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

In re:

VIDANGEL, INC.,

Debtor.

Case No. 17-29073

Chapter 11

Judge Kevin R. Anderson

**SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR RELIEF FROM THE
AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(d) (DKT. 194)**

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INTRODUCTION

VidAngel filed its Chapter 11 petition nearly a year ago. Since then, VidAngel has done almost nothing that a debtor trying to reorganize would do. VidAngel has not proposed a plan for reorganization. Instead VidAngel has filed a series of requests (most recently this past Monday) to extend the exclusivity period for filing such a plan. In the meantime, VidAngel's assets have dwindled from nearly \$3.45 million last October to just over \$1.5 million at the end of July a decrease of more than \$1.9 million. During that same period, VidAngel has paid nearly \$800,000 to Harmon Brothers LLC, an internet advertising agency owned by VidAngel's CEO and founder, Neal Harmon, and his brothers.

The only thing that VidAngel has accomplished through its Chapter 11 filing has been to delay resolution of the California Action,¹ including the liquidation of the substantial damages that VidAngel owes for its rampant violation of Movants' rights under the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1201(a), and the Copyright Act, 17 U.S.C. § 106. This, of course, was part of VidAngel's self-declared "legal and business strategy," i.e., to "pause[]" the California Action.² VidAngel opposed this Motion to Lift the Automatic Stay on the ground it needed "breathing space" so a court could adjudicate its Declaratory Judgment Action regarding what VidAngel calls its "Stream-Based Service."³ VidAngel's professed desire to obtain such a federal court adjudication has been shown to be a sham. In his ruling finding no

¹ [*Disney Enters., Inc. v. VidAngel, Inc.*](#), Civil No. 2:16-cv-04109-AB-PLA (C.D. Cal, filed June 9, 2016) (the "California Action").

² [*Dkt. 69-2*](#), "VidAngel Uses Chapter 11 Protection to Pause Los Angeles Lawsuit to Reorganize Its Business Around The New Streaming Model" VidAngel BlogPost (Bankr. D. Utah, filed on Nov. 17, 2017) ("VidAngel Bankruptcy BlogPost") ("Per federal law, chapter 11 reorganization automatically pauses our lawsuit with Disney and the other plaintiffs in California. This strategy also allows us to continue our *new* lawsuit in Utah, where we are seeking a legal determination that our new filtering system is legal.") (emphasis in original).

³ [*VidAngel, Inc. v. Sullivan Entm't Grp., Inc. et al.*](#), Civil No. 2:17-cv-00989-DN (D. Utah, filed Aug. 31, 2017) (the "Utah Declaratory Judgment Action").

personal jurisdiction over VidAngel's claim, Chief Judge Nuffer gave VidAngel the option to have the claim transferred to California, where there indisputably is jurisdiction, and where the Court told VidAngel more than a year ago that it could amend its counterclaim there to state the declaratory judgment it claimed to be seeking in Utah. There is no basis for further delay in resolving the California Action, which VidAngel itself has recognized is essential for the resolution of this Chapter 11 case.

Application of the *Curtis* factors demonstrates that the stay should be lifted forthwith:

- Continuing the stay deprives Movants of their right to have their claims resolved and risks the further dissipation of VidAngel's assets, which will be needed to satisfy a judgment.
- The California Court has experience adjudicating Movants' claims and the DMCA and Copyright Act.
- Movants have a Seventh Amendment right to a jury, which the California Court, but not the bankruptcy court, is empowered to empanel without the parties' consent.
- VidAngel faces no cognizable prejudice from the resolution of Movants' claims in the California Court.

VidAngel argues that its Adversary Complaint⁴ moots this Motion and requires Movants to litigate their DMCA and Copyright Act claims for damages arising out of VidAngel's so-called "Disc-Based Service" in this Court (or the Utah District Court). VidAngel is wrong, as Movants have explained previously.⁵ This Court asked the parties to brief the additional issues of res judicata, the first-filed rule, and abstention under 28 U.S.C. § 1334. Each of those doctrines also forecloses VidAngel's attempt to obtain from this Court a liability determination

⁴ [*VidAngel, Inc. v. Disney Enters., Inc.*](#), Adversary No. 18-02016 (Bankr. D. Utah, filed Feb. 15, 2018) (the "[Adversary Complaint](#)").

⁵ See [Dkt. 203](#), Reply ISO Notice and Request for Hearing on Movant's Pending Mot. for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) (Dkt. 194) (Bankr. D. Utah, filed on Aug. 20, 2018).

on the claims at issue in the California Action. VidAngel pled the same declaratory relief claims in its Adversary Complaint as it did in the California Action concerning the Disc-Based Service, and Judge Birotte dismissed those claims because such claims all necessarily will be resolved by Movants' affirmative claims. VidAngel's claims cannot be decided here.

The stay should be lifted pursuant to 11 U.S.C. § 362(d)(1) so the California Action can be brought to conclusion.

STATEMENT OF FACTS

A. The California Action

1. On June 9, 2016, four Movants filed the California Action alleging that VidAngel circumvented of the technological protection measures that control access to Movants' copyrighted works in violation of the DMCA, 17 U.S.C. § 1201(a), and infringed their exclusive rights of reproduction and public performance under the Copyright Act, 17 U.S.C. § 106(1), (4). After exchanging expedited discovery with VidAngel, Movants filed a motion for preliminary injunction.⁶

2. On September 16, 2016, VidAngel answered the California Complaint and filed counterclaims.⁷ VidAngel asserted affirmative defenses under the Family Movie Act, 17 U.S.C. § 110(11), and the Copyright Act's fair use provision, *id.* § 107. VidAngel asserted three

⁶ Movants have concurrently filed a Request for Judicial Notice ("RJN") which includes relevant, public pleadings from the California Action and Utah Declaratory Judgment Action. California Plaintiffs' Complaint (California Action Dkt. 1) is RJN Ex. A (the "California Complaint").

