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

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In re:

VIDANGEL, INC.,

Debtor.

Bankruptcy No. 17-29073 (KRA)

Chapter 11

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**TRUSTEE’S MOTION FOR ORDER: (i) FIXING A BAR DATE FOR FILING APPLICATIONS TO ALLOW ADMINISTRATIVE EXPENSE CLAIMS; (ii) APPROVING THE FORM OF THE BAR DATE NOTICE; and (iii) APPROVING THE MAILING PROCEDURES**

George Hofmann, in his capacity as Chapter 11 Trustee (the “Trustee”) of VidAngel, Inc. (the “Debtor”), hereby moves the Court (the “Motion”) for entry of an order pursuant to Bankruptcy Code § 503(b) and Fed. R. Bankr. P. 1019: (i) fixing the time within which all applications for allowance of administrative expense claims under Bankruptcy Code § 503(b) must be filed; (ii) approving the form of the bar date notice; and (iii) approving the mailing procedures. In support of this Motion, the Trustee states as follows:

### **GENERAL BACKGROUND**

1. The Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on October 18, 2017 (the “Petition Date”).

2. On August 28, 2019, the Court entered its Order appointing the Trustee, and the Trustee was appointed as the Debtor’s Chapter 11 Trustee on that same date.

3. Prior to the Trustee’s appointment, the Debtor operated its business as a debtor-in-possession under Bankruptcy Code §§ 1107 and 1108.

4. In its capacity as debtor-in-possession, the Debtor sought and obtained Court approval to retain the following professionals (together with a basic summary of the services for which each professional was employed:

(a) **Rocky Mountain Advisory, LLC** (“RMA”): Application to Employ at Docket No. 11; Order Approving Employment at Docket No. 101; employed for general financial advising and accounting services to the Debtor;

(b) **Parsons Behle & Latimer, P.C.** (“PBL”): Application to Employ at Docket No. 12; Order Approving Employment at Docket No. 102; employed as the Debtor’s general bankruptcy counsel;

(c) **Baker Marquart LLP** (“B&M”): Application to Employ at Docket No. 49; Order Approving Employment at Docket No. 103; employed to represent the Debtor in the action captioned *Disney Enterprises, Inc., et al. v. VidAngel, Inc.*, Case No. CV 16-04109-AB, U.S. Dist. Ct., Central Dist. CA (the “California Litigation”) and the action captioned *VidAngel, Inc. v. Sullivan Entertainment Group, Inc., et al.* Case No 2:17-cv-00989, U.S. Dist. Ct., Dist. of Utah (the “Utah

Copyright Litigation” and together with the California Litigation, the “Copyright Litigation”);

(d) **Durham Jones & Pinegar, P.C.** (“DJP”): Application to Employ at Docket No. 52; Order Approving Employment at Docket No. 123; employed as special counsel to represent the Debtor in the Utah Copyright Litigation and a patent lawsuit, Case No. 2:14-cv-00160, U.S. Dist. Ct., Dist. of Utah (the “Patent Litigation”);

(e) **Tanner LLC** (“Tanner”): Application to Employ at Docket No. 55; Order Approving Employment at Docket No. 122; employed to assist the Debtor with tax returns, financial auditing, and disclosures to the SEC;

(f) **Analysis Group, Inc.** (“AGI”): Application to Employ at Docket No. 58; Order Approving Employment at Docket No. 164; employed as a financial expert for the California Litigation;

(g) **Stris & Maher LLP** (“Stris”): Application to Employ at Docket No. 126; Order Approving Employment at Docket No.147; employed to serve as special counsel to represent the Debtor in its appeal to the Ninth Circuit in the California Litigation;

(h) **Kaplan, Voekler, Cunningham & Frank, PLC** (“KVCF”): Application to Employ at Docket No. 158; Order Approving Employment at Docket No. 173; employed as special counsel to advise the Debtor with respect to corporate and securities issues, including on matters related to the restructuring of the Debtor and the formation of a broker-dealer and transfer agent and agreements for new lines of business for the Debtor;

(i) **Call & Jensen, P.C.** (“C&J”): Application to Employ at Docket No. 277; Order Approving Employment at Docket No. 298; employed as special counsel to advise the Debtor with respect to post-trial and appeals issues in the California Litigation.

