

No. 16-56843

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

VIDANGEL, INC.,

Defendant-Appellant,

v.

DISNEY ENTERPRISES, INC.; LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM CORPORATION; AND
WARNER BROS. ENTERTAINMENT, INC.,

Plaintiffs-Appellees.

On Appeal from the United States District Court
for the Central District of California

Hon. André Birotte Jr.

No. 2:16-cv-04109-AB-PLA

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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 WESTERN DIVISION

19 DISNEY ENTERPRISES, INC.;
20 LUCASFILM LTD. LLC;
21 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
22 BROS. ENTERTAINMENT, INC.,

23 Plaintiffs,

24 vs.

25 VIDANGEL, INC.,
26 Defendant.

CASE NO. 2:16-cv-04109-AB-PLA

**VIDANGEL, INC.'S AMENDED
ANSWER AND AFFIRMATIVE
DEFENSES TO COMPLAINT; AND
FIRST AMENDED
COUNTERCLAIMS**

[DEMAND FOR JURY TRIAL]

Judge: Hon. André Birotte Jr.
Courtroom 4

1 VIDANGEL, INC.,
2 Counterclaimant,
3 vs.
4 DISNEY ENTERPRISES, INC.;
5 LUCASFILM LTD. LLC;
6 TWENTIETH CENTURY FOX FILM
7 CORPORATION; WARNER BROS.
8 ENTERTAINMENT, INC., AND
9 DOES 1-100,
10 Counterclaim-Defendants.

9 **AMENDED ANSWER**

10 Defendant VidAngel, Inc. (“VidAngel”) hereby answers plaintiffs Disney
11 Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation and
12 Warner Bros. Entertainment, Inc.’s (collectively, “Plaintiffs”) Complaint.

13 **INTRODUCTORY STATEMENT**

14 Plaintiffs’ carefully selected and misleading allegations distort relevant facts
15 and law.

16 Plaintiffs repeatedly suggest that VidAngel needs their permission to offer a
17 filtering service, despite Congressional law which expressly authorizes VidAngel’s
18 service without need for any such consent. In enacting the Family Movie Act
19 (“FMA”), Congress protected the right of families to filter and view content
20 according to their personal preferences. This right is codified in Copyright Act
21 Section 110 (“Limitations on exclusive rights: Exemption of certain performances
22 and displays”). That section provides that “making imperceptible (*i.e.*, filtering) . . .
23 at the direction of a member of a private household, of limited portions of audio or
24 video content of a motion picture [defined to include television programs, as well],
25 during a performance in or transmitted [*e.g.*, streamed] to that household for private
26 home viewing, from an authorized copy of the motion picture” does not violate the
27 Copyright Act. Because the Digital Millennium Copyright Act is part of the
28 Copyright Act, it is subject to the same exemption. Hence, VidAngel is well within

1 its rights to legally decrypt DVDs and Blu-rays for the purpose of allowing families
2 to view filtered movies.

3 In asking this Court to impose a consent requirement on VidAngel's filtering
4 service, Plaintiffs are effectively asking that the Court repeal a federal statute enacted
5 to protect American families.

6 Plaintiffs further suggest they do not derive financial benefit from VidAngel's
7 business. In fact, the opposite is true. VidAngel spends one-third of all capital raised
8 to lawfully purchase thousands of DVD and Blu-ray discs, which are then re-sold to
9 VidAngel users. Shown below is the manager of VidAngel's storage vault pictured
10 with lawfully purchased copies of *The Revenant*.



VidAngel's inventory of *The Revenant*, one of over 2,000 titles available

1 The majority of VidAngel’s purchases represent sales that would not occur but for its
2 filtering service, because most of VidAngel’s customers would not acquire and watch
3 a particular film without filtering.

4 Plaintiffs’ repeated characterization of VidAngel’s service as a “rental” service
5 is yet another deliberate mischaracterization. As shown in the picture below, each
6 disc lawfully purchased by VidAngel is assigned an individual bar code.



VidAngel’s discs are marked with individual bar codes

1 These specific, identifiable discs are re-sold by VidAngel to its customers. Once a
2 VidAngel customer purchases a disc, that disc is no longer available for sale. The
3 purchasing customer may request that the physical disc be mailed to him or her or
4 may allow VidAngel to maintain custody of it. The discs are maintained in a physical
5 vault, which is kept locked and protected by round-the-clock electronic monitoring.
6 When a customer purchases one episode of a television show available on a disc
7 containing multiple episodes, VidAngel cannot sell any other episode for an obvious
8 reason – the entire disc is in its vault and the entire disc belongs to that one customer.

9 After VidAngel lawfully acquires DVDs for a particular title, it prepares the
10 DVD's content for filtering by tagging a digital copy of each film to identify over 80
11 categories of content – such as profanity, nudity and violence. To use VidAngel's
12 service, users must first purchase movies and may view them only after selecting
13 their desired content filters. Works are filtered as requested by each customer and
14 transmitted to each household privately, at the direction of a member of the
15 household. VidAngel never makes a fixed copy of any filtered work. Once a
16 VidAngel user has viewed a filtered film he or she purchased, the user may, at his or
17 her option, keep the title or sell it back to VidAngel.

18 VidAngel's business model is predicated on providing a filtering service in a
19 completely lawful manner. VidAngel wrote to Plaintiffs and other content owners
20 over a year ago to describe its service and request feedback regarding any concerns
21 with respect to copyright or other issues. In those letters, VidAngel promised that if
22 any of the studios raised an issue with VidAngel's service, VidAngel would attempt
23 to modify it to address the purported infirmity. Although neither the Plaintiffs nor
24 any other copyright owner raised any issue in response to the letters, at least one of
25 the Plaintiffs signed up for VidAngel's service shortly after receiving VidAngel's
26 letter. Using an alias name, Albert Podrasky, Plaintiff Disney Enterprises, Inc.'s
27 worldwide anti-piracy head, opened a VidAngel account on August 6, 2015. He then
28 purchased and sold back numerous DVDs. Plaintiffs Twentieth Century Fox and

1 Time Warner also responded to VidAngel’s offer to meet, but they did not raise any
2 concerns regarding VidAngel’s model.

3 Plaintiffs disingenuously imply that, following a year of inaction, they have
4 sued now only because VidAngel changed its business model. (Complaint ¶ 47.)
5 The truth is that during a 2014 beta test, VidAngel used an earlier business model (a
6 Google Play “plug-in” and HD Chromecast support), which required Google’s active
7 assistance. After initially supporting VidAngel, Google notified VidAngel that the
8 method being tested violated YouTube’s Terms and Conditions and withdrew
9 Chromecast support. When VidAngel wrote to the Plaintiffs and other studios (in
10 July 2015), it was already using its current business model, which Mr. Podrasky
11 began examining early last August. Given their delay, Plaintiffs cannot credibly
12 argue that VidAngel’s service has irreparably harmed them.¹

13 Plaintiffs’ complaint is not surprising in light of Plaintiffs’ longstanding
14 hostility toward any form of filtering under the FMA, as the framers of the FMA
15 acknowledges in its legislative history. It appears that Plaintiffs also complain
16 because VidAngel’s service is damaging their relationships with “streaming service
17 licensees” to whom Plaintiffs have sold lucrative streaming licenses that do not
18 permit filtered streaming.² But Plaintiffs cannot demand a separate license for
19 filtering their content when doing so is specifically authorized by the FMA, which
20 Congress enacted to protect the right of families to enjoy the cinematic arts in their

22 ¹ Moreover, courts may not enjoin a technology, such as VidAngel’s, that has
23 “substantial non-infringing uses.” *Sony Corp. of America v. Universal City Studios,*
24 *Inc.*, 464 U.S. 417 (1984). Plaintiffs nowhere dispute that VidAngel’s technology has
25 such uses.

26 ² In fact, Plaintiffs have interfered with VidAngel’s attempts to partner with
27 streaming content providers to filter movies. Plaintiffs have also sought to
28 improperly expand their copyright monopoly, seeking to deprive consumers of their
right to buy and sell copyrighted works. As alleged in VidAngel’s Amended
Counterclaims, Plaintiffs should be held accountable for their improper actions.

1 homes while omitting offensive or otherwise objectionable content. VidAngel exists
2 to provide families a means to implement the spirit and purpose of the FMA. This
3 Court should protect the FMA and reject Plaintiffs’ renewed effort to render that
4 important legislation meaningless.

5 **RESPONSES TO SPECIFIC ALLEGATIONS**

6 1. Paragraph 1 contains legal arguments, opinions and conclusions that
7 require no response. VidAngel otherwise denies the allegations of this paragraph.

8 2. VidAngel admits the image in paragraph 2 appears to be a screenshot
9 from VidAngel’s website. Additionally, VidAngel admits its users can search for
10 content by popularity, genre and other categories. Among other things, users can
11 search for content by a motion picture’s “inspiring score,” which is the average score
12 given by users on a rating scale of 1 to 100 as to whether a motion picture is
13 inspiring. VidAngel denies the remaining allegations in this paragraph.

14 3. Paragraph 3 contains legal arguments, opinions and conclusions that
15 require no response. VidAngel otherwise denies the allegations of this paragraph.

16 4. VidAngel admits the image in paragraph 4 appears to be an
17 advertisement that previously appeared on VidAngel’s website. Paragraph 4 contains
18 legal arguments, opinions and conclusions that require no response. VidAngel
19 otherwise denies the allegations of this paragraph.

20 5. VidAngel admits the images in paragraph 5 appear to be screenshots
21 from VidAngel’s website. The remainder of this paragraph contains legal arguments,
22 opinions and conclusions that require no response. VidAngel otherwise denies the
23 allegations of this paragraph.

24 6. Paragraph 6 contains legal arguments, opinions and conclusions that
25 require no response. VidAngel otherwise denies the allegations of this paragraph.

26 7. Paragraph 7 contains legal arguments, opinions and conclusions that
27 require no response. VidAngel otherwise denies the allegations of this paragraph.

28

1 8. VidAngel is without sufficient information or knowledge to form a
2 belief as to the truth of the allegations of paragraph 8.

3 9. VidAngel is without sufficient information or knowledge to form a
4 belief as to the truth of the averment that Disney has obtained Certificates of
5 Copyright Registration for the Copyrighted Works. The remainder of Paragraph 9
6 contains legal arguments, opinions and conclusions that require no response.
7 VidAngel otherwise denies the allegations of this paragraph.

8 10. VidAngel is without sufficient information or knowledge to form a
9 belief as to the truth of the allegations of paragraph 10.

10 11. VidAngel is without sufficient information or knowledge to form a
11 belief as to the truth of the averment that Lucasfilm has obtained Certificates of
12 Copyright Registration for the Copyrighted Works. The remainder of Paragraph 11
13 contains legal arguments, opinions and conclusions that require no response.
14 VidAngel otherwise denies the allegations of this paragraph.

15 12. VidAngel is without sufficient information or knowledge to form a
16 belief as to the truth of the allegations of paragraph 12.

17 13. VidAngel is without sufficient information or knowledge to form a
18 belief as to the truth of the averment that Fox has obtained Certificates of Copyright
19 Registration for the Copyrighted Works. The remainder of Paragraph 13 contains
20 legal arguments, opinions and conclusions that require no response. VidAngel
21 otherwise denies the allegations of this paragraph.

22 14. VidAngel is without sufficient information or knowledge to form a
23 belief as to the truth of the allegations of paragraph 14.

24 15. VidAngel is without sufficient information or knowledge to form a
25 belief as to the truth of the averment that Warner Bros. has obtained Certificates of
26 Copyright Registration for the Copyrighted Works. The remainder of Paragraph 15
27 contains legal arguments, opinions and conclusions that require no response.
28 VidAngel otherwise denies the allegations of this paragraph.

1 16. VidAngel admits that it is a Delaware corporation with its principal
2 place of business at 249 N. University Avenue, Provo, Utah 84601. VidAngel
3 otherwise denies the allegations of this paragraph.

4 17. VidAngel admits that this Court has subject matter jurisdiction over the
5 Complaint.

6 18. VidAngel admits that venue is proper in this district.

7 19. VidAngel lacks sufficient information or knowledge to form a belief as
8 to the truth of the allegations of paragraph 19.

9 20. VidAngel lacks sufficient information or knowledge to form a belief as
10 to the truth of the allegations of paragraph 20.

11 21. VidAngel lacks sufficient information or knowledge to form a belief as
12 to the truth of the allegations of paragraph 21.

13 22. VidAngel lacks sufficient information or knowledge to form a belief as
14 to the truth of the allegations of paragraph 22.

15 23. VidAngel lacks sufficient information or knowledge to form a belief as
16 to the truth of the allegations of paragraph 23.

17 24. VidAngel is without sufficient information or knowledge to form a
18 belief as to the truth of the averments in the preamble of paragraph 24.

19 (a) VidAngel is without sufficient information or knowledge to form
20 a belief as to the truth of the allegations of paragraph 24(a).

21 (b) VidAngel is without sufficient information or knowledge to form
22 a belief as to the truth of the allegations of paragraph 24(b).

23 (c) VidAngel is without sufficient information or knowledge to form
24 a belief as to the truth of the allegations of paragraph 24(c).

25 (d) VidAngel is without sufficient information or knowledge to form
26 a belief as to the truth of the allegations of paragraph 24(d).

27 VidAngel admits that it has previously offered each of the motion picture titles listed
28 in paragraph 24 for sale and online filtering.

1 25. VidAngel lacks sufficient information or knowledge to form a belief as
2 to the truth of the allegations of paragraph 25.

3 26. VidAngel lacks sufficient information or knowledge to form a belief as
4 to the truth of the allegations of paragraph 26.

5 27. VidAngel lacks sufficient information or knowledge to form a belief as
6 to the truth of the allegations of paragraph 27.

7 28. VidAngel lacks sufficient information or knowledge to form a belief as
8 to the truth of the allegations of paragraph 28.

9 29. Paragraph 29 contains legal arguments, opinions and conclusions that
10 require no response. VidAngel otherwise denies the allegations of this paragraph.

11 30. VidAngel admits that it operates an online video service located at
12 <http://vidangel.com>, which is also available through a mobile application users may
13 access on their internet-connected smartphones, tablets and televisions (apps for
14 televisions can only be used through a set-top box like Roku, Apple TV and Amazon
15 Fire TV). Additionally, VidAngel admits that it currently offers users the ability to
16 skip or mute content within certain filter categories, including language,
17 sex/nudity/immodesty, violence/blood/gore and alcohol or drug use. Users must
18 apply at least one filter in order to view a video. VidAngel otherwise denies the
19 allegations of this paragraph.

20 31. Paragraph 31 contains legal arguments, opinions and conclusions that
21 require no response. VidAngel otherwise denies the allegations of this paragraph.

22 32. VidAngel admits that DVDs and Blu-ray discs are optical discs that
23 contain recorded material in digital form. VidAngel lacks sufficient information or
24 knowledge to form a belief as to the truth of the remainder of this paragraph.
25 VidAngel otherwise denies the allegations of this paragraph.

26 33. VidAngel lacks sufficient information or knowledge to form a belief as
27 to the truth of the allegations of paragraph 33.