The plaintiffs in the California Action are Movants Disney Enterprises, Inc. ("Disney"), Lucasfilm Ltd. LLC ("Lucasfilm"), Twentieth Century Fox Film Corporation ("Fox"), Warner Bros. Entertainment Inc. ("Warner Bros."), MVL Film Finance, LLC ("Marvel"), New Line Productions, Inc. ("New Line"), and Turner Entertainment Co. ("Turner"). *See* RJN Ex. B, First Am. Compl. (California Action Dkt. 228).

⁷ RJN Ex. C, VidAngel, Inc.'s Am. Answer and Affirmative Defenses to Compl.; and First Am. Countercls. (California Action, Dkt. 77).

counterclaims alleging that the plaintiffs violated the federal antitrust law and analogous state law provisions.⁸ VidAngel also asserted four counterclaims for declaratory relief, asking the California Court to declare that VidAngel's operation of the Disc-Based Service did not violate Movants' rights under the DMCA or the Copyright Act.⁹ Movants filed a motion to dismiss VidAngel's counterclaims.¹⁰

3. On December 22, 2016, after a half-day hearing and on a record of more than 2,000 pages, Judge Birotte granted Movants' motion for a preliminary injunction. Judge Birotte held that Movants were likely to succeed on their DMCA and copyright infringement claims, and that VidAngel was unlikely to succeed on its defenses.¹¹ That decision was affirmed by the Ninth Circuit on August 24, 2017.¹²

4. On August 10, 2017, Judge Birotte granted Movants' motion to dismiss VidAngel's counterclaims. Regarding VidAngel's declaratory relief counterclaims, Judge Birotte held that "[e]ach of the issues that VidAngel raises in its claims for declaratory relief will be decided through Plaintiff's claims in this action or Defendants affirmative defenses thereto. Because this would amount to duplicative litigation, the Court, in its discretion, denies VidAngel's fourth through seventh claims for declaratory relief."¹³

5. On August 31, 2017, VidAngel filed a motion for entry of final judgment pursuant to Rule 54(b) of its antitrust counterclaims. VidAngel argued that the antitrust

⁸ *Id.* at 17-56.

⁹ *Id.* at 48-54, Fourth through Seventh Counterclaims.

¹⁰ RJN Ex. D, Pls.' Notice of Mot. and Mot. to Dismiss VidAngel's First Am. Countercls. and Strike VidAngel's Affirmative Defense of Copyright Misuse; Mem. of Points and Authorities in Supp. Thereof (California Action, Dkt. 103).

¹¹ [*Disney Enters., Inc. v. VidAngel, Inc.*](#), 224 F. Supp. 3d 957 (C.D. Cal. 2016), *aff'd*, 869 F.3d 848 (9th Cir. 2017).

¹² [*Disney Enters., Inc. v. VidAngel, Inc.*](#), 869 F.3d 848 (9th Cir. 2017).

¹³ RJN Ex. E at 18, Order Granting Pls.' Mot. to Dismiss Def.'s First Am. Countercls. and Strike Def.'s Affirmative Defense of Copyright Misuse (Dkt. 103) (California Action, Dkt. 199).

counterclaims were “factually and legally severable from the remaining adjudicated claims,” i.e., the declaratory relief claims concerning the DMCA and Copyright Act.¹⁴ VidAngel told the California Court that it would “wait to appeal” the dismissal of its declaratory relief claims “until such time that plaintiffs’ two copyright claims are resolved and appealed.”¹⁵ Judge Birotte granted VidAngel’s motion and entered judgment for Movants on the antitrust claims.¹⁶

6. On September 28, 2017, Judge Birotte set trial for June 5, 2018.¹⁷

7. On September 29, 2017, Movants filed a motion for partial summary judgment, asking the California Court to enter a judgment on liability.¹⁸ In the meet-and-confer process that preceded the filing of the summary judgment motion, VidAngel conceded that the Ninth Circuit’s opinion foreclosed nearly all of VidAngel’s defenses; but said it would dispute Movants’ motion on the ground that its fair use defense has not been completely resolved.¹⁹

8. On October 18, 2017, VidAngel filed its petition for bankruptcy²⁰, two days before its opposition to Movants’ motion for partial summary judgment was due²¹.

¹⁴ RJN Ex. F at 7, VidAngel’s Mot. for Final J. Pursuant to Rule 54(b) (California Action, Dkt. 203).

¹⁵ *Id.* at 4.

¹⁶ RJN Ex. G, Order Granting VidAngel’s Mot. for Entry of Final J. Dismissing VidAngel’s First, Second and Third Countercls. (Dkt. No. 203) (California Action, Dkt. 226). VidAngel’s appeal followed and was summarily denied by the Ninth Circuit on August 17, 2018, [*Disney Enters., Inc. v. VidAngel, Inc.*](#), 734 F. App’x. 522, 523 (9th Cir. 2018) (unpublished).

¹⁷ RJN Ex. H, Order re: Jury/Court Trial (California Action, Dkt. 215).

¹⁸ RJN Ex. I, Pls.’ Mot. for Partial Summ. J. on Liability; Mem. of Points and Authorities in Supp. thereof (California Action, Dkt. 222).

¹⁹ RJN Ex. J at 2-3, 5, Stipulation Regarding Request to Set Pretrial and Trial Schedule (California Action, Dkt. 212) (“During pre-motion meet-and-confer discussions, Plaintiffs asked VidAngel to stipulate to liability on the basis of the Ninth Circuit’s opinion. VidAngel takes the position that the Ninth Circuit’s opinion leaves open whether VidAngel can prevail on its fair use defense. . . . VidAngel agrees, however, that following the Ninth Circuit opinion, VidAngel has no basis to argue there are any disputed issues of material fact on any other issue regarding Plaintiffs’ showing of liability and VidAngel’s defenses thereto.”).

²⁰ [Dkt. 1](#), VidAngel’s Pet. for Chapter 11 Bankruptcy (Bankr. D. Utah, filed Oct. 18, 2017).

