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Hearing Date: November 2, 2018, 10:00 a.m.

Proposed 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

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
DEBTOR'S OPPOSITION TO MOTION FOR RELIEF
FROM STAY**

VidAngel, Inc., the above-captioned debtor and debtor in possession hereby requests the Court to take judicial notice of the Memorandum and Order of the United States District Court for the District of Utah Granting Motion to Withdraw Bankruptcy Reference (the "**Order**") under Rule 201 of the Federal Rules of Evidence. A true and correct copy of the Order is attached as an exhibit hereto.

Dated this 1st day of November, 2018.

/s/ Brian M. Rothschild

Brian M. Rothschild

J. Thomas Beckett

PARSONS BEHLE & LATIMER

Attorneys for VidAngel, Inc.

PROOF OF SERVICE

I hereby certify that on November 1, 2018, I caused a true and correct copy of the foregoing **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEBTOR'S OPPOSITION TO MOTION FOR RELIEF FROM STAY** to be filed with the ECF system, which electronically served the following:

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Respectfully submitted,

/s/ Brian M. Rothschild

Brian M. Rothschild

PARSONS BEHLE & LATIMER

Attorneys for VidAngel, Inc.

Exhibit A

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

<p>VIDANGEL, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</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>MEMORANDUM DECISION AND ORDER GRANTING [2] MOTION TO WITHDRAW BANKRUPTCY REFERENCE</p> <p>Case No. 2:18-cv-00145-DN</p> <p>District Judge David Nuffer</p>
<p>In re:</p> <p>VIDANGEL, INC.,</p> <p style="text-align: center;">Debtor.</p>	<p>Related Chapter 11 Case</p> <p>Case No. 17-29073</p> <p>Adv. Case No. 18-ap-02016-KRA</p> <p>Chapter 11</p> <p>Judge Kevin Anderson</p>

Plaintiff VidAngel, Inc. (“VidAngel”) filed a motion to withdraw the reference to the Bankruptcy Court of an adversary proceeding related to Bankruptcy Case No. 17-29073 (“Motion to Withdraw”).¹ Defendants Disney Enterprises, Inc., Lucas Film Ltd. LLC, Twentieth Century Fox Film Corporation, Warner Bros. Entertainment Inc., MVL Film Finance LLC, New

¹ Motion to Withdraw the Reference of Adversary Proceeding Related to a Chapter 11 Case (“Motion to Withdraw”), [docket no. 2](#), filed Feb. 16, 2018.

Line Productions, Inc. and Turner Entertainment Co. (collectively, the “Studios”) filed an opposition² and VidAngel replied.³

BACKGROUND

In June 2016, four of the defendants in this action (the “California Plaintiffs”) sued VidAngel in the United States District Court for the Central District of California, alleging copyright infringement and Digital Millennium Copyright Act (DMCA) violations.⁴ While the California action was pending, VidAngel brought a declaratory judgment action in the United States District Court for the District of Utah against three California Plaintiffs and other entities.⁵ That action was dismissed for lack of personal jurisdiction over the defendants.⁶ Shortly thereafter, VidAngel filed a voluntary petition for relief under Title 11 of the United States Code in the United States Bankruptcy Court for the District of Utah (“Chapter 11 Case”).⁷ The California action was automatically stayed pending resolution of the Chapter 11 Case.

The Studios have filed a Motion to Lift the Stay in the Chapter 11 Case to allow the California District Court to move forward and liquidate damages.⁸ The Studios’ Motion to Lift

² Opposition to VidAngel’s Motion to Withdraw the Reference of Adversary Proceedings Related to a Chapter 11 Case (“Opposition”), [docket no. 3](#), filed Mar. 1, 2018.

³ Reply in Support of Plaintiff’s Motion to Withdraw the Reference of Adversary Proceeding Related to a Chapter 11 Case (“Reply”), [docket no. 7](#), filed Mar. 9, 2018.

⁴ *Disney Enterprises, Inc., Lucasfilm Ltd., LLC, Twentieth Century Fox Film Corp., and Warner Bros. Ent., Inc. v. VidAngel, Inc.*, Case No. 2:16-cv-04109-AB-PLA (C.D. California).

