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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

**DEBTOR'S MOTION TO EMPLOY CALL & JENSEN AS
SPECIAL COUNSEL UNDER SECTIONS 327(e) AND 328(a)
OF THE BANKRUPTCY CODE**

VidAngel, Inc., the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**VidAngel**”), hereby moves the Court (the “**Motion**”) for entry of an order, pursuant to sections 327(e) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”), Federal Rules of Bankruptcy Procedure 2014(a) and 2016 (the “**Bankruptcy Rules**”), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Utah (the “**Local Rules**”), authorizing the Debtor to employ Call & Jensen as special counsel. The Debtor seeks authorization for Call & Jensen to serve as special counsel to represent and provide advice to Debtor as part of VidAngel’s pending

litigation in the United States District Court for the Central District of California. In support of this Motion, the Debtor submits the Declaration of Mark L. Eisenhut, a shareholder at Call & Jensen (the “**Eisenhut Declaration**”). In further support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the relief requested in this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in the District of Utah under 28 U.S.C. §§ 1408 and 1409.

2. The legal predicates for the relief sought in this Motion are 11 U.S.C. §§ 327 and 328, and Federal Rule of Bankruptcy Procedure 2014.

3. No prior application has been filed for the relief requested herein.

BACKGROUND

4. On October 18, 2017 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under the Bankruptcy Code. The Debtor continues in possession of its properties and is operating and managing its businesses as a debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and a creditors’ committee has not 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 original comedy series, Dry Bar Comedy, has had more than 16 million minutes viewed in the 7 days prior to the Petition Date.

The Debtor's services give subscribers and their families choice over the content they view and share with the families.

6. This Court previously approved the Debtor's retention of Baker Marquart. Baker Marquart will now transition away from representing the Debtor at trial. Baker Marquart has agreed to continue offering necessary advisory, consulting, and transition services to the Debtor.

RELIEF REQUESTED

The Debtor submits this Motion pursuant to sections 327(e) and 328 of the Bankruptcy Code and Rule 2014(a) of the Bankruptcy Rules to retain Call & Jensen as special counsel for the Debtor.

RETENTION OF CALL & JENSEN

Call & Jensen is a boutique litigation law firm located in Newport Beach, California. Call & Jensen's experience and expertise will be vital to the Debtor's strategy regarding its pending case before the United States District Court. In-house counsel for the Debtor will serve as a witness in the Debtor's pending case and cannot participate in the trial. Baker Marquart, Debtor's counsel previously approved by this Court, will continue to provide consulting and advisory services on an as-needed basis.

The Debtor wishes to employ Call & Jensen as special counsel in its bankruptcy case because, among other reasons, Call & Jensen has extensive experience and expertise in the area of complex commercial litigation, and is uniquely positioned to advise the Debtor with respect to the unique issues facing the Debtor in its litigation.

The Debtor believes that Call & Jensen is qualified to represent it, and that the best interests of the Debtor and its creditors would be served if Call & Jensen is authorized by the Court to be employed as the Debtor's special counsel.

The professional services that the Debtor may request Call & Jensen to provide may include the following:

Representing and advising the Debtor on matters relating its jury trial and regarding all aspects of litigation and defense in the matter of *Disney Enterprises et al v. VidAngel*, USDC Central Dist. Of CA, Case No. 16-cv-04109-AB.

COMPENSATION¹

Subject to approval by the Court, Call & Jensen has agreed to represent the Debtor for one hundred percent compensation of fees up to \$275,000. Depending on the outcome of the case, the Debtor will pay fees up to \$747,500 to Call & Jensen. Additionally, the Debtor will grant shares to Call & Jensen and pay fees in excess of \$495,000.

Call & Jensen will be paid a retainer of \$25,000. If Call & Jensen incurs reimbursable costs, Call & Jensen will submit an application for reimbursement in accordance with the Court's Order establishing compensation procedures (Dkt. 100).

CALL & JENSEN IS DISINTERESTED AND HOLDS NO ADVERSE INTEREST

Call & Jensen has indicated its willingness to act as special counsel to the Debtor in the capacities designated above.