B. VidAngel’s Declaratory Judgment Action In The Utah District Court

1. On August 31, 2017, VidAngel filed a declaratory judgment action in the Utah District Court against three Movants—Marvel, New Line and Turner—as well as several corporate affiliates and business partners of the four original plaintiffs in the California Action.²²

In an SEC filing shortly thereafter, VidAngel admitted that it filed the Utah Declaratory Judgment Action to “avoid the prospect of again litigating in an unfavorable forum.”²³

2. On October 26, 2017, the defendants in the Utah Declaratory Judgment Action filed a Motion to Dismiss based on, among other things, lack of personal jurisdiction.²⁴

3. On July 27, 2018, Chief Judge Nuffer issued an Order holding that the defendants are not subject to personal jurisdiction in the District of Utah. Chief Judge Nuffer gave VidAngel the option of having its declaratory relief claims transferred to the Central District of California pursuant to 28 U.S.C. § 1631 or dismissed.²⁵

4. On August 3, 2018, VidAngel declined the Court’s offer to transfer the Utah Declaratory Judgment Action to California and consented to dismissal.²⁶

C. VidAngel’s Bankruptcy Petition And Proceedings In This Court

1. On October 18, 2017, VidAngel filed its Chapter 11 petition.

²¹ RJN Ex. K, Order Regarding Briefing Schedule for Pls.’ Partial Mot. for Summ. J. (California Action, Dkt. 224).

²² [Complaint](#) (Utah Declaratory Judgment Action, Dkt. 1).

²³ [Dkt. 69-1](#), VidAngel, Inc. Form 1-SA, at 5 (Bankr. D. Utah, filed on Nov. 8, 2017).

²⁴ RJN Ex. O, Moving Defendants Mot. to Dismiss or, in the Alternative, to Transfer or Stay (Utah Declaratory Judgment Action, Dkt. 58).

²⁵ RJN Ex. P, Order Granting Mot. to Dismiss (Utah Declaratory Judgment Action, Dkt. 129).

²⁶ RJN Ex. Q, VidAngel’s Notice Consenting to Dismissal with Prejudice (Utah Declaratory Judgment Action, Dkt. 130).

2. VidAngel’s CEO, Neal Harmon, publicly stated that the bankruptcy petition was part of VidAngel’s “legal and business strategy,” to “pause[]” the California Action while “continu[ing VidAngel’s] *new* lawsuit”—i.e., the Utah Declaratory Judgment Action.²⁷

3. Upon filing for bankruptcy, VidAngel stated that it had \$3,449,285 in cash and cash equivalents.²⁸ VidAngel’s most recently filed monthly operating report (for the period ending July 31, 2018) lists cash and cash equivalents of \$1,510,573—a decrease of more than \$1.9 million since VidAngel filed its petition.²⁹

4. According to its filings in this Court, VidAngel, since filing for bankruptcy, has paid out nearly \$800,000 to Harmon Brothers LLC, an internet advertising agency that is owned by Mr. Harmon and his brothers.³⁰

5. On November 8, 2017, Movants filed this Motion asking the Court to dismiss VidAngel’s bankruptcy petition or, in the alternative, for relief from the automatic stay.³¹

6. On February 14, 2018, Movants each filed a proof of claim asserting a “general unsecured claim against Debtor for damages, as alleged in the California Action, in an amount to

²⁷ [Dkt. 69-2](#), VidAngel Bankruptcy BlogPost.

²⁸ [Dkt. 47](#), Statement of Financial Affairs and Assets (Bankr. D. Utah, filed on Nov. 1, 2017).

²⁹ [Dkt. 199](#), July Monthly Financial Report (Bankr. D. Utah, filed on Aug. 15, 2018).

³⁰ [Dkt. 134](#) at 13, November 2017 Monthly Financial Report (\$66,999.24 paid to Harmon Brothers); [Dkt. 145](#) at 10, 11, 13, December 2017 Monthly Financial Report (\$121,910.28 paid to Harmon Brothers); [Dkt. 156](#) at 13, 14, 17, 18, January 2018 Monthly Financial Report (\$229,756.09 paid to Harmon Brothers); [Dkt. 160](#) at 13, 14, 18, February 2018 Monthly Financial Report (\$126,804.56 paid to Harmon Brothers); [Dkt. 172](#) at 13, 18, 20, March 2018 Monthly Financial Report (\$61,454.31 paid to Harmon Brothers); [Dkt. 178](#) at 14, April Monthly Financial Report (\$43,000 paid to Harmon Brothers); [Dkt. 185](#) at 9, 10, 12, May Monthly Financial Report (\$105,286.05 paid to Harmon Brothers); [Dkt. 191](#) at 10, 12, June Monthly Financial Report (\$38,438.78 paid to Harmon Brothers); [Dkt. 199](#) at 9, July Monthly Financial Report (\$800.25 paid to Harmon Brothers).

³¹ [Dkt. 69](#), Movants’ Mot. for Dismissal of the Debtor’s Chapter 11 Pet. Pursuant to 11 U.S.C. § 1112(b) or, in the Alternative, for Relief from the Automatic Stay Pursuant to 11 U.S.C. §362(d) (Bankr. D. Utah, filed on Nov. 8, 2017).

be determined by the California District Court.”³² Those claims expressly reserved Movants’ right to a trial by jury, to contest this Court’s jurisdiction, and to have the claims liquidated by the California Court.³³

7. On February 15, 2018, VidAngel filed an Adversary Complaint against Movants.³⁴ VidAngel’s first cause of action seeks disallowance of claims pursuant to 11 U.S.C. § 502. VidAngel’s second cause of action seeks a declaration that VidAngel’s operation of the Disc-Based Service did not violate Movants’ rights under the DMCA or the Copyright Act; this claim in the Adversary Complaint incorporated VidAngel’s Fourth through Seventh Counterclaims for declaratory relief from its counterclaims in the California Action, claims that Judge Birotte dismissed in his August 10, 2017 Order.³⁵

8. No creditors committee has been formed in this Chapter 11 action.³⁶ According to the United States Trustee, there were “too few unsecured creditors willing to serve for the United States Trustee to form a Creditors’ Committee.”³⁷

9. On September 10, 2018, VidAngel filed its *third* motion to extend its exclusivity period for filing a reorganization plan.³⁸

³² [Proofs of Claims 5-1 to 11-1](#) at 2-3 (Bankr. D. Utah, filed on Feb. 18, 2018).

