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Proposed Attorneys for VidAngel, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re VIDANGEL, INC.,

Debtor.

Case No. 17-29073

Chapter 11

Honorable Kevin R. Anderson

**DEBTOR'S THIRD MOTION FOR ENTRY OF AN ORDER
UNDER SECTION 1121(d) OF THE BANKRUPTCY CODE
EXTENDING DEBTOR'S EXCLUSIVE PERIODS WITHIN
WHICH TO FILE AND SOLICIT ACCEPTANCES OF A
PLAN**

VidAngel, Inc., debtor and debtor-in-possession (“**VidAngel**” or “**Debtor**”) in the above-captioned chapter 11 case, hereby moves this Court for entry of an order, substantially in the form attached hereto as Exhibit A (the “**Order**”), extending Debtor’s exclusive periods within which to file and solicit acceptances of a chapter 11 bankruptcy plan for an additional one hundred and twenty (120) days, without prejudice to Debtor’s right to seek further extensions of its exclusivity periods. In support of the Motion, Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to [28 U.S.C. § 1334](#). This is a core proceeding pursuant to [28 U.S.C. § 157\(b\)](#). Venue is proper before this Court under [28 U.S.C. §§ 1408 and 1409](#).
2. The statutory predicate for the relief requested herein is [section 1121\(d\) of title 11 of the United States Code \(11 U.S.C. §§ 101 et seq.](#), the “Bankruptcy Code”).

FACTUAL BACKGROUND

3. On October 18, 2017 (the “**Petition Date**”), the Debtor filed a voluntary chapter petition under the Bankruptcy Code. 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](#).
4. No trustee or examiner has been appointed in this case. No committee of unsecured creditors or other official committee has been appointed in this case.
5. The Debtor is the worldwide leader in video filtering technology. The Debtor’s 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 choices for the content they view and share with their families.

RELIEF REQUESTED

Under [section 1121 of the Bankruptcy Code](#), Debtor has the exclusive right to (i) file a plan of reorganizations or liquidation through and including October 15, 2018 (the “**Plan Proposal Period**”); and (ii) solicit and obtain acceptances for a plan through and including December 12, 2018 (the “**Solicitation Period**,” and, together with the Plan Proposal Period, the “**Exclusive**

Periods”). The Court previously extended the exclusive periods by an Order dated June 13, 2018. (Dkt. 184.)

6. The Debtor is currently in the process of formulating a plan based on its current revenue stream from original content, Dry Bar Comedy, and nascent filtering technology. To give the Debtor the time to develop a plan that addresses these enterprises, the Debtor seeks an order granting a third extension of one hundred and twenty (120) days to the original allocated time for (i) the Plan Proposal Period through and including February 12, 2019 and (ii) the Solicitation Period through and including April 11, 2019.

BASIS FOR RELIEF

7. Exclusive periods are intended to afford a chapter 11 debtor a full and fair opportunity to return the greatest value to the debtor’s estate, its creditors and parties in interest. Congress provided debtors with the exclusive right to propose a plan of reorganization and solicit votes on that plan for the period prescribed in [section 1121\(b\)](#). [Section 1121\(b\) of the Bankruptcy Code](#) creates an initial period of one hundred and twenty (120) days after the commencement of a chapter 11 case during which only a debtor may file a plan and an additional 60-day period during which only the debtor may solicit votes for a plan. The initial Plan Proposal Period was set to expire on February 15, 2018 and the initial Solicitation Period was set expire on April 16, 2018. By an order entered on February 14, 2018 (Dkt. 154), these periods were extended by one hundred and twenty (120) days. By an order entered on June 13, 2018 (Dkt. 184), these periods were extended by an additional one hundred and twenty days. The Debtor now moves for an additional one hundred and twenty (120) day extension.

8. [Section 1121\(d\)\(1\)](#) allows a court to extend the Exclusive Periods “for cause.” *See* [11 U.S.C. § 1121\(d\)](#). Although the term “cause” is not defined, bankruptcy courts have discretion to promote the orderly, consensual, and successful reorganization of a debtor’s affairs. *See, e.g.,*

203 *N LaSalle St. P'ship v. Bank of Am. Nat. Ass'n*, No. 99 C 7108, 1999 WE 1206619, at *4 (N.D. 111. Dec. 13, 1999) (“[T]he Code commits decisions on extending the exclusivity period to the discretion of the bankruptcy court.”); 140 Cong. Rec. H. 10764 (Oct. 4, 1994) (“Exclusivity is intended to promote an environment in which the debtor’s business may be rehabilitated and a consensual plan may be negotiated.”).

9. Congress did not intend exclusive periods to be hard and fast. Rather, Congress intended bankruptcy courts to have flexibility in providing extensions to the exclusive periods for a debtor to have sufficient time to formulate, negotiate, and draft a viable plan without interruptions from the filing of competing plans. See [In re Perkins](#), 71 B.R. 294, 297 (W.D. Tenn. 1987) (“The hallmark of [\[section 1121\(d\)\]](#) is flexibility”).

10. Courts generally use the following factors to determine whether “cause” exists to extend a debtor’s exclusive periods: (a) the size and complexity of the case; (b) the necessity of sufficient time to negotiate and prepare adequate information; (c) the existence of good faith progress; (d) whether the debtor is paying its debts as it becomes due; (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (f) whether the debtor has made progress negotiating with creditors; (g) the length of time a case has been pending; and (h) whether or not unresolved contingencies exist. See [In re Cent. Jersey Airport Servs.](#), 282 B.R. 176, 184 (Bankr. D.N.J. 2002).