28

1 34. Paragraph 34 contains legal arguments, opinions and conclusions that
2 require no response. VidAngel otherwise denies the allegations of this paragraph.

3 35. Paragraph 35 contains legal arguments, opinions and conclusions that
4 require no response. VidAngel otherwise denies the allegations of this paragraph.

5 36. VidAngel admits that the image in Paragraph 36 is an advertisement that
6 previously appeared on the Internet. VidAngel otherwise denies the remaining
7 allegations of Paragraph 36.

8 37. Paragraph 37 contains legal arguments, opinions and conclusions that
9 require no response. VidAngel otherwise denies the allegations of this paragraph.

10 38. Paragraph 38 contains legal arguments, opinions and conclusions that
11 require no response. VidAngel otherwise denies the allegations of this paragraph.

12 39. VidAngel admits VidAngel’s “How Does VidAngel’s Sellback Work?”
13 page contains the question and response quoted in footnote 1. The remainder of
14 paragraph 39 contains arguments, opinions and legal conclusions that require no
15 response. VidAngel otherwise denies the allegations of this paragraph.

16 40. VidAngel admits the screenshot and language from a “how-to” use
17 VidAngel video posted on the service’s homepage contains the picture and quoted
18 language contained in paragraph 40. The remainder of this paragraph contains
19 arguments, opinions and legal conclusions that require no response. VidAngel
20 otherwise denies the allegations of this paragraph.

21 41. VidAngel admits VidAngel sells copyrighted content and permits users
22 to sell that content back to VidAngel. VidAngel further admits the image in
23 paragraph 41 appears to be a screenshot from VidAngel’s website. VidAngel admits
24 that it previously allowed users to select between auto or manual sell-back when a
25 user purchased video content. VidAngel admits that, when watching from a desktop
26 or laptop web browser, the system is designed to show the user a sell-back button
27 over the closing credits of the film. The remainder of this paragraph contains
28

1 arguments, opinions and legal conclusions that require no response. VidAngel
2 otherwise denies the allegations of this paragraph.

3 42. Paragraph 42 contains legal arguments, opinions and conclusions that
4 require no response. VidAngel otherwise denies the allegations of this paragraph.

5 43. Paragraph 43 contains legal arguments, opinions and conclusions that
6 require no response. VidAngel otherwise denies the allegations of this paragraph.

7 44. Paragraph 44 contains legal arguments, opinions and conclusions that
8 require no response. VidAngel otherwise denies the allegations of this paragraph.

9 45. Paragraph 45 contains legal arguments, opinions and conclusions that
10 require no response. VidAngel otherwise denies the allegations of this paragraph.

11 46. VidAngel admits that users previously were able to filter out opening
12 and closing credits. Additionally, VidAngel lacks sufficient information or
13 knowledge to form a belief as to the truth of the averment that “some people already
14 have started to make social media postings touting the fact they can use VidAngel to
15 watch movies and television shows essentially unfiltered.” Paragraph 46 also
16 contains legal arguments, opinions and conclusions that require no response.
17 VidAngel otherwise denies the allegations of this paragraph.

18 47. VidAngel admits that, as part of beta testing, it previously distributed an
19 internet web browser “plug-in” that muted and skipped content streamed from other
20 services. VidAngel denies the remaining allegations in paragraph 47.

21 48. VidAngel admits that it currently offers more than 2,000 titles, which
22 includes television episodes and movies. VidAngel otherwise denies the allegations
23 of paragraph 48.

24 49. Deny.

25 50. VidAngel is without sufficient information and knowledge to form a
26 belief as to the truth of the allegations of paragraph 50.

27 51. VidAngel lacks sufficient information or knowledge to form a belief as
28 to the truth of the allegations of paragraph 51.

1 52. VidAngel is without sufficient information and knowledge to form a
2 belief as to the truth of the allegations of paragraph 52.

3 53. Deny.

4 54. Deny.

5 **FIRST CLAIM FOR RELIEF**

6 55. VidAngel incorporates its answers to paragraphs 1-54 as if set forth fully
7 herein.

8 56. Deny.

9 57. Deny.

10 58. Deny.

11 59. Deny.

12 60. Deny.

13 61. Deny.

14 62. Deny.

15 63. Deny.

16 **SECOND CLAIM FOR RELIEF**

17 64. VidAngel incorporates its answers to paragraphs 1-63 as if set forth fully
18 herein.

19 65. VidAngel admits that the quoted language in paragraph 65 appears in
20 Section 1201(a)(1)(A) of the Digital Millennium Copyright Act. Otherwise denied.

21 66. VidAngel lacks sufficient information or knowledge to form a belief as
22 to the truth of the allegations of paragraph 66.

23 67. Deny.

24 68. Deny.

25 69. Deny.

26 70. Deny.

27 71. Deny.

28 72. Deny.

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AFFIRMATIVE DEFENSES

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, VidAngel further pleads the following separate and additional defenses. By pleading these defenses, VidAngel does not in any way agree or concede that it has the burden of proof or persuasion on any of these issues. VidAngel reserves the right to assert such additional affirmative defenses as discovery indicates are proper.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Legal Authorization)

VidAngel’s business is authorized by the Family Movie Act of 2005, codified as 17 U.S.C. §110(11).

THIRD AFFIRMATIVE DEFENSE

(Fair Use)

The complaint is barred, in whole or in part, by the doctrine of fair use.

FOURTH AFFIRMATIVE DEFENSE

(Comparative Fault)

The complaint is barred, in whole or in part, based on the doctrine of comparative fault.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

The complaint is barred, in whole or in part, based on Plaintiffs’ failure to mitigate damages.

SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

The complaint is barred, in whole or in part, based on the principles of estoppel.

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SEVENTH AFFIRMATIVE DEFENSE

(Laches)

The complaint is barred, in whole or in part, by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The complaint is barred, in whole or in part, by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

The complaint is barred, in whole or in part, by the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE

(First Amendment)

The complaint is barred, in whole or in part, because application of the Copyright Act to impose liability in this case would violate the First Amendment to the United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

(Copyright Abandonment)

The complaint is barred, in whole or in part, to the extent any Plaintiffs have forfeited or abandoned copyright or failed to comply with all necessary formalities.

TWELFTH AFFIRMATIVE DEFENSE

(Innocent Infringers)

The complaint is barred, in whole or in part, to the extent any persons, based on whose behavior seek to hold VidAngel liable, are innocent infringers.

THIRTEENTH AFFIRMATIVE DEFENSE

(Supervening Events)

The complaint is barred, in whole or in part, because any alleged injury or loss sustained by Plaintiffs was caused by intervening or supervening events over which VidAngel had and has no control.

FOURTEENTH AFFIRMATIVE DEFENSE

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(Responsibility of Third Parties)

The complaint is barred, in whole or in part, because any alleged injury or loss sustained by Plaintiffs was the fault and responsibility of third parties over whom VidAngel had and has no control, and for whose actions VidAngel had and has no responsibility.

FIFTEENTH AFFIRMATIVE DEFENSE

(Express or Implied License)

The complaint is barred, in whole or in part, because Plaintiffs have granted an express or implied license in their copyrighted works to VidAngel.

SIXTEENTH AFFIRMATIVE DEFENSE

(First Sale Doctrine)

The complaint is barred, in whole or in part, by the first sale doctrine.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Copyright Misuse)

The complaint is barred, in whole or in part, by the copyright misuse doctrine.

ADDITIONAL AFFIRMATIVE DEFENSE

(Subsequently Discovered Defense)

VidAngel has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses, and reserves the right to assert additional defenses if and as it learns of facts that may support such defenses.

WHEREFORE, VidAngel prays for relief as follows:

- 1. That the complaint be dismissed, with prejudice and in its entirety;
- 2. That Plaintiffs take nothing by this action and that judgment be entered against Plaintiffs and in favor of VidAngel;
- 3. That VidAngel be awarded its costs incurred in defending this action;

1 **VIDANGEL’S FIRST AMENDED COUNTERCLAIMS**

2 For its Amended Counterclaims against Plaintiffs Disney Enterprises, Inc.,
3 Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, and Warner Bros.
4 Entertainment, Inc.’s (collectively “Counterclaim-Defendants”), VidAngel avers as
5 follows:

6 **THE PARTIES**

7 1. Counterclaimant VidAngel, Inc. is a corporation duly incorporated under
8 the laws of the State of Delaware with its principal place of business in Provo, Utah.
9 VidAngel is the leading entertainment platform empowering users to filter movies
10 and television shows as expressly authorized by Congress. Using VidAngel’s
11 proprietary technology, consumers view content they own in a customized experience
12 that offers the greatest degree of personal choice in the entertainment marketplace –
13 all as expressly authorized by Congress in the Family Home Movie Act of 2005, as
14 explained more fully below.

15 2. Counterclaim-Defendant Disney Enterprises, Inc. (“Disney”) is a
16 Delaware corporation with its principal place of business in Burbank, California.

17 3. Counterclaim-Defendant Lucasfilm Ltd., LLC (“Lucasfilm”) is a limited
18 liability company organized under the laws of the State of California with its
19 principal place of business in San Francisco, California. Lucasfilm is a wholly-
20 owned subsidiary of Disney.

21 4. Counterclaim-Defendant Twentieth Century Fox Film Corporation
22 (“Fox”) is a Delaware corporation with its principal place of business in Los Angeles,
23 California.

24 5. Counterclaim-Defendant Warner Bros. Entertainment Inc. (“Warner
25 Bros.”) is a Delaware corporation with its principal place of business in Burbank,
26 California.

27 6. VidAngel does not presently know the true names and capacities of the
28 Counterclaim-Defendants sued herein as DOES 1 through 100 and therefore is suing

1 those Counterclaim-Defendants by fictitious names pursuant to Federal Rule of Civil
2 Procedure 19. VidAngel will amend its Counterclaims to allege the true identities of
3 DOES 1 through 100 once they are ascertained. VidAngel is informed and believes
4 each of the Counterclaim-Defendants sued as DOES 1 through 100 is in some manner
5 responsible for the occurrences, injuries and other damages alleged in these
6 Counterclaims.

7 **JURISDICTION AND VENUE**

8 7. This Court has original and exclusive jurisdiction over these Amended
9 Counterclaims pursuant to 28 U.S.C. §§ 1331, 1337(a), 1338, 2201 and 15 U.S.C. §§
10 1, 15, 26.

11 8. Venue is proper in this District pursuant to 15 U.S.C. §§ 22 and 28
12 U.S.C. §§ 1391(b) and 1400(a). Many of the unlawful acts alleged herein were
13 performed and occurred in material part within this District.

14 **SUMMARY OF COUNTERCLAIMS**

15 9. There exists a demand for a service which allows parents to filter motion
16 pictures and television content to eliminate objectionable material, such as violence,
17 sex and profanity. In response to that demand, Congress enacted the Family Home
18 Movie Act (“FMA”) to allow filtering without violating legitimate copyright
19 protection. Counterclaimant VidAngel founded its business on providing such
20 filtering services consistent with the FMA. Contrary to the spirit and purpose of the
21 FMA, Counterclaim-Defendants have each executed an agreement with the Directors
22 Guild of America (“DGA”) which the industry understands as prohibiting the
23 filtering of motion picture and television content except in very limited
24 circumstances. Counterclaim-Defendants, and their unnamed studio co-conspirators,
25 have relied on this agreement to justify their anticompetitive conduct designed to
26 prevent VidAngel from fulfilling its mission to filter such content. When entering
27 into this agreement with the DGA, each Counterclaim-Defendant knew that every
28 other studio (*i.e.*, each of its competitors) would be asked to and required to sign a

1 similar agreement; in fact, Counterclaim-Defendants insisted that they do so to insure
2 that no entity would secure a competitive advantage. In furtherance of the
3 combination to eliminate filtering—and contrary to their own economic self-
4 interest—Counterclaim-Defendants then refused to enter into licensing agreements to
5 allow VidAngel to stream and filter content, rejected VidAngel’s offers to buy
6 enormous quantities of DVDs from Counterclaim-Defendants, and interfered with
7 YouTube and Google Play’s efforts to expand VidAngel’s platform, viability and
8 customer base. In fact, Counterclaim-Defendants and their unnamed co-conspirators
9 have deliberately and repeatedly thwarted the efforts of VidAngel, and other filtering
10 services, at every turn. In so doing, Counterclaim-Defendants have frustrated the will
11 of Congress, effectively eviscerated the ability of parents to shield their children from
12 objectionable material, and seriously diminished VidAngel’s ability to function in the
13 market. Moreover, having forced VidAngel to an awkward and cumbersome method
14 of operation, as described more fully herein, Counterclaim-Defendants have now
15 conjured up a copyright infringement claim against VidAngel. These Amended
16 Counterclaims, based on the Sherman and Clayton Antitrust Acts, seek damages for,
17 and injunctive relief against, the unlawful collusive acts described herein.

18 **FACTUAL ALLEGATIONS**

19 **The Family Movie Act of 2005**

20 10. Many parents struggle to find ways to shield their children and others
21 within their homes from viewing or listening to violence, sex, profanity and other
22 content they find objectionable in television programs and motion pictures. There is
23 great demand for services that allow them to filter out these objectionable elements.
24 A recent survey conducted for VidAngel found that approximately 47% of parents
25 want online filtering services. Unsurprisingly, many are not sufficiently technology-
26 savvy to filter content on their own; instead, they must and do rely on third-party
27 services, including but not limited to VidAngel.

28 11. In response to the demand from parents and other consumers to control

1 the content they view in the privacy of their homes, Congress enacted the Family
2 Home Movie Act of 2005. The FMA, codified at 17 U.S.C. § 110(11), specifically
3 provides that it is *not* a violation of copyright to create or provide a “computer
4 program or other technology that enables” filtering “by or at the direction of a
5 member of a private household, of limited portions of audio or video content of a
6 motion picture, during a performance in or transmitted to that household for private
7 home viewing, from an authorized copy of the motion picture.” As used in the FMA,
8 “motion picture” is defined to include television programs. The FMA immunized
9 from copyright infringement and expressly authorizes: (1) a third party to create a
10 computer program or other technology; (2) that enables a member of a private
11 household to make imperceptible limited portions of an authorized copy of a motion
12 picture’s audio or video content; (3) to transmit that technology or computer program
13 to a household at the direction of a member of a private household; and (4) if no fixed
14 copy of the altered version is created.

15 12. The legislative history of the FMA describes the origin of the FMA as
16 follows:

17 The Committee strongly believes that, subject to certain conditions,
18 copyright and trademark law should not be used to limit a parent’s right
19 to control what their children watch in the privacy of their own home. A
20 dispute involving this issue is currently being heard in the U.S. District
21 Court for the District of Colorado [*Huntsman v. Soderbergh*, No. Civ.
22 A02CV01662RPMMJW (D. Colo.)]. Testimony provided by the
23 Register [of Copyright] on June 17, 2004, makes clear that some parties
to the suit should not face liability for their current actions, while others
appear to be in violation of existing copyright law. The “Family Movie
Act” clarifies the liability, if any, for the companies that are a party to
this case and to other companies not a party to this case that may be
interested in providing such services in the future.