⁵ *VidAngel, Inc. v. Sullivan Ent. Group, Inc., Marvel Characters, Inc., MVL Film Finance, LLC, Twentieth Century Fox Home Ent., LLC, Fox Digital Ent., Inc., Fox Broadcasting Company, Inc., New World Pictures, Ltd., Castle Rock Ent., Inc., Turner Ent. Co., Village Roadshow Pictures Entertainment Inc., Regency Ent. (USA), Inc., and Metro-Goldwyn-Mayer Studios, Inc.*, Case No. 2:17-cv-989 (D. Utah).

⁶ *VidAngel, Inc. v. Sullivan Entertainment Group, Inc., et al.*, Case No. 2:17-cv-00989 (D. Utah), Memorandum Decision and Order Granting Motion to Dismiss, [Doc. 129](#), entered July 27, 2018.

⁷ *In re: VidAngel, Inc.*, Case No. 17-29073, Bankruptcy Dkt. 1, filed Oct. 18, 2017.

⁸ *Id.*, Movants’ Motion for Dismissal of the Debtor’s Chapter 11 Petition 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), and Memorandum in Support (“Motion to Lift the Stay”), Bankruptcy Dkt. 69, filed Nov. 8, 2017.

the Stay has been fully briefed and is set for oral argument before the bankruptcy court. In their briefing, the Studios assert that the bankruptcy court does not have the same level of familiarity with copyright issues as the district court and that the Studios do not consent to a jury trial in bankruptcy court.⁹

In compliance with the bankruptcy court order, the Studios filed proof of their claim in the Chapter 11 Case “in an amount to be determined by the California District Court.”¹⁰ The Studios also made the following reservation:

The execution and filing of [their] Proof of Claim is not and shall not be deemed or construed as . . . a consent by the Claimant to the jurisdiction . . . of this Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving the Claimant; . . . [or] a waiver or release of the Claimant’s right to trial by jury in this Court or any other court in any proceeding as to any and all matters so triable herein.¹¹

The next day, VidAngel filed a complaint against the Studios in an adversary proceeding in the bankruptcy court (“Adversary Complaint”).¹² The Adversary Complaint incorporates by reference VidAngel’s Amended Answer, Affirmative Defenses, and First Amended Counterclaims, as set forth in the California action,¹³ and asserts two causes of action.¹⁴ First, VidAngel seeks disallowance of the Studios’ claims from the California action, alleging that the Studios’ claims are unenforceable under applicable law.¹⁵ Second, VidAngel requests

⁹ *Id.*, Response to VidAngel’s Supplemental Brief Objecting to Relief from the Automatic Stay 7-8, Bankruptcy Dkt. 218, filed Sept. 28, 2018. *See* 28 U.S.C. § 157(e) (“[T]he bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.”).

¹⁰ Opposition 6 (citing DEI Proof of Claim).

¹¹ *Id.*

¹² *In re: VidAngel, Inc.*, Case No. 17-29073, Complaint for Declaratory Relief and Disallowance Claims (“Adversary Complaint”), Bankruptcy Dkt. 155, filed Feb. 15, 2018.

¹³ *Id.* ¶¶ 23, 26, 29; *id.*, Exh. A, VidAngel, Inc.’s Amended Answer and Affirmative Defenses to Complaint; and First Amended Counterclaims (“VidAngel’s Amended Answer”).

¹⁴ VidAngel’s Amended Answer included a jury demand. *Id.*, Exh. A.

¹⁵ *Id.* ¶¶ 18-24.

declaratory relief that its Disc Ownership Model does not infringe on the Studios' copyrights, that the Studios are not harmed and have not sustained any damages, and that VidAngel is not liable to the Studios for alleged infringement or violation of the DMCA.¹⁶

VidAngel now seeks withdrawal of the bankruptcy reference of the adversary proceeding.¹⁷ After the filing of the Motion to Withdraw, VidAngel's declaratory action in the Utah District Court was dismissed for lack of personal jurisdiction.¹⁸

DISCUSSION

VidAngel asserts that withdrawal of the Adversary Complaint is mandatory. Pursuant to 28 U.S.C. § 157(d), "[t]he district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce."¹⁹ The district court may also withdraw a proceeding for good cause.²⁰ However, VidAngel did not assert a good cause basis or provide any analysis of the relevant factors for permissive withdrawal. Instead, VidAngel argues that its Adversary Complaint and the Studios' proofs of claim involve issues of federal copyright law, an area of non-bankruptcy federal law, triggering mandatory withdrawal.²¹ VidAngel further alleges that by filing their proof of claims in the Chapter 11 Case, the Studios have consented to the jurisdiction of the Utah

¹⁶ *Id.* ¶¶ 25-32.

