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Chapter 11 Trustee

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

In re:

VIDANGEL, INC.,

Debtor.

Bankruptcy No. 17-29073 (KRA)

Chapter 11

**TRUSTEE'S RESPONSE IN SUPPORT OF MOTION FOR APPROVAL OF
COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY AGREEMENT**

George Hofmann, in his capacity as Chapter 11 Trustee (the "Trustee") of the bankruptcy estate of VidAngel, Inc. (the "Debtor"), through his undersigned counsel, submits this response in support of the *Motion for Approval of Commercial Insurance Premium Finance and Security Agreement* (the "Motion"). Prior to the appointment of the Trustee, the Debtor filed the Motion to request authorization from the Court to enter into a Loan Agreement¹ for the financing of various "directors and officers" ("D&Os") insurance policies (the "Policies"). For the reasons stated herein, the Trustee believes that the consummation of Loan Agreement, and the resulting continuation of the Policies, is in the best interests of the Debtor's bankruptcy estate (the "Estate") and

¹ Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Motion.

should be approved. In support of his Response, the Trustee respectfully states as follows:

ARGUMENT

I. The Policies

1. The Policies provide D&O insurance with an aggregate liability limit of \$1,000,000 per policy period.
2. Among other things, the Policies include coverage for “Regulatory Claims” and Claims for “Wrongful Acts,” which are largely related to employment practices.
3. The Policies exclude coverage for actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, secret or any other intellectual property rights, and expressly exclude coverage for any claims against any insured D&O “alleging, arising out of, based upon or attributable to, directly or indirectly, in whole or in part” the Debtor’s litigation with Disney Enterprises, Inc., Lucasfilm Ltd., LLC, Twentieth Century Fox Film Corporation, and Warner Bros Entertainment, Inc.
4. The Policies remain effective notwithstanding the Debtor’s bankruptcy case.
5. Notwithstanding the exclusions in the Policies, the Trustee believes that the Policies provide a potential benefit to the Estate. Although the Trustee has no reason to believe that there are claims against the Debtor’s D&Os, the Trustee’s investigation of the Debtor and the Estate is just beginning. Moreover, the Trustee believes that the Debtor’s D&Os will be disincentivized to assist the Trustee in his administration of the Estate if the Policies are canceled.

II. The Loan Agreement

6. The terms of the Loan Agreement are fair and reasonable. The interest rate is 11.65%, and the Debtor appears to have the resources to make the monthly payments of \$3,851.59.

7. The security interest granted under the Loan Agreement is limited to “unearned an or return [sic] insurance premiums, accrued dividends, and loss payments which would reduce unearned premiums” that are associated with the Policies. In the Trustee’s judgment, the proposed security interest is reasonable under the circumstances, and will not disadvantage other creditors, because the insurance premiums, dividends, and loss payments would not exist without the proposed financing.

8. The Trustee is, however, concerned that the Loan Agreement includes at least two express representations that the “Borrower” is not in bankruptcy. These representations are inaccurate. The Trustee will ensure that the lender is aware that the Debtor is in bankruptcy, and that the status of the Debtor as a debtor will not void or otherwise impact the terms of the Loan Agreement.

9. To the extent that the Debtor’s status as a chapter 11 debtor voids or otherwise impacts the terms of the Loan Agreement, the Trustee will either (i) renegotiate the Loan Agreement, or (ii) determine if a reasonable alternative solution can be reached.

WHEREFORE, the Trustee respectfully requests that this Court enter an order authorizing the Loan Agreement, subject to the Trustee’s further investigation and assurance that the Debtor’s status as a chapter 11 debtor will not void or otherwise

impact the terms of the Loan Agreement, and granting such other and further relief as the Court deems just and proper.

Dated: September 3, 2019

COHNE KINGHORN, P.C.

/s/ Jeffrey Trousdale

GEORGE HOFMANN

JEFFREY TROUSDALE

Attorneys for Trustee

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2019, I electronically filed the **TRUSTEE'S RESPONSE IN SUPPORT OF MOTION FOR APPROVAL OF COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY AGREEMENT** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system:

By Electronic Service: I certify that the parties of record in this case as identified below, are registered CM/ECF users, and will be served notice of entry of the foregoing Order through the CF/ECF System:

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