24 H.R. Rep. 109-33 at 5.

25 13. The FMA does not dictate what type of content families may make
26 imperceptible. The FMA was “drafted in a content-neutral manner so that its
27 operation and impact do not depend upon whether the content . . . made imperceptible
28 contains items that are often viewed as offensive, such as profanity, violence, or

1 sexual acts. . . .The goal of the legislation [is] to give the viewer the ability to make
2 imperceptible limited portions of [a] work that he or she chooses not to see for
3 themselves or their family, whether or not the skipped content is viewed as
4 objectionable by most, many, few, or even one viewer.” *Id.* at 224.

5 14. The Director’s Guild of America is an entertainment guild of some
6 16,000 motion picture and television directors and members of directorial teams in
7 the United States. The Motion Picture Association of America (“MPAA”) is a trade
8 organization that represents the major studios and “serves as the voice and advocate
9 of the American motion picture, home video and television industries.” Each
10 Counterclaim-Defendant, or its parent, is a member of the MPAA. Both the DGA
11 and MPAA vigorously opposed the FMA. *Id.* at 69.

12 15. In drafting the FMA, Congress specifically considered whether the
13 public would benefit from having for-profit companies offer such filtering services.
14 Following subcommittee hearings, the House Copyright Committee (the
15 “Committee”) concluded that:

16 The for-profit nature of the entities providing services to the public that
17 the legislation addresses has no bearing on the operation of the immunity
18 from liability. The Committee is unable to discern a credible basis for
19 creating a distinction between the for-profit or non-profit nature of
20 companies that offer services covered by the Act.

19 *Id.* at 225. Thus, Congress understood that the content filtering permitted by the
20 FMA would likely be provided by for-profit companies.

21 16. Likewise, federal courts have recognized that the FMA protects filtering
22 services from the studios’ infringement claims: “the effect of the Family Movie Act is
23 that Congress made a policy decision that those who provide the technology to enable
24 viewers to edit films for their private viewing should not be liable to the copyright
25 owners for infringing their copyright. . . .” *Huntsman v. Soderbergh*, No. Civ.
26 A02CV01662RPMJW, 2005 WL 1993421 (D. Colo. 2005).

27 17. VidAngel’s Counterclaims are brought to give the FMA efficacy and
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1 defeat the collaborative efforts of the studios, and particularly the anticompetitive
2 actions taken by Counterclaim-Defendants and the DGA to prevent filtering and
3 thereby circumvent Congress' intent and neuter the FMA.

4 **The Studios' Hostility Toward Filtering**

5 18. Unfortunately, due to the hostility of the major motion picture studios,
6 the commercial market for online filtering services has been slow to develop.
7 VidAngel is one of few companies that enable consumers to filter out violence,
8 profanity, nudity, sexual acts and other content in motion pictures and television
9 programs. In fact, VidAngel allows consumers to choose to filter any combination of
10 over 80 categories of content. All of the market participants, including VidAngel,
11 have had their growth stunted by the studios, including the Counterclaim-Defendants.
12 As a result, many – if not most – consumers have been unable to realize the promise
13 and benefits of the FMA.

14 19. But for the conduct described herein, there would be a vibrant “filtering”
15 industry with numerous for-profit entities competing with VidAngel and others.
16 Counterclaim-Defendants, the DGA and/or the other major studios have sued nearly
17 every filtering company over the years. Nearly all of the targeted companies, which
18 operated with business models different than VidAngel's, have since ceased
19 operations.

20 20. The major motion picture studios, and the directors they employ,
21 historically have been hostile to any alterations made to a director's final cut. They
22 have long argued that a director's “moral right” should prohibit any alterations to the
23 director's work. As members of Congress have noted in rejecting that contention,
24 such concern for artistic integrity does not extend to opportunities to sell product
25 placements in films, the use of test audiences to modify their works to make them
26 “more commercial,” and other “assaults” on artistic integrity.

27 21. The studios and others opposing the FMA also argue that parents should
28 not allow children to watch a movie unless the parent approves the content of the

1 entire movie. Congress also rejected that contention.

2 22. In 2014, all major motion picture and television studios, including those
3 named as Counterclaim-Defendants herein as well as those not named, entered into a
4 written agreement with the DGA (the “DGA Agreement”). That agreement is
5 understood and implemented by the parties to prohibit the studios from entering into
6 distribution agreements that allow secondary editing or filtering of movies or
7 television programs, save for a few narrow exceptions.

8 23. In particular, Section 7-509 of the DGA Agreement, entitled “Editing
9 Theatrical Motion Pictures,” prohibits *any* alteration to a motion picture, including
10 such nuances as the “placement of or changes in commercial breaks,” without the
11 involvement, consultation or final approval of the director. These provisions of the
12 DGA Agreement, standing alone, are an unreasonable restraint on trade in violation
13 of Section 1 of the Sherman Act.

14 24. Section 7-509 of the DGA Agreement has been understood and enforced
15 by the studios as prohibiting all filtering. For example, when VidAngel approached
16 the studios to obtain licensing to stream filtered movies, non-party Lionsgate
17 Entertainment, Inc., (“Lionsgate”) advised VidAngel that it could not enter into such
18 an agreement with VidAngel unless VidAngel got permission from the DGA first. In
19 2014, VidAngel approached non-party Google Inc. (“Google”) to discuss the
20 possibility of streaming filtered content through Google Play. As detailed below, the
21 negotiations ended when Mark Fleming, a Google representative, informed VidAngel
22 on December 14, 2015 that Google was concerned a “blocker” to the deal was that
23 the “directors won’t let this happen” and that even if the studios were interested,
24 “their existing deals with the production companies/directors/etc. may not allow for it
25 . . . and therefore those [contracts] will need to get renegotiated first. . .” Conversely,
26 a local distributor in Utah, who started negotiations in May 2016, agreed to a
27 licensing deal with VidAngel because it is not a signatory to the DGA Agreement and
28 can permit filtering of content.

1 25. Each Counterclaim-Defendant and each non-defendant studio
2 voluntarily signed the DGA Agreement knowing full well that every other studio
3 would be asked to and would sign the same agreement so that all studios agreed there
4 would be no filtering of motion pictures save for in a few narrow and well-defined
5 exceptions (*i.e.* in-flight entertainment). Indeed, to avoid any studio(s) getting a
6 competitive advantage, each studio sought and received DGA assurance that *all*
7 studios would be required to and would sign the same agreement. Accordingly, the
8 studios have each agreed with the DGA and further have agreed with every other
9 studio that each would abide by the industry agreement not to filter.

10 26. On July 1, 2014, over 150 studios, production companies and other
11 entities, including Counterclaim-Defendants and/or their parents and subsidiaries,
12 signed the DGA Agreement.

13 27. The studios entered the DGA Agreement as part of a concerted effort to
14 prohibit the lawful provision of online filtering services pursuant to the FMA. The
15 studios were, or should have been, aware that the DGA Agreement could and would
16 be used in an anticompetitive manner, as alleged above, to restrict or extinguish the
17 market for online filtering services within the United States and this is exactly what
18 they contemplated and have accomplished.

19 28. Moreover, and perhaps more importantly, the studios license film
20 content only on the express written condition that the licensee not filter. In
21 furtherance of the studios' concerted effort to prohibit lawful provision of online
22 filtering services, the studios, including Counterclaim-Defendants, have entered into
23 anticompetitive agreements with the major digital content distributors which include
24 standard terms and conditions that restrict content editing and filtering of any kind
25 without their prior written consent. At least one of those agreements, involving non-
26 parties Google and Sony Pictures Entertainment ("Sony"), included the following
27 language:
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1 **CUTTING, EDITING AND INTERRUPTION.** Licensee [Google]
2 shall not make, or authorize any others to make, any modifications,
3 deletions, cuts, alterations or additions in or to any Included Program
4 without the prior written consent of Licensor [Sony]. For the avoidance
5 of doubt, no panning and scanning, time compression or similar
6 modifications shall be permitted, provided, however, Licensee may
7 make reasonable adjustments to size, color, brightness, contrast, etc. of
8 any of the Included Programs as necessary to preserve the integrity of
9 the original picture of the Copy as delivered by Licensor to Licensee.
Without limiting the foregoing, Licensee shall not delete the copyright
notice or credits from the main or end title of any Included Program or
from any other materials supplied by Licensor hereunder. No
exhibitions of any Included Program hereunder shall be interrupted for
intermission, commercials or any other similar commercial
announcements of any kind. Notwithstanding the foregoing, Licensee
shall be entitled to insert a promotional card displaying Licensee's logo
or brand name prior to the Included Program provided that such
promotional card runs for no longer than 3 seconds.

10
11 29. Likewise, when the studios, including Counterclaim-Defendants, sign a
12 deal for the rights to a specific movie title, the studios are required to include the
13 following language in all of their agreements. For example, in Sony's agreement for
14 the movies *Fury* and *American Hustle*, the following language binds Sony:

15 [Sony] shall have the right...to make any and all changes and
16 modifications in the Picture; provided, [Sony] shall comply with any
contractual right of first opportunity to make such changes granted to
Director.

17 30. This language (or requirements just like it) ultimately trickles down
18 through all agreements and purports to hand the authority to make any changes back
19 to the director. Indeed, all of Counterclaim-Defendants' agreements with major
20 digital content distributors contain similar standard terms and conditions which
21 restrict content filtering of any kind without the studios' prior consent.
22 Counterclaim-Defendants are, or should have been, aware that such agreements are
23 anticompetitive.

24 31. To avoid any studio having a competitive advantage, it is reasonable and
25 plausible to infer that each of the studios has entered agreements with the major
26 content distributors that contain terms and conditions similar to those mentioned
27 above, extending the restrictions on editing and filtering found in the DGA
28 Agreement to the major content distributors. This network of vertical DGA-studio

1 agreements operates to substantially restrict, if not eliminate, competition and
2 therefore violates the antitrust laws.

3 32. During congressional deliberations over the FMA, the House Copyright
4 Committee acknowledged that it was “aware of concerns regarding the legislation’s
5 impact upon moral rights, particularly those of movie directors.” While preserving
6 the directors’ right to control the editing of content in the public sphere, the
7 Committee granted individual viewers the right to filter content for viewing within
8 the privacy of their homes, with the assistance of remote technology offered by for-
9 profit companies. It wrote:

10 The Committee had hoped to receive testimony from a representative of
11 the director’s community on this issue [of moral rights] at one of the
12 Committee hearings on the issue, but no director was willing to testify.
13 The Committee is aware of numerous motion pictures being edited for
14 screen size, content, and time purposes with or without the director’s
15 consent so that a motion picture can be displayed on the 48-3 aspect
16 ratios of standard definition televisions, on an airplane with
objectionable language removed, and on television channels in the
traditional 90 or 120 minute time slots. The Committee sees no
difference between the impact upon the moral rights of directors of such
modifications and someone wanting to prevent certain content from
being displayed on their television.

17 H.R. Rep. 109-33 at 225. Thus, Congress fairly protected the directors and studios
18 from the threat of public censorship, while simultaneously granting individuals the
19 right to customize content in a private setting.

20 33. The Committee weighed the studios’ objection to filtering content and
21 determined that neither copyright nor trademark law should be used to limit a
22 parent’s right to control what his or her family watches in private. Accordingly, for-
23 profit companies and private individuals have the right to filter motion pictures in
24 accordance with the FMA, notwithstanding the hostility of the motion picture
25 industry to this type of alteration of their content.

26 **The United States Market for Online Filtering of**
27 **Film and Television Content**

28 34. When the FMA was enacted in 2005, physical media was king in the

1 home entertainment world. DVDs were by far the most popular video format for
2 Americans. According to the Digital Entertainment Group (the “DEG”), in 2006
3 Americans spent \$22.8 billion on DVD sales and rentals, representing 99% of home
4 entertainment spending. *DEG Year-End 2006 Home Entertainment Sales Update*,
5 The Digital Entm’t Grp. (Jan. 8, 2007), [http://degonline.org/wp-](http://degonline.org/wp-content/uploads/2014/02/f_4Q06.pdf)
6 [content/uploads/2014/02/f_4Q06.pdf](http://degonline.org/wp-content/uploads/2014/02/f_4Q06.pdf). At that time, most households had DVD
7 players and almost every desktop or laptop computer had a DVD drive.

8 35. Today, the home entertainment landscape is dramatically different.
9 Sales of DVDs and Blu-ray discs have steadily declined in recent years. In 2014, the
10 DEG reported that for the first time, Americans spent more on digital video providers
11 than physical discs.

12 36. Americans are also using new methods to view video content, as
13 consumers shift from physical discs to digital content that may be viewed on a
14 number of different devices. In 2015, the Pew Research Center reported that 68% of
15 American adults owned smartphones and 45% owned tablet computers.
16 Unsurprisingly, it has become increasingly difficult to purchase laptops with DVD
17 drives, as consumers demand lightweight portable devices and as digital delivery of
18 content becomes more feasible and prevalent.

19 37. As a result, there is a nationwide demand for online filtering services
20 that transmit filtered content over the internet, at the direction of heads of household,
21 to personal computers and other devices, including mobile applications, smart phones
22 and remote streaming devices. The market for filtered movies is, according to
23 National Research Group, 56 million people. Improvements in internet access and
24 speed have enabled viewers to unplug and rely heavily on streaming as a main source
25 of video consumption. From 2010 to 2015, the increasing prevalence of
26 smartphones, tablets and other internet-connected devices has mirrored and largely
27 been driven by the increased effectiveness and reliability of streaming video. Many
28 Americans rely upon these devices to watch their media content. Thus, the demand

1 for movies and television programs available for online remote filtering is larger
2 today than ever.

3 38. Counterclaim-Defendant Disney recognizes the need and demand for
4 online filtering services to control the content of what is available to children in
5 particular. Disney owns and markets a device called “Circle” which, according to its
6 website (<https://meetcircle.com/circle/filter/>) allows parents to set and customize
7 filters to ensure their children are not exposed to unwanted content on the internet,
8 social media or streaming television services.

9 **VidAngel’s Three Early Business Models and**
10 **Counterclaim-Defendants’ Anticompetitive Conduct**

11 39. To address the substantial demand for online filtering, VidAngel was
12 formed in October 2013 to provide customers the ability to control the content they
13 view at home. Using innovative and proprietary software, VidAngel created a
14 catalog of videos that could be filtered by users. Once a video is selected, a user can
15 choose from over 80 categories of filters, including sex, violence and profanity, to
16 mute or skip portions of the audio or video to permit a family-friendly viewing
17 experience.

18 40. Method 1: Traditional Streaming License. VidAngel solicited each of
19 the studios for a traditional streaming license, inducing the Counterclaim-Defendant
20 studios, but each and every studio declined. This unanimity could not exist in a
21 competitive environment and the unanimous and consistent declination to license
22 streaming content evidences and supports the inference that the studios have agreed
23 to “kill off” filtering.

24 41. Method 2: Buying discs straight from the studios. VidAngel requested
25 to buy DVDs and Blu-rays from the studios directly, thus funneling revenue straight
26 to the studios without any profits siphoned off by an intermediate retailer, such as
27 Walmart. Further evidencing collusion and acting contrary to their best business
28 interests, each studio declined or ignored these requests.