³³ [Id.](#)

³⁴ [Adversary Complaint](#), Case No. 18-02016 (filed Feb. 15, 2018).

³⁵ [Id.](#) at 5-6.

³⁶ [Dkt. 91](#), Office of the United States Trustee for the District of Utah § 341 Meeting Minute Entry (Bankr. D. Utah, filed on Nov. 16, 2017).

³⁷ [Statement of United States Trustee Regarding Creditors’ Committee](#) (Bankr. D. Utah, filed Nov. 20, 2017).

³⁸ [Dkt. 210](#), Debtor’s Third Mot. for an Order Under Section 1121(d) of the Bankr. Code Extending Debtor’s Exclusive Periods Within Which to File and Solicit Acceptances of a Plan (Bankr. D. Utah, filed on Sept. 10, 2018).

ARGUMENT

I. THE STAY OF THE CALIFORNIA ACTION SHOULD BE LIFTED SO THAT THE MOVANTS' CLAIMS CAN BE LIQUIDATED

The orderly resolution of pre-petition claims includes “permit[ing] pending litigation involving the debtor to continue in a nonbankruptcy forum,” pursuant to 11 U.S.C. § 362(d)(1).³⁹

Congress explained that

it will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.⁴⁰

The *Curtis* factors⁴¹ guide the Court’s consideration of a motion to lift the stay to resolve pending litigation in another forum, although “not all of the factors are relevant in every case, nor is a court required to give each factor equal weight.”⁴² Movants have the initial “burden to show that ‘cause’ exists to lift the stay.”⁴³ Once Movants show cause, the burden “shifts to [the] debtor to demonstrate why the stay should remain in place.”⁴⁴ Movants meet their burden under the relevant *Curtis* factors and briefly address those that are not relevant. VidAngel cannot meet its burden to justify maintaining the stay.

A. The Relevant *Curtis* Factors Compel Relief From The Stay

Factor 1: whether the relief will result in a partial or complete resolution of the issues.

Relief from the stay will allow for a comprehensive resolution of Movants’ DMCA and Copyright Act claims, including a jury determination of the damages VidAngel owes Movants

³⁹ *In re Busch*, 294 B.R. 137, 141 (10th Cir. BAP 2003).

⁴⁰ [S. Rep. No. 989](#), 95th Cong., 2d Sess. 50, reprinted in 1978 U.S.C.C.A.N. 5787, 5836 (quoted in *In re Busch*, 294 B.R. at 141 and *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (9th Cir. BAP 1995)).

⁴¹ *In re Curtis*, 40 B.R. 795, 799 (Bankr. D. Utah 1984).

⁴² *In re Roger*, 539 B.R. 837, 845 (C.D. Cal. 2015).

⁴³ *In re Busch*, 294 B.R. at 140-41.

⁴⁴

for violating their rights, and the entry of a final judgment.⁴⁵ “[H]ow much is owed to the studios with regard to damages” is, as VidAngel itself has told this Court, a “paramount question” that must be answered before VidAngel can have any hope of reorganizing.⁴⁶

Bankruptcy courts routinely lift the stay to allow the adjudication of pre-petition claims in the courts in which they were filed. In *In re Touchstone Home Health*, for example, the court granted a creditor relief from the stay to conclude pre-petition litigation and liquidate its claim against the debtor.⁴⁷ As the court explained: “The Debtor may owe the [plaintiff] the full amount of the Claim, or nothing, or something in between. Liquidating the amount of the Claim would fully resolve the underlying dispute.”⁴⁸ Likewise in *In re Horizon Womens Care Professional LLC*, the bankruptcy court rejected the debtor’s argument that the claims allowance/disallowance process should be used to resolve the creditor’s pre-petition claim.⁴⁹ The court explained that liquidating claims and allowing (or disallowing) them “are wholly separate matters”; “[g]ranted relief from stay will result in complete resolution of the state court litigation.”⁵⁰ In this case, granting Movants’ Motion will allow the California Action to proceed to judgment and enable Movants to liquidate their claims.

⁴⁵ [Feltner v. Columbia Pictures Television, Inc.](#), 523 U.S. 340, 353 (1998) (copyright owner has Seventh Amendment right to a jury determination of damages under the Copyright Act). As VidAngel conceded, “the Constitution prohibits bankruptcy courts from holding jury trials in non-core matters, such as the California Action, without the parties’ consent.” [Dkt. 114](#), Debtor’s Opp’n to Mot. for Relief from Stay at 28, Case No. 17-29073 (Bankr. D. Utah, filed Nov. 27, 2017); see also [Dec. 5, 2017 Hr’g Tr.](#) at 41:2-41:4 (in dialogue with the parties, this Court confirmed that “an Article III Federal District Court needs to make that determination [i.e., final judgment and damages], not the Bankruptcy Court, unless the parties would want that.”).

⁴⁶ [Dec. 5, 2017 Hr’g Tr.](#) at 17:24-18:5, Case No. 17-29073 (Bankr. D. Utah).

⁴⁷ [In re Touchstone Home Health LLC](#), 572 B.R. 255 (Bankr. D. Colo. 2017).

⁴⁸ [Id.](#) at 282.

⁴⁹ *In re Horizon Womens Care Prof’l LLC*, 506 B.R. 553, 558 (Bankr. D. Colo. 2014).

