

George Hofmann (10005)
Jeffrey Trousdale (14814)
Cohne Kinghorn, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Facsimile: (801) 363-4378

Attorneys for George Hofmann,
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

Honorable Kevin R. Anderson

**TRUSTEE'S APPLICATION TO EMPLOY WINSTON & STRAWN, LLP AS SPECIAL
COUNSEL AND DECLARATION OF PROPOSED ATTORNEY**

George Hofmann, in his capacity as Chapter 11 Trustee (the "Trustee") of the bankruptcy estate (the "Estate") of VidAngel, Inc. (the "Debtor"), moves this Court for an order authorizing the Trustee to employ Michael S. Elkin ("Elkin") and the firm of Winston & Strawn LLP ("Winston & Strawn") as his special counsel pursuant to Bankruptcy Code § 327(a) and (e), and in support of this application respectfully represents as follows:

1. The Debtor commenced this case under Chapter 11 of the Bankruptcy Code by filing a voluntary petition on October 18, 2017.

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. There are substantial issues related to the Debtor's use (or non-use) of copyrighted material, for which the Trustee requires unbiased legal counsel of the highest caliber. Although some of these issues are related to the "California litigation" with which this Court and parties are familiar, the Trustee does not intend to use Winston & Strawn as his counsel in the California litigation. Instead, the Trustee will use Winston & Strawn as his unbiased legal counsel to help guide his decision making with respect to the California litigation, as well as to advise him on other copyright issues related to the Debtor's business.

4. For the foregoing and all other necessary and proper purposes, the Trustee desires to retain Winston & Strawn as special counsel to represent him.

5. The employment of Elkin and the firm of Winston & Strawn may be authorized by this Court pursuant to Bankruptcy Code § 327(a) and (e), and in the Trustee's opinion, the employment of Elkin and Winston & Strawn is in the best interest of the Estate.

6. As required by Bankruptcy Code § 327(e), the Trustee anticipates that the Estate will benefit from the employment of Elkin and Winston & Strawn as special counsel for the following reasons:

A. Elkin is one of the preeminent copyright lawyers in the country. He and his team at Winston & Strawn have tried more than 100 cases to verdict, including high-profile and precedent-setting disputes involving major entertainment and digital media companies. Elkin is recognized as a legal leader

in digital copyright matters and has represented numerous start-up companies (like the Debtor) in issues related to new technology, streaming, and alleged copyright infringement.

B. Elkin and Winston & Strawn are familiar with copyright infringement issues and are at the forefront of developing law on these issues. Because the copyright issues presented in the California litigation and the Debtor's ongoing business are so complex, the Trustee requires the highest caliber counsel to help guide his decision making.

7. Based upon the attached Declaration of Michael Elkin, the Trustee believes that Elkin and the firm of Winston & Strawn do not hold or represent any interests adverse to that of the Trustee or the Debtor's Estate, and that Elkin and the firm of Winston & Strawn are disinterested persons within the meaning of Bankruptcy Code § 101(14).

8. The Trustee is informed that Winston & Strawn's normal hourly billing rates at the time of this Application range from \$540 per hour to \$1,650 per hour for attorneys and from \$195 per hour to \$390 per hour for paraprofessionals. Michael Elkin's billing rate is \$1,405 per hour, but he has agreed to discount his rate to \$950 per hour for the services he performs for the Estate. Elkin has also agreed to assign tasks to associates or junior partners with lower billing rates when possible. In particular, associate attorney Emily Ellis is intended to perform services for this matter, and Winston & Strawn has agreed to discount her normal rate of \$615 per hour down to \$590 per hour.

9. It is contemplated that Elkin and the firm of Winston & Strawn will seek compensation based upon normal and usual hourly billing rates, subject to the discounts it has agreed upon as described above. It is further contemplated that Elkin and the firm

of Winston & Strawn will seek interim compensation during the case as permitted by Bankruptcy Code § 331.

10. The Court has power to authorize employment of Michael Elkin and the firm of Winston & Strawn pursuant to Bankruptcy Code § 327(e) which states in pertinent part:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney . . . if in the best interest of the estate, and if such attorney does represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

WHEREFORE, the Trustee prays that he be authorized to employ Elkin and the firm Winston & Strawn as his special counsel to render services in the areas described above with compensation to be paid as an administrative expense in such amounts as this Court may hereinafter determine and allow.

DATED September 17, 2019.

/s/ George Hofmann
Chapter 11 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2019, I electronically filed the **TRUSTEE'S APPLICATION TO EMPLOY SPECIAL COUNSEL AND DECLARATION OF PROPOSED ATTORNEY** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. 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:

- J. Thomas Beckett tbeckett@parsonsbehle.com, ecf@parsonsbehle.com;brothschild@parsonsbehle.com;kstankevitz@parsonsbehle.com
- Michael Ronald Brown mbrown@parsonsbehle.com
- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov
- Rose Leda Ehler rose.ehler@mto.com, cynthia.soden@mto.com
- George B. Hofmann tr trustee@ck.law, dhaney@ck.law;mparks@ck.law;UT16@ecfcbis.com;gbh@trustesolutions.net
- 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
- Grace S. Pusavat gpusavat@parsonsbehle.com
- Brian M. Rothschild brothschild@parsonsbehle.com, ecf@parsonsbehle.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

By U.S. Mail: In addition to the parties of record receiving notice through the CM/ECF system, the following parties should be served notice pursuant to Fed. R. Civ. P. 5(b).