1 42. Method 3: Streaming through YouTube and Chromecast. Because the
2 studios refused to grant it a traditional streaming license and would not otherwise sell
3 physical DVDs to it, VidAngel developed a website to allow customers to filter
4 movies and videos available on YouTube and the Google Play Hollywood library.³
5 In 2012, Google launched Google Play to provide movies, TV shows, music and
6 books to Google and Android users. Importantly, the movies on Google Play were
7 delivered using YouTube’s infrastructure, meaning that every movie and show
8 available on Google Play was also available for purchase and/or rent on YouTube.
9 This was important because YouTube ran in a user’s web browser using a type of
10 software (called a Javascript API) that made it possible for VidAngel to manipulate
11 the playback of ordinary (but not high-definition) video and audio on a user’s desktop
12 computer. One limitation of this method was that without the official collaboration of
13 Google, the Javascript API would not work on Google Play apps, mobile devices,
14 Roku and other mobile platforms. At that time, though, Google supported the
15 technical capabilities for VidAngel to deliver a filtered HD movie to a family’s TV.

16 43. For some time, customers also could use VidAngel’s Chrome extension
17 (an additional piece of software that can be loaded into a user’s Google Chrome web
18 browser) and VidAngel.com to stream filtered movies that appeared on YouTube to
19 their computers. They could also use a Chromecast (a small piece of hardware that
20 plugs into newer HDTVs) to stream HD filtered movies to their HDTVs.

21 44. From approximately November 2013 to February 3, 2014, while
22 Chromecast was undergoing its own private beta test, VidAngel was able to access
23 technical features within the Chromecast private beta that allowed VidAngel to filter
24 high-definition titles available on Google Play to a user’s HDTV. During this time,
25

26 ³ At all relevant times, Google Play’s Hollywood library was made available on
27 YouTube (although Hollywood movies were only available on YouTube in standard
28 definition format). Google was and is the owner of YouTube.

1 VidAngel reached out to Google to ask whether VidAngel could purchase
2 Chromecast devices at wholesale and then sell them to families who wanted to use
3 VidAngel’s filtering services. Google responded that it would consider a bulk
4 purchase agreement only after VidAngel successfully launched a public beta of its
5 Software Development Kit on February 3, 2014.

6 45. Once Chromecast launched on February 3, 2014, however, VidAngel
7 discovered that Google had removed the technology that made the filtering service
8 possible on native Chromecast. Google did not notify VidAngel or publicly
9 announce the removal of its technology. As a result of these abrupt changes,
10 VidAngel no longer had any support for its high-definition product on Chromecast
11 and lost the time, resources and energy that had gone into developing VidAngel’s
12 technology for use of this platform.

13 46. Counterclaim-Defendants, and the studios acting collectively, induced
14 and persuaded Google to terminate all technical support offered to VidAngel for its
15 Chromecast application for filtering HD content by contending that such support
16 violated the studios’ contracts with Google. Google stood to profit from VidAngel’s
17 purchase, promotion and distribution of the Chromecast device and offered no
18 justification, business or otherwise, for suddenly eliminating the technical features
19 that allowed VidAngel’s services to function with Chromecast.

20 47. The studios also induced and persuaded other major digital content
21 distributors (*e.g.*, Google Play, Netflix, Amazon, and Hulu) to refuse to support
22 VidAngel’s online filtering service. On or about December 5, 2013, VidAngel
23 received a notice from YouTube’s legal department averring that VidAngel was
24 breaking its terms of use because the VidAngel application was designed to “modify
25 the audio or visual components of . . . content.” YouTube took the position that
26 VidAngel’s content filtering, even as authorized by the FMA, violated YouTube’s
27 terms of use.

28 48. Shortly after VidAngel filed its original Counterclaims, Google changed

1 its terms of use and/or protocol on YouTube to introduce more restrictive terms
2 which make YouTube less practicable and useable for filtering.

3 49. Counterclaim-Defendants combined with one another (and others) to
4 unlawfully pressure Google to withhold its Chromecast and YouTube support
5 services from VidAngel. Counterclaim-Defendants did so, at least in part, in
6 furtherance of a conspiracy to prevent filtered streaming of their works.

7 **Google Play Sought to Partner with VidAngel Then Abruptly Terminates**
8 **Negotiations After Interference from the Studios**

9 50. The studios again pressured Google to withdraw support of VidAngel in
10 late 2014 and early 2015. In November 2014, a Google Play representative Mark
11 Fleming (who was a customer of VidAngel and a fan of the product) reached out to
12 VidAngel and expressed interest in a partnership between Google and VidAngel to
13 allow consumers to use VidAngel's filtering technology directly on Google Play's⁴
14 various platforms. On or about December 12, 2014, VidAngel's CEO met with Mr.
15 Fleming and other Google representatives to discuss the viability of VidAngel's
16 filters on Google Play's various streaming platforms. Google Play's representatives
17 informed VidAngel that Google was interested in this partnership, but Google Play
18 was concerned that their licensing agreements with the studios prohibited secondary
19 editing of any kind, which could interfere with an otherwise positive business
20 relationship.

21 51. Mr. Fleming and VidAngel's CEO exchanged several emails after the
22 meeting and continued negotiations until March 2015. On December 14, 2014, Mr.
23 Fleming expressed concern in an email to VidAngel's CEO that the studios'

24
25 ⁴ Google Play is Google's official store for digital content distribution. It can be
26 accessed through web browsers, smartphones and various other modern devices.
27 Google Play sells and rents movie and television content pursuant to license
28 agreements with the movie and television studios.

1 agreements with the directors prohibited filtering, and in order to comply with the
2 terms of these agreements, Google would need to get approval from the director of
3 each and every movie VidAngel wanted to filter, or alternatively, wait until a “painful
4 cascade” of renegotiations occurred between each studio and the DGA and/or each
5 studio and each director.

6 52. In March 2015, Mr. Fleming met with executives from non-party Sony
7 to discuss the opportunity to use VidAngel’s online filtering service on Google Play’s
8 platforms. Mr. Fleming insisted that none of the negotiations with VidAngel and
9 Sony be in writing. After meeting with Sony, Mr. Fleming informed VidAngel’s
10 CEO that Sony and the rest of the MPAA member studios refused to allow Google to
11 partner with VidAngel. After March 2015, Google Play ceased all negotiations of a
12 partnership with VidAngel.

13 53. Google has an extensive library of movies and television shows
14 available for purchase or rent on Google Play. Google Play’s “Movies & TV”
15 website has a section dedicated to motion pictures produced by major studios. In this
16 section, it promotes, sells and rents motion pictures from Counterclaim-Defendants
17 Warner Bros., Disney and Fox, among others. Google depends on the studios to
18 supply content for this library.

19 54. In the absence of the DGA Agreement and in a competitive market, at
20 least one or more the studios, including Counterclaim-Defendants, would agree to a
21 streaming license with VidAngel to provide filtering services because such an
22 agreement would be profitable for the studios. Nonetheless, as a result of the studios’
23 collective agreement, the market for online remote filtering has been “killed off” and
24 is virtually non-existent – despite being protected by the FMA. VidAngel is the only
25 significant company in the United States that presently provides online filtering
26 services for high-definition motion pictures and television shows over the internet,
27 whether the consumer is using a laptop, smart phone, tablet or other device capable of
28 streaming video. Counterclaim-Defendants have frustrated the will of Congress and

1 the American people as expressed by the adoption of the FMA.

2 **VidAngel Launches Its Current Business Model**

3 55. Contrary to Plaintiffs' allegations (Complaint ¶ 47), prior to VidAngel
4 developing its current model, there was no effective way to deliver filtered content
5 pursuant to the FMA to the overwhelming majority of viewers without the
6 cooperation of Google and other content distributors. By 2014, the traditional ways
7 of filtering movies were no longer available to the overwhelming majority of
8 consumers.

9 56. Alternatives to VidAngel's current model are cumbersome, expensive
10 and often ineffective. ClearPlay, for example, offers a DVD filtering experience
11 which requires the purchase and installation of a \$249.99 DVD-player in addition to
12 an \$8/month subscription fee. Consumers must acquire a DVD on their own,
13 purchase and install the additional equipment, subscribe to the service, place the
14 physical DVD in the player, and download filters just to view a filtered title. At
15 times, differences between the content a consumer purchased (*e.g.*, a director's cut
16 with bonus footage additions or a separate edition of the film) and the content upon
17 which the ClearPlay filters are based cause ClearPlay's filters to fail.

18 57. Even VidAngel's pioneering filtering software, which functioned on top
19 of Google Play streaming content, was fraught with problems. That software worked
20 only with standard definition content, not the popular high-definition format. More
21 importantly, as noted above, Google Play began to prevent VidAngel's software from
22 functioning properly on the Chromecast. Because VidAngel's software was not
23 officially supported by Google, changes to YouTube caused the filters to fail. When
24 that happened, users would see content that they did not want to see until VidAngel
25 updated its software. Those experiences damaged VidAngel's credibility. Finally,
26 slower computers could not process both the video and the filter at the same time,
27 resulting in missed profanity or nudity filters. The end result was that – without
28 Google's technical support and cooperation – no method enabled a consistent

1 filtering experience for the majority of VidAngel users and no method would provide
2 a high-definition filtering experience for any VidAngel users.

3 58. Unable to use Google Play and YouTube's platform due to
4 Counterclaim-Defendants' opposition to VidAngel's online filtering service,
5 VidAngel built its current proprietary platform, and developed software and other
6 technology to enable private persons to engage lawfully in personal movie filtering as
7 contemplated and expressly authorized by the FMA. Its technology allows the
8 owners of digital video discs or Blu-ray discs (collectively referred to as "DVDs") to
9 filter objectionable content.

10 59. At present, VidAngel has more than 2,500 movies and television
11 episodes currently available for purchase in its library. VidAngel has lawfully
12 purchased and owns physical copies of each of these titles in DVD format before
13 selling the DVDs to VidAngel customers. VidAngel spends one-third of all capital
14 raised just to purchase those DVDs lawfully. VidAngel acquires numerous DVDs for
15 each of its titles from various public and private sellers. Plaintiffs falsely allege that
16 they receive no payment from VidAngel as a result of its service (Complaint ¶¶ 49-
17 50), Plaintiffs in truth receive the same payment for each of these first sales to
18 VidAngel as they would receive from any lawful first purchaser.

19 60. Following its purchase from VidAngel's suppliers, VidAngel enters each
20 DVD it has purchased into an inventory management application database and
21 assigns a unique barcode to each physical disc case. When a consumer purchases a
22 DVD, that particular DVD is held in VidAngel's vault for the customer and VidAngel
23 records the purchase by assigning the unique barcode for the DVD to its owner. Only
24 a customer who owns a DVD in the vault may access the title for filtering. The vault
25 is locked and under 24-hour surveillance using multiple video cameras.

26 61. VidAngel's trained personnel and contractors carefully review all titles
27 available for resale for potentially objectionable content. VidAngel has developed
28

1 more than 80 codes or tags for different kinds of content that a viewer might prefer
2 not to hear or see.

3 62. Using VidAngel's proprietary tagging application, customers are able to
4 select their own filtering options and stream content they own to their personal
5 devices. Users are shown a listing of the various types of potentially objectionable
6 content identified in the purchased work, as well as the number of occurrences of
7 each such type of content within the work. The user then selects the types of content
8 he or she wishes to have silenced or deleted. The user has access to set any
9 combination of filters in the following categories: profanity, sex/nudity/immodesty,
10 violence, drug/alcohol use, and objectionable/disturbing. The user's unique selection
11 of filters creates a custom filter. Filters may be modified before and during the
12 viewing process and are saved to the user's unique customer ID.

13 63. Before watching a particular movie or television episode, a customer
14 must purchase a physical DVD containing the complete, unaltered version of the title
15 from VidAngel. Every DVD available for purchase by a customer was first lawfully
16 acquired by VidAngel as described above. VidAngel typically maintains the physical
17 DVD on behalf of the purchasers, but purchasers may request that the DVD be sent to
18 them or retrieve the DVD from VidAngel's offices. VidAngel will not provide its
19 filtering service, however, if the DVD is not in its or the customer's possession. That
20 requirement ensures that the one-to-one correspondence between the disc and the user
21 is maintained.

22 64. Users are able to access the contents of their DVDs only by owning
23 them. The purchase price for each DVD is \$20. To purchase a disc, users must log-
24 on to the VidAngel website. First-time users are required to provide an email address
25 to establish a unique user ID and create a password. Upon providing this
26 information, users have the ability to access the current inventory of disks available to
27 purchase.

28

1 65. Once a purchase transaction has occurred, the disc is removed from
2 available inventory and the title is transferred to that customer's unique user ID.
3 After a customer purchases a physical DVD and selects his or her desired filters, the
4 user is permitted to play a filtered version of the work on one device screen at a time.
5 VidAngel filters the specific content identified by its customer to be screened as the
6 content is streamed to the customer but makes no permanent fixed copy of the work
7 as streamed. Neither VidAngel nor its users make any alteration to the underlying
8 work.

9 66. A subscriber is able to view the stream instantaneously on any
10 VidAngel-supported device, including Roku, Apple TV, Smart TV, Amazon Fire TV,
11 Android, Chromecast, iPad/iPhone and desktop or laptop computers.

12 67. VidAngel's service relies on HTTP Live Streaming ("HLS") encryption
13 to let customers enjoy video over HTTP for playback on devices running iOS,
14 including the iPhone, iPad, iPod Touch, Roku, Chromecast, and desktop and laptop
15 computers. VidAngel's service utilizes the Advanced Encryption Standard ("AES"),
16 as well as other technologies, to seamlessly protect content from non-authorized
17 streaming, piracy, and redistribution by others, with no detectable difference to video
18 playback. VidAngel employs a one-screen policy for playback based on the user's
19 account, IP address and other information.

20 68. Once a user has viewed it, the user may re-sell a movie or television
21 program back to VidAngel for a partial credit of the \$20 purchase price. The sell-
22 back price decreases \$1 per night for standard definition (SD) purchases and \$2 per
23 night for high-definition (HD) purchases. Once a user sells the movie back to
24 VidAngel, the user's access is immediately terminated. If the user decides to sell the
25 disk back, the remaining balance is credited back to the user's VidAngel account.
26 The credit can be used towards future purchases. For example: A \$20 SD disk is
27 owned for 2 nights at \$1 per night and sold back for \$18 in sell-back credit. If a
28 VidAngel customer keeps a DVD for more than 20 days, he or she can now view it

1 through the VidAngel platform in perpetuity or sell it back for \$1 or \$2 in credit. Or,
2 VidAngel will send the DVD to the customer upon request at any time.

3 69. VidAngel has designed and engineered its filtering service to promote
4 compliance with copyright law and the FMA. For example, just as a physical DVD
5 could not be played simultaneously on multiple devices, VidAngel restricts a user's
6 playback to one device at a time. VidAngel also streams a filtered work to just one of
7 a user's registered devices at a time.

8 **VidAngel Reached Out to Counterclaim-Defendants to Explain Its Service**

9 70. Before VidAngel made its new service available to the public at large,
10 VidAngel wrote to the general counsels of each of the Counterclaim-Defendants, as
11 well as other content owners, on July 23, 2015, with follow-up letters on August 21,
12 2015, introducing its business model and offering to meet with them to discuss the
13 distribution of their content for filtering under the FMA. Attached as Exhibits A and
14 B are true and correct copies of letters sent to Counterclaim-Defendants (or their
15 parents), in July and August of 2015. VidAngel had over 750 titles available when it
16 sent its letters to Counterclaim-Defendants asking for their input or offering to
17 discuss VidAngel's business model.