⁵⁰ [Id.](#)

Where courts have denied motions to lift the stay, this first *Curtis* factor may not be satisfied because the proceedings in the pre-petition court and the bankruptcy court will involve “unavoidable” duplication of effort and “needless relitigation in the bankruptcy court.”⁵¹ The circumstances of this Motion present none of those risks. The division of labor between the California Court and this Court is clear: The California Court will determine liability, liquidate damages, and decree the terms of a permanent injunction. This Court will then decide the allowance/disallowance of Movants’ claims in the reorganization process under § 502.

Factor 2: the lack of any connection with or interference with the bankruptcy case.

When the expenditure of litigation resources in liquidating a claim outside of the bankruptcy court *aids* rather than *detracts* from the administration of the estate, this factor weighs in favor of relief. The *In re Touchstone Home Health* court explained that where (1) “[t]he subject of the [pre-petition proceeding] is very discrete”; (2) “[i]f the matter is not resolved through the [pre-petition proceeding], it would need to be resolved by the [bankruptcy] Court”; and (3) “[t]he Claim could be decided by [the pre-petition forum] as quickly and efficiently as in this [bankruptcy] Court”; then, the “resolution [in the pre-petition forum] would facilitate the overall bankruptcy process and reorganization by liquidating an important claim.”⁵²

The same is true here. Resolving Movants’ DMCA and copyright infringement claims is discrete and separate from the bankruptcy law issues. The California Court is the most efficient forum for resolving Movants’ claims given its familiarity with the case including its expertise in the DMCA and Copyright Act.

⁵¹ [In re Curtis](#), 40 B.R. at 804. *But see In re Ozai*, 34 B.R. 764, 766 (9th Cir. BAP 1983) (holding that it was not an abuse of discretion to lift the stay so fraud claims could be litigated to judgment in state court where it “served” “[j]udicial economy” for the state court to decide the state law at issue, even though the bankruptcy court would have to decide the dischargeability issue under § 523).

⁵² [In re Touchstone Home Health LLC](#), 572 B.R. at 282.

VidAngel will have to expend resources defending against Movants' claims, but that is true regardless of where the claims are liquidated. VidAngel's bankruptcy filing did not extinguish the pre-petition claims. And the costs of defending against such claims "do not compel a court to deny stay relief."⁵³ Nor does the resolution of Movants' claims threaten to "detract from the reorganization effort."⁵⁴ Indeed, as VidAngel has previously recognized, the resolution of Movants' claims is essential if VidAngel is to know whether it can emerge from bankruptcy with a successful reorganization.⁵⁵ VidAngel's intention to "pause" the California Action—for a year now and apparently indefinitely—is an abuse of the stay. The automatic stay cannot be used to "defer or deflect resolution of claims against [the debtor in] another forum with proper jurisdiction."⁵⁶ Indeed, courts have granted relief from the stay when the debtor was "using the bankruptcy process . . . to delay any final judicial determination of the parties' respective rights."⁵⁷

Factor 4: whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.

The California Court has specialized expertise that make it the best suited tribunal for deciding Movants' copyright infringement and DMCA claims.

⁵³ *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. at 566 (citing *In re Todd Shipyards Corp.*, 92 B.R. 600, 603 (Bankr. D.N.J. 1988); *In re Unioil*, 54 B.R. 192, 195 (Bankr. D. Colo. 1985); *In re UNR Indus., Inc.*, 54 B.R. 266, 269 (Bankr. N.D. Ill. 1985); *In re Rabin*, 53 B.R. 529, 532 (Bankr. D.N.J. 1985); *In re Bock Laundry Mach. Co.*, 37 B.R. 564, 567 (Bankr. N.D. Ohio 1984); see also *In re Roger*, 539 B.R. at 848 (reversing denial of stay relief because any determination that the estate would be harmed by the attorneys' fees and litigation distraction of granting relief so a state court action could proceed was "both legally impermissible and factually unsupported").

⁵⁴ *In re Curtis*, 40 B.R. at 806.

⁵⁵ See [Dec. 5, 2017 Hr'g Tr.](#) at 17:24-18:5 (counsel for VidAngel stating that "how much is owed to the studios with regard to damages, if any, in respect of the old Disc-Based model" is a "paramount question[]" that must be determined).

⁵⁶ *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. at 567.

⁵⁷ See also *In re Dennen*, 539 B.R. 182, 187-88 (Bankr. D. Colo. 2015).

First, the California Court has already analyzed the relevant facts and law in ruling on the preliminary injunction. That court held that Movants have a “strong likelihood of success on the merits” of both claims.⁵⁸ Movants’ summary judgment motion is pending before that court. Second, as an Article III Court, the California Court is the tribunal in which copyright infringement and DMCA claims are typically resolved. It has more familiarity with the legal principles underpinning Movants’ claims and VidAngel’s defenses. Third, the California Court has the power to empanel a jury to decide damages. Movants have a right to a damages trial before a jury, which will determine whether VidAngel committed “willful” infringement and will determine the proper amount of statutory damages.⁵⁹

Factor 7: whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties.

There is no prejudice to the interests of other creditors. The United States Trustee concluded that there were “too few unsecured creditors willing to serve” to justify the formation of a creditor’s committee.⁶⁰ Movants are the only parties to appear before this Court pressing an interest in VidAngel’s estate. Movants’ interests are substantial.

Factor 10: the interest of judicial economy and the expeditious and economical determination of litigation for the parties.

The “interests of judicial economy and efficiency” are “best-served” by liquidating claims before the court that “knows the parties and the factual and legal issues” and can schedule final hearings “in short order.”⁶¹

⁵⁸ [Disney Enters., Inc. v. VidAngel, Inc.](#), 224 F. Supp. 3d at 969, 971.

⁵⁹ [Feltner](#), 523 U.S. at 353 (right to a jury); [17 U.S.C. § 504\(c\)\(2\)](#) (statutory damages for “willful” infringement).

⁶⁰ [Statement of United States Trustee Regarding Creditors’ Committee](#), Case No. 17-29073 (Bankr. D. Utah, filed Nov. 20, 2017).

⁶¹ [In re Touchstone Home Health LLC](#), 572 B.R. at 282.

