs to specific customers;
- 7 (m) VidAngel requires each customer to select one or more filters; and
- 8 (n) VidAngel streams content from the DVD to each purchaser while
- 9 applying the filters chosen by that customer.
- 10 11. A declaration that the buy-sell-back provision in VidAngel’s current
- 11 business model complies with the FMA and does not otherwise violate copyright law,
- 12 and that Counterclaim-Defendants’ attempts to prevent VidAngel from offering its
- 13 buy-sell-back service to customers constitute an attempt to unlawfully restrict the
- 14 resale of goods;
- 15 12. A declaration that VidAngel’s current practice of decrypting DVDs for
- 16 the sole purpose of converting them into a format capable of being filtered to
- 17 streaming devices pursuant to the FMA does not violate the Digital Millennium
- 18 Copyright Act and does not infringe the reproduction rights of copyright holders;
- 19 13. A declaration that VidAngel’s current practice of remotely streaming its
- 20 filtering technology to users is permissible under the FMA and does not infringe the
- 21 public performance rights of copyright holders;
- 22 14. A declaration that VidAngel is not required to obtain prior authorization
- 23 from Counterclaim-Defendants before streaming Counterclaim-Defendants’
- 24 copyrighted works to individual users pursuant to the FMA;
- 25 15. Such further relief as this Court deems just and appropriate.
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DATED: September 16, 2016

Respectfully submitted,

BLECHER COLLINS & PEPPERMAN, P.C.

By: /s/ Maxwell M. Blecher
Maxwell M. Blecher

BAKER MARQUART LLP

By: /s/ Ryan G. Baker
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Attorneys for Defendant and Counterclaimant
VidAngel, Inc.

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DEMAND FOR JURY TRIAL

VidAngel hereby demands trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Civil Local Rule 38-1.

DATED: September 16, 2016 Respectfully submitted,

BLECHER COLLINS & PEPPERMAN, P.C.

By: /s/ Maxwell M. Blecher
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