11. Each factor is not relevant or present in every case, and the existence and satisfaction of even one of these factors may be sufficient to extend the exclusive period. See [In re Hoffinger Indus., Inc.](#), 292 B.R. 639, 644 (8th Cir. BAP 2003) (noting that “[i]t is within the discretion of the bankruptcy court to decide which factors are relevant and give the appropriate

weight to each”); [In re United Press Int’l, Inc., 60 B.R. 265, 269 \(Bankr. D.D.C. 1986\)](#) (extending exclusivity based on complexity, plan negotiations, and progress toward reorganization).

12. Sufficient cause exists to extend the Exclusive Periods. As set forth below, the requested extension of the Exclusive Periods will not prejudice the legitimate interests of any creditor and will provide the Debtor the opportunity to formulate, negotiate, and draft a viable plan.

I. Debtor Has Made Good Faith Progress.

13. The Debtor has complied with various procedural requirements under the Bankruptcy Code, including the filing of monthly financial reports, and engaging in discussions with parties in interest in an attempt to negotiate a path forward that maximizes value for the estate.

II. Debtor Is Paying Its Bills as They Come Due.

14. Courts considering extending exclusive periods may also assess a debtor’s liquidity and solvency. See [In re Ravenna Indus., Inc., 20 B.R. 886, 890 \(Bankr. N.D. Ohio 1982\)](#). In this case, the Debtor is paying its bills as they come due and has sufficient liquidity to continue paying those bills. As a result, this factor weighs in favor of the requested relief.

III. Debtor Is Using Exclusivity for a Proper Purpose.

15. Extensions to exclusive periods have been denied when plan negotiations among parties in interest have broken down, and the continuation of the exclusive periods would merely be used by the debtor as bargaining leverage over the other parties-in-interest. See [In re Lake in the Woods, 10 B.R. 338, 345 \(E.D. Mich. 1981\)](#); *Continental Casualty Co.*, 2005 U.S. Dist. LEXIS 26247, *12. In this case, the Debtor’s request for a third extension of 120 days is not a negotiation or delay tactic. The requested relief would enable the Debtor to continue to formulate, negotiate, and draft a viable plan that will maximize the value for the estate. Because the Debtor has no

desire to shut out any creditors or parties in interest, the Debtor is using its exclusivity periods for a proper purpose and this factor supports granting the requested relief.

IV. Debtor Has Shown Cause to Extend the Exclusive Periods.

16. As described above and as reflected on the docket of this case, the Debtor is making meaningful progress in this chapter 11 case. Because of this progress, sufficient cause exists to extend the Exclusive Periods. There is no harm in granting the requested extension now because extending the Exclusive Periods does not alter the right of any party to request a termination of exclusivity for cause under [section 1121\(d\) of the Bankruptcy Code](#). Accordingly, the Debtor submits that this request is in the best interests of all parties involved.

17. The Debtor therefore submits that this Motion to extend the Plan Proposal Period through February 12, 2019 and the Solicitation Period through April 11, 2019 is justified.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter the Order granting the relief requested herein and grant such other relief as the Court deems just and proper.

Dated this 10th day of September 2018.

/s/ Grace S. Pusavat

J. Thomas Beckett
Brian M. Rothschild
Grace S. Pusavat

PARSONS BEHLE & LATIMER
Proposed Attorneys for VidAngel, Inc.

Exhibit A
Proposed Order

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

In re:

VIDANGEL, INC.,

Debtor.

Case No. 17-29073

Chapter 11

Judge Kevin R. Anderson

**ORDER UNDER SECTION 1121(d) OF THE
BANKRUPTCY CODE GRANTING DEBTOR'S THIRD
MOTION TO EXTEND DEBTOR'S EXCLUSIVE
PERIODS WITHIN WHICH TO FILE AND SOLICIT
ACCEPTANCES OF A PLAN**

Upon the motion (the “**Motion**”)¹ of VidAngel Inc., as debtor and debtor-in-possession (“**Debtor**”), seeking entry of an order under section 1121(d) of the Bankruptcy Code extending for a third time the Debtor’s Exclusive Periods within which to file and solicit acceptances of a plan; and the Court having jurisdiction to consider the Motion and the requested relief therein pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and the Court having determined that the relief sought in the Motion is in the best interests of Debtor, its creditors, and

¹ Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

all parties in interest; and upon the Motion and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.
2. Debtor's exclusive period under section 1121(d) of the Bankruptcy Code for filing a plan of reorganization or liquidation is extended through and including February 12, 2019.
3. Debtor's exclusive period under section 1121(d) of the Bankruptcy Code for soliciting acceptances of a plan of reorganization or liquidation is extended through and including April 11, 2019.
4. The entry of this Order is without prejudice to (a) Debtor's rights to seek such additional and further extensions of the Exclusive Periods as may be necessary or appropriate; or (b) any party-in-interest's right to seek to reduce or terminate the Exclusive Periods for cause in accordance with section 1121(d) of the Bankruptcy Code.
5. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.
6. Notwithstanding any Federal Rule of Bankruptcy Procedure to the contrary, this Order shall be immediately effective and enforceable upon its entry.

END OF ORDER

PROOF OF SERVICE

I hereby certify that on September 10, 2018, I caused a true and correct copy of the foregoing **DEBTOR'S THIRD MOTION FOR ENTRY OF AN ORDER UNDER SECTION 1121(d) OF THE BANKRUPTCY CODE EXTENDING DEBTOR'S EXCLUSIVE PERIODS WITHIN WHICH TO FILE AND SOLICIT ACCEPTANCES OF A PLAN** to be served as follows:

On September 10, 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
- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
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- 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, the following parties should be served notice pursuant to Fed R. Civ. P. 5(b).

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

Dated September 10, 2018,

PARSONS BEHLE & LATIMER

By: /s/ Grace S. Pusavat
Grace S. Pusavat
Attorneys for VidAngel, Inc.