18 71. Unbeknownst to VidAngel at the time, Counterclaim-Defendant Disney
19 almost immediately accessed VidAngel's service after receiving VidAngel's first
20 letter. On August 6, 2015, a Disney employee signed up for a VidAngel account
21 using a non-descript Gmail account and providing payment information for the
22 Director of Antipiracy Operations at Disney. Between August 2015 and April 2016,
23 this Disney employee purchased and sold back 17 titles using VidAngel's services.
24 Despite this apparent interest in VidAngel, Disney did not respond to VidAngel's
25 offer to meet or discuss VidAngel's business.

26 72. Also in response to VidAngel's letters and growing user base,
27 Counterclaim-Defendants, including Fox, sought guidance from the MPAA and each
28 other concerning VidAngel's filtering services in or around July and August 2015. In

1 fact, 59 employees of Counterclaim-Defendants, the MPAA, or other MPAA studios
2 exchanged 124 messages concerning VidAngel in August 2015 alone. During early
3 2016, Fox again discussed VidAngel's services with the MPAA, and consulted with
4 co-Counterclaim-Defendants Disney and Warner Bros. on the issue. Although it was
5 seemingly interested and possibly concerned about VidAngel, Fox never met with
6 VidAngel to discuss VidAngel's service or operations. In fact, although Fox and
7 Time Warner, Inc. (Warner Bros.' parent) were the only Counterclaim-Defendants to
8 respond to VidAngel's offer to meet, Fox failed to appear for two scheduled
9 appointments. Likewise, Time Warner cancelled a conference call at the last minute
10 and then failed to reschedule.

11 73. Overall, Counterclaim-Defendants' in-house counsel and outside counsel
12 discussed VidAngel over 1,300 times by email alone before finally filing suit. At no
13 point did any Counterclaim-Defendant send VidAngel a cease-and-desist letter, seek
14 an injunction or any other type of relief.

15 **The Studios' Choice to Enforce Their Anticompetitive Agreements**

16 74. Because unfiltered content falls outside the FMA, a service streaming
17 unfiltered content (*i.e.* Netflix) is required to negotiate and pay for a streaming
18 license with each studio. The studios generally charge \$3.50 per title to allow third
19 party services to stream unfiltered content for 24 to 48 hours. After the third parties
20 add their own mark-up, consumers usually pay around \$5.00 to watch new releases
21 through these streaming services.

22 75. VidAngel has sought a streaming license from the studios, including
23 Counterclaim-Defendants. Because of the restrictive and exclusionary terms of the
24 DGA Agreement, the studios, including Counterclaim-Defendants, have refused to
25 grant VidAngel a streaming license that would permit filtering. As a result, under
26 VidAngel's current business model, the studios profit from VidAngel's initial
27 purchase of each DVD title, but not each time that title is re-sold and streamed to a
28 new customer. This allows VidAngel to offer consumers lower prices than unfiltered

1 streaming services, typically \$1.00-2.00 net cost per title.

2 76. Not only are VidAngel's prices lower, but its apps also are rated higher
3 by users than the leading distribution platforms endorsed by the studios. For
4 example, the VidAngel rating on Google Play is 4.8 stars whereas Netflix is 4.4 stars,
5 Hulu is 4.1 stars, and Disney Movies Anywhere is 3.9 stars. For all ratings on the
6 Apple App Store, VidAngel has 5 stars, Netflix has 3.5 stars, Hulu has 2 stars, and
7 Disney Movies Anywhere has 3.5 stars. On Roku, VidAngel has 4.5 stars, Netflix
8 has 3 stars, Hulu has 3.5 stars and Disney Movies Anywhere has 3.5 stars.

9 77. About 96% of VidAngel's purchases have come from users who chose
10 more than one filter. This filtered-only viewership adds to the studios' bottom lines
11 because these purchases would not have occurred but for VidAngel and its filtering
12 services. Nonetheless, the studios have economic and other control motives to
13 subvert VidAngel's business because VidAngel's DVDs are re-sold and streamed to a
14 new customer an average of 16 times each in the first four weeks of the new release.
15 Because Counterclaim-Defendants have denied VidAngel a streaming license, they
16 do not receive a profit from each instance a title is re-sold and streamed like they
17 would from a service, such as Netflix, that has a streaming license. Although this
18 could be easily remedied by granting VidAngel a streaming license with a per use
19 charge, Counterclaim-Defendants have instead chosen to enforce their
20 anticompetitive agreements which prohibit filtering by denying VidAngel such a
21 license rather than confronting the DGA or changing the terms of their contracts with
22 the directors who produce their motion picture and television content.

23 78. In addition to the studios' economic and control motivations,
24 VidAngel's success has also detracted from Counterclaim-Defendant Disney's
25 reputation and brand as the longstanding guardian of children and family interests in
26 the industry.

27 79. There are significant drawbacks to VidAngel's current business model
28 because it does not have a streaming license. For example, VidAngel spends one-

1 third of all capital raised on the purchase of DVDs and has high overhead costs
2 stemming from the maintenance of its secure vault. It also sustains losses when it
3 overstocks its inventory with a particular title that its customers ultimately do not
4 purchase, or is forced to send “out of stock” notices when its inventory on a
5 particularly popular title is too low. VidAngel sent over 250,000 out of stock notices
6 in August 2016 alone – meaning VidAngel turned away 250,000 potential purchases
7 it could have consummated if it had a standard streaming distribution agreement that
8 allowed for filtering. Despite its attempts to cooperate, collaborate and consult with
9 each studio, VidAngel has been forced into this inefficient business model by virtue
10 of their collective anticompetitive conduct.

11 **FIRST COUNTERCLAIM FOR RELIEF**

12 **By VidAngel against All Counterclaim-Defendants**

13 **(Violation of Section 1 of the Sherman Act (15 U.S.C. § 1))**

14 80. VidAngel incorporates herein by reference each and every averment
15 contained in all preceding paragraphs.

16 **Relevant Product/Service Market**

17 81. The relevant product/service market for antitrust purposes in this case is
18 the implementation of online remote filtering services for high-grossing motion
19 picture productions and high-rated television productions, including without
20 limitation, the implementation of filtering services for digital content applications
21 available on modern mobile devices, including smartphone and remote streaming
22 devices.

23 82. There is extremely low cross-elasticity of demand and/or no reasonably
24 interchangeable substitutes for online remote filtering services. Over VidAngel’s
25 entire history, nearly 96% of VidAngel’s purchasers selected multiple filters,
26 demonstrating the fact that the version of the motion picture or television show
27 VidAngel streams is of a different character than the version available through other
28

1 non-filtering streaming services like Google Play, Amazon Video, VUDU and
2 iTunes.

3 **Relevant Geographic Market**

4 83. The relevant geographic market for antitrust purposes in this case is the
5 entire United States which is the area of effective competition in which the parties
6 operate and to which customers can practically turn for online remote filtering
7 services.

8 **Antitrust Standing**

9 84. VidAngel has the requisite standing to assert antitrust claims against
10 these Counterclaim-Defendants because VidAngel is a participant and competitor in
11 the relevant market and has suffered injury by reason of the unreasonable restraints
12 and concerted exclusionary conduct of the Counterclaim-Defendants.

13 **Contracts and Combination to Unreasonably Restrain Competition**

14 85. Even without consideration or aggregation of their unnamed co-
15 conspirators, Counterclaim-Defendants represent nearly 57% percent of motion
16 picture revenue, and over a period of many decades, have established collective and
17 total control over motion picture, film and television productions in the U.S. – the
18 raw material needed to effectively compete in the relevant online remote filtering
19 services market. To date in 2016, each Counterclaim-Defendant enjoys the following
20 market shares based on overall gross revenue in the motion picture industry: Fox,
21 14.1%; Warner Bros., 16.5%; and Disney (through its subsidiary Buena Vista),
22 26.2%. The production and distribution of all motion pictures accounts for
23 approximately \$11.5 billion dollars annually. Accordingly, Counterclaim-Defendants
24 collectively have market power because of their ability to exclude competition and/or
25 control prices or output in the filtering services market.

26 86. Counterclaim-Defendants also have significant television-related
27 ventures. Warner Bros.’s television outlets produced more than 70 series in the 2015-
28 2016 season and comprise the largest television production company measured by

1 revenue and library. Disney's television portfolio includes the Disney Channel, ABC
2 Television Network, 50% ownership of A&E Network, and an 80% stake in ESPN.
3 Disney and Fox, among others, are co-owners of the streaming television service
4 Hulu. In addition to Hulu, Fox's television ventures also include FOX News, Fox
5 Sports Networks, FOX Sports, FX, and National Geographic.

6 87. As evidenced above, the motion picture and television production and
7 distribution markets are controlled by an oligopoly of entrenched and vertically-
8 integrated enterprises. As a result, there are high barriers to entry, including capital
9 and access to talent, which limit access to potential new entrants. Further,
10 Counterclaim-Defendants' restrictions, threats and arrangements have created a
11 barrier that precludes effective entry by other competitors. As a result, the quality
12 and variety of offerings in the online remote filtering market have been reduced and
13 constrained.

14 88. As set forth above, Counterclaim-Defendants and their unnamed co-
15 conspirators entered into one or more agreements that unreasonably restrained
16 interstate trade in violation of Section 1 of the Sherman Act and Section 4 of the
17 Clayton Act, 15 U.S.C. §§ 1, 15.

18 89. Counterclaim-Defendants voluntarily entered into a written contract with
19 the DGA on July 1, 2014, as described above, in which they agreed to prohibit
20 secondary editing or filtering of motion pictures or television programs and which
21 prohibits Counterclaim-Defendants from entering into distribution agreements that
22 permit such filtering. These agreements impose vertical non-price restraints on
23 distributors, exhibitors, and other companies in the market for online remotefiltering
24 services of motion pictures and television shows and amount to a group boycott or
25 other concerted refusal to deal with VidAngel in violation of the antitrust laws.

26 90. Counterclaim-Defendants have entered into licensing agreements with
27 Google Play and other digital content distributors. In furtherance of their
28 combination to restrain the market for online filtering services, Counterclaim-

1 Defendants have inserted provisions into those license agreements which prohibit
2 these distributors from implementing filtering services for digital content applications
3 available on modern mobile devices, including smartphones and remote streaming
4 devices.

5 91. In furtherance of their combination to restrain the market for online
6 filtering services, Counterclaim-Defendants placed pressure on Google Play to not
7 enter into a partnership with VidAngel and to deny VidAngel access to Google Play's
8 services. Counterclaim-Defendants orchestrated this boycott of VidAngel to further
9 their own commercial profit, artificially raise prices, reduce output and force
10 VidAngel out of business.

11 92. The actions complained of herein will continue to restrain and adversely
12 affect interstate commerce in that provision of filtering services crosses state lines.
13 Each Counterclaim-Defendant and VidAngel purchase a substantial volume of goods,
14 services, and supplies in interstate commerce which are, or are threatened to be,
15 adversely affected by the unlawful conduct alleged herein.

16 **Antitrust Injury and Damage to VidAngel**

17 93. The anticompetitive scheme and plan of the Counterclaim-Defendants to
18 unreasonably restrain trade in the above-described trade and commerce has been done
19 with the intent to specifically eliminate online filtering of motion picture and
20 television productions as a viable industry.

21 94. A copyright holder enjoys a "distribution right" and may initially sell, or
22 not sell, copies of a copyrighted work to others on such terms as he or she sees fit.
23 However, the copyright holder's distribution right is limited to the first sale of the
24 copyrighted item. Under the "first sale" doctrine, codified at 17 U.S.C. § 109(a), "the
25 distribution right may be exercised solely with respect to the initial disposition of
26 copies of a work, not to prevent or restrict the resale or other further transfer of
27 possession of such copies."

28 95. Counterclaim-Defendants' right to control distribution of a copy of a

1 copyrighted movie release *ends* once the copy has been sold. The distribution right
2 may not lawfully be exercised after the initial sale, “to prevent or restrict the resale or
3 further transfer of possession of such copies.”

4 96. Counterclaim-Defendants’ attempts to prevent and restrict VidAngel
5 from offering its buy-sell-back service to customers constitute an attempt to
6 unlawfully restrict the resale of goods. Any such attempt is an illegal restraint of
7 trade.

8 97. Counterclaim-Defendants’ collusive conduct and unlawful contracts
9 have produced antitrust injury, and unless enjoined by this Court, will continue to
10 produce at least the following actual and demonstrative anticompetitive, exclusionary
11 and injurious effects upon competition and consumers in interstate commerce:

12 (a) competition and output in the relevant filtering market has been
13 substantially and reasonably restricted, lessened, foreclosed and eliminated;

14 (b) barriers to entry into the relevant filtering market have been raised
15 which has prevented or delayed the entry of new filtering competitors;

16 (c) consumer choice has been, and will continue to be, significantly
17 reduced, limited and constrained as to selection, price and quality of filtering services
18 in the United States;

19 (d) consumer access to VidAngel’s competitive filtering services has
20 been artificially restricted and reduced and its filtering service offerings will continue
21 to be excluded from the market; and

22 (e) the will of the people and of Congress in enacting the FMA has
23 been frustrated, subverted and thwarted.

24 98. As a result of Counterclaim-Defendants’ concerted activity, VidAngel
25 was denied access to Google Play’s digital distribution service and therefore has
26 suffered antitrust injury. Counterclaim-Defendants’ conduct has had an
27 anticompetitive effect on the development of the market for online filtering services
28 for high-quality video content within the United States; in fact, their misconduct has

1 substantially deprived and actually threatens to effectively extinguish that market.

2 99. There are no business, technological or other efficiencies that require or
3 justify Counterclaim-Defendants' imposition of such exclusionary and
4 anticompetitive conditions and restrictions.

5 100. By reason of, and as a direct and proximate result of the violations
6 alleged herein, Counterclaimant VidAngel has suffered and may continue to suffer
7 substantial financial injury in its business and property by Counterclaim-Defendants'
8 and unnamed co-conspirators continuing violations of the antitrust laws.
9 Counterclaim-Defendants' unlawful conduct was calculated to eliminate
10 Counterclaimant as a viable competitor in the filtering market. Due to Counterclaim-
11 Defendants' contract and combination, VidAngel lost substantial profits and profit
12 opportunities. Counterclaim-Defendants' coordinated and focused anticompetitive
13 conduct has cumulatively, incrementally, and unreasonably restricted competition and
14 devastated VidAngel's business. As a result, VidAngel has been deprived of
15 revenues and profits they would have otherwise made, suffered diminished market
16 growth and sustained a loss of goodwill and going concern value. Counterclaim-
17 Defendants' conduct has decreased VidAngel's business volume and substantially
18 diminished its business value.

19 101. VidAngel does not yet know the precise extent of its past damages and
20 when ascertained will ask leave of this Court to insert said sum herein.

