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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

**DEBTOR'S MOTION FOR ORDER AUTHORIZING USE
OR SALE OF DEBTOR'S DISC INVENTORY**

VidAngel, Inc. (the “**Debtor**” or “**VidAngel**”), by and through its undersigned counsel, hereby moves under 11 U.S.C. § 363 for an order authorizing it to use and sell its unaltered inventory of video discs to raise funds and help maintain its cash position (the “**Motion**”). In support of the Motion, the Debtor respectfully states as follows:

I. JURISDICTION, VENUE, AND PREDICATES

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b). Venue is proper before this Court pursuant to

28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief sought are 11 U.S.C. §§ 363(b) and (c)(1) and Federal Rule of Bankruptcy Procedure 6004.

II. GENERAL BACKGROUND

2. On October 18, 2017, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, in the United States Bankruptcy Court for the District of Utah.

3. Since the Petition Date, the Debtor has been managing its assets and properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No committee, trustee or examiner has been appointed in this case.

4. On January 15, 2019, the Debtor filed its initial proposed Debtor's Plan of Reorganization.

5. Prior to the Petition Date, the Debtor's day-to-day business was selling customers actual physical video discs (either DVDs or Blu-ray Discs) (the "**Discs**"), which the customers could (a) have sent to them in the mail or (b) keep in the Debtor's vault and have it streamed to them with filters selected by the purchaser (the foregoing, the "**Disc-based Model**"). The Disc-based Model required the Debtor to purchase large numbers of video discs and store them in its vault. As of the Petition Date, the Debtor held approximately 171,901 Discs,¹ which it had purchased for approximately \$1,758,664.26, which, as of the Petition Date, it valued at approximately \$450,000.00. (See Debtor's Schedule B, at line 22.) If liquidated today, the Debtor believes the inventory would be valued at no more than \$250,000.00 to \$300,000.00.

¹ The Debtor holds approximately 200,000 discs, but approximately 28,000 of them were sold to customers prior to the Petition Date and are merely being held for customers. The Debtor will not sell any discs owned by customers.

6. The Debtor operated the Disc-based Model from January 2015 to December 29, 2016, and so the Debtor was in the business of selling video discs to customers in the ordinary course of business for a significant portion of its existence as a company.

7. The Discs in the Debtor's inventory are unaltered discs, the overwhelming majority of which are still unopened and in their original cello-wrapped packaging. The value of a video disc declines rapidly as more time passes after each work's initial release because used and surplus inventory discs flood the market, streaming services make free or nearly free viewing available, and, at the same time, demand for viewing an older movies decreases the longer a movie has been out of theaters. Thus, the value of the Debtor's Discs is declining, and the Debtor estimates that the overwhelming majority of the Discs have a liquidation value of between \$0.25 and \$8.00 for DVDs and between \$1.00 and \$5.00 for Blu-ray discs.

8. By this Motion, the Debtor, out of an abundance of caution, seeks authorization to use its Discs as an incentive for raising equity funding for the Debtor's general fund, including the Debtor's appeal. The Debtor will offer additional "crowd-sourced" equity in the Debtor and, as an incentive, will allow equity subscribers to select up to 5 Discs for every \$100 in equity purchased (*i.e.*, \$20 per Disc). The Debtor believes this incentive – equivalent to a free tote bag premium for a donation to PBS or NPR – will greatly increase investors' willingness to purchase new equity. At this price, the value-per-Disc received is up to 80x the Discs' liquidation value.

9. The equity funding raised will become part of the Debtor's general fund, which will improve the Debtor's cash position at a time when it needs additional cash to continue paying attorneys' fees to prosecute its post-trial motions in the Copyright Lawsuit, and motion practice and solicitation and confirmation of its chapter 11 plan in the Bankruptcy Court. In addition, the Debtor intends to pursue its appeal of the Studios' judgment and hereby seeks

approval to use the first \$120,000 of the funds raised to pay Call & Jensen its administrative priority claim (subject to approval of such fees under section 327 and 330 of the Bankruptcy Code), which will enable the Debtor to pursue its appeal without endangering its cash position. The equity fundraising will alleviate many of the concerns raised about the Debtor's cash position by the Studios in their Motion to Convert and Motion to Appoint a Chapter 11 Trustee.

10. The sale or use of the Discs does not involve transmission of any of the copyright owners' works or any of the conduct that the Studios² complained about in the Copyright Lawsuit any more than would Wal-Mart's sale of a video disc from a bin in its stores.

11. Prior to filing this Motion, the Debtor sought the consent and input of the Studios and the U.S. Trustee, neither of which objected to the relief provided that the Court enters an order approving the proposed use of the Discs. The Studios requested, and the Debtor provided, the list of the Debtors' Discs because the Studios expressed concern that there might be some Discs of extraordinary value in the inventory. The Debtor knows of no Discs with extraordinary value, but is willing to allow the Studios to designate (by screen grab evidence of a higher listed price than \$20 per Disc) any Discs that they believe are of extraordinary value and withhold those from use as an equity fundraising incentive if they wish to do so within two weeks of the Court granting this Motion.

III. RELIEF REQUESTED

The Debtor respectfully requests the entry of an order under 11 U.S.C. § 363(b) and Rules 6004 and 9014 of the Federal Rules of Bankruptcy Procedure authorizing it use the Discs as incentives for equity fundraising as described above.

² Capitalized terms not otherwise defined herein have the meaning ascribed to those terms in the First-Day Declaration of Patrick Reilly.

IV. BASIS FOR RELIEF REQUESTED

Under section 363(b) of the Bankruptcy Code and subject to the requirement of prior notice and a hearing, the Debtor may “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b).

A transfer of assets proposed by a debtor-in-possession should be authorized and approved if the sale is supported by a sound business reason and is based on a sound exercise of business judgment. *See, e.g., In re Medical Software Solutions*, 286 B.R. 431, 440-41 (Bankr. D. Utah 2002).

The Debtor, in the exercise of its business judgment, has determined that the funds raised by additional equity fundraising would improve the Debtor’s cash position and, therefore, is in the best interests of its chapter 11 estate. The Debtor does not intend to re-start its business of selling video discs, and therefore the Discs are not necessary to any of the Debtor’s future business plans. The value of the Discs is rapidly declining, and will yield significantly less in any liquidation than if value is realized from them now through the proposed equity fundraise. Finally, the amount proposed to be raised by using the Discs this way will yield \$20 per Disc, which is up to 80x their liquidation value. The proposed use greatly benefits the estate and its stakeholders.

V. CONCLUSION

The Debtor respectfully requests that this Court enter an order granting the Motion, authorizing the Debtor to use the Discs as incentives for equity fundraising as described herein, and granting such other and further relief as the Court deems just and proper to effect the relief requested.

DATED this 19th day of July, 2019.

PARSONS BEHLE & LATIMER

/s/ Brian M. Rothschild _____

J. Thomas Beckett

Brian M. Rothschild

Michael R. Brown

Attorneys for VidAngel, Inc.

PROOF OF SERVICE

I hereby certify that on July 19, 2019, I caused a true and correct copy of the foregoing **DEBTOR'S MOTION FOR ORDER AUTHORIZING USE OR SALE OF DEBTOR'S DISC INVENTORY** to 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
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- David H. Leigh dleigh@rqn.com, dburton@rqn.com;docket@rqn.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

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

/s/ Brian M. Rothschild

Brian M. Rothschild