The aforementioned professionals shall be referred to as the “Approved Professionals.”<sup>1</sup>

5. In addition to the Approved Professionals, the Trustee has discovered that there may have been other professionals<sup>2</sup> who performed work for the Debtor, and were paid by the Debtor, during the Case without prior Court approval.

6. On November 20, 2017, Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, Warner Bros. Entertainment, Inc., MVL Film Finance LLC, New Line Productions, Inc., and Turner Entertainment Co. (collectively, the “California Litigants”) filed the *Movants’ Reservation of Rights to the Debtor’s Motions to Employ (A) Baker Marquart LLP as Special Counsel, (B) Durham Jones & Pinegar as Special Counsel, and (C) Analysis Group, Inc. as Economic Consultant* [Docket No. 97] (the “Reservation of Rights”).

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<sup>1</sup> Although the Debtor sought Court approval for the employment of William M. Duckworth, II, PhD, as a consulting expert for the California Litigation [see Docket No. 290], the Trustee cannot find an order approving Mr. Duckworth’s employment by the Debtor. Accordingly, Mr. Duckworth is not an “Approved Professional” as that term is used in this Motion.

<sup>2</sup> As used in the motion, the term “professionals” shall mean and include any person whose employment or compensation is subject to Bankruptcy Code §§ 327, 328, and 330 as determined by this Court and/or applicable law. In general, the Trustee anticipates that this would include, without limitation, all attorneys, accountants, and expert witnesses who provided services to the Debtor in the Case, regardless of the scope or nature of the services they provided. Other examples of persons who may be “professionals” include realtors, consultants, auctioneers, investment bankers, and engineers. Whether or not a person is a “professional” subject to Bankruptcy Code §§ 327, 328, and 330 is, ultimately, subject to the Court’s determination.

7. In the Reservation of Rights, the California Litigants specifically reserved their rights to object to B&M, DJP, and AGI's fee applications and/or seek disgorgement of interim fees rewarded.

8. On November 22, 2017, the Court entered its *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals* [Docket No. 100] (the "Compensation Procedures Order"). In relevant part, the Compensation Procedures Order: (i) allows for professionals employed in the Case to provide their monthly billing statements to the Debtor and the U.S. Trustee; (ii) authorizes the Debtor to pay 100% of expenses and 80% of fees requested in the monthly statements (unless the Debtor or U.S. Trustee object); and (iii) conditions the continued receipt of monthly payments on the filing of interim fee applications in the Case every four months (collectively, and as described in more detail in the Compensation Procedures Order, the "Compensation Procedures").

9. The Orders approving the employment of DJP, Stris (for costs), C&J, PBL, RMA, Tanner, and B&M expressly incorporate the terms of the Compensation Procedures Order. The Order approving the employment of KVCF incorporates "applicable orders of this Court," and the Order approving the employment of AGI sets for procedures that are substantially similar to the Compensation Procedures.

10. It appears to the Trustee that many of the Approved Professionals were paid on monthly basis. It also appears to the Trustee that many of the Approved Professionals did not comply with the Compensation Procedures. For example, as of the date of this Motion, only three of the Approved Professionals (RMA, PBL, and B&M) applied for interim approval of their compensation with the Court.

11. In addition to fees and expenses of Approved Professionals (or professionals whose employment was not approved), other persons or entities may hold or assert administrative expense claims under Bankruptcy Code § 503(b) for the period of time in which the Debtor acted as a debtor-in-possession in the Case.

### **RELIEF REQUESTED**

12. By this Motion, the Trustee seeks entry of an order setting a bar date of December 13, 2019 at 5:00 p.m. prevailing Mountain time for filing requests for allowance of administrative claims under Bankruptcy Code § 503(b) for claims against the Debtor's estate arising on or after the Petition Date, and on or before August 28, 2019 (the "Trustee Appointment Date"). The Debtor further requests that this Court approve the proposed Notice of Bar Date for Filing Applications to Allow Administrative Expense Claims (the "Bar Date Notice"), substantially in the form attached as Exhibit A.

### **DISCUSSION**

13. Fed. R. Bankr. P. 1019(6) provides in relevant part (with emphasis added):

A request for payment of an administrative expense incurred before conversion of the case is timely filed under § 503(a) of the Code if it is filed before conversion or a time fixed by the court. If the request is filed by a governmental unit, it is timely if it is filed before conversion or within the later of a time fixed by the court or 180 days after the date of the conversion. . . . Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the time for filing a request for payment of an administrative expense . . .