The California Court has already considered an extensive record and issued a comprehensive decision that the Ninth Circuit affirmed. A motion for summary judgment is pending. VidAngel wants this Court (or a District Court in Utah) to repeat this work. There is no need to duplicate efforts. Lifting the stay so pre-petition litigation can be completed in the pre-petition forum is inherently more efficient than starting over in another forum.⁶²

Factor 11: whether the foreign proceedings have progressed to the point where the parties are prepared for trial.

The California Action is close to completion. Before VidAngel filed its Petition, the California Court and Ninth Circuit had already ruled on the legal issues relevant to VidAngel's liability, and a summary judgment motion on liability was pending.⁶³ Trial was set for June 2018, less than eight months from VidAngel's petition date.⁶⁴ The parties have been filing regular status reports with Judge Birotte, as requested, so he is aware of what has happened since the California Action was stayed.⁶⁵ Movants will seek to have their summary judgment motion heard expeditiously and trial set for the first available date.

Factor 12: the impact of the stay on the parties and the "balance of hurt."

Since filing this Motion in November 2017, the harm to Movants has increased substantially. Movants are prejudiced by the risk of lost evidence as time drags on.⁶⁶ In addition, the estate's assets, which will have to satisfy the claims of all creditors, including

⁶² *Id.* at 283 (explaining that "[a]t worst" the efficiency costs would be "the same as adjudication in the Court since presumably the same witnesses and evidence would be tendered").

⁶³ *Disney Enters.*, 224 F. Supp. at 957.

⁶⁴ RJN Ex. H, Order re: Jury/Court Trial (California Action, Dkt. 215).

⁶⁵ RJN Ex. L, [In Chambers] Order Staying Case Pending Bankr. (California Action, Dkt. 231); *see also* RJN Ex. M, February 28, 2018 Status Report Pursuant to In Chambers Order [Dkt. 231] Regarding Status of Proceedings Following VidAngel's Filing of Chapter 11 Bankr. Pet. [Dkt. 229] (California Action, Dkt. 236); *id.* Ex. N, June 28, 2018 Status Report Pursuant to In Chambers Order [Dkt. 231] Regarding Status of Proceedings Following VidAngel's Filing of Chapter 11 Bankr. Pet. [Dkt. 229] (California Action, Dkt. 237).

⁶⁶ *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. at 566.

Movants, are rapidly disappearing. VidAngel's assets have diminished by nearly \$2 million within the last year; nearly \$800,000 of that amount has been paid out to VidAngel's founders through their "Harmon Brothers" advertising agency.⁶⁷ VidAngel has no right to use the automatic stay to forever forestall the adjudication against it of pre-petition claims.⁶⁸ This is particularly true where, as here, there is a demonstrable diminution in the estate that will have an adverse financial impact on the amount of money that can be distributed to creditors.

By comparison, VidAngel does not stand to suffer any cognizable harm.

B. The Remaining *Curtis* Factors Are Irrelevant

The following factors are irrelevant to this Court's analysis of the *Curtis* factors:

(3) "[w]hether the foreign proceeding involves the debtor as a fiduciary"; (5) "[w]hether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation"⁶⁹; (6) "[w]hether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question"; (8) "[w]hether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c)"; and (9) "[w]hether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f)."⁷⁰

In sum, all of the relevant *Curtis* factors compel for lifting the stay.

⁶⁷ See footnote 30, *supra*.

⁶⁸ See *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. at 567; *In re Dennen*, 539 B.R. at 187-88.

⁶⁹ VidAngel does not have insurance, but the fact VidAngel has to pay counsel does not make this factor weigh for maintaining the stay. See *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. at 566 (incurring litigation costs is not a reason to deny stay relief); see also *In re Roger*, 539 B.R. at 848 (same).

⁷⁰ *In re Curtis*, 40 B.R. at 800.

C. The *Gindi* Likelihood Of Success Factor Compels Relief From The Stay

The Tenth Circuit has also emphasized that relief is appropriate when “the creditor has a probability of prevailing on the merits of his case.”⁷¹ Movants have a strong probability of prevailing on the merits of the California Action, as recognized by both Judge Birotte and the Ninth Circuit. This test therefore also supports relief from the automatic stay.

II. VIDANGEL’S REQUEST FOR DECLARATORY RELIEF IN ITS ADVERSARY COMPLAINT SHOULD BE DISMISSED

A. Res Judicata Bars VidAngel From Reasserting The Declaratory Judgment Act Claims That Were Dismissed By The California Court

VidAngel’s Adversary Complaint asserts a request for a declaration under the Family Movie Act and Copyright Act that the Disc-Based Service did not violate Movants’ rights.⁷² This is just a replay of VidAngel’s now-dismissed declaratory relief counterclaims in the California Action. Res judicata bars VidAngel’s attempt to relitigate those same claims through its Adversary Complaint.

Res judicata applies where there is (1) “a [] judgment on the merits in the earlier action”; (2) “identity of the parties in [both] suits”; and (3) “identity of the cause of action in both suits.”⁷³ All three factors are satisfied here.

Judgment on the merits. The California Court concluded that “[e]ach of the issues that VidAngel raises in its claims for declaratory relief will be decided through Plaintiff’s claims in this action or Defendants affirmative defenses thereto” and that therefore it would exercise its

⁷¹ *In re Gindi*, 642 F.3d 865, 872 (10th Cir. 2011) *overruled on other grounds by TW Telecom Holdings Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011).

⁷² [Adversary Complaint](#), Second Cause of Action, Case No. 18-02016 (filed Feb. 15, 2018). VidAngel’s First Cause of Action seeks a disallowance of claims under 11 U.S.C. § 502(b)(1) and also incorporates VidAngel’s Amended Answer, Affirmative Defenses and First Amended Counterclaims (California Action, Dkt. 77).