None

Manual Notice List:

U.S. Trustees Office
Washington Federal Bank Bldg.
405 South Main St., Suite 300
Salt Lake City, UT 84111

Analysis Group, Inc.
333 South Hope Street
27th Floor
Los Angeles, CA 90071

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

Douglas D. Geysler
STRIS & MAHER, LLP
725 S Figueroa St. Ste. 1830
Los Angeles, CA 90017

Gil Miller
Rocky Mountain Advisory
215 South State Street Ste 550
Salt Lake City, UT 84111

Tanner LLC
Key Bank Tower
36 S State Street
Suite 600
Salt Lake City, UT 84111-1400

Mark D. Hashimoto
Piercy Bowler Taylor & Kern
9980 South 300 West
Suite 200
Sandy, UT 84070

Kaplan, Voekler, Cunningham, &
Frank, PLC
1401 E Cary St
PO Box 2470
Richmond, VA 23219

Kelly M. Klaus
Munger, Tolles & Olson, LLP
350 South Grand Avenue, 50th
Floor
Los Angeles, CA 90071-3426

Peter K. Stris
STRIS & MAHER, LLP
725 S Figueroa St. Ste. 1830
Los Angeles, CA 90017

Todd Rosen
Munger, Tolles & Olson, LLP
350 South Grand Avenue
50th Floor
Los Angeles, CA 90071-3426

All parties on the Court's official case matrix.

/s/ George Hofmann

**DECLARATION OF MICHAEL S. ELKIN IN SUPPORT OF
THE TRUSTEE'S APPLICATION TO EMPLOY SPECIAL COUNSEL**

I, Michael S. Elkin, declare and submit the following statements and disclosures as my Declaration in support of the Trustee's Application to Employ Counsel:

1. I am an attorney duly admitted to practice before the state courts of New York and New Jersey.

2. I am a member of Winston & Strawn LLP ("Winston & Strawn"), the law firm that the Trustee is seeking to employ as special counsel by the Application to which this Declaration is attached.

3. The law firm of Winston & Strawn has extensive experience in copyright law, copyright litigation, digital streaming, and new media. The firm is well qualified to represent the Trustee as special counsel and is willing to accept employment on the basis set forth in the annexed Application. As set forth in the Application, my normal hourly billing rate is \$1,405 per hour. I have agreed to reduce my billing rate to \$950 per hour for the services I provide to the Estate, and I will endeavor to assign matters to partners and associates with lower billing rates where possible.

4. The firm of Winston & Strawn is a relatively large law firm with sixteen offices in the U.S., Europe and Asia. Winston & Strawn maintains a conflict database with respect to parties that it is or was adverse to, or are or were represented by, Winston & Strawn. Winston has conducted an extensive search of its conflict database and has made other extensive internal inquiries to determine whether Winston & Strawn has any connections to the Trustee, Debtor, and the Debtor's creditors, and, if so, whether such connections are adverse in any way to Winston & Strawn's proposed representation of

the Trustee in this Case. In particular, based on its conflict database and internal inquiries, Winston & Strawn does not currently represent, has not represented within the past three years, and does not have any plan in the future to represent, any of the parties in the California Litigation that are adverse to the Debtor. Accordingly, to the best of my knowledge, Winston & Strawn, its members and its associates, do not hold any interest adverse to the above-entitled estate and said law firm is a disinterested person as defined in Bankruptcy Code § 101.

5. Winston & Strawn has represented or currently represents the following entities, which are in some way affiliated with certain creditors in the Case: The Void, LLC, a Disney investment, is a client in unrelated litigation; HBO Latin America Productions Service, LC, an affiliate of Warner Bros. Entertainment, is a client in unrelated general employee benefits matters; Zions Bank N.A., an affiliate of Zions First National Bank, is a client in unrelated corporate and energy finance matters; KeyBank NA, an affiliate of Key Bank Tower, is a client in unrelated energy finance matters. Because none of the aforementioned entities are creditors of the Debtor or parties in any litigation against the Debtor, I believe that Winston & Strawn remains a disinterested person, as contemplated under Bankruptcy Code § 327(a).

6. To the best of my knowledge, neither Winston & Strawn nor any of its members have a pre-petition or other claim against the Estate.

7. To the best of my knowledge, neither Winston & Strawn nor any of its members have any connection with the Debtor, and Winston & Strawn has not in the past, and does not plan in the future, to represent any entity related to the Debtor.

8. Neither Winston & Strawn nor any of its members have received a retainer from the Debtor, the estate, or a third party.

9. To the best of my knowledge, neither Winston & Strawn nor any of its members have any interests adverse to the Trustee, the Estate or the Debtor.

Executed September 16, 2019.

A handwritten signature in black ink, appearing to read "Michael S. Elkin", written over a horizontal line.

Michael S. Elkin