21 **SECOND COUNTERCLAIM FOR RELIEF**

22 **By VidAngel against All Counterclaim-Defendants**

23 **(Intentional Interference with**

24 **Prospective Economic Advantage)**

25 102. VidAngel incorporates herein by reference each and every averment
26 contained in all preceding paragraphs.

27 103. This Court has jurisdiction over this Second Counterclaim for Relief
28 based on the doctrine of supplemental jurisdiction (28 U.S.C. § 1367) because this

1 Counterclaim for Relief arises from the same transactions and from a common
2 nucleus of operative facts as alleged in the federal causes of action.

3 104. VidAngel has developed advantageous prospective business and
4 economic relationships with business partners to expand VidAngel's business,
5 visibility and availability to consumers, and which promise a continuing probability
6 of future economic benefit to VidAngel. Counterclaim-Defendants knew, or
7 reasonably should have known, of the existence of those prospective economic
8 advantages.

9 105. Counterclaim-Defendants, with the intent of disrupting and destroying
10 VidAngel's business relationships, have deliberately undertaken the illegal practices
11 described herein thereby inducing VidAngel's actual and prospective partners, such
12 as YouTube and Google Play, not to enter into such prospective contractual
13 relationships with VidAngel. As such Counterclaim-Defendants' conduct was
14 wrongful.

15 106. By means of the alleged actions, including but not limited to the unfair,
16 anticompetitive and/or predatory acts set herein, Counterclaim-Defendants intended
17 to pressure and induce these customers to end or disrupt their prospective economic
18 relationships with VidAngel. As a direct and proximate result of Counterclaim-
19 Defendants' actions as alleged herein, many of the economic benefits from
20 Counterclaimant's prospective customers have been lost. Counterclaim-Defendants
21 knew these disruptions or interferences were substantially certain to occur as a result
22 of their conduct.

23 107. Counterclaim-Defendants' conduct was a substantial factor in causing
24 financial injury to VidAngel and has rendered it more difficult for VidAngel to
25 remain and survive as a viable competitor. VidAngel has sustained and will continue
26 to sustain damages, the exact amount of which is extremely difficult to calculate, and
27 presently unknown, but which will be proven at trial.

28 108. Counterclaim-Defendants' wrongful conduct in interfering with such

1 prospective business contractual relations is intentional, malicious and without
2 justification and such conduct and overall scheme was undertaken solely to hinder, if
3 not eliminate, competition. Their anticompetitive conduct was not privileged or
4 excused and was without any legitimate business justification. Counterclaim-
5 Defendants have knowingly engaged in such wrongful conduct for the purpose of
6 excluding competition, damaging VidAngel's goodwill, and to deprive consumers of
7 the benefits of free and open competition. Counterclaim-Defendants committed each
8 of the foregoing acts willfully, fraudulently, oppressively, maliciously and with the
9 wrongful intention of injuring VidAngel's prospective business relationships.
10 Accordingly, VidAngel is entitled to punitive and exemplary damages sufficient to
11 serve as an example and to punish Counterclaim-Defendants.

12 109. As a result of the foregoing acts, VidAngel has suffered, and will
13 continue to suffer, irreparable injury for which there is no adequate remedy at law
14 unless Counterclaim-Defendants are enjoined by this Court.

15 **THIRD COUNTERCLAIM FOR RELIEF**

16 **By VidAngel against All Counterclaim-Defendants**

17 **(Unfair Competition in Violation of**

18 **Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

19 110. VidAngel incorporates herein by reference each and every averment
20 contained in all preceding paragraphs.

21 111. This Court has jurisdiction over this Third Counterclaim for Relief based
22 on the doctrine of supplemental jurisdiction (28 U.S.C. § 1367) because this
23 Counterclaim for Relief arises from the same transactions and from a common
24 nucleus of operative facts as alleged in the federal causes of action.

25 112. Section 17200 *et seq.* of the California Business & Professions Code is
26 written in the disjunctive and broadly covers three varieties of unfair competition –
27 acts that are unlawful, or unfair, or fraudulent. The statute's intent and purpose is to
28 protect both consumers and competitors by promoting fair competition in commercial

1 markets for goods and services.

2 113. Counterclaimant VidAngel is a “person” within the meaning of
3 California Business & Professions Code § 17201.

4 114. As alleged herein, Counterclaim-Defendants’ conduct constitutes
5 “unfair” business practices. A practice may be deemed unfair even if not specifically
6 proscribed by some other law although here the conduct violates both the FMA and
7 the Sherman Act. Conduct that significantly threatens or harms competition, or
8 threatens an incipient violation of an antitrust law, may be deemed to be “unfair.”

9 115. As alleged herein, Counterclaim-Defendants’ anticompetitive conduct is
10 also “unlawful.” Within the meaning of § 17200, virtually any violation of any civil
11 or criminal federal, state or municipal, statutory, regulatory, court-made, or local law
12 can serve as a predicate for an “unlawful” claim.

13 116. By reason of, and as a direct and proximate result of Counterclaim-
14 Defendants’ unfair and unlawful practices and conduct, Counterclaimant VidAngel
15 has suffered and will continue to suffer, economic injury to its business and property.

16 117. Counterclaim-Defendants’ unfair and unlawful conduct has caused
17 economic harm to Counterclaimant VidAngel, competition and consumers.

18 118. Pursuant to Section 17203, the entry of permanent and mandatory
19 injunctive relief against Counterclaim-Defendants is necessary to enjoin the ongoing
20 wrongful business conduct. An injunction is needed to enable and restore
21 competition in the online filtering market.

22 **FOURTH COUNTERCLAIM FOR RELIEF**

23 **By VidAngel against All Counterclaim-Defendants**

24 **(Declaratory Relief Regarding VidAngel’s Current System)**

25 119. VidAngel incorporates herein by reference each and every averment
26 contained in all preceding paragraphs.

27 120. An actual controversy has arisen and now exists between VidAngel and
28 Counterclaim-Defendants concerning whether VidAngel’s current system violates

1 copyright law. VidAngel’s system is designed and operates as follows:

- 2 (a) VidAngel lawfully purchases Blu-rays and DVDs (both referred to as
3 “DVD” in this prayer);
- 4 (b) VidAngel uses a commercially available software program to
5 automatically allow read-access for the purpose of mounting the DVD
6 files for uploading onto a computer, in the process removing restrictions
7 on DVD encryption;
- 8 (c) VidAngel extracts the subtitle/caption data files and then creates
9 Matroska files of the feature films;
- 10 (d) VidAngel uploads the subtitle/caption data files and Matroska files
11 (collectively known as the “pre-filter files” or “PF” files) onto a secure
12 folder on a third-party Internet service provider’s cloud storage service
13 (“CSS”) and uploads the subtitle/caption into a separate CSS folder;
- 14 (e) VidAngel destroys the Matroska files;
- 15 (f) VidAngel boots an encoding and segmenting server (“ESS”) to run two
16 scripts, including an encoding script and a segmenting script.
- 17 (g) The encoding script temporarily copies the PF files from the CSS to the
18 ESS, uses ffmpeg to prepare the PF files for tagging and filtering, creates
19 a single mp4 file (640 kilobytes per second bitrate) for tagging (when
20 that is not performed beforehand on YouTube or when corrections need
21 to be made to the tags), copies the mp4 file from the ESS to a secure
22 CSS location, creates four Transport Stream files (“TS files”) at 640,
23 1200, 2040 and 4080 bitrates for filtering, copies the TS files to a secure
24 location on the CSS, and deletes all copies and files on the ESS, and is
25 run once for each title’s Matroska file;
- 26 (h) The segmenting script temporarily copies the TS files from the CSS to
27 the ESS, segments the TS files for adaptive bitrate streaming (the HLS
28 specification) based on both 9-10 second intervals and the locations of

1 each tag for the title (which could be as short as 2 tenths of a second),
2 creates thumbnail files for player scrubbing preview for each non-
3 filterable segment, saves a comma-separated values (CSV) file
4 containing the results of the segmenting process for each segment,
5 uploads the CSV file for use by the filtering system, encrypts each
6 segment of each bitrate with a new and unique encryption key, copies
7 the unencrypted segments from the ESS to a secure location on the CSS,
8 copies the encrypted segments from the ESS onto a publicly accessible
9 location on the CSS, copies the encryption keys from the ESS to a secure
10 location on the CSS, deletes older revision files on the CSS, and deletes
11 all copies and files on the ESS;

12 (i) VidAngel lawfully purchases additional DVDs;

13 (j) VidAngel enters the information concerning the additional DVDs into an
14 inventory system;

15 (k) VidAngel applies bar codes to the DVD packages;

16 (l) VidAngel sells specific, individual DVDs to specific customers;

17 (m) VidAngel requires each customer to select one or more filters; and

18 (n) VidAngel streams content from the DVD to each purchaser while
19 applying the filters chosen by that customer.

20 121. Counterclaim-Defendants contend that VidAngel's operating system as
21 described in the preceding paragraph infringes their exclusive rights to copy and
22 make public performances of their copyrighted works in violation of 17 U.S.C. § 101
23 *et seq.*, whereas VidAngel contends that this system is fully consistent with the FMA
24 and otherwise complies with copyright law.

25 122. VidAngel desires a judicial determination of the legality of its current
26 operating system, and the respective rights and duties of the parties. A judicial
27 declaration is necessary and appropriate so that VidAngel and Counterclaim-
28 Defendants may ascertain their rights and duties under copyright law.

1 123. VidAngel desires a judicial determination of the legality of its buy-sell-
2 back provision, and the respective rights and duties of the parties. A judicial
3 declaration is necessary and appropriate so that VidAngel and Counterclaim-
4 Defendants may ascertain their rights and duties under copyright, antitrust and unfair
5 competition law.

6 **FIFTH COUNTERCLAIM FOR RELIEF**

7 **By VidAngel against All Counterclaim-Defendants**
8 **(Declaratory Relief Regarding Decryption of DVD Format**
9 **for the Purpose of Filtering Under the FMA)**

10 124. VidAngel incorporates herein by reference each and every averment
11 contained in all preceding paragraphs.

12 125. An actual controversy has arisen and now exists between VidAngel and
13 Counterclaim-Defendants concerning whether the creation of a decrypted version of
14 lawfully purchased DVDs for the purpose of filtering pursuant to the FMA violates
15 copyright law. Counterclaim-Defendants contend that the mere act of creating a
16 decrypted version of a lawfully purchased DVD of their title violates Section
17 1201(a)(1)(A) of the Digital Millennium Copyright Act and infringes their
18 reproduction rights in violation of 17 U.S.C. §§ 1201, *et seq.* VidAngel contends that
19 the making of a decrypted copy as the necessary first step in making a lawfully
20 purchased DVD capable of being filtered is fully consistent with the FMA and
21 otherwise complies with all copyright laws.

22 126. VidAngel desires a judicial determination of the legality of decrypting
23 DVDs for the sole purpose of converting them into a format capable of being filtered
24 to streaming devices pursuant to the FMA, and the respective rights and duties of the
25 parties with respect to this practice. A judicial declaration is necessary and
26 appropriate so that VidAngel and Counterclaim-Defendants may ascertain their rights
27 and duties under copyright law.

28

1 **SIXTH COUNTERCLAIM FOR RELIEF**

2 **By VidAngel against All Counterclaim-Defendants**
3 **(Declaratory Relief Regarding Remote Streaming of**
4 **Filtering Technology Under the FMA)**

5 127. VidAngel incorporates herein by reference each and every averment
6 contained in all preceding paragraphs.

7 128. An actual controversy has arisen and now exists between VidAngel and
8 Counterclaim-Defendants concerning whether the practice of remotely streaming a
9 filtering technology to users is permissible under the FMA. Counterclaim-
10 Defendants contend that such a practice infringes their exclusive right to publicly
11 perform their copyrighted works in violation of 17 U.S.C. § 101 *et seq.* VidAngel
12 contends that such a practice is fully consistent with the FMA and otherwise complies
13 with copyright law.

14 129. VidAngel contends that the plain language of the FMA endorses the use
15 of remote streaming of filtering technology. The FMA provides that it is not a
16 violation of copyright for a third party, operating at the direction of a member of a
17 private household, to make limited portions of audio or video content imperceptible
18 “during a performance . . . *transmitted* to that household for private home viewing . .
19 . . .” 17 U.S.C. § 110(11) (emphasis added). Such a transmission is clearly broad
20 enough to include remote streaming; indeed, the Copyright Act states that “[t]o
21 transmit a performance or display is to communicate it by *any device or process*
22 whereby images or sounds are received beyond the place from which they are sent.”
23 17 U.S.C. § 101 (emphasis added). The legislative history also makes clear that
24 remote streaming of filtering technology is authorized by the FMA:

25 The bill as proposed in the Senate makes clear that, under certain
26 conditions, “making imperceptible” of limited portions of audio or
27 video content of a motion picture—that is, skipping and muting limited
28 portions of movies without adding any content—as well as the creation
or provision of a computer program or other technology that enables

1 such making imperceptible, does not violate existing copyright or
2 trademark laws. That is true whether the movie is on prerecorded
3 media, like a DVD, or is transmitted to the home, as through pay-per-
view and “video-on-demand” services.

4 150 Cong. Rec. S11852-01. Additionally, VidAngel privately transmits its filtering
5 technology to an individual user in his own household consistent with established
6 copyright law. *See Fox Broad. Co. v. Dish Network LLC*, 2015 WL 1137593, at *13
7 (C.D. Cal. Jan. 20, 2015) (holding that transmissions to owners or valid possessors of
8 copyrighted programming are not public performances).

9 130. VidAngel desires a judicial determination of the legality of remotely
10 streaming a filtering technology to users and the respective rights and duties of the
11 parties with respect to this practice. A judicial declaration is necessary and
12 appropriate so that VidAngel and Counterclaim-Defendants may ascertain their rights
13 and duties under copyright law.

14 **SEVENTH COUNTERCLAIM FOR RELIEF**

15 **By VidAngel against All Counterclaim-Defendants**

16 **(Declaratory Relief Regarding Prior Authorization Under the FMA)**

17 131. VidAngel incorporates herein by reference each and every averment
18 contained in all preceding paragraphs.

19 132. An actual controversy has arisen and now exists between VidAngel and
20 Counterclaim-Defendants concerning whether the FMA requires VidAngel to obtain
21 prior authorization from Counterclaim-Defendants before streaming Counterclaim-
22 Defendants’ copyrighted works to individual users pursuant to the FMA.
23 Counterclaim-Defendants contend that without their prior authorization, the
24 streaming of filtered versions of their works infringes their exclusive rights to copy
25 and publicly perform their works in violation of 17 U.S.C. § 101 *et seq.*, whereas
26 VidAngel contends that the FMA requires no such prior authorization.

27 133. VidAngel contends that the FMA expressly allows the filtering and
28

1 streaming of third-party works at the direction of private persons without obtaining
2 authorization from the copyright holder to make limited alterations to the copyrighted
3 content. The plain language of the FMA permits a third party operating “by or at the
4 direction of a member of a private household” to filter audio or video content “from
5 an authorized copy of the motion picture” 17 U.S.C. § 110(11). Nothing in the
6 FMA requires a third party to obtain authorization from copyright holders before
7 making “limited portions of audio or video content” imperceptible for performance in
8 “private home viewing[.]” *Id.*; *see also* 150 Cong. Rec. S11852-01 (stating that
9 “skipping and muting from an unauthorized or ‘bootleg’ copy of a motion picture
10 would not be exempt.”) Consistent with the plain language of the FMA and
11 copyright law, VidAngel contends that it lawfully operates at the direction of
12 members of private households and properly purchased and owned “authorized
13 cop[ies]” of the titles at issue in DVD format before selling the DVDs to its
14 customers.