⁷³ [City of Eudora v. Rural Water Dist. No. 4](#), 875 F.3d 1030, 1035 (10th Cir. 2017).

jurisdictional “discretion” to “den[y] VidAngel’s fourth through seventh claims for declaratory relief.”⁷⁴ The California Court’s decision to decline jurisdiction and dismiss those declaratory judgment claims without leave to amend is an “adjudication on the merits” pursuant to Federal Rule of Civil Procedure 41(b).⁷⁵ Clear precedent establishes that such a jurisdictional dismissal precludes relitigation of the same issue before another court.⁷⁶

If VidAngel disagrees with the California Court, its proper path is to wait until the conclusion of that case and appeal that decision to the Ninth Circuit. VidAngel recognized exactly this when it asked the California Court to enter judgment pursuant to Rule 54(b) on the dismissal of its antitrust counterclaims:

The Court denied or dismissed with prejudice VidAngel’s declaratory relief counterclaims, four through seven, ... As to these declaratory relief counterclaims, *VidAngel will wait to appeal the correctness of that ruling until such time that the resolution of plaintiffs’ two copyright claims are resolved and appealed.*⁷⁷

The only path for VidAngel to challenge the California Court’s dismissal is via “direct review” on appeal; it cannot also “collateral[ly] attack” those rulings through this proceeding.⁷⁸

⁷⁴ RJN Ex. E at 20, Order Granting Pls.’ Mot. to Dismiss Def.’s First Am. Countercls. and Strike Def.’s Affirmative Defense of Copyright Misuse (Dkt. 103) (California Action, Dkt. 199).

⁷⁵ [Fed. R. Civ. P. 41\(b\)](#) provides: “(b) . . . Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.”

⁷⁶ See [Eaton v. Weaver Mfg. Co.](#), 582 F.2d 1250, 1255-56 (10th Cir. 1978) (“Principles of res judicata apply to jurisdiction as well as to other issues.”); [In re Brooks-Hamilton](#), 271 F. App’x 654, 657 (9th Cir. 2008) (holding that dismissal on the basis of subject matter jurisdiction “preclude[s] re-litigation of the jurisdictional issue there presented, in a subsequent action.”) (unpublished) (citing [Kendall v. Overseas Dev. Corp.](#), 700 F.2d 536, 539 (9th Cir. 1983)).

⁷⁷ RJN Ex. F at 4, VidAngel’s Mot. for Final J. Pursuant to Rule 54(b) (California Action, Dkt. 203) (emphasis added).

⁷⁸ [Federated Dept. Stores, Inc. v. Moitie](#), 452 U.S. 394, 398 (1981) (district court’s error “is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause of action.”) (alterations and quotation marks omitted).

Identity of parties. This factor “looks to the party against whom res judicata is being asserted”⁷⁹—VidAngel. The California Court’s dismissal of VidAngel’s declaratory relief counterclaims bars VidAngel from reasserting them in its adversary proceeding here (just as it could not refile them in California or Utah district court).

Identify of the cause of action. The claim for declaratory relief in VidAngel’s Adversary Complaint is substantively identical to the California declaratory relief claims—VidAngel simply “incorporates by reference . . . Paragraphs 119-134 thereof.”⁸⁰ Both claims seek a declaration that VidAngel’s so-called “Disc Ownership Model” is lawful and does not violate the DMCA or infringe Movants’ copyrights.⁸¹

VidAngel’s declaratory relief claims are barred by res judicata and, while not at issue in this motion, should ultimately be dismissed.

B. The California Action Was First-Filed And Has Priority

“The rule is that the first federal district court which obtains jurisdiction of parties and issues should have priority and the second court should decline consideration of the action until the proceedings before the first court are terminated.”⁸² This rule also applies to second-filed proceedings in bankruptcy.⁸³ Although courts have discretion in applying the rule, it “should be

⁷⁹ *Hung v. Tribal Techs.*, No. C 11-04990 WHA, 2018 WL 827934, at *2 (N.D. Cal. 2018) (emphasis omitted); see also *In re Waterscape Resort LLC*, 544 B.R. 507, 517-18 (Bankr. S.D.N.Y. 2016) (“Moreover, a non-party to the original action may rely on res judicata to defeat the plaintiff’s claim in the second action if ‘the liability of the defendant is altogether dependent upon the culpability of one exonerated in a prior suit, upon the same facts, when sued by the same plaintiff.’”) (citation omitted).

⁸⁰ *Adversary Complaint*, Second Cause of Action, Case No. 18-02016 (filed Feb. 15, 2018) ¶ 26.

⁸¹ See *id.* ¶¶ 25-32 (incorporating by reference Amended Counterclaims ¶¶ 119-134).

⁸² *O’Hare Int’l Bank v. Lambert*, 459 F.2d 328, 331 (10th Cir. 1972) (citation omitted).

⁸³ *In re Mansfield Corp.*, 339 B.R. 194, 200 (Bankr. D. Minn. 2006) (dismissing second-filed adversary complaint under first-filed rule because “[t]here is no question that this lawsuit is ‘duplicative’ as to substance. As such, and standing alone, it triggers the federal courts’ general aversion to duplicative litigation, which raises the first-filed rule. Given [the first-filed court’s]

invoked in a fashion to achieve the underlying goal of avoiding duplicative litigation.”⁸⁴ The reasons underlying the first-filed rule are “(1) to prevent duplicative and vexatious litigation in multiple forums; (2) to facilitate the consistent and comprehensive disposition of litigation in one forum, and (3) to avoid the unnecessary expenditure of judicial and party resources.”⁸⁵ Thus, where an earlier action is pending in federal district court and a second lawsuit involving substantially similar parties and issues is filed, “the entire action should be decided by the court in which the action was first filed.”⁸⁶

“The first-to-file rule applies when three conditions are met: (1) chronology of the actions, (2) similarity of the parties, and (3) similarity of the issues.”⁸⁷

Chronology of the actions. The California Action was filed on June 9, 2016, more than 20 months before VidAngel filed its Adversary Complaint.⁸⁸

significant attention to the Utah litigation already, not to mention the parties’ substantial investment in the process there, this Court should defer to the litigation preceding there.”); *In re Com21, Inc.*, 357 B.R. 802, 809 (Bankr. N.D. Cal. 2006) (applying first-filed rule to stay adversary proceeding pending outcome of patent litigation in federal district court).

