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Chapter 11 Trustee

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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

Honorable Kevin R. Anderson

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**TRUSTEE'S APPLICATION TO EMPLOY CALL & JENSEN, P.C. 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 Mark Eisenhut ("Eisenhut") and the firm of Call & Jensen, P.C. ("Call & Jensen") as his special counsel pursuant to Bankruptcy Code § 327(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. Prior to the appointment of the Trustee, the Debtor filed its *Motion to Employ Call & Jensen as Special Counsel Under Sections 327(e) and 328(a) of the Bankruptcy Code* (the “Debtor’s Application”). As explained in the Debtor’s Application, the Debtor sought Court approval to employ Call & Jensen to represent and advise the Debtor regarding all aspects of litigation and defense in the matter of *Disney Enterprises et al. v. VidAngel, Inc.*, U.S. Dist. Ct., Central Dist. of CA, Case No. 16-cv-04109-AB (the “California Litigation”).

4. The Court approved the Debtor’s Application pursuant to its *Order Granting Debtor’s Motion to Employ Call & Jensen as Special Counsel Pursuant to Bankruptcy Code §§ 327(e) and 328(a)*, entered on March 18, 2019 (the “Employment Order”).

5. The Employment Order requires Call & Jensen to apply to the Bankruptcy Court prior to seeking compensation and reimbursement of expenses on an interim and final basis and provides that Call & Jensen may be compensated in compliance with the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals* [Docket No. 100] (the “Compensation Procedures Order”).

6. The Trustee desires to retain Call & Jensen as special counsel to represent him in the California Litigation. The Trustee is still investigating the merits of the claims and defenses in the California Litigation, and believes that Call & Jensen’s knowledge of the California Litigation will be invaluable in his evaluation of the issues. Moreover, Call & Jensen is the law firm best suited to continue the California Litigation,

should the Trustee make that determination, given the institutional knowledge that it has.

7. The employment of Eisenhut and the firm of Call & Jensen may be authorized by this Court pursuant to Bankruptcy Code § 327(e), and in the Trustee's opinion, the employment of Eisenhut and Call & Jensen is in the best interest of the Estate.

8. As required by Bankruptcy Code § 327(e), the Trustee anticipates that the Estate will benefit from the employment of Eisenhut and Call & Jensen. Eisenhut is one of the preeminent trial lawyers in California, and he specializes in complex business and other civil litigation matters. Since the Court entered the Employment Order, Eisenhut and his team at Call & Jensen have spent substantial time “coming up to speed” and developing legal strategy for the California Litigation. The Trustee believes that it would be inefficient and expensive to waste the time and effort of Call & Jensen by seeking to employ another firm to represent the estate in the California Litigation.

9. Based upon the attached Declaration of Mark Eisenhut, the Trustee believes that Eisenhut and the firm of Call & Jensen do not hold or represent any interests adverse to that of the Trustee or the Debtor's Estate with respect to the matter on which they are to be employed. As such, they are eligible to be employed by the Trustee pursuant to Bankruptcy Code § 327(e).

10. As explained in the Debtor's Application, Call & Jensen and the Debtor agreed that regardless of the outcome of the California Litigation the Debtor would pay one hundred percent of Call & Jensen's fees up to \$275,000, and one hundred percent of Call & Jensen's fees in excess of \$495,000. The Debtor was not required to pay fees

in Call & Jensen's billings that are in excess of \$275,000, up to a total of \$495,000, unless a favorable outcome was obtained, as set forth in the agreement. The Debtor was obligated to pay fees in excess of \$495,000 regardless of the outcome. In addition to the foregoing amounts, in the event of a favorable outcome, the Debtor would pay additional amounts in case and grant Call & Jensen options for VidAngel, Inc., stock, as set forth in the agreement. The Trustee is not "assuming" this fee arrangement, and the Trustee anticipates that Call & Jensen will apply for Court approval of its fees and expenses incurred for the Debtor pursuant to its prior arrangement with the Debtor.

11. The Trustee has agreed to pay Call & Jensen at a substantially discounted hourly billing rate of \$400 per hour for all attorneys, and \$215 for paraprofessionals, *provided, however*, that Call & Jensen has agreed that its fees and expenses for services to the Trustee will be capped at \$200,000 for work related to a motion for new trial, fee application by plaintiffs, and appeal to the 9<sup>th</sup> Circuit (the "Cap Amount"). Call & Jensen will receive an additional \$100 per hour for all post-trial attorney hours, retroactively, should it achieve a favorable post-trial outcome, defined to mean: a new trial is granted (or the equivalent is achieved via appeal), or the verdict amount is reduced by more than 25%. Call & Jensen shall be obligated to seek Court approval of all fees and expenses incurred, and in no event shall the Debtor's estate be obligated to pay fees or expenses that exceed the Cap Amount. For the avoidance of doubt, the Cap Amount does not include the fees and expenses earned and/or incurred by Call & Jensen prior to the submission of this application, and Call & Jensen is entitled to file an application for Court approval of such amounts. It is contemplated that Eisenhut and the

firm of Call & Jensen will seek interim compensation during the case as permitted by Bankruptcy Code § 331.

12. The Court has power to authorize employment of Mark Eisenhut and the firm of Call & Jensen 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 Eisenhut and the firm Call & Jensen 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 25, 2019.

/s/ George Hofmann  
Chapter 11 Trustee

### CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, I electronically filed the **TRUSTEE'S APPLICATION TO EMPLOY CALL & JENSEN, P.C. AS 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, cyntia.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
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- 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

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Johnson & Hatch  
10 West Broadway  
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Rocky Mountain Advisory  
215 South State Street Ste 550  
Salt Lake City, UT 84111

Tanner LLC  
Key Bank Tower  
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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 MARK L. EISENHUT IN SUPPORT OF  
THE TRUSTEE'S APPLICATION TO EMPLOY SPECIAL COUNSEL**

I, Mark L. Eisenhut, 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 and federal courts of California.

2. I am a member of Call & Jensen, P.C. ("Call & Jensen"), 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 Call & Jensen has extensive experience in copyright law, copyright litigation, and the issues that are presently being litigated in the "California Litigation" (as defined in the Application). Since its employment by the Debtor in January, 2019, Call & Jensen has spent substantial time and effort developing the Debtor's legal strategy with respect to the California Litigation. Call & Jensen is presently representing the Debtor in post-trial matters and an appeal of the jury determination in the California Litigation. Thus, 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.

4. Call & Jensen was employed by the Debtor to represent it in the California Litigation. Call & Jensen was paid on an interim basis for some of the fees earned and expenses incurred while representing the Debtor, and intends to file an application for approval of compensation with the Court with respect to the fees and expenses that have not yet been paid. The firm of Call & Jensen, its shareholders and its associates,




do not hold or represent any interest adverse to the above-entitled estate with respect to the California Litigation, and said law firm is eligible for employment by the Trustee under Bankruptcy Code § 327(e).

5. Call & Jensen has agreed that its fees and expenses incurred on behalf of the Trustee will be capped at \$200,000 for the scope of work requested through appeal to the 9<sup>th</sup> Circuit.

6. Neither Call & Jensen nor any of its members represent, or will represent, any person or interest adverse to the Estate with respect to the California Litigation.

Executed September 16, 2019.

  
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Mark L. Eisenhut