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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

OBJECTION TO MOTION FOR ORDER AUTHORIZING USE OR SALE OF DEBTOR'S DISC INVENTORY (DKT. 333) AND *EX PARTE* MOTION FOR EXPEDITED HEARING (DKT. 334)

The Studios, each of which holds a substantial unsecured claim against the estate, respectfully submit this objection ("Objection") to Debtor VidAngel, Inc.'s ("VidAngel") Motion for Order Authorizing Use or Sale of Debtor's Disc Inventory (Dkt. 333) and *Ex Parte*

Motion for Expedited Hearing[1] (Dkt. 334), filed on July 19, 2019.

VidAngel proposes to dispose of some of the estate's few remaining assets to incentivize crowd-funding for yet more litigation. The requested transfer will benefit VidAngel's lawyers—who, along with management pushed VidAngel into functional insolvency—but it will not benefit VidAngel's creditors. If the Court does not deny the request outright, the Studios respectfully request that the Court refer this proposal to the independent trustee, whose appointment the Studios have requested. A trustee, rather than the Debtor's management, should evaluate the costs and benefits of the proposal, and the use of funding for additional litigation, before asking for the Court to approve it.

ARGUMENT

A. VidAngel's Disc "Incentive" Is Not Ordinary Course, And VidAngel Does Not Meet The Standard For Approval

To transfer substantial assets outside the ordinary course of business, "[t]he Debtor must show (1) that a sound business reason exists for the sale; (2) there has been adequate and reasonable notice to interested parties, including full disclosure of the sale terms and the Debtor's relationship with the buyer; (3) that the sale price is fair and reasonable; and (4) that the proposed buyer is proceeding in good faith." *In re Medical Software Sols.*, 286 B.R. 431,439-40 (Bankr. D. Utah 2002).

VidAngel attempts to cast its request is somehow "ordinary course of business" for VidAngel based on the so-called Disc-based Model.[2] It is not. VidAngel was never in the business of selling discs or routinely shipping them to customers. Through all of its disc-service,

[1] VidAngel erroneously states that the Studios do not object to the relief sought. [Mot. ¶ 11]. On July 12, 2019, the Studios told VidAngel's counsel they reserved their right to object. VidAngel could have filed the instant motion earlier, but instead waited until the close of business, Friday, July 19, to file the motion and to seek *ex parte* treatment of its request to expedite the hearing.

[2] VidAngel supposedly halted its so-called "Disc-Based Model" on December 29, 2016, two-and-a-half years ago and nearly a year before filing its petition for bankruptcy. So, at a minimum, none of this is *current* ordinary course.

VidAngel only sent *four* discs to customers. Indeed, the Studios' technical expert testified that he asked VidAngel to ship him the disc of *Cinderella* he supposedly "bought," but VidAngel never sent it to him—even though he paid the $5 shipping fee. [Jury Trial Day 1 (6/11/2019) Tr. 194:7-24]. The bottom line is that for *millions* of transactions, VidAngel kept ~200,000 discs in its "vault" and never shipped them to customers, as it is proposing to do now. The "sale" of discs was merely a fiction VidAngel's lawyers came up with in VidAngel's unsuccessful attempt to claim its service was not infringing.

VidAngel is therefore proposing to dispose of assets outside the ordinary course of its business, but VidAngel has made no showing that the "sale price" for the assets—zero dollars—"is fair and reasonable." *In re Medical Software Sols.*, 286 B.R. at 440. The Court can and should deny the motion for that reason alone.

B. VidAngel's Management Is Not In A Position To Decide Whether The Disc "Incentive" Is In The Best Interest Of The Estate (And It Is Not)

The Studios further object to VidAngel's attempt to earmark the funds obtained for further litigation and to VidAngel's unsubstantiated estimate of the liquidation value of the Disc Inventory.

First, VidAngel is not disposing of the discs to maximize the value of the Disc Inventory, but instead to file post-trial motions and an appeal in the California Action. [Mot. ¶ 9]. VidAngel once again fails to describe any legal grounds on which it plans to attack the jury's verdict—much less to show how any of those lines of attack could succeed in the face of the deferential review of a jury verdict. [Dkt. 332, Reply ISO Mot. to Convert at 5-6]. The request to dispose of assets, like VidAngel's attempt to avoid the appointment of a trustee or conversion to Chapter 7, is just another effort to continue litigating away all of the estate's assets, to the detriment of the Studios and other creditors. Worse, it will add *new* equity holders who then will have an additional claim against VidAngel for being duped into funding the litigation strategy of a business with no future value. The Debtor's management has made clear it will litigate the California Action ad infinitum. The recommendation of whether that is in the estate's best interest should made by an independent trustee.

Second, VidAngel provides nothing to back up its purported "belie[f]" that giving discs away for free will "greatly increase investors' willingness to purchase new equity." [Mot. ¶ 8]. If VidAngel could fundraise *without* giving away the Disc Inventory, then this proposed use of the discs would deplete assets with no corresponding gain. It is clear that VidAngel's management has not fully evaluated the transaction. For example, VidAngel does not disclose what it will cost to ship those discs, including packaging, postage, and employee time to locate the discs, package, and mail them.

Moreover, VidAngel's estimates of the potential financial costs and benefits do not add up. The Debtor estimates, without support, that the liquidation value of the 171,901 disc-inventory is $250,000 to $300,000. [Mot. ¶ 5]. However, this estimate does not correspond with VidAngel's own per-disc estimates of $0.25 to $8.00 for DVDs and $1.00 to $5.00 for Blu-rays. [Mot. ¶ 7]. Using $3.00 a disc average, the estimated value of the Disc Inventory would be over $500,000. Likewise, VidAngel's statement that "the value-per-Disc received is up to 80x the Discs' liquidation value," [Mot. ¶ 8] is misleading. At $20 per disc, VidAngel suggests it would raise $3,438,020 ($20 * 171,901 discs), but this is hardly 80x VidAngel's estimated liquidation value of $250,000 to $300,000, which would be $20 - $24 million.

VidAngel's estimate of the discs' value is also at odds with the sworn trial testimony of its Chief Operating Officer, Liz Ellis. Ms. Ellis testified that "[s]ome of those classic titles, not only were they hard to find, but they were really expensive." [Jury Trial Day 3 (6/13/2019) Tr. 653:24-25]. Those rare discs—"still unopened and in their original cello-wrapped packaging" [Mot. ¶ 7]—may very well increase, rather decrease, in value. The Debtor states it "knows of no Discs with extraordinary value," [Mot. ¶ 11] and then puts the onus on the Studios to identify those discs—an independent trustee would at least *ask* VidAngel's COO which discs she was referencing or examine records of the cost of purchase for each disc.

VidAngel's motion raises questions that need to be evaluated by a trustee whose only interest is the estate and *not* the pursuit by VidAngel's current management of a failed litigation strategy.

CONCLUSION

The Studios respectfully request the Court deny VidAngel's motion or, at a minimum, deny it without prejudice to renewal once an independent trustee has been appointed.

DATED this 22nd day of July, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the electronic filing users in this case as follows:

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