15 134. VidAngel desires a judicial determination as to whether it is required by
16 the FMA to obtain Counterclaim-Defendants’ prior authorization before providing its
17 filtering service to individuals under the FMA, and the respective rights and duties of
18 the parties with respect to this practice. A judicial declaration is necessary and
19 appropriate so that VidAngel and Counterclaim-Defendants may ascertain their rights
20 and duties under copyright law.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, VidAngel respectfully requests that this Court award the
23 following relief:

24 1. That the conduct alleged in the First Counterclaim for Relief herein be
25 adjudged to be in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

26 2. That, pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15),
27 VidAngel recover treble the amount of its actual damages sustained by reason of
28 those federal antitrust violations.

1 3. That, pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15),
2 VidAngel be awarded a reasonable attorneys' fee and costs of litigation.

3 4. That, pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), the
4 Court enjoin Counterclaim-Defendants from their continuing anticompetitive and
5 wrongful conduct.

6 5. That the conduct alleged in the Second Counterclaim for Relief herein be
7 adjudged to constitute intentional interference with prospective advantage.

8 6. That VidAngel be awarded punitive or exemplary damages on its tort
9 claim.

10 7. That the conduct alleged in the Third Counterclaim for Relief herein be
11 adjudged to be unfair and/or unlawful business practice in violation of § 17200 of the
12 California Business & Professions Code.

13 8. That pursuant to § 17203 of the California Business & Professions Code,
14 the unfair and/or unlawful business practices of Counterclaim-Defendants be
15 permanently enjoined.

16 9. That pursuant to Section 1021.5 of the California Code of Civil
17 Procedure, VidAngel be awarded reasonable attorneys' fees.

18 10. Pursuant to 28 U.S.C. § 2201, a declaration that VidAngel's current
19 system does not violate copyright law, to the extent it operates as follows:

20 (a) VidAngel lawfully purchases Blu-rays and DVDs (both referred to as
21 "DVD" in this prayer);

22 (b) VidAngel uses a commercially available software program to
23 automatically allow read-access for the purpose of mounting the DVD
24 files for uploading onto a computer, in the process removing restrictions
25 on DVD encryption;

26 (c) VidAngel extracts the subtitle/caption data files and then creates
27 Matroska files of the feature films;

28 (d) VidAngel uploads the subtitle/caption data files and Matroska files

1 (collectively known as the “pre-filter files” or “PF” files) onto a secure
2 folder on a third-party Internet service provider’s cloud storage service
3 (“CSS”) and uploads the subtitle/caption into a separate CSS folder;

4 (e) VidAngel destroys the Matroska files;

5 (f) VidAngel boots an encoding and segmenting server (“ESS”) to run two
6 scripts, including an encoding script and a segmenting script.

7 (g) The encoding script temporarily copies the PF files from the CSS to the
8 ESS, uses ffmpeg to prepare the PF files for tagging and filtering, creates
9 a single mp4 file (640 kilobytes per second bitrate) for tagging (when
10 that is not performed beforehand on YouTube or when corrections need
11 to be made to the tags), copies the mp4 file from the ESS to a secure
12 CSS location, creates four Transport Stream files (“TS files”) at 640,
13 1200, 2040 and 4080 bitrates for filtering, copies the TS files to a secure
14 location on the CSS, and deletes all copies and files on the ESS, and is
15 run once for each title’s Matroska file;

16 (h) The segmenting script temporarily copies the TS files from the CSS to
17 the ESS, segments the TS files for adaptive bitrate streaming (the HLS
18 specification) based on both 9-10 second intervals and the locations of
19 each tag for the title (which could be as short as 2 tenths of a second),
20 creates thumbnail files for player scrubbing preview for each non-
21 filterable segment, saves a comma-separated values (CSV) file
22 containing the results of the segmenting process for each segment,
23 uploads the CSV file for use by the filtering system, encrypts each
24 segment of each bitrate with a new and unique encryption key, copies
25 the unencrypted segments from the ESS to a secure location on the CSS,
26 copies the encrypted segments from the ESS onto a publicly accessible
27 location on the CSS, copies the encryption keys from the ESS to a secure
28 location on the CSS, deletes older revision files on the CSS, and deletes

- 1 all copies and files on the ESS;
- 2 (i) VidAngel lawfully purchases additional DVDs;
- 3 (j) VidAngel enters the information concerning the additional DVDs into an
- 4 inventory system;
- 5 (k) VidAngel applies bar codes to the DVD packages;
- 6 (l) VidAngel sells specific, individual DVDs to specific customers;
- 7 (m) VidAngel requires each customer to select one or more filters; and
- 8 (n) VidAngel streams content from the DVD to each purchaser while
- 9 applying the filters chosen by that customer.
- 10 11. A declaration that the buy-sell-back provision in VidAngel's current
- 11 business model complies with the FMA and does not otherwise violate copyright law,
- 12 and that Counterclaim-Defendants' attempts to prevent VidAngel from offering its
- 13 buy-sell-back service to customers constitute an attempt to unlawfully restrict the
- 14 resale of goods;
- 15 12. A declaration that VidAngel's current practice of decrypting DVDs for
- 16 the sole purpose of converting them into a format capable of being filtered to
- 17 streaming devices pursuant to the FMA does not violate the Digital Millennium
- 18 Copyright Act and does not infringe the reproduction rights of copyright holders;
- 19 13. A declaration that VidAngel's current practice of remotely streaming its
- 20 filtering technology to users is permissible under the FMA and does not infringe the
- 21 public performance rights of copyright holders;
- 22 14. A declaration that VidAngel is not required to obtain prior authorization
- 23 from Counterclaim-Defendants before streaming Counterclaim-Defendants'
- 24 copyrighted works to individual users pursuant to the FMA;
- 25 15. Such further relief as this Court deems just and appropriate.
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DATED: September 16, 2016

Respectfully submitted,

BLECHER COLLINS & PEPPERMAN, P.C.

By: /s/ Maxwell M. Blecher
Maxwell M. Blecher

BAKER MARQUART LLP

By: /s/ Ryan G. Baker
Ryan G. Baker

Attorneys for Defendant and Counterclaimant
VidAngel, Inc.

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DEMAND FOR JURY TRIAL

VidAngel hereby demands trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Civil Local Rule 38-1.

DATED: September 16, 2016

Respectfully submitted,

BLECHER COLLINS & PEPPERMAN, P.C.

By: /s/ Maxwell M. Blecher
Maxwell M. Blecher

BAKER MARQUART LLP

By: /s/ Ryan G. Baker
Ryan G. Baker

Attorneys for Defendant and Counterclaimant
VidAngel, Inc.

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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF TIM
WILDMON IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.


Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

I, Tim Wildmon, declare as follows:

1. I am the President of American Family Association. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. AFA has hundreds of thousands of financial supporters and millions of online subscribers.
3. A matter of great concern to our members and their families is their ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. Our members who are parents want to be able to watch movies and television programs with their young children without exposing their children to such content. Every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents. Many parents reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
5. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
6. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our members want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.
7. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families—even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 6 day of September, 2016, at 10:50, AM.

By Tim Wildmon 

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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.

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21

UNITED STATES DISTRICT COURT

22

CENTRAL DISTRICT OF CALIFORNIA

23

WESTERN DIVISION

24

DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27

Plaintiffs,

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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF TIM BARTON
IN SUPPORT OF VIDANGEL'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4


I, Tim Barton, declare as follows:

1. I am the Chief Operating Officer of WallBuilders. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by WallBuilders and have served in my present capacity since 2009. WallBuilders has thousands of followers.
3. A matter of great concern to our followers is their ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our adult followers want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, our followers who are parents want to be able to watch movies and television programs with their young children without exposing their children to such content. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
5. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
6. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our followers want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.

7. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this __8th__ day of September, 2016, at _Aledo____, _Texas____.

By  _____
[Tim Barton]

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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.

20

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

28

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF THEODORE
BAEHR IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

I, Theodore Baehr, declare as follows:

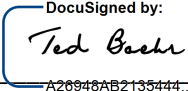
1. I am the Publisher of MOVIEGUIDE(r) and Chairman of Christian Film & Television Commission®. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by Good News Communications, Inc. dba MOVIEGUIDE(r) and dba Christian Film & Television Commission® since 1978 and have served in my present capacity since 1978. www.movieguide.org has more than 34 million CONTSTITUENTS/USERS.
3. Extensive research, including over 500,000 studies, shows that the best protection for children from the well documented harms of the mass media of entertainment to which they are susceptible is teaching them media and cultural wisdom so that they understand and hold fast to the values and faith of their parents. The most comprehensive system for this is THE CULTURE-WISE FAMILY® and THE MEDIA-WISE FAMILY. Along with 60 professors at City University of New York, I helped to develop and test the initial media literacy systems when I was the Director of the TV Center at CUNY.
4. A secondary level of protection is the ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our MOVIEGUIDE(r) users want to watch popular movies and television programs, if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and even more important worldviews that are contrary to their faith and values even if the movie is devoid of objectionable semantics and Syntactics. Much more commonly, our constituents, who are parents want to be able to watch movies and television programs with their young children without exposing their children to such content or aberrant philosophies and worldviews. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young engage may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
5. That said, removing offensive semantic and syntactic content must be joined with understanding worldviews, ontology and epistemology so that the child is not influenced by culturally corrosive material presented in a pristine way, such as the movie HAPPY FEET.
6. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
7. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.

8. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent’s place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our users want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.

9. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner’s specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families-- even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 7 day of September, 2016, at Camarillo, CA

By  _____, Theodore Baehr, Publisher and Chairman
A26948AB2135444...
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20

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UNITED STATES DISTRICT COURT

22

CENTRAL DISTRICT OF CALIFORNIA

23

WESTERN DIVISION

24

DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

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Plaintiffs,

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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF RICK GREEN
IN SUPPORT OF VIDANGEL'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

I, Rick Green, declare as follows:

1. I am the Host of WallBuilders Live Radio Program. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by WallBuilders Live since and have served in my present capacity since 2006. WallBuilders Live has thousands of listeners.
3. A matter of great concern to our listeners is their ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our adult listeners want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, our listeners who are parents want to be able to watch movies and television programs with their young children without exposing their children to such content. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
5. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
6. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our listeners want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.

7. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 17th day of August, 2016, at Austin, Texas.

By  _____
Rick Green

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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,
27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)
**DECLARATION OF REBECCA
HAGELIN IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

1 I, Rebecca Hagelin, declare as follows:

2 1. I am a public speaker and an author of books and columns on faith, family and the
3 culture. I make this declaration of my personal and first-hand knowledge and, if called and
4 sworn as a witness, I could and would testify competently hereto.

5 2. I have written three books, thousands of newspaper and online columns, and
6 given scores of speeches about the challenges parents face in raising children of strong
7 moral character in our current crass culture. I work hard to provide real solutions and
8 practical help to parents and families in their quest to locate materials and entertainment
9 matter that reinforces - rather than destroys - the principles they are trying to teach their
10 children.

11 3. A matter of great concern to my readers is their ability to watch movies and
12 television programs in private without being subjected to types of content they regard as
13 inappropriate or indecent. A significant percentage of my readers want to watch popular
14 movies and television programs, but only if they are not exposed to types of content they
15 personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the
16 like. Much more commonly, my readers who are parents want to be able to watch movies
17 and television programs with their young children without exposing their children to such
18 content. Their concerns should be respected not only because every family and every child
19 is unique and no one is in a better position to decide what is in a child’s best interest than
20 the child’s parents, but because they reasonably fear that watching violence at a young age
21 may lead to an increased incidence of violent behavior later in life and that watching
22 inappropriate content in general may degrade society’s moral standards.

23 4. In various ways, the government has sought to guarantee the right of all
24 Americans to enjoy popular culture in private without having their sensibilities assaulted.
25 The Supreme Court, for example, long ago approved the right of the Federal
26 Communications Commission to prohibit radio stations from playing the George Carlin
27 “Seven Dirty Words” or “Filthy Words” monologue during hours when children might be
28 listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so,

1 Congress wanted to make the filtering of movies and television programs as widely,
2 readily, and inexpensively available to American families as possible. In deference to the
3 major Hollywood studios (which opposed the enactment of the Family Movie Act),
4 Congress required that to fall within the Act's protections, filtering could be performed
5 only within a family's home or by a third party and streamed to the family provided that: (i)
6 the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc);
7 (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed
8 copy of a filtered work was ever made.

9 5. Those requirements attempted to balance the strong public interest in making
10 filtered content as widely, readily, and inexpensively available to American families as
11 possible with the interests of the copyright owners, who understandably did not want the
12 market flooded with bootleg or derivative copies of their works and who wanted to protect
13 their exclusive rights to distribute copies of their works and to show them publicly, whether
14 on television, in movie theaters, or by using other methods.

15 6. Of the two methods of filtering authorized by the Family Movie Act, the third-
16 party filtering and streaming method best satisfies the intent of Congress that filtering be
17 widely, readily, and inexpensively available to American families. The reasons why that is
18 so are obvious. Works that are filtered and streamed by a third party can be viewed on a
19 wide range of devices, including desk top, lap top, and tablet computers and smart
20 telephones—as well as on television sets. Further, such works can be streamed to a family
21 virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In
22 contrast, home filtering requires that consumers buy a special DVD player and pay a
23 monthly rental fee for it. More importantly, the DVD player must be connected to a
24 television set, thus making it impractical to use when a family wants to watch content on a
25 television other than the one to which the box is connected, and impossible to use when
26 watching content on any type of computer or a smart telephone. Given that many parents
27 want to watch movies or television programs when they are not in front of a home
28

1 television, the third-party filtering and streaming method is of much greater benefit to them
2 than relying on a special DVD player connected to a television set.

3 7. One company that filtered content for consumers was not fully compliant with the
4 Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering
5 pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it
6 out of business. Although another company still provides home filtering through the use of
7 a DVD player, VidAngel is the only service that filters and streams content to consumers
8 wherever they are and to virtually whatever device they want. If the studios persuade the
9 Court to enjoin VidAngel from filtering and streaming content to American families--even
10 though those families have each lawfully purchased a copy of that content--the studios will
11 succeed in depriving a great many American families of a very valuable right granted to
12 them by Congress.

13
14 I declare under penalty of perjury of the laws of the United States that the foregoing
15 is true and correct.

16
17 Executed this 23rd day of August, 2016.

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20 Rebecca Hagelin
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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.

20

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF PATRICK
TRUEMAN IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.



