

J. Thomas Beckett, USB #5587
Brian M. Rothschild, USB #15316
Michael R. Brown, USB #16007
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
MBrown@parsonsbehle.com
ecf@parsonsbehle.com

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 FOURTH MOTION FOR ENTRY OF AN
ORDER UNDER SECTION 1121(d) OF THE BANKRUPTCY
CODE EXTENDING DEBTOR'S EXCLUSIVE PERIOD
WITHIN WHICH TO 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 period within which to solicit acceptances of a chapter 11 bankruptcy plan for an additional 95 days, from March 15 to June 18, 2019, which, in any event, is its last date to solicit under 11 U.S.C. § 1121(d)(2)(B). 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 11 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 entertainment content they wish to view.

RELIEF REQUESTED

Under [section 1121 of the Bankruptcy Code](#) and previously granted motions to extend exclusivity, the Debtor has had the exclusive right (i) to file a plan of reorganizations or liquidation through and including January 14, 2019 (the “**Plan Proposal Period**”); and (ii) to

solicit and obtain acceptances for a plan through and including March 15, 2019 (the “**Solicitation Period**,” and, together with the Plan Proposal Period, the “**Exclusive Periods**”).

6. At the October 2, 2018 hearing on the Debtor’s motion to extend exclusivity, the Court extended the Exclusive Periods by 91 days. The Court further stated that the door was open for additional extensions, so long as the Debtor demonstrated progress in presenting a plan to deal with the claims of creditors.

7. The Debtor has done as the Court instructed. On January 14, 2019, the Debtor filed its proposed plan of reorganization. And on January 15, 2019, it filed its proposed disclosure statement.

8. The Debtor’s plan addresses all classes of claims and interests. The claimants treated in the plan range from a broad and sizeable customer base, much of which holds subscription credits (currently worth \$3.7 million), to the largest film studios in the world, with claims that remain contingent and unliquidated, with a theoretical range of \$0 to \$100 million.

9. To deal with its subscription credit claims, the Debtor proposes to accelerate the credit holders’ time to redeem, and to take away any ability for them to redeem those credits for cash. These changes, the Debtor believes, will substantially increase its revenues, cash flows, and renewed subscription base as it emerges from bankruptcy.

10. To deal with the Studios’ claims, the Debtor proposes to pay their claim in full with a note, up to \$7,000,000. If their claim exceeds \$7,000,000, the Debtor will pay the balance with interest as a balloon. If it is unable to pay the balloon, the Debtor will be sold in a commercially reasonable manner as a going concern to pay the balloon.

11. In the meantime, in California, the Debtor and the Studios have stipulated to ask the court for a four-day setting for a jury trial on damages starting on June 14, 2019.

12. Also in the meantime, in Utah, the Debtor proposes to launch *The Chosen* on or around April 21, 2019 to coincide with the Easter holiday. After the show's premier, the Debtor will be better suited to gauge the production's economic success.

13. With an extension through June 18, 2019, the Debtor will be significantly more likely to reorganize successfully. Between March 15, 2019 (the current last day of the Solicitation Period) and June 18, 2019, the Debtor should have substantially more information about *The Chosen* (which it expects to have a substantial impact on its revenues) and some more information about the Studios' claims (which could have a substantial impact on its debts). This further information will certainly assist the Court's analysis of feasibility and increase the Debtor's chances of obtaining confirmation.

14. Finally and significantly, this extension will reduce the chances of a competing plan being filed and solicited (without the benefit of the information anticipated to develop in the meantime), which will increase the chances of a consensual plan resulting.

BASIS FOR RELIEF

15. 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.

16. [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.”).

17. 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, draft, and confirm 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”).

18. 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 they become 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).

19. 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).

20. Sufficient cause exists to extend the Solicitation Period. As set forth below, the requested extension of the Solicitation Period will not prejudice the legitimate interests of any creditor and will provide the Debtor the opportunity to properly solicit its plan.

I. Debtor Has Made Good Faith Progress.

21. The Debtor has complied with various procedural requirements under the Bankruptcy Code, including the filing of monthly financial reports, and responding to the motions of claimants. The Debtor has made great use of the “breathing spell” that it enjoyed. Its businesses have turned around, and it has been cash-flow positive since last summer. Most importantly, the Debtor has filed a plan of reorganization that provides for the payment of all claims. And it has filed its proposed disclosure statement. This factor weighs heavily in favor of the requested relief.

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

22. 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.

23. 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 an extension of 95 days is not a

negotiation or delay tactic. The body of creditors in this case is unique and diverse. The requested relief would enable the Debtor to solicit a legitimate plan to reorganize and pay all creditors. 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 Solicitation Period.

24. 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 Solicitation Period. Accordingly, the Debtor submits that this request is in the best interests of the Debtor and its estate.

25. The Debtor therefore submits this Motion to Extend the Solicitation Period through June 18, 2019.

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 15th day of January 2019.

/s/ J. Thomas Beckett

J. Thomas Beckett
Brian M. Rothschild
Michael R. Brown
PARSONS BEHLE & LATIMER
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 FOURTH MOTION TO
EXTEND DEBTOR’S EXCLUSIVE PERIOD WITHIN
WHICH TO 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 fourth time the Debtor’s Exclusive Period within which to 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 all parties in

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

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 soliciting acceptances of a plan of reorganization or liquidation is extended through and including June 18, 2019.
4. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.
5. 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 January 15, 2019, I caused a true and correct copy of the foregoing **DEBTOR'S FOURTH MOTION FOR ENTRY OF AN ORDER UNDER SECTION 1121(d) OF THE BANKRUPTCY CODE EXTENDING DEBTOR'S EXCLUSIVE PERIOD WITHIN WHICH TO SOLICIT ACCEPTANCES OF A PLAN** to be served as follows:

:

- Laurie A. Cayton tr laurie.cayton@usdoj.gov,
- James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Rose Leda Ehler rose.ehler@mto.com, cynthia.soden@mto.com
- Michael R. Johnson mjohanson@rqn.com, docket@rqn.com;dburton@rqn.com
- Kelly M. Klaus kelly.klaus@mto.com
- David H. Leigh dleigh@rqn.com, dburton@rqn.com;docket@rqn.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).

Brent O. Hatch
Johnson & Hatch
10 West Broadway
Suite 400
Salt Lake City, UT 84101

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

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

Dated January 15, 2019,

PARSONS BEHLE & LATIMER

By: /s/ J. Thomas Beckett
Attorneys for VidAngel, Inc.