J. Thomas Beckett, USB #5587
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
MBrown@parsonsbehle.com

Attorneys for VidAngel, Inc., debtor and debtor-in-possession.

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

In re:	Case No. 17-29073
VIDANGEL, INC.,	Chapter 11
Debtor.	Judge Kevin R. Anderson

DEBTOR'S OBJECTION TO THE STUDIOS' MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE

VidAngel, Inc. (the "Debtor" or "VidAngel"), by and through its undersigned counsel, respectfully submits its objection to the Studios' Emergency Motion to Appoint a Chapter 11 Trustee (dkt. #310) (the "Studios' Trustee Motion").

OBJECTION

The Studios seek the appointment of a chapter 11 trustee in this case pursuant to 11 U.S.C. § 1104(a) (in cases of "fraud, dishonesty, incompetence, or gross mismanagement") and § 1104(b) (if the appointment "is in the interest of creditors"). Specifically, they complain about two recent actions by the Debtor: (i) its proposal to transfer intellectual property to Skip Foundation, and (ii) its creation and funding of VAS Portal, LLC. However, neither of these actions transgressed

the law the Studios rely upon, and neither of them violates any other provision of the Bankruptcy Code.

The Studios' Trustee Motion is entirely misdirected, and it should be denied.

A. The Studios Complain that the Debtor Proposed Transferring Intellectual Property to the Skip Foundation.

The Studios complain that the Debtor filed a motion seeking this Court's approval of the transfer of some of its intellectual property to Skip Foundation. The Studios are correct, the Debtor did file that motion (dkt. # 308). Then they withdrew it (dkt. 6/24/2019). And yet the Studios did not withdraw their Trustee Motion in response. The purpose of the Skip Foundation and a list of industry leaders comprising its board of directors can be found at the website, skip.tv, a download from which is attached to the accompanying Declaration of Neal S. Harmon (the "Harmon Decl."), Exhibit A.

The Studios do not claim that they had inadequate notice of the Debtor's motion. Indeed, they admitted that they received a "heads up" from Debtor's counsel. Studios' Trustee Motion, p. 2. Rather, they averred that the Debtor's motion was a "ruse," *id*., p.3, and a "brazen attempt to shield its assets" *id*., p. 2. Then they jumped to this conclusion: "Simply put, the Debtor has now engaged in a fraudulent transfer of its valuable intellectual property assets (*or at least is proposing to do so*)." Id., pp. 9-10 (emphasis added).

In the first place, the Debtor merely made a *proposal*; it gave the Studios every opportunity to object and complete their discovery on that proposal. In the meantime, the Debtor was fully prepared to show how the proposed transfer would have decreased expenses and increased revenues by, among other things, crowdsourcing the labor-intensive task of content tagging.

Harmon Decl., ¶ 1. Had the Debtor pursued that proposed transfer, this Court would then have received documentary evidence and testimony in regular order and made an informed decision.

The fact that the Studios (after due diligence) might have objected to the Debtor's proposal is not grounds for the appointment of a trustee. *See* 11 U.S.C. §§ 1104(a) (in cases of "fraud, dishonesty, incompetence, or gross mismanagement") & 1104(b) (if the appointment "is in the interest of creditors").

Moreover, after having written the CEO of Disney but not having received a response, the Debtor has withdrawn its proposal. A copy of Mr. Harmon's letter to Disney's CEO is attached as Exhibit B to the Harmon Decl. The Debtor's proposal, and its timing, may have made sense before a jury in California assessed damages in the amount of $62 million. Without cooperation from Disney, it did not make sense thereafter. So the Debtor withdrew it. Harmon Decl., ¶ 2. The issue is moot.

B. The Studios Complain about the VAS Portal Transaction.

The Studios complain that the Debtor created a subsidiary, VAS Portal LLC, which the Debtor then transferred to an affiliate, Harmon Ventures, LLC, for $1, and then the Debtor loaned VAS Portal $100,000. While they accuse the Debtor of a lack of transparency, they rely on the Debtor's public SEC filings to describe this transaction. The Studios described the VAS Portal transaction accurately, but *wholly* inadequately. Without sufficient inquiry or analysis, the Studios leap to the conclusion that this transaction is *not* in the ordinary course of the Debtor's business. Rather, they say, it is a self-serving and incompetent waste of estate assets. They know very well that this is incorrect. This has been carefully explained to them: the VAS Portal transaction was a plain-vanilla corporate action taken in furtherance of the Debtor's "VidAngel Studios" ("VAS") line of business.

a. The Debtor hired Kaplan in furtherance of its VAS line of business.

In early 2018, the Debtor had two lines of business: a movie filtering technology, its "streaming model," which VidAngel believes is legal, and original content production, including Dry Bar Comedy and The Chosen. Given its experience with The Chosen, which was crowdfunded, the Debtor realized it could profit in that space. The problem is that crowdfunding original content requires FINRA registration and corporate entity restructuring. The Debtor needed to engage expertise. Harmon Decl., ¶ 3.