To the best of the Debtor's knowledge, Call & Jensen has no direct or indirect relationship to, connection with, or interest in the Debtor, any of the Debtor's creditors, any other party in interest, any of their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except as disclosed in the Declaration of Mark L. Eisenhut, filed herewith, executed on behalf of Call & Jensen in

¹ The following description of the terms and conditions of Call & Jensen's retention are meant as a summary only. To the extent of any contradiction between this summary and the terms of the Engagement Letter, attached as Exhibit A hereto, the terms of the Engagement Letter control.

accordance with section 327 of the Bankruptcy Code and rule 2014 of the Federal Rules of Bankruptcy Procedure.

AUTHORITY FOR RELIEF REQUESTED

Section 327(e) of the Bankruptcy Code provides as follows:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

Section 328(a) of the Bankruptcy Code provides as follows with respect to the terms of such employment:

The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.

11 U.S.C. § 328(a) (emphasis added).

In this case, the Debtor is operating its business as debtor in possession in accordance with sections 1107(a) and 1108 of the Bankruptcy Code. Call & Jensen holds no prepetition claims against the Debtor. The terms of the retention are reasonable and within the Debtor's business judgment. Accordingly, Call & Jensen may serve as special litigation counsel under section 327(e) of the Bankruptcy Code.

NO PRIOR REQUEST

No prior motion or application for the relief requested herein has been made to this or any other court.

NOTICE

The Debtor has provided notice of this Motion to the Office of the United States Trustee for the District of Utah and all ECF notice parties and parties who have requested notice on the Court's docket. Bankruptcy Rule 9013. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

CONCLUSION

For the reasons stated above, the Debtor requests that the Court grant the Motion and enter the Order submitted herewith.

Respectfully submitted this 11th day of February 2019.

/s/ Michael R. Brown

Michael R. Brown

PARSONS BEHLE & LATIMER

Attorneys for VidAngel, Inc.

Exhibit A

ENGAGEMENT AGREEMENT

February 11, 2019

OUR FILE NUMBER
VID01-02

BY EMAIL ONLY

Neal Harmon, CEO
VIDANGEL, INC.
295 W Center
Provo, UT 84601
neal@vidangel.com

Re: *Disney Enterprises, et al v. VidAngel*
(USDC Central Dist. of CA, Case No. 16-cv-04109-AB (PLAx))

Dear Neal:

This engagement letter will confirm that Call & Jensen has been engaged to represent VidAngel, Inc. through trial in the above matter. Our engagement will be limited as set forth herein, and will not include advice regarding any insurance or indemnity issues (or deadlines) unless we are so engaged and such engagement is confirmed in writing. We will work closely with your other counsel, each of whom we understand are employed by VidAngel as in-house counsel, including David Quinto (VidAngel general counsel) and Morgan Philpot, with one or both of them as co-counsel of record with us. In mutual cooperation with us, they will assist and/or take primary responsibility for various trial preparation tasks, including motions, briefs, depositions, etc. We are currently anticipating that the scope of the upcoming trial will be limited to a determination of statutory damages for alleged copyright infringement and alleged violations of the DMCA, based on up to approximately 1000 works (i.e., movies owned by the plaintiffs, which VidAngel believes should only be 504, not 1000), and that liability for such claims will have already been adjudicated against VidAngel before trial. Should the scope change, the economic terms of our engagement may need to be adjusted accordingly.

Our billings will be in accordance with the following unique fee arrangement which we have negotiated with you, and which is further discussed in the attached spreadsheet. We remain flexible to do more or less than set forth in the spreadsheet, subject to potential renegotiation of the below fee arrangement if appropriate. Our attorneys will be charged at a blended rate of \$500 per hour. Our paralegals will be charged at \$200 per hour. You will pay to us, promptly as earned and billed, one hundred percent of the first \$275,000 in attorney and paralegal fees reflected in our billings. You will not pay fees in our billings that are in excess of \$275,000, up to a total of \$495,000, unless a favorable outcome is obtained, as set forth in the following paragraph. You will pay to us, promptly as earned and billed, one hundred percent of our fees that are in excess of \$495,000.

