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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

**LIMITED OBJECTION OF CALIFORNIA PLAINTIFFS TO 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 (DKT. 210)**

The California Plaintiffs,¹ all of which are creditors holding substantial unliquidated unsecured claims against the estate, respectfully submit this limited objection (the “Limited Objection”) to Debtor VidAngel, Inc.’s (“VidAngel”) Third Motion to Extend the Exclusivity Period under § 1121(d) (Dkt. 210) (“Motion”), filed on September 10, 2018.

LIMITED OBJECTION

For almost a year now, VidAngel has vigorously opposed the California Plaintiffs’ motion for relief from the stay, insisting it needs continued “breathing space” to focus on its plan of reorganization. To date, however, VidAngel has not explained any specific, concrete steps it has taken toward preparing, much less submitting, such a plan. At the same time, between the October 18, 2017 Petition Date and August 31, 2018, VidAngel’s cash assets—which will be necessary to satisfy the claims of the California Plaintiffs and other creditors—have declined by almost \$1.8 million dollars.² VidAngel is exploiting the automatic stay and holding the California Plaintiffs’ claims “hostage.”³ As a result of VidAngel’s foot-dragging, the estate is rapidly dissipating assets that otherwise would be available to pay, at least in part, the substantial damages VidAngel will owe the California Plaintiffs for infringing their rights.

By this Limited Objection, California Plaintiffs ask the Court to order VidAngel to file a status report regarding its reorganization efforts, draft plan, and timeline for confirmation; and ask that the Court limit any extension of exclusivity to no more than 30 days.

¹ 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. (collectively, the “California Plaintiffs”).

² [Dkt. 215](#), August 2018 Monthly Financial Report at 2 (showing a decrease in cash since case filing from \$3,449,285 to \$1,713,752).

³ [In re Sw. Oil Co. of Jourdanton, Inc.](#), 84 B.R. 448, 450 (Bankr. W.D. Tex. 1987) (quoting [In re Timbers of Inwood Forest Assocs., Ltd.](#), 808 F.2d 363, 372 (5th Cir.1987) *sub nom.* [United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.](#), 484 U.S. 365 (1988) (dictum)).

ARGUMENT

Congress, in enacting § 1121, “recognized the problems faced by creditors where a debtor unreasonably delays proposing a plan of reorganization.”⁴ Congress struck a compromise by limiting the initial exclusive period to 120 days.⁵ In applying § 1121(d), courts seek to “limit the delay that makes creditors the hostage of Chapter 11 debtors.”⁶ Accordingly, extensions “should not be granted routinely,” especially where, as here, the debtor has “uncomplicated financial structures and relatively few or no public shareholders.”⁷

VidAngel has abused both the automatic stay and its exclusivity period to hold the California Plaintiffs’ claims in abeyance indefinitely while it uses its limited assets to experiment with strategies to get out from under the California Court’s injunction and try its hand at an original content business. That is not the purpose of Chapter 11, and VidAngel is not entitled to yet another extension as a matter of course. VidAngel must show that it has a reasonable probability of proposing a confirmable plan of reorganization.

A. VidAngel Has Not Demonstrated Any Progress Toward Reorganization

To obtain an extension, VidAngel must show “a reasonable probability that it will be able to propose a plan that will result in a successful reorganization within a reasonable time.”⁸ That probability “cannot be grounded solely on speculation”; rather, VidAngel must “prove that an

⁴ *Id.* at 450.

⁵ *Matter of Lake in the Woods*, 10 B.R. 338, 343 (Bankr. E.D. Mich. 1981) (discussing legislative history, showing “there should be a relative balance of negotiating strength between debtors and creditors during reorganization of an enterprise”).

⁶ *In re Southwest Oil*, 84 B.R. at 450 (quoting *In re Timbers of Inwood Forest Assocs., Ltd.*, 808 F.2d at 372).

⁷ *In re Grossinger’s Assocs.*, 116 B.R. 34, 36 (Bankr. S.D.N.Y. 1990).

⁸ *In re Southwest Oil*, 84 B.R. at 451 (citation omitted).

effective reorganization is possible.”⁹ VidAngel’s Motion makes no effort to establish that reorganization is possible.¹⁰

VidAngel has not provided the Court with any concrete, specific evidence that it is working toward a plan. VidAngel states that it is “engaging in discussions with parties in interest in an attempt to negotiate a path forward that maximizes value for the estate.”¹¹ But it has not discussed a draft plan with the California Plaintiffs even though they hold the bulk of the unsecured claims. And it does not appear that VidAngel has been diligently pursuing these efforts with other creditors either. VidAngel’s monthly financial statements report a grand total of \$12,481 expended on reorganization costs since VidAngel filed its petition.¹²

B. Further Delay Threatens California Plaintiff’s Legitimate Claims To VidAngel’s Remaining Assets

In ruling on a motion to extend the exclusivity period, “the Court must also balance potential harm to creditors.”¹³ As Movants explain in the concurrently filed response to VidAngel’s Supplemental Brief, further delay in having their claims liquidated and moving this case forward will cause them harm.

