

J. Thomas Beckett, USB #5587  
Brian M. Rothschild, USB #15316  
Grace S. Pusavat, USB #15713  
**PARSONS BEHLE & LATIMER**  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Telephone: 801.532.1234  
Facsimile: 801.536.6111  
TBeckett@parsonsbehle.com  
BRothschild@parsonsbehle.com  
GPusavat@parsonsbehle.com  
ecf@parsonsbehle.com

*Attorneys for VidAngel, Inc.*

---

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

---

In re:

VIDANGEL, INC.,

Debtor.

Case No. 17-29073

Chapter 11

Judge Kevin R. Anderson

---

**DEBTOR'S RESPONSE TO STUDIOS' NOTICE AND REQUEST FOR STATUS  
CONFERENCE AND FINAL HEARING ON PENDING MOTION**

---

VidAngel, Inc. (the “**Debtor**” or “**VidAngel**”), by and through its undersigned counsel, hereby responds to *Movants’ Notice of Ruling in Support of Movants’ Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d), and Request for a Status Conference and Final Hearing on Pending Motion* (the “**Notice and Request**”) filed by 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. (together, the “**Studios**”).

**I.**  
**INTRODUCTION AND SUMMARY**

The Studios' Notice and Request seeks a status conference and final hearing on its *Motion for Dismissal of the Debtor's Chapter 11 Petition Pursuant to 11 U.S.C. § 112(b) or in the Alternative, for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* (the "**Motion for Relief From Stay**").<sup>1</sup> But the Motion for Relief from Stay is moot because, by the Motion, the Studios ask the Court to lift the automatic stay to continue litigating *Disney Enterprises, Inc. v. VidAngel, Inc.*, Case No. CV-16-04109 (the "**Copyright Action**"), which the Studios converted to a proof of claim and moved to this Court. The automatic stay cannot be lifted because the Studios, by filing proofs of claim for the damages in the Copyright Action (actually attaching their Complaint), have moved the Copyright Action to the Bankruptcy Court and are in the process of adjudicating their claims already. There is no Automatic Stay to lift for the Copyright Action. At the time the Studios filed their proofs of claim, the Debtor filed the Motion to Withdraw the Reference, which is merely awaiting a decision by the District Court for the District of Utah.

The Studios, by filing their proofs of claim in this chapter 11 bankruptcy case, irrevocably consented to the jurisdiction of the Bankruptcy Court for the District of Utah for the adjudication of their claims against the Debtor. *Langenkamp v. Culp*, 498 U.S. 42, 44-45, 111 S.Ct. 330, 112 L.Ed.2d 343 (1990). The Debtor moved to withdraw the reference under 28 U.S.C. § 157(d) for mandatory withdrawal of the reference from the Bankruptcy Court, but the District Court has not yet taken action on the Motion to Withdraw the Reference.<sup>2</sup>

---

<sup>1</sup> Dkt. 69.

<sup>2</sup> *VidAngel, Inc. v. 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.*, Case No. 2:18-CV-00145.

Because the withdrawal of the reference is mandatory in this case, VidAngel anticipates that the Motion to Withdraw the Reference will be granted. See 28 U.S.C. § 157(d). Accordingly, the Studios' claims will be adjudicated by the District Court for the District of Utah if it withdraws the reference. Alternatively, while the Motion to Withdraw the Reference is pending, the Bankruptcy Court continues to have jurisdiction over the adversary proceeding, and could proceed to adjudicate the Studios' claims. Bankruptcy Rule 5011(c).

Although the Studios' Notice and Request asserts that the ruling in *VidAngel, Inc. v. Sullivan Entertainment Group, Inc. et al.*, Civil No. 2:17-cv-00989 (the "**Utah Declaratory Relief Action**") supports lifting the automatic stay, the Utah Declaratory Relief Action is unrelated to the Studios' Motion for Relief from Stay. The Utah Declaratory Relief Action sought to determine the legality of VidAngel's new technology. The Utah Declaratory Relief Action, in which VidAngel was the plaintiff, was never subject to the Automatic Stay, and thus the dismissal of that action has no bearing on the Studios' Motion for Relief from Stay.

Because the Studios consented to have their claims adjudicated in the Bankruptcy Court of Utah, the Copyright Action is moot (and ought to be dismissed) and the Studios' Motion for Relief from Stay should be denied.