¹⁷ Motion to Withdraw, [docket no. 2](#).

¹⁸ *VidAngel, Inc. v. Sullivan Entertainment Group, Inc., et al.*, Case No. 2:17-cv-00989 (D. Utah), Memorandum Decision and Order Granting Motion to Dismiss, [Doc. 129](#), entered July 27, 2018.

¹⁹ 28 U.S.C. § 157(d).

²⁰ *Id.* § 157(d) ("The district court may withdraw, in whole or in part, any case or proceeding referred under this section . . . for cause shown."). See *Western Utah Copper Co. v. Bridge Loan Capital Fund, LP and Bloc Mgmt., LLC*, 2:10-cv-1039-TS, 2011 WL 52511, at *1 (D. Utah Jan. 6, 2011) (identifying factors to consider to determine good cause for permissive withdrawal).

²¹ Motion to Withdraw 6-7.

bankruptcy court and conversion of their pending legal claims in the California District Court to equitable claims in the Chapter 11 Case.²²

The Studios primarily argue that if their pending Motion to Lift the Stay is granted by the bankruptcy court, then the federal copyright law issues contained in the Adversary Complaint will be resolved by the California action.²³ Such action would presumably make the Adversary Complaint moot, and therefore, the Studios assert that withdrawal is not mandatory. The Studios further assert that they have not consented to having the bankruptcy court liquidate their claims through the Adversary Complaint.²⁴

Although there are serious concerns regarding the propriety of the Adversary Complaint, on its face, the Adversary Complaint raises a private right claim that is entitled to adjudication by an Article III tribunal unless the parties voluntarily consent to the bankruptcy court's jurisdiction.²⁵ The Studios have not consented to the bankruptcy court's jurisdiction. Therefore, withdrawal of the adversary proceedings is mandatory under 28 U.S.C. § 157(d).

Finally, although the bankruptcy court lacks jurisdiction to adjudicate the Adversary Complaint, it is also doubtful that this court should do so. VidAngel argues that the Studios lost their right to pursue the California case when they filed their proofs of claim.²⁶ This argument is not correct.²⁷ Moreover, this court has previously determined that it lacked personal jurisdiction over some of the named defendants in this action to issue the declaratory relief that VidAngel

²² Motion to Withdraw 5, 7-8; Adversary Complaint ¶ 13, Bankruptcy Dkt. 155.

²³ Opposition 6-8.

²⁴ *Id.* 5-6.

²⁵ *Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2584, 180 L.Ed. 2d 475 (2011); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932, 191 L.Ed. 2d 911 (2015).

²⁶ Motion to Withdraw 8.

²⁷ See *In re Dampier*, No. BAP CO-15-006, 2015 WL 6756446, at *4 (10th Cir. BAP Nov. 5, 2015) (“bankruptcy courts and state courts have concurrent jurisdiction to adjudicate the validity of disputes arising under applicable non-bankruptcy law, including the validity and the amount of claims asserted against debtors”).

appears to now be seeking in the Adversary Complaint.²⁸ Further briefing on this issue by the parties is appropriate to determine whether VidAngel should be allowed to proceed on the Adversary Complaint, notwithstanding its withdrawal of reference.

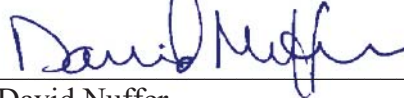
ORDER

IT IS HEREBY ORDERED that the Motion to Withdraw²⁹ is GRANTED and the reference of the adversary proceeding is withdrawn. The Studios' Motion to Lift Stay³⁰ shall remain with the bankruptcy court and nothing in this order precludes the bankruptcy court from ruling on the Motion to Lift Stay.

IT IS FURTHER ORDERED that within fourteen (14) days, the parties shall file a memorandum with the district court addressing why the Adversary Complaint should not be dismissed for lack of jurisdiction or other good cause.

Dated November 1, 2018.

BY THE COURT:



David Nuffer
United States District Judge

²⁸ *VidAngel, Inc. v. Sullivan Entertainment Group, Inc., et al.*, Case No. 2:17-cv-00989 (D. Utah), Memorandum Decision and Order Granting Motion to Dismiss, [Doc. 129](#), entered July 27, 2018.

²⁹ [Docket no. 2](#).

³⁰ *In re: VidAngel, Inc.*, Case No. 17-29073, Bankruptcy Dkt. 69.