⁹ *Id.*; see also *In re Grossinger’s Assocs.*, 116 B.R. at 36 (denying motion to extend because after six months it was clear “the debtor is simply bidding for more time because it does not have any funding in place to support a plan at this time”).

¹⁰ *In re Ravenna Indus., Inc.*, 20 B.R. 886, 890 (Bankr. N. D. Ohio 1982) (citing debtor’s “failure to submit evidence which would provide the needed cause” in denying motion to extend).

¹¹ *Dkt. 210*, Mot. ¶ 13.

¹² *Dkt. 215*, August Financial Statement at 15.

¹³ *In re Southwest Oil*, 84 B.R. at 453 (discussing *In re Ravenna Indus., Inc.*, 20 B.R. at 890 and deterioration of debtor’s financial position as a reason to deny a motion to extend the exclusivity period).

In particular, the “deterioration [of the debtor’s] cash position” may justify denying an extension of the exclusivity period.¹⁴ Between filing for bankruptcy on October 18, 2017 and August 31, 2018, VidAngel’s available cash assets have dropped substantially, from \$3,582,361 to \$1,713,752—losing more than half its cash (\$1,868,609) to disbursements.¹⁵ During the same 10-month period, VidAngel has paid its officers \$654,000¹⁶, and has paid its founders’ advertising agency, Harmon Brothers LLC, another \$881,418.¹⁷ VidAngel claims to be turning the corner to profitability. This claim is belied by the fact that VidAngel recently sought approval for a loan to pay its insurance; that hardly inspires confidence that the debtor-in-possession has righted the ship.¹⁸ VidAngel’s delay strategy has already caused the California Plaintiffs real and concrete harm because there are far less assets today to distribute to creditors than there were at case filing and risks further prejudice to the California Plaintiffs, who are by far VidAngel’s largest creditors.

¹⁴ [In re Ravenna Indus., Inc.](#), 20 B.R. at 890 (noting that the debtor-in-possession reports submitted in that case demonstrated “a deterioration in the cash position of the debtor over the past four months.”).

¹⁵ [Dkt. 88](#), October 2017 Monthly Financial Report at 3; [Dkt. 215](#), August Monthly Financial Report at 2.

¹⁶ [Dkt. 215](#), August 2018 Monthly Financial Report at 15.

¹⁷ [Dkt. 134](#) at 13, November 2017 Monthly Financial Report (\$66,999.24); [Dkt. 145](#) at 10, 11, 13, December 2017 Monthly Financial Report (\$121,910.28); [Dkt. 156](#) at 13, 14, 17, 18, January 2018 Monthly Financial Report (\$229,756.09); [Dkt. 160](#) at 13, 14, 18, February 2018 Monthly Financial Report (\$126,804.56); [Dkt. 172](#) at 13, 18, 20, March 2018 Monthly Financial Report (\$61,454.31); [Dkt. 178](#) at 14, April 2018 Monthly Financial Report (\$43,000); [Dkt. 185](#) at 9, 10, 12, May 2018 Monthly Financial Report (\$105,286.05); [Dkt. 191](#) at 10, 12, June 2018 Monthly Financial Report (\$38,438.78); [Dkt. 199](#) at 9, July 2018 Monthly Financial Report (\$800.25); [Dkt. 215](#) at 9, 10, 12 (\$86,968.55).

¹⁸ [Dkt. 207](#), Mot. for Approval of Commercial Insurance Premium Finance and Security Agreement, filed Sept. 5, 2018.

C. The Court Should Require VidAngel To File A Status Report And Limit Any Extension To 30 Days

There is no creditors' committee in this proceeding. California Plaintiffs are the largest and most interested creditors but without the insight into VidAngel's reorganization efforts that a creditors' committee would have. Accordingly, the Court should require that VidAngel file a status report by October 15, 2018 that outlines (1) the concrete steps that VidAngel has taken thus far to develop a reorganization plan; (2) a good faith preliminary outline of the draft plan's structure; and (3) a timeline for when it will propose a plan and the timeframe in which it intends to seek confirmation.

Moreover, an additional 120 day extension is too long. VidAngel has represented that its financial status has changed dramatically since July, and in another month, its status may change again. The California Plaintiffs ask that the Court limit any extension to no more than 30 days.

CONCLUSION

The California Plaintiffs respectfully request that the Court order VidAngel to file a status report and that the Court limit any extension to no more than 30 days.

DATED this 28th day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2018, I electronically filed the foregoing *The California Plaintiff' Objection to 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 (Dkt. 210)* 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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