

**THIS LETTER AND THE STATEMENTS HEREIN REPRESENT THE POSITIONS AND ASSERTIONS OF THE STUDIOS. WHERE INDICATED BY HEADINGS, THIS LETTER ALSO INCLUDES CERTAIN RESPONSES AND COUNTER-ARGUMENTS BY THE TRUSTEE. THE CRITIQUES AND CHARACTERIZATIONS ARE NOT INTENDED AS A COMPLETE OR COMPREHENSIVE SUMMARY OF THE PLAN, AND ARE NOT A SUBSTITUTE FOR THE COURT APPROVED DISCLOSURE STATEMENT. THE STATEMENTS HEREIN ARE NOT ENDORSED AND HAVE NOT BEEN ADOPTED BY THE BANKRUPTCY COURT.**

**YOU SHOULD NOT RELY UPON THIS LETTER ALONE IN DECIDING HOW TO VOTE ON THE PLAN. THIS LETTER SHOULD BE READ IN CONJUNCTION WITH THE TRUSTEE'S COURT APPROVED DISCLOSURE STATEMENT. YOU ARE ADVISED TO CAREFULLY ANALYZE THE DISCLOSURE STATEMENT, AND THE TRUSTEE'S PLAN ITSELF, BEFORE YOU DECIDE HOW TO VOTE.**

April 23, 2020

Re: Studio's Solicitation for Creditors and Equity Holders to Reject  
the Trustee's Chapter 11 Plan of Reorganization  
In re VidAngel, Inc., Case No. 17-29073

Dear Voting Creditors and Equity Holders:

This firm is counsel to creditors 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, "Studios"). Subject to a pending appeal, the Studios currently hold unsecured claims arising from a jury award for willful copyright infringement and violations of the Digital Millennium Copyright Act in the total amount of \$62.4 million against the bankruptcy estate of VidAngel, Inc. ("VidAngel"). The Studios assert that their unsecured claims may be further increased by attorneys' fees and by interest.

George Hofmann, the Chapter 11 Trustee appointed to administer VidAngel's bankruptcy estate (the "Trustee"), has included his positions in this letter. He has indicated that he will challenge the Studios' efforts to increase their claims with awards of attorneys' fees. Further, the Trustee is appealing the Studios' judgment against VidAngel and has indicated that he may object to the Studios' claims in the bankruptcy court.

ATTORNEYS AT LAW

Clark P. Giles  
Herbert C. Livsey  
D. Jay Curtis  
James S. Jardine  
Larry G. Moore  
Bruce L. Olson  
John A. Adams  
Douglas M. Monson  
Craig Carlile  
Jeffrey W. Appel  
David J. Castleton  
Ellen J. D. Toscano  
Kevin G. Glade  
Lester K. Essig  
Stephen C. Tingey  
John R. Madsen  
Scott A. Hagen  
Rick L. Rose  
Brent D. Wride  
Steven W. Call  
Sally B. McMinimee  
Steven G. Jones  
Mark A. Cotter  
Greggory J. Savage  
Kelly J. Applegate  
Justin T. Toth  
Liesel B. Stevens  
Robert O. Rice  
Arthur B. Berger  
Rick Thaler  
John W. Mackay  
McKay M. Pearson  
Mark W. Pugsley  
Matthew N. Evans  
Gary L. Longmore  
John P. Wunderli  
Michael R. Johnson  
E. Blaine Rawson  
Samuel C. Straight  
Paul C. Burke  
Elaina M. Maragakis  
D. Zachary Wiseman  
Michael D. Mayfield  
Bryan K. Bassett  
Kamie F. Brown  
Gregg D. Stephenson  
Kristine M. Larsen  
Gregory S. Roberts  
Christopher N. Nelson