On March 5, 2018, the Debtor requested this Court's permission to retain Kaplan, Voekler, Cunningham & Frank, PLC ("Kaplan"). (Dkt. No. 158). In its application, the Debtor explained that it wanted to engage Kaplan to reorganize its business and create a new FINRA member entity to support VidAngel Studios (its platform to raise funds from its audiences to produce original content): "[VidAngel] has engaged [Kaplan] to provide corporate and securities-related legal services in connection with [VidAngel's] creation of the 'VidAngel Studios' line of business. Concomitant with that effort, [VidAngel] intends to acquire or form an entity that is a FINRA member securities broker-dealer and form and register … an entity as a transfer agent." (Dkt. No. 158).

The Studios objected to Kaplan's form of compensation but not to Kaplan's employment. (Dkt. No. 161). The Debtor replied. (Dkt. No. 165). At the hearing, the Debtor's CEO, Neal Harmon, testified that the Debtor hired Kaplan to help VidAngel create entities for creators to crowdsource funding for new content. The Debtor was unsure how the new entities would be structured, *i.e.*, whether the entities would be structured separate from the Debtor or as a division of the Debtor. It deferred the way the entities were to be structured to Kaplan because VidAngel

did not have the required expertise in the law relating to creating these types of entities. (Dkt. No. 170). Harmon Decl., ¶ 4.

b. This Court Found VidAngel to be Proceeding in Good Faith.

This Court recognized the Debtor's thoroughness in coming up with viable options to repay its debts and granted its application to employ Kaplan. (Dkt. No. 162, 167, 170, 173). This Court also noted that "I don't have any suggestion at this point that the debtor is not proceeding in good faith to pursue a successful reorganization of its business…." (Dkt. No. 170).

c. With Kaplan's help, VidAngel set up VAS Portal.

With its experience and expertise in FINRA-related corporate and securities law, Kaplan helped create VAS Portal, LLC (the "VAS Portal") for the Debtor to use as a platform to raise crowdfunding of $1.07 million and lower budgets to produce more original content. (Dkt. No. 158, 170). However, under VidAngel, VAS Portal was ineligible to be a FINRA member because VidAngel was in bankruptcy. Being ineligible to be a FINRA member, VAS Portal was worthless and unable to fulfill its purpose. Therefore, the Debtor transferred VAS Portal to its affiliate Harmon Ventures, LLC, for $1, where the portal was eligible to be a FINRA member and could crowdsource funds for VidAngel Studios. Harmon Decl., ¶ 5.

To protect the Debtor's estate's interest in VAS Portal, the Debtor entered into a call option agreement with Harmon Ventures that gives the Debtor the right to purchase all of the membership interest of VAS Portal for $1 at any time beginning upon (i) the occurrence of the confirmation of the plan for reorganization by the Bankruptcy Court or (ii) the termination of the Disney Litigation and the Bankruptcy proceeding, and ending one year following the latest to occur of the foregoing. This right is also subject to the approval of FINRA as to the change in ownership. Harmon Decl., ¶ 6.

Still, for VAS Portal to be a FINRA member, it also had to be funded. So, the Debtor funded VAS Portal with a short-term loan with a call option that the Debtor can exercise, if necessary, before the note becomes due in six months. Meanwhile, with the Debtor's loan, VAS Portal has working capital to set up the portal and qualify to be a FINRA member. If FINRA did not require another entity to own VAS Portal, then the Debtor would own VAS Portal and the Debtor would be covering these expenses directly as costs of doing VidAngel Studio's business. Harmon Decl., ¶ 7.

With VidAngel's loan and under Harmon Ventures LLC, VAS Portal was approved to be a FINRA member on June 7, 2019 and is creating value for the Debtor. The VAS Portal transaction was entirely complete before the jury rendered its verdict in California. I about a week since a post-trial launch, VAS Portal has already raised over $650,000 for two projects that will be available exclusively on VidAngel, thus increasing the value build for creditors and other stake holders. More projects are being prepared for launch presently. Harmon Decl., ¶ 8.

d. The VAS Portal transaction was ordinary course in the VidAngel Studios line of business.

Clearly, as the Studios know, the VAS Portal transaction was made in the ordinary course of the VidAngel Studios line of business. Their theory—that the transaction was a self-serving and incompetent waste of estate assets—is entirely unfounded. And they know that also.

CONCLUSION

The Debtor's proposed transfer of intellectual property to the Skip Foundation was intended to reduce expenses and increase revenues. But that proposal has been withdrawn for now. The Debtor's creation and funding of VAS Portal was in the ordinary course of VidAngel Studios' line of business.

The Studios have not and cannot show that either of the transactions they complain of violates 11 U.S.C. § 1104(a) ("fraud, dishonesty, incompetence, or gross mismanagement") or engages 11 U.S.C. §1104(b) (if the appointment "is in the interest of creditors").

The Court should deny the Studios' Trustee Motion.

Dated this 3rd day of July, 2019.

/s/ *J. Thomas Beckett*

J. Thomas Beckett
PARSONS BEHLE & LATIMER
Attorneys for VidAngel, Inc., debtor and debtor-in-possession.

PROOF OF SERVICE

I hereby certify that on July 3, 2019, I caused a true and correct copy of the foregoing **DEBTOR'S OBJECTION TO THE STUDIOS' MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE** be served as follows:

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 mjohnson@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 July 3, 2019, I also caused a true and correct copy of the foregoing documents to be served on the following parties by email:

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

/s/ *J. Thomas Beckett*
J. Thomas Beckett
PARSONS BEHLE & LATIMER
Attorneys for VidAngel, Inc., debtor and debtor-in-possession.