Outcome-based fees:

1. Damages in excess of REDACTED. If the total damages awarded after trial against VidAngel exceed REDACTED, you will not pay our fees that are in excess of \$275,000, up to a total of \$495,000. You will pay our fees that are in excess of \$495,000.
2. Medium Range Damages. If the total damages awarded after trial against VidAngel are less than REDACTED (costs or attorneys' fees awarded against VidAngel will not be counted towards this threshold), you will pay us \$597,500, plus you will grant to us 67,434 immediately-vested options for VidAngel, Inc. stock (which stock is currently valued at \$1.52/share), with a strike price of \$0.32 per share. In addition, you will pay our billed hourly fees that are in excess of \$495,000 (for example, if our total hourly billings for attorney and paralegal time amount to \$525,000, you will pay an additional \$30,000).
3. Damages and fees of REDACTED or less. If the total damages (plus attorneys' fees, if any) awarded after trial against VidAngel are REDACTED or less, you will pay us \$747,500, plus you will grant to us 166,118 immediately-vested options for VidAngel, Inc. stock (which stock is currently valued at \$1.52/share), with a strike price of \$0.32 per share. In addition, you will pay our billed hourly fees that are in excess of \$495,000 (for example, if our total hourly billings for attorney and paralegal time amount to \$525,000, you will pay an additional \$30,000).
4. Payment timing: For any cash amounts earned under item (2) or (3) above in excess C&J's hourly fees, VidAngel may pay such cash amounts in two equal quarterly payments.

In addition to our attorney and paralegal fees, and regardless of how much in fees you owe, you will be responsible for one hundred percent of all costs incurred. Costs on our billings may include, among other things, photocopying, parking and mileage (at current IRS rate), airfare at coach class, filing fees, courier costs, costs of vendors (such as electronic discovery vendors), and the costs of reporters and transcripts. We may ask you to pay any such costs directly. When we advance any costs, we will reflect such costs on our billings and you will reimburse such costs promptly. Such costs may not appear on our billings until a month or more after they are paid or incurred. It is also understood and agreed that this engagement letter shall also apply to any services rendered within 30 days prior to the signing of this engagement letter.

We will be provided a security deposit-type retainer in the amount of \$25,000. We will place such retainer in a trust account – from which we are authorized to pay ourselves, without further authorization, as fees are earned and/or as disbursements and expenses are incurred. The prompt payment in full of our monthly billings will continuously restore the retainer to its full amount – or, we may simply refrain from drawing on the retainer as long as our billings are promptly paid. At the conclusion of this matter, any balance in the retainer account will be refunded. It is understood and agreed that the retainer amount is neither an estimate of nor a limitation upon attorneys' fees, disbursements or expenses that may be incurred in this matter. This matter will likely be quite expensive, and total fees will be substantially greater than \$25,000. If you will be wiring the retainer to us, our wiring instructions are attached.

When our billings are received it may be noted that the “recapitulation” of time at the end of our billings shows rates less than expected – that is because of time we may have provided on a reduced or “no charge” basis.

We are extremely sensitive about the cost of legal services to our clients, and I will personally review all of our billings for correctness and cost-effectiveness. It is understood that we have not guaranteed what the ultimate cost of our handling of this matter may be.

As will be noted from our billings, time is shown in hours and tenths of hours, rather than in hours and minutes. The minimum entry for a particular activity is one-tenth (.10) of an hour. It should be borne in mind that the descriptions of work in our billings are abbreviated in nature, and that terminology is broadly used. ("Telephone conference" may, for example, include the conversation itself, as well as time spent in making notes of the conversation, in analyzing information received, etc.)

I should be contacted promptly if there is ever any question or concern about any of our billings. Open and candid communication about billings is essential.

Our billings are payable upon presentation. We are able to maintain what we regard to be favorable billing rates for the quality of our attorneys (more fully described on our website at www.calljensen.com) by being selective about our clients and representing only clients who pay our billings promptly upon receipt. Your cooperation in this regard will be greatly appreciated.

Our wiring information (for payment of our billings if such method is preferred) is attached.

It is understood and agreed that we are not guaranteeing any particular result or outcome in this matter, and that any views expressed during the course of this matter are based upon our then-existing understanding of the facts and law.

Our clients will be responsible to provide us with all facts and documents within their possession or control which refer or relate to this matter, and to communicate and cooperate with us in connection with this matter. When in doubt about the relevance of a particular fact or document, the same should be provided to us for our evaluation.

Based on our discussions with you, and your description of what has occurred in the case to date, we understand you have already secured all evidence and have taken precaution to assure no evidence is destroyed. If for any reason sufficient precautions have not yet been taken, please note that a "litigation hold" MUST IMMEDIATELY be placed by our clients upon all documents (paper and electronic) which refer or relate to this matter in any way – to make ABSOLUTELY CERTAIN that no such documents are lost or altered while this matter is pending. In this regard, routine deletion protocols must be suspended, and no computers or other devices (including cell phones) which contain any relevant information (including text messages or voicemails) should be destroyed. Please also be aware that a conventional "backup" of computer information is an inadequate means of preserving such information where litigation is involved. It is understood and agreed that communications in connection with this matter may occur by unencrypted emails – unless you instruct, in a specific instance, otherwise.