SALT LAKE CITY OFFICE

PO Box 45385

Salt Lake City, Utah

84145-0385

36 South State Street

Suite 1400

Salt Lake City, Utah

84111

801 532-1500 TEL

801 532-7543 FAX

www.rqn.com

## **THE STUDIOS' POSITION ON THE TRUSTEE'S PLAN**

**YOU ARE IN RECEIPT OF A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FROM THE TRUSTEE. *IT IS THE STUDIOS' OPINION THAT VIDANGEL WILL NOT BE ABLE TO GENERATE THE REVENUES NECESSARY TO FUND PLAN PAYMENTS OF OVER \$70 MILLION OVER 14 YEARS. FURTHER, THE STUDIOS BELIEVE THAT THE TRUSTEE'S PLAN DOES NOT PROVIDE THE BEST POSSIBLE TREATMENT FOR PRIORITY AND UNSECURED CREDITORS AND DOES NOT GIVE THE DEBTOR A REALISTIC CHANCE OF REORGANIZING. THE STUDIOS URGE YOU TO VOTE TO REJECT THE TRUSTEE'S PLAN.***

On behalf of the Studios, I write to provide you with the Studios' views and positions regarding the Trustee's Plan<sup>1</sup> and a recommendation on how to vote.

The Studios do not believe the Trustee's Plan is in the best interests of VidAngel's priority and unsecured creditors. The Studios ask that you join them in voting to REJECT the Trustee's Plan for the following reasons:

1. **The Trustee's Plan Will Not Pay Class 2 Claim In Full On The Effective Date, But Instead Pays Class 2 Claims With Interest Over 14 Years.** The Trustee's Plan, if confirmed, would pay Class 2 claims over time in quarterly payments over 14 years, the full allowed amount of their claims as of the petition date, with interest after the Effective Date at the federal judgment rate, of 1.43%, . Consistent with the requirements of the Bankruptcy Code, Class 1 Priority Claims will be paid first. After Class 1 Priority Claims have been paid, the Trustee's Plan proposes to pay Class 2 General Unsecured Claims pro rata with the Studio's claims over the remainder of the 14-year period. These payments escalate over time so the bulk of the claim is paid the last 7 years. The Studios believe that Class 2 claims could be paid in cash on the Effective Date (a) if sufficient funds are available on the Effective Date, and (b) provided that the Studios' agree to subordinate their claims to permit other non-priority unsecured creditors to be paid first as set forth in the Studios' competing Plan. Such a plan, if supported by the Studios, could provide for immediate payment in full to Priority and General Unsecured Claims.
2. **The Studios Do Not Believe The Trustee's Plan For Paying Creditors Is Feasible.** The Trustee's Plan, if confirmed, pays the Studios' entire claims of \$62.4 million, with interest at the federal judgment rate, i.e., 1.43%, over a 14-

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

year period. The Studios intend to object that the interest rate is too low and will need to be higher to meet standards for confirmation. The Trustee's Plan requires VidAngel to generate revenues over a 14-year period, substantially exceeding its past performance. The Trustee's Plan would require the Debtor to make payments to creditors (including the Studios) averaging approximately \$1.72 million per quarter, with distributions to the Studios totaling approximately \$70,430,000. The Studios believe that VidAngel will not generate enough income over 14 years to pay the Studios' and Class 2 General Unsecured Claims as proposed under the Trustee's Plan. If the Studios consent and agree to discount the amount of their claims, which is contemplated in the Studios' plan, this could compromise and reduce the amount owed to the Studios significantly, allowing VidAngel to emerge from bankruptcy with less debt and a greater chance of successful future operations. The Studios, however, will not agree to a reduction in the amount of their claims unless a plan provides protections of their copyright interests that they deem acceptable.