## **II.** **RELEVANT BACKGROUND**

1. On October 18, 2017 (the "**Petition Date**"), the Debtor filed a voluntary chapter petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, commencing this chapter 11 case (the "**Chapter 11 Case**").

2. The Debtor is the worldwide leader in video filtering technology. The Debtor'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. The Debtor's services give subscribers and their families choice over the content they view and enjoy with their families.

3. Prior to the Petition Date, in June 2016, four of the Studios sued VidAngel in the Copyright Action for copyright infringement of approximately 80 of the Studios' copyrighted works. The Studios alleged that VidAngel's decryption of its works was a technical violation of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1201(a), and that VidAngel's filtering and streaming violated their exclusive rights to make copies of and publicly perform their works in violation of 17 U.S.C. § 106. The four initial Studio plaintiffs amended their complaint to add three additional plaintiffs and allege the infringements of additional motion pictures. The four initial Studio plaintiffs also rejected VidAngel's statutory offer to allow entry of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure.

4. Following the Petition Date, on February 14, 2018, the Studios filed their proofs of claim in the Debtor's Chapter 11 Case, seeking damages for alleged infringement of their copyrights and alleged DMCA violations 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

5. 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.

6. Under controlling United States Supreme Court precedent, by filing their proofs of claim, the Studios have consented to the adjudication of their claims 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)). Accordingly, the Studios as a matter of law consented to the adjudication and allowance or disallowance of their claims by the Bankruptcy Court in the District of Utah.

7. On February 15, 2018, the Debtor filed a Complaint opening an adversary proceeding related to the Chapter 11 Case for the Utah Declaratory Relief Action. By the Complaint, the Debtor objected to the allowance of the Studios' claims under 11 U.S.C. § 502(b). In addition, the Debtor sought declaratory relief that the Debtor did not infringe the Studios' copyrighted works, and that it owes the Studios nothing.

8. On February 16, 2018 the Debtor filed a Motion to Withdraw Bankruptcy Reference and Memorandum in Support (the “**Motion to Withdraw the Reference**”) in *VidAngel, Inc. v. 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.*, Case No. 2:18-CV-00145.

9. On July 27, 2018, the Honorable David Nuffer, Chief Judge for the United States District Court for the District of Utah, entered a *Memorandum Decision and Order Granting Motion to Dismiss* for the Utah Declaratory Relief Action.

10. The Motion to Withdraw the Reference remains under advisement at the District Court.

### **III.** **ARGUMENT**

The Studios' Notice and Request is off-base in that the Studios erroneously try to associate the dismissal of the Utah Declaratory Relief Action to the Motion for Relief from Stay: the two have nothing to do with one another.

The Utah Declaratory Relief Action, in which VidAngel was the plaintiff, sought to determine the legality of VidAngel's new technology. The Automatic Stay did not even apply to the Utah Declaratory Relief Action. The dismissal of that action has no bearing on the Studios' Motion for Relief from Stay.

The Studios' Notice and Request asks for a final hearing on the pending Automatic Stay Motion. A hearing on the Automatic Stay Motion is unnecessary and the pending Automatic Stay Motion should be denied as moot because the Copyright Action was extinguished when the Studios voluntarily filed proofs of claim and consented to have their claims adjudicated by the Bankruptcy Court.

Under controlling United States Supreme Court precedent, by filing their proofs of claim, the Studios also consented to the adjudication of their claims and any claims against them by the Utah Bankruptcy Court. *Langenkamp*, 498 U.S. at 44-45. (“[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)). Accordingly, the Studios have as a matter of law consented to the adjudication and allowance or disallowance of their claims by the Bankruptcy Court in Utah. Nevertheless, under 28 U.S.C. § 157(d), withdrawal of the reference is available because of the predominance of federal non-bankruptcy law.