⁸⁴ *In re Mansfield Corp.*, 339 B.R. at 198. To be sure, bankruptcy courts just as district courts have discretion to entertain a second-filed adversary proceeding when doing so “would cause ‘little or no burden on the federal judiciary,’ and [is] unlikely to result in conflicting judgments.” *In re Tribune Co.*, 418 B.R. 116, 125 (Bankr. D. Del. 2009) (citing *In re Husco, Inc.*, 268 B.R. 441 (Bankr. W.D. Pa. 2001)). That is not the case here.

⁸⁵ *In re Mansfield Corp.*, 339 B.R. at 198 (citations omitted); see also *Buzas Baseball, Inc. v. Bd. of Regents of Univ. Sys. of Ga.*, No. 98–4098, 1999 WL 682883, at *2 (10th Cir. Sept. 2, 1999) (unpublished) (as between two district courts, “as courts of coordinate jurisdiction and equal rank” they “must be careful to avoid interfering with each other’s affairs in order ‘to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.’”) (citation omitted).

⁸⁶ *Layne Christensen Co. v. Levelland/Hockley Cty. Ethanol, LLC*, No. CIV. A. 08-2203-CM, 2009 WL 352832, at *2 (D. Kan. 2009) (collecting cases); see also *Shannon’s Rainbow, LLC v. Supernova Media, Inc.*, 683 F. Supp. 2d 1261, 1278 (D. Utah 2010) (“[T]he first court who obtains jurisdiction over the same parties and issues is the appropriate court to resolve the case”).

⁸⁷ *Shannon’s Rainbow*, 683 F. Supp. at 1278 (citing *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991)).

⁸⁸ RJN Ex. A, Compl. (California Action, Dkt. 1); [Adversary Complaint](#), Case No. 18-02016, Dkt. 1 (filed Feb. 15, 2018).

Similarity of the parties. The parties are identical.⁸⁹ California Plaintiffs are Disney, Lucasfilm, Fox, Warner Bros. Marvel, New Line, and Turner.

Similarity of issues. The claims here are identical—VidAngel has simply incorporated its counterclaims from the California Action into its Adversary Complaint. The California Court held: “Each of the issues that VidAngel raises in its claims for declaratory relief will be decided through Plaintiff’s claims in this action or Defendants affirmative defenses thereto.”⁹⁰

VidAngel’s declaratory relief claims asserted here are therefore “duplicative” and should be resolved before the California Court pursuant to the first-filed rule.⁹¹

C. This Court Has Discretion To Apply Section 1334 Permissive Abstention To VidAngel’s Declaratory Relief Claims⁹²

Section 1334(c)(1) allows for permissive abstention in cases involving concurrent federal proceedings “when it would serve ‘the interest of justice.’”⁹³ In deciding whether to abstain under § 1334(c)(1), courts consider an additional twelve factors⁹⁴, many of which overlap with

⁸⁹ [Shannon’s Rainbow](#), 683 F. Supp. at 1279 (“[o]nly similarity or ‘substantial overlap’ is required”) (citations omitted).

⁹⁰ RJN Ex. E at 18, Order Granting Pls.’ Mot. to Dismiss Def.’s First Am. Countercls. and Strike Def.’s Affirmative Defense of Copyright Misuse (Dkt. 103) (California Action, Dkt. 199).

⁹¹ [Shannon’s Rainbow](#), 683 F. Supp. at 1278-79.

⁹² [Section 1334\(c\)\(1\)](#) governs permissive abstention. Mandatory abstention under [28 U.S.C. § 1334\(c\)\(2\)](#) does not apply because it involves only parties to “a proceeding based upon a State law claim or State law cause of action” that could not have been commenced in a court of the United States absent title 11 jurisdiction.

⁹³ [In re Apex Oil Co.](#), 980 F.2d 1150, 1152 (8th Cir. 1992) (explaining that § 1334(c)(1) applies to both federal and state claims).

⁹⁴ The twelve permissive abstention factors are: “(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty or unsettled nature of the applicable law; (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than form of an asserted ‘core’ proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden of [the bankruptcy court’s] docket; (10) the likelihood that

the *Curtis* factors relating to judicial economy, impact on the administration of the estate, and specialization of the other forum, analyzed in Section I.A., *supra*—and which favor abstention.

In addition, abstention factor seven analyzes whether the proceeding is core or not core. VidAngel’s declaratory relief claims relating to the DMCA and the Copyright Act are not core because they “could just as easily have been brought” outside the bankruptcy court.⁹⁵ Indeed, they were brought in the California Action. The “noncore status of the proceeding . . . weigh[s] in favor of abstention.”⁹⁶

Abstention factor ten considers “the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties.”⁹⁷ VidAngel admitted as much in public statements⁹⁸, and its recent rejection of Chief Judge Nuffer’s offer to transfer its declaratory relief claims for its “Stream-Based Service” to California underscores this point.

CONCLUSION

Movants respectfully request that the Court grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and permit Movants to adjudicate and liquidate their claims before the California Court.

the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.” *In re Eastport Assocs.*, 935 F.2d 1071, 1075-76 (9th Cir. 1991) (quoting *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990)).

⁹⁵ *In re Eastport Assocs.*, 935 F.2d at 1077; *id.* at 1076 (“If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding.”) (quoting *In re Wood*, 825 F.2d 90, 96-97 (5th Cir. 1987)).

⁹⁶ *In re Eastport Assocs.*, 935 F.2d at 1077.

⁹⁷ *Id.* at 1075-76.

⁹⁸ [Dkt. 69-2](#), VidAngel Bankruptcy BlogPost.

DATED this 14th day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2018, I electronically filed the foregoing *Supplemental Brief in Support of Movants' Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. §362(d)* with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the electronic filing users in this case as follows:

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