Although we anticipate no such disputes, it is understood and agreed that any disputes related to this engagement, our relationship with our clients and/or our billings shall be resolved

by binding arbitration administered by Judicial Arbitration and Mediation Services (JAMS), with the prevailing party entitled to recover costs and attorneys' fees in connection with such dispute including the standard hourly rates for time spent by Call & Jensen attorneys working on such matter.

California Business and Professions Code Section 6148 provides that, in certain circumstances, contracts and billings for legal services must be in writing and must contain specified information. It is understood and agreed that, to the extent the requirements of such Section are applicable and unsatisfied by this engagement letter and our billings, such requirements are waived.

It is understood and agreed that the VidAngel general counsel and the VidAngel CEO will be our primary contact persons for this matter, and that each of them individually have full and complete authority to communicate with us and to give us instructions and authorizations in connection with this matter.

If this engagement letter is satisfactory, I look forward to receiving signatures as indicated below – by email is sufficient. We look forward to working with you to resolve this matter as effectively and efficiently as possible.

Yours truly,

Mark L. Eisenhut
For Call & Jensen
A Professional Corporation

MLE:cm
Enclosures

READ, UNDERSTOOD AND AGREED.

Dated: _____

VIDANGEL, INC.

By: _____

Printed Name: _____

Its: _____

**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 GRANTING DEBTOR’S MOTION TO EMPLOY CALL &
JENSEN AS SPECIAL COUNSEL PURSUANT TO BANKRUPTCY
CODE §§ 327(e) AND 328(a)**

The Court has considered the motion (the “**Motion**”)¹ filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**” or “**VidAngel**”) requesting authorization to employ Call & Jensen as special counsel, the Declaration of Mark L. Eisenhut in Support of the Motion, and applicable law. Based thereon, the Court finds that (i) the employment of Call & Jensen as special counsel to the Debtor is in this best interests of the Debtor’s bankruptcy estate; (ii) Call & Jensen does not represent any interest materially adverse to the Debtor or the bankruptcy estate; and (iii) Call & Jensen is a “disinterested person” as that term is defined in sections 327(e) and 328(a) of the Bankruptcy Code. Accordingly, and for good cause otherwise appearing,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED;

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtor is authorized under 11 U.S.C. §§ 327(e) and 328(a) and Federal Rule of Bankruptcy Procedure 2014 to employ and compensate Call & Jensen as special counsel for and on behalf of the Debtor, as outlined in the Motion and the Engagement Letter, attached hereto;²

3. The Debtor is authorized to pay Call & Jensen a retainer of \$25,000. Additionally, the Debtor is authorized to pay Call & Jensen fees and costs to Call & Jensen in both cash and shares of the Debtor. A copy of an engagement letter (“**Engagement Letter**”) executed by the Debtor and Call & Jensen is attached hereto as Exhibit A;

4. Call & Jensen is entitled to reimbursement of its out-of-pocket costs and reasonable expenses;

5. Baker Marquart will continue to provide advisory and consulting services on an as-needed basis as the Debtor transitions to Call & Jensen as trial counsel; and

6. Call & Jensen shall apply to the Bankruptcy Court prior to seeking reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and applicable orders of this Court.

[END OF ORDER]

² In the event of any conflict between the terms of this Order and the Engagement Letter, the Engagement Letter shall control.

PROOF OF SERVICE

I hereby certify that on February 11, 2019, I caused a true and correct copy of the foregoing **DEBTOR'S MOTION TO EMPLOY CALL & JENSEN AS SPECIAL COUNSEL UNDER SECTIONS 327(e) AND 328(a) OF THE BANKRUPTCY CODE** to be served as follows:

On February 11, 2019, 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:

- 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

On February 12, 2019, I caused a true and correct copy of the foregoing documents to be served on the following parties by First Class Mail, postage prepaid:

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

Respectfully submitted,

/s/ Michael R. Brown

Michael R. Brown

PARSONS BEHLE & LATIMER

Attorneys for VidAngel, Inc.