14. The Trustee is still investigating the Debtor's records and operations. He is in the process of employing some, but not all, of the Debtor's former professionals to act as special counsel and/or professionals for him in his administration of the Debtor's

bankruptcy case. Should the Trustee employ any of the Approved Professionals (or professionals who were not approved), he will seek Court approval of such employment. However, the Trustee has determined that the date of his appointment is a “cut off” date on which professionals who were employed by the Debtor must (i) stop working for the Debtor, and (ii) seek to be employed by the Trustee. Absent Court approval of their continued employment by the Trustee, professionals who were previously employed by the Debtor cannot, and should not, expect any compensation from the Estate for services performed for the Debtor after the Trustee Appointment Date. Similarly, absent Court approval of their fees and expenses incurred prior to the Trustee Appointment Date, professionals should not expect to be paid for their services, and/or should anticipate that the Trustee or third parties (including the California Litigants) may seek disgorgement of any non-approved fees and expenses paid to them by the Debtor.

15. The Trustee further proposes that any creditor that holds an administrative expense claim against the Debtor arising on or before the Trustee Appointment Date, no matter how remote or contingent, must file a request for allowance of an administrative expense claim pursuant to Bankruptcy Code § 503(b) on or before December 13, 2019 at 5:00 p.m. prevailing Mountain time. That includes, without limitation, any claims based on services rendered to Debtor’s estate (including claims for compensation under Bankruptcy Code § 330), goods provided to the Debtor’s estate, taxes allegedly owing by the Debtor’s estate, or any tort claims against the Debtor’s estate, notwithstanding that such claims (or the injuries on which they are based) may be contingent and may not have occurred, matured or become fixed and liquidated before December 13, 2019 at 5:00 p.m. prevailing Mountain time.

16. The fixing of a bar date will enable the Trustee, and any other interested parties, to more definitely ascertain the number, amount, and substance of pre-Trustee Appointment Date administrative expense claims asserted against the Debtor's estate. Based on the notice to be provided, as set forth below, the Trustee submits that the requested procedures will provide any claimants with ample opportunity to prepare and file requests for allowance of administrative claims in this case. To be clear, the Trustee anticipates additional administrative expense claims to be incurred by him, his Court-approved professionals, and possibly others in this case, and is not seeking to establish a bar date for such claims.

17. The Trustee is considering the formulation of a possible Chapter 11 plan. Pursuant to Bankruptcy Code § 1129(a)(9), the Estate must pay allowed administrative expense claims upon the effective date of the Debtor's Chapter 11 plan. Knowing the total amount of asserted pre-Trustee Appointment Date administrative expense claims will be beneficial to the Trustee in formulating, determining feasibility, and confirming a plan. Given the irregularities of this case—including possible services provided by non-approved professionals, and the possible failure of Approved Professionals in complying with the Compensation Procedures—the Trustee sees substantial benefits to setting a bar date for persons to seek allowance of administrative expense claims.

18. If the Court grants this Motion, the Trustee will cause the Bar Date Notice to be mailed on or before October 14, 2019,<sup>3</sup> to all creditors and parties in interest included on the Debtor's mailing matrix, to all persons who have filed a notice of

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<sup>3</sup> If the Court cannot hear or approve this motion prior to October 14, 2019, the Trustee will seek approval of a new bar date and mailing notice date, which dates will be approximately 60 days apart.

appearance in this case, and to all professionals or other potential administrative expense claimants who are known to the Trustee. The Bar Date Notice advises these potential claimants of the consequences of filing to file a timely request for allowance of an administrative expense claim.

19. The Trustee proposes that any person, entity, or governmental unit that is required to file a timely request for allowance of administrative expense claim, but does not: (i) shall not, with respect to such claim, receive or be entitled to receive any payment or distribution or property from the Debtor's estate with respect to such claim; and (ii) shall be forever barred from asserting such claim against the Debtor's estate.

20. The Trustee requests entry of an order providing that a person, entity, or governmental unit holding the following types of claims are not required to file a request for allowance of an administrative expense claim before December 13, 2019 at 5:00 p.m. prevailing Mountain time:

A. Any administrative expense claim, including those of professionals, against the Debtor's estate arising from services performed for the Trustee on or after August 28, 2019; and

B. Any claim allowed by order of this Court entered on or before December 13, 2019 at 5:00 p.m. prevailing Mountain time.