3. **The Plan Requires An Additional Layer Of Administrative Expense.** The Trustee's Plan, if confirmed, contemplates that the Trustee will serve in the capacity of Plan Administrator, and permits the Plain Administrator to hire lawyers (which could include the Trustee's own law firm) and other professionals to represent him, over a 14-year period at the estimated cost of \$715,000 (which includes some fees relating to plan confirmation). The Studios believe that a better alternate plan should not include a Plan Administrator or entail these costs.
4. **The Studios Believe that the Plan Promises More Litigation In VidAngel's Future.** The Trustee's Plan contemplates that the Trustee will appeal the Studios' judgment (at an estimated cost of \$130,000). The Studio's believe that Trustee's Plan assumes that VidAngel will be involved in future copyright litigation, against third parties and/or the Studios. The Trustee estimates the costs of seeking a patent will be \$85,000, but does not estimate the cost of additional legal fees to the Estate if there is litigation regarding the legality of VidAngel's proposed DVR Model. The Studios' opinion is that future litigation is very likely if the Trustee's Plan is confirmed and this litigation will be costly, noting that the Debtor's legal expenses from 2016 to 2019 when it was in litigation with the Studios were over \$5.5 million.

The Studios urge you to check "**Rejects the Plan**" on the ballot.

#### **THE TRUSTEE'S RESPONSES TO THE STUDIOS' ARGUMENTS**

The Trustee offers the following statements in response to the Studios' arguments:

1. **The Plan Pays All Claims 100% of their Principal Amounts, Plus Interest.** The Trustee's Plan, if confirmed and if the Debtor generates sufficient cash, pays all Allowed claims, including the Studios' Claims, 100% of their principal amounts plus interest over a 14-year period, in accordance to the Bankruptcy Code's priority scheme. Although the Studios assert "that an appropriate treatment of these claims is to pay them in cash on the Effective Date," the Trustee believes that the Studios would object to the Trustee's Plan if such terms were included in his Plan, and would argue that the Plan unfairly treats other creditors more favorably. The Trustee would change his plan to pay claims other than the Studios first if the Studios would consent. In contrast, the Trustee believes that the plan that may be proposed by the Studios will be "unconfirmable," because the "quid pro quo" for the Studios' voluntary subordination of their claims is to impose on VidAngel and its management restrictive covenants and confusing/ambiguous limits on the scope of VidAngel's future business activities forever.
2. **The Trustee's Plan Pays the Studios' Judgment in Full and Allows the Trustee to Protect the Rights of VidAngel and Its Creditors by Appealing of the Studios' Judgment.** The Trustee's Plan, if confirmed, pays the Studios' Claims in full, and also allows the Plan Administrator to continue to appeal the California Court Judgment against VidAngel at the estimated cost of \$130,000 in legal fees. If the appeal is successful, the Studios' Claims against VidAngel could be reduced or eliminated. If the Studios' judgment is upheld, the Trustee believes that VidAngel will be able to generate sufficient revenues to pay the Studios' Claims in full, as shown in the projections that are attached to the Trustee's Disclosure Statement. The Trustee's Plan preserves the ability of VidAngel to legally offer its "Self-Selected Viewing Service" to customers, and preserves the ability of VidAngel to challenge the Permanent Injunction issued by the California Court. The Trustee believes that the preservation of these rights creates better long-term value for VidAngel's Credit Holders (who can use their credits for VidAngel's services) and also preserves VidAngel's ability to return value to Equity Holders when all claims are paid in full.
3. **The Plan Administrator's Estimated Fees and Costs.** The Trustee's Plan proposes that the Court appoint a "Plan Administrator". This is proposed and intended to protect the interests of creditors if VidAngel materially defaults under the Trustee's Plan. Although the Trustee estimates that the combined costs of the Plan Administrator and the Trustee may be approximately \$715,000 over the entire 14-year Plan Period, at least \$400,000 of those estimated costs are related to confirming the Trustee's Plan, objecting to Claims, and bringing certain causes of action that are held by the Estate. Specifically, these costs include costs that the Trustee is already incurring or will incur before the Plan is confirmed, and these costs would be incurred by the Reorganized Debtor or the Trustee no matter what plan is proposed,

particularly if the Studios continue to oppose the Trustee's Plan. The Trustee asserts that he has acted in good faith, as a fiduciary of VidAngel's bankruptcy estate, and would continue to do so in a "Plan Administrator" capacity. In light of the amount that the Trustee's Plan proposes to pay (over \$70 million when interest is accounted for), the Trustee's opinion is that estimated future fees of the Plan Administrator are relatively small.