Finally, by filing their proof of claim, the Studios have converted their legal claim – on which they might have had a right to a jury trial – to an equitable claim for a ratable distribution of the Debtor’s estate. *Hong Kong and Shanghai Banking Corp. v. Simon*, 153 F.3d 991, 997 (9th Cir. 1998). The Ninth Circuit explained:

When a creditor submits to bankruptcy court jurisdiction by filing a proof of claim in order to collect all or a portion of a debt, it assumes certain risks. For example, the creditor loses the right to a jury trial on any counter-claims filed by the debtor or the trustee. *See Langenkamp*, 498 U.S. at 44-45, 111 S.Ct. 330, 112 L.Ed.2d 343. In addition, the creditor loses previously-held rights to assert “legal claims” against the debtor and his estate; bankruptcy “converts the creditor’s legal claim into an equitable claim to a pro rata share of the res.” *Katchen [v. Landy]*, 382 U.S. [323], at 336, 86 S.Ct. 467, 15 L.Ed.2d 391 [(1966)].

*Id.*

Thus the Studios’ filing of their proofs of claim is both the Studios’ consent to adjudication by the Bankruptcy Court in the District of Utah, which is part of the District Court for the District of Utah, and a conversion of the legal claims pending in the District Court in California in the Copyright Action to equitable claims against the Debtor’s chapter 11 estate in the chapter 11 case pending in the District of Utah.

If the Studios wish to proceed and liquidate their claims, the Bankruptcy Court is the forum in which to do it. In fact, under Rule 5011(c) of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Court has jurisdiction to continue adjudicating the adversary proceeding until and unless the District Court acts on the Motion to Withdraw the Reference:

(c) *Effect of Filing of Motion for Withdrawal or Abstention.* The filing of a motion for withdrawal of a case or proceeding or for abstention pursuant to 28 U.S.C. §1334(c) shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion. A motion for a stay ordinarily shall be presented first to the bankruptcy judge. A motion for a stay or relief from a stay filed in the district court shall state why it has not been presented to or obtained from the bankruptcy judge. Relief granted by the district judge shall be on such terms and conditions as the judge deems proper.

(emphasis added). Thus if the Studios want to stay the adversary proceeding pending the District Court ruling on the Motion to Withdraw the Reference, they must file a motion to stay, which they have not done.

Accordingly, the Bankruptcy Court may proceed to adjudicate the Studios' claims until and unless the District Court withdraws the reference.

All of this is to say that the Studios' Notice and Request is confused and wrong. The Court should deny the Motion for Relief from Stay and adjudicate the Studios' claims in the adversary proceeding.



**IV.**  
**CONCLUSION**

For the foregoing reasons, the Debtor respectfully asks that this Court deny the Studios' request for a hearing on the pending Motion for Relief from Stay, and adjudicate the Studios' claims in the adversary proceeding. Accordingly, the Debtor requests that the Court schedule a status conference and set a date for a hearing to enter a scheduling order under Rule 26.

Dated this 13 day of August, 2018.

/s/ Brian M. Rothschild

J. Thomas Beckett

Brian M. Rothschild

Grace S. Pusavat

**PARSONS BEHLE & LATIMER**

*Attorneys for VidAngel, Inc.*

---

**PROOF OF SERVICE**

---

I hereby certify that I caused a true and correct copy of the foregoing **DEBTOR'S RESPONSE TO STUDIOS' NOTICE AND REQUEST FOR STATUS CONFERENCE AND FINAL HEARING ON PENDING MOTION** to be served as follows:

On August 13, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

- J. Thomas Beckett tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com;kstankevitz@parsonsbehle.com
- Lev E. Breydo lev.breydo@mto.com
- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Michael R. Johnson mjohanson@rqn.com, docket@rqn.com;dburton@rqn.com
- David H. Leigh dleigh@rqn.com, dburton@rqn.com;docket@rqn.com
- Grace S. Pusavat gpusavat@parsonsbehle.com
- Brian M. Rothschild brothschild@parsonsbehle.com, ecf@parsonsbehle.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

By U.S. Mail - In addition to the parties of record receiving notice through the CM/ECF system, I caused the following parties to be served by U.S. Mail, First-Class, Postage Prepaid, by depositing the document in the mail within 24 hours of the date hereof.

Todd Rosen/Kelly M. Klaus  
Munger, Tolles & Olson, LLP  
350 South Grand Avenue, 50th Floor  
Los Angeles, CA 90071-3426

Dated this 13 day of August, 2018.

**PARSONS BEHLE & LATIMER**

By: /s/ Brian M. Rothschild

---

Brian M. Rothschild  
Attorneys for VidAngel, Inc.