21. The Trustee submits that these proposed procedures are reasonable under the circumstances, will advance the administration of this estate, and will assist the Trustee in potentially formulating and confirming a Chapter 11 plan.

**WHEREFORE**, the Trustee respectfully requests that this Court enter an order (i) establishing the bar date for filing requests for allowance of administrative claims

pursuant to Bankruptcy Code § 503(b) arising on or before August 28, 2019 and after the Petition Date; (ii) approving the Bar Date Notice in substantially the form attached as Exhibit A; and (iii) granting the Trustee such other and further relief as may be appropriate under the circumstances.

Dated: September 13, 2019

**COHNE KINGHORN P.C.**

/s/ Jeffrey Trousdale

GEORGE HOFMANN

JEFFREY TROUSDALE

Attorneys for the Chapter 11 Trustee

**Exhibit “A”**

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

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In re:  VIDANGEL, INC.,  Debtor.	Bankruptcy No. 17-29073 (KRA)  Chapter 11
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**NOTICE OF BAR DATE FOR FILING APPLICATIONS  
TO ALLOW ADMINISTRATIVE EXPENSE CLAIMS**

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PLEASE TAKE NOTICE that on \_\_\_\_\_, 2019, the United States Bankruptcy Court for the District of Utah (the "Bankruptcy Court") entered an order in the above-captioned Chapter 11 case (the "Bar Date Order") establishing **December 13, 2019 at 5:00 p.m. prevailing Mountain time** as the last day for filing requests for allowance of administrative claims of the Debtor's professionals under Bankruptcy Code § 503(b) arising on or after October 18, 2017, and on or before August 28, 2019.

**Parties Who Must File a Request for Allowance of Administrative Expense Claim**

Except as specifically set forth below, all creditors asserting a claim against the bankruptcy estate of VidAngel, Inc. (the "Debtor") which arose on or after October 18, 2017 (the "Petition Date"), and on or before August 28, 2019 (the "Trustee Appointment Date"), must file a request for allowance of administrative expense claim with the Bankruptcy Court on or before December 13, 2019 at 5:00 p.m. prevailing Mountain time. This includes any administrative expense claim arising during this time period, no matter how remote or contingent. That includes, without limitation, any claims based on services rendered to Debtor's estate (including claims for compensation under Bankruptcy Code § 330), goods provided to the Debtor's estate, taxes allegedly owing

by the Debtor's estate, or any tort claims against the Debtor's estate, notwithstanding that such claims (or the injuries on which they are based) may be contingent and may not have occurred, matured or become fixed and liquidated before December 13, 2019 at 5:00 p.m. prevailing Mountain time.

This includes any administrative expense claim of a professional arising after the Petition Date and before the Trustee Appointment Date. "Professionals" are those persons or entities whose employment and compensation by the Debtor are subject to Bankruptcy Code §§ 327, 328, and 330. The term "professionals" includes, but is not limited to, attorneys, accountants, and expert witnesses for the Debtor. Other examples of persons who may be professionals include realtors, consultants, auctioneers, investment bankers, and engineers. Whether or not a person is a "professional" subject to Bankruptcy Code §§ 327, 328, and 330 is, ultimately, up to the Court to decide.

You should seek the advice of independent legal counsel if you think you may be classified as a professional and you performed services for the Debtor before the Trustee Appointment Date.

**Any person, entity, or governmental unit with an administrative expense claim that fails to timely file and serve an application for allowance of administrative expense claim in compliance with this Notice and the Bar Date Order shall be forever barred from receiving any distribution on account of any such claim.**

**Parties Who Are Not Required to File a Request for Allowance of Administrative Expense Claim**

The following parties are not required to file a request for allowance of administrative expense claim:

- A. Any administrative expense claim, including those of professionals providing services for the Trustee, against the Debtor's estate arising on or after August 28, 2019; and
- B. Any claim allowed by order of this Court entered on or before December 13, 2019 at 5:00 p.m. prevailing Mountain time.

Dated: September 13, 2019

**COHNE KINGHORN, P.C.**

/s/ Jeffrey Trousdale

GEORGE HOFMANN

JEFFREY TROUSDALE

Attorneys for the Chapter 11 Trustee