4. **The Plan Preserves VidAngel's Ability to Reorganize.** The Trustee believes that his Plan preserves all of VidAngel's legal rights, including its rights to appeal the Studios' California Court Judgment. The Trustee's Plan also is designed to retain VidAngel's existing executive team, who have told him they will quit if (a) the Plan does not retain exclusive jurisdiction in the Utah bankruptcy court for any determination of a breach under the Plan, and (b) if the restrictive covenants and business limits that the Studios propose on the Debtor's future business are imposed. The Trustee's Plan also is intended to ensure that VidAngel remains in business, which will permit it to offer what the Trustee believes is legal filtering services to its customers, and maintain value for its Equity Holders. The Trustee fears that a plan with the restrictions and limits proposed by the Studios creates an untenable risk of putting VidAngel out of business. That said, if VidAngel materially defaults under the Trustee's Plan, the Plan contemplates a potential liquidation for the benefit of creditors. The Trustee submits that you should vote in favor of his Plan.

#### **THE STUDIOS HAVE FILED AN ALTERNATE PLAN**

**THE PURPOSE OF THIS LETTER IS NOT TO SOLICIT YOUR VOTE FOR OR AGAINST THE STUDIOS' PLAN. A VOTE ON THE STUDIOS' PLAN CAN ONLY BE SOLICITED BY A COURT-APPROVED DISCLOSURE STATEMENT, WHICH DOES NOT PRESENTLY EXIST.**

For informational purposes only, know that the Studios have filed their own Proposed Plan of Reorganization ("Studios' Proposed Plan") and are seeking bankruptcy court approval of a Disclosure Statement. The Studios' Proposed Plan is available on the docket of the Utah Bankruptcy Court, Case No. 17-29073-KRA, Dkt. No. 608.

The creditors and equity holders can also obtain a copy of the Studios' Proposed Plan by contacting the Trustee's Counsel, Jeffrey Trousdale, at Cohne Kinghorn, P.C., 111 East Broadway, 11th Floor, Salt Lake City, Utah 84111.

#### **STUDIOS' SUMMARY OF SALIENT PROVISIONS OF THEIR PLAN**

The following is a brief summary of the terms of the publicly-filed Studios' Proposed Plan, which the Studios have filed as an alternative to the Trustee's Plan. Please note that the summarized terms represent a portion of the

terms contained in the Studios' Proposed Plan. The Trustee's counter-points are provided immediately below the Studios' summary of the terms of the Plan.

1. Assuming that sufficient cash is on hand, the Studios' Proposed Plan pays Administrative Expenses, Priority Claims, and General Unsecured Claims in full on the Effective Date.
2. The Studios will subordinate their Claims for \$62.4 million plus attorneys' fees and interest to General Unsecured Claims, Priority Claims, and Administrative Expenses and will compromise those claims, so the Reorganized Debtor pays a reduced total of \$14 million to the Studios over 14 years. In exchange for subordinating and reducing their Claims, the Studios' Plan proposes restrictive covenants that would (a) bind the Debtor's management to a 1-year covenant not to compete in favor of the Debtor; (b) prevent the Debtor from filing litigation regarding their right to use the Studios' or other copyright holders' works without their consent; and (c) restrict the Debtor's ability to use the Studios' or their Affiliates' copyrighted works without their consent. The Studio's opinion is that these restrictive covenants will prevent the Debtor from becoming embroiled in yet more copyright litigation, impeding its change of successfully reorganizing.
3. The Reorganized Debtor will not incur the costs of a Plan Administrator and his Professionals; and
4. The Studios' Plan guards against costly, resource-intensive copyright litigation by ensuring that the Reorganized Debtor will not make unlicensed use of the Studios' or their Affiliates' Copyrighted Works.
5. Although the Trustee believes that the Debtor's management will leave if the Studios' Plan is confirmed, the Studios would prefer if they stay and, only if not, will find replacement management.

#### TRUSTEE'S RESPONSE TO STUDIOS' SUMMARY OF THEIR PLAN

In response to the Studios' statements regarding their potential Plan, the Trustee expresses the following concerns:

1. Although the Studios' Plan is proposed as a "plan of reorganization," the Trustee understands that VidAngel's entire team of officers will resign if the Studios' Plan is confirmed. If VidAngel loses its entire executive team, the Trustee believes that it is highly likely that VidAngel will not be able to exist as a "going concern" company, and VidAngel will be liquidated. If VidAngel is liquidated, "Credit Holders" and Equity Interest holders will be left with

nothing.

2. The “quid pro quo” for subordination and potential discount of the Studios’ claims is to impose limits and restrictions on VidAngel’s future business, and upon its management, that the Trustee believes violate applicable law and, in the Trustee’s view, render it incapable of being “confirmed” by the bankruptcy court. For example, the Studios’ Plan proposes that Neal Harmon and Jeffrey Harmon (VidAngel’s CEO and CMO) will be subject to non-compete agreements, which the Trustee believes cannot be imposed without the Harmons’ agreement. Additionally, the Trustee believes that the Studios’ Plan imposes broad, ambiguous and confusing limits and restrictions on VidAngel’s future business activities that exceed limits currently imposed by federal or state law. The Trustee believes that these non-monetary benefits in favor of the Studios could punish VidAngel even for innocent mistakes, will undermine VidAngel’s ability to reorganize, and ultimately could result in putting VidAngel out of business. The Trustee asserts that the covenants and limits proposed by the Studios (a) cannot be foisted on VidAngel or its management without their agreement or consent, making confirmation of the Studio’s plan impossible, (b) are illegal and unenforceable, (c) are designed to be confusing, ambiguous and overbroad, (d) would punish VidAngel even for innocent mistakes, (e) undermine the feasibility of reorganization, and (f) ultimately will result in putting VidAngel out of business.
3. The Studios’ Plan preserves its \$62.4 million judgment and claim for 15 years, and secures it with a 15-year lien on VidAngel’s assets that will not be released early, even if VidAngel pays the Studios their proposed \$14 million amount ahead of schedule. While the Studio’s Plan might avoid the expense of a Plan Administrator, the Trustee believes that VidAngel would be “looking over its shoulder,” and its equity holders would suffer in a state of limbo, for 15 years. In this regard, a future violation of the non-monetary limits on VidAngel’s future business activities – including potentially an innocent and/or inadvertent mistake – would, impose the full unpaid balance of the judgment as a penalty, and if within the 15-year term, would permit the Studios to exercise their lien rights to liquidate VidAngel and put it out of business. These and other provisions in the Studios’ Plan appear to the Trustee to be proposed in furtherance of the Studios’ interests as competitors of VidAngel, or alternatively, to punish VidAngel. For these reasons and others, the Trustee intends to challenge the Studios’ Plan as not being proposed “in good faith,” which is one of the Bankruptcy Code’s requirements to confirm a plan.
4. The Studios’ Plan, if confirmed, would result in the Studios’ being granted a “15 year lien” on all of the Debtor’s property, including its intellectual property, with no option for the Debtor to pay off the Studios’ Claims early

and obtain a release of the “15 year lien.” The Trustee does not believe that this treatment is appropriate under the Bankruptcy Code.

The Bankruptcy Court has approved the form of this letter as containing “adequate information,” and has authorized the Studios to distribute it, but the Bankruptcy Court has not endorsed or adopted any of the statements herein. Rather, the statements herein represent the Studios’ position, and the Trustee’s response.

**THE STUDIOS REITERATE THEIR REQUEST THAT ALL CREDITORS  
AND EQUITY HOLDERS VOTE TO REJECT THE TRUSTEE’S PLAN.**

Very truly yours,

*/s/ Michael R. Johnson*

\_\_\_\_\_  
Michael R. Johnson