NATIONAL CENTER ON SEXUAL EXPLOITATION

Established 1962

PATRICK A. TRUEMAN, Esq.
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*Sr. Vice President &
Executive Director*

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*Vice President & Director
of Education and Outreach*

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Bishop, Diocese of Arlington, VA

MARGARET RUCKS
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Rucks Family Foundation*

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*National Regent,
Catholic Daughters of the Americas*

MELEA STEPHENS, L.P.C., M.M.F.T.
Marriage and Family Therapist

PATRICK A. TRUEMAN, Esq.
*Former Chief, Child Exploitation
and Obscenity Section,
U.S. Department of Justice*

JOHN J. WALSH, Esq.
Attorney at Law

ELIZABETH YORE
*Former General Counsel,
National Center for Missing
and Exploited Children*

September 8, 2016

I, Patrick A. Trueman, declare as follows:

1. I am the President & CEO of the National Center on Sexual Exploitation. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by National Center on Sexual Exploitation since 2009 and have served in my present capacity since January, 2011. National Center on Sexual Exploitation has more than 700,000 active supporters.
3. A matter of great concern to our supporters is their ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our adult supporters want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, our supporters who are parents want to be able to watch movies and television programs with their young children without exposing their children to such content. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased

a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.

5. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
6. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our supporters want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.
7. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this eighth day of September 2016, at 6:00pm.

By
Patrick A Trueman



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19 *Attorneys for Defendant and*
20 *Counterclaimant VidAngel, Inc.*

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF MATT KIBBE
IN SUPPORT OF VIDANGEL'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.


Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

I, Matt Kibbe, declare as follows:

1. I am the President and Chief Community Organizer at Free the People. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by Free the People since I founded it in 2015. Prior to that, I founded FreedomWorks in 2004, and served as President until 2015.
3. As a libertarian, I oppose government censorship. Freedom of speech and artistic expression are essential in a free society, even when I find such expressions personally offensive. I also don't think the political process is very good at defining, or defending, community values. Communities best define community values, and communities are defined by the choices of parents, grandparents, brothers, sisters, and even next-door neighbors. Protected and defended from the bottom up, values and standards thrive, and hold us together, despite all of our different preferences.
4. How do you deal with content that some people find offensive? There are typically two answers to this question. The first is central planning. Some government regulator, a censor, decides what the public should be allowed to see. In the West, most societies have realized that censorship and the stifling of free expression is detrimental, not only to freedom as an end in itself, but to a well-functioning society where creators are allowed to voice their views in any way they see fit, and the public is free to consume it, or not.
5. This has long been regarded as the "free market" position for media. Customers pay for the content they want to see, and if something offends them, they simply don't buy it. While this is far preferable to any form of censorship, it does not give parents access to all of the technological tools available to them.
6. Congress enacted the Family Movie Act in 2005, with the intent of allowing parents more personal control. Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
7. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why are so obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone.
8. The company VidAngel has managed to carve out a niche in the content market by removing objectionable material from popular films and television shows, and marketing it to viewers who find such material offensive. This is a simple and elegant solution that gives parents more control without undermining artistic expression. VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to consumers—even though those consumers have each lawfully purchased a copy of that content—the studios will succeed in depriving a great many American families of a very valuable choice, one that protects every interest without leaving anyone worse off.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 9th day of September, 2016, at 5:37 pm, EST. By


Matt Kibbe
Washington, DC

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Counterclaimant VidAngel, Inc.

20

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF L. BRENT
BOZELL III IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
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Judge: Hon. André Birotte Jr.
Date: October 24, 2016
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VIDANGEL, INC.,
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vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

1 I, L. Brent Bozell III, declare as follows:

2 1. I am the founder and President of the Media Research Center. I make
3 this declaration of my personal and first-hand knowledge and, if called and sworn as
4 a witness, I could and would testify competently hereto.

5 2. I have been employed by the Media Research Center since 1987 and
6 have served in my present capacity ever since. Media Research Center has almost
7 1,000,000 members nationwide, over 10 million followers on Facebook, and
8 delivers nearly 203 million impressions weekly through its websites, video channels,
9 news wire services, and Brent my nationally syndicated columns.

10 3. Our members, most of whom come from America's vast Christian
11 community, are deeply concerned about the media and their effect on their lives and
12 those of their families. Our members see the Media Research Center as a leading
13 resource in holding media accountable. We have long been deeply concerned by the
14 impact of movies and TV shows on kids, which is why—in 1995—I founded and
15 served as the first President of the Parent's Television Council. In partnership with
16 legendary Hollywood comedian Steve Allen, former host of The Tonight Show, we
17 worked to raise awareness about the harmful effects of adult programming on
18 children. We encouraged Hollywood—as well as its advertisers—to create and
19 promote family-friendly programming. Today, the PTC, now run by President Tim
20 Winter, is the largest group in America dedicated to restoring responsibility in
21 Hollywood.

22 4. In that capacity, like most Americans, I was supportive of services
23 launched in the early 2000s to provide parents with tools to filter content for their
24 kids in their homes. And I was deeply frustrated by the Hollywood studios'
25 collective hostility to such services, culminating in a lawsuit that resulted in the
26 closure of Clean Flix, a popular video filtering service. I recall distinctly that
27 Members of Congress in both the House and the Senate— with whom I have had
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1 regular contact for decades—were upset about Hollywood’s disregard for the
2 national plea from parents for a return to decency. This sentiment was bi-partisan.
3 Members of both parties were enraged.

4 5. During 2004 and 2005, as the Family Movie Act moved through
5 Congress under a variety of names and committees in both chambers and with
6 strong support from both parties, I was supportive of the measure and felt that it was
7 necessary to protect families from mature content. This sentiment was echoed in
8 letters of support by the American Medical Association and the American
9 Psychological Association. When the Family Movie Act passed with overwhelming
10 support in the House and Senate, I was convinced that we had solved the problem
11 and that parents would finally be protected and empowered with the right to filter
12 content such as violence, sex, nudity, vulgarity, blasphemy, in the home.

13 6. When the Media Research Center discovered 11 years later that Disney
14 and three other studios had sued VidAngel, by far the most popular filtering service,
15 I was dumbfounded. How could they attempt to shut down a company that is clearly
16 in compliance with the Family Movie Act? We at the Media Research Center have
17 resolved to voice our support for the rights of families to filter content, to declare
18 unequivocally that VidAngel is a service our members and families desire, and to
19 remind the Court that Members of Congress clearly and expressly passed the Family
20 Movie Act—years after the passage of the Digital Millennium Copyright Act and
21 with full knowledge of that legislation in hindsight—to afford families this absolute
22 right to purchase content from a third party and “hire” said party to transmit said
23 content to them in the home.

24 7. The Media Research Center and its 975,000 members strongly contend
25 that, should VidAngel be enjoined from operating, the effect would be an immediate
26 and undue harm to families who currently enjoy a legally protected status in their
27 homes. To shut down VidAngel—even temporarily—would be harmful to and
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1 contrary to the public interest. Therefore, we ask the Court today to reaffirm the will
2 of Congress and the legality of the Family Movie Act.

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4 I declare under penalty of perjury of the laws of the United States that the foregoing
5 is true and correct.

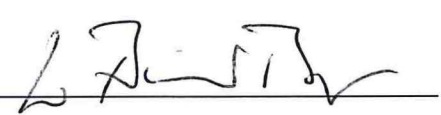
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7 Executed this 26 day of August, 2016, at Reston, VA.

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By 

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L. Brent Bozell III

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Counterclaimant VidAngel, Inc.

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22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF GEORGE E.
ROLLER IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

I, George E. Roller, declare as follows:

1. I am the Ambassador for the Center for Christian Statesmanship. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by the Center for Christian Statesmanship since 2003 and have served in my present capacity since November of 2016. The Center for Christian Statesmanship has more than 250 people on our donor and prayer warrior list.
3. A matter of great concern to our donors is their ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our adult donors want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, our donors who are parents and grandparents want to be able to watch movies and television programs with their young children without exposing their children to such content. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
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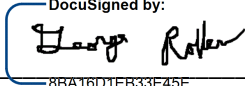
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7. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 6 day of September, 2016, at Manassas , Virginia .

By George E. Roller
[NAME]

DocuSigned by:

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

23

WESTERN DIVISION

24

DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

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Plaintiffs,

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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF GARY MARX
IN SUPPORT OF VIDANGEL'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4



I, Gary Marx, declare as follows:

1. I am the President of Madison Strategies. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by Madison Strategies since 2013 serve as President of a team the believes in VidAngel and uses it with my own family.
3. A matter of great concern to my team and family is our ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. We want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, my wife and I are parents want to be able to watch movies and television programs with our young children without exposing their children to such content. Our concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because we reasonably fear that watching violence at a young engage may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
5. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
6. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of us want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.
7. One company that filtered content for consumers was not fully compliant with the Family Movie Act

because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this ___30th___ day of August, 2016, at _Flowery Branch___, ___GA___.

By _____ Gary A. Marx _____
DocuSigned by:
Gary Marx
DBF665B86AF6496...

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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF GARY BAUER
IN SUPPORT OF VIDANGEL'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

I, Gary L. Bauer declare as follows:

1. I am the President of American Values. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by American Values since 2000 and have served in my present capacity since 2000. American Values has thousands of supporters.
3. A matter of great concern to our supporters is their ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our adult supporters want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, our supporters who are parents want to be able to watch movies and television programs with their young children without exposing their children to such content. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
5. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
6. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our supporters want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.

7. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 9th day of August, 2016, at Arlington, Virginia.

By Gary L. Bauer
Gary Bauer

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Counterclaimant VidAngel, Inc.

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF DAVID
BOZELL IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

I, David Bozell, declare as follows:

1. I am the President of America, Inc.. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. I have been employed by America Inc. since 2010 and have served in my present capacity since 2015. America, Inc. has more than nine million social media fans, followers and subscribers.
3. A matter of great concern to our organization is the public's ability to watch movies and television programs in private without being subjected to types of content it regards as inappropriate or indecent. Our subscribers, a significant percentage who are parents, want to be able to watch movies and television programs with their young children without exposing their children to such content. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
5. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
6. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our subscribers want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.
7. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's

specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 19th day of August, 2016, at Clifton, VA.

By

A handwritten signature in blue ink, appearing to read 'D. Bozell', with a large, sweeping flourish at the end.

David Bozell
President, ForAmerica

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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.

20

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF DAVID
BARTON IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,

vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

I, David Barton, declare as follows:

1. I am the Founder and President of WallBuilders. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
2. WallBuilders began in 1988 and we now have thousands of followers.
3. A matter of great concern to our followers is their ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our adult followers want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, our followers who are parents want to be able to watch movies and television programs with their young children without exposing their children to such content. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
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7. One company that filtered content for consumers was not fully compliant with the Family Movie Act

because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this __8th__ day of September, 2016, at _Aledo____, __Texas__.

By  _____
[David Barton]

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Counterclaimant VidAngel, Inc.

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,
27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)
**DECLARATION OF CONNOR
BOYACK IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
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VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

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DECLARATION OF CONNOR BOYACK

I, Connor Boyack, declare as follows:

1. I am the president of Libertas Institute, a public policy watchdog and educational organization in Utah. I submit this declaration in support of defendant and counter-claimant VidAngel Inc.’s preliminary injunction opposition. I have personal knowledge of the facts set forth herein and, if called upon a witness, I could and would testify competently thereto.

2. I founded Libertas Institute in 2011 and have served its president ever since. Over 50,000 identified Utahns are supporters of Libertas Institute’s work, though our public interest efforts benefit many more throughout the state.

3. Many of our supporters are families with young children. We publish a book series of educational literature and spend considerable time and resources trying to identify the values and principles the parents of these families have. Without question I can say that a large majority of them are concerned with the media content surrounding their young children and their inability to protect them from content they deem inappropriate. These parents desire the freedom and flexibility to customize the content they acquire for the particular benefit of their children, whether it is by reducing or eliminating violence, sex, profanity, or other indecent content. They are able to do this with physical media and desire to do it with digital media as well.

4. Content creators do not have the right to dictate how the viewer must experience content. As an author of ten books, I know that some readers object to various chapters in my books and skip them altogether. Some resell them, deeming them undesirable for ownership. Others may disagree with limited parts, but find the overall experience worth continuing to read. I cannot compel my readers to read the entire book as I wrote it and intended it to be read. Similarly, film creators cannot compel a viewing experience that is out of their control; ownership relinquishes the

1 ability to dictate the experience, and families should have the right to employ tools
2 or techniques that can alter the viewing experience as necessary to protect the
3 sensibilities and vulnerable emotions of their young children.

4 5. As I understand the law, the Family Movie Act provides VidAngel the
5 legal right to provide this customized experience for families that purchase copies of
6 videos through VidAngel's website. This service has been a tremendous resource for
7 many of our supporters who are eager to consume content from which they
8 otherwise would have completely abstained. This opens a new market to film
9 producers while allowing these families the right to control their in-home, personal
10 viewing experience.

11 6. Victory on the part of the plaintiff studios would cause great harm to
12 our supporters and their families, who would once again find themselves without the
13 ability to filter the films they are watching. VidAngel's compliance with the law—
14 notwithstanding the objection of the plaintiff studios—fulfills Congress's intent in
15 passing the Family Movie Act and provides a service beneficial to millions of
16 Americans—legal consumers who want to exercise the fundamental right of
17 regulating how the property they have properly acquired is personally used.

18
19 I declare under penalty of perjury under the laws of the United States of
20 America that the foregoing is true and correct to the best of my knowledge and
21 belief.

22
23 Executed this 7th day of September 2016, at Lehi, Utah.

24
25
26 By: 
27 Connor Boyack
28 President, Libertas Institute

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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.
20

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,
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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF HARRY R.
JACKSON JR. IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

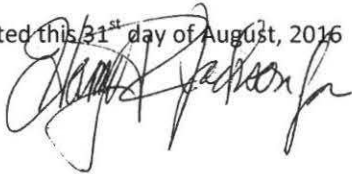
I, Harry Jackson, declare as follows:

1. I am Harry Jackson, Senior Pastor of Hope Christian Church and Bishop of the International Communion of Evangelical Churches that has 7000 churches in the network. I make this declaration of my personal and first-hand knowledge.
2. I have been employed by Hope Christian Church since the 1980s and have served in my present capacity.
3. A matter of great concern to our members is their ability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our adult members want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find repugnant—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, our members who are parents want to be able to watch movies and television programs with their young children without exposing their children to such content. Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably fear that watching violence at a young age may lead to an increased incidence of violent behavior later in life and that watching inappropriate content in general may degrade society's moral standards.
4. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their sensibilities assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin "Seven Dirty Words" or "Filthy Words" monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act's protections, filtering could be performed only within a family's home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
5. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
6. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent's place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our members want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.

7. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner's specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress.

I declare the foregoing is true and correct.

Executed this ~~31st~~ day of August, 2016



Harry R. Jackson Jr.
Senior Pastor, Hope Christian Church
Bishop, International Communion of Evangelical Churches

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19 *Attorneys for Defendant and*
Counterclaimant VidAngel, Inc.

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

23

WESTERN DIVISION

24

DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

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Plaintiffs,

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CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF TIMOTHY F.
WINTER IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,

vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

1 I, Timothy F. Winter, declare:

2 1. I submit this declaration in support of defendant and counterclaimant
3 VidAngel, Inc.'s ("VidAngel's") Opposition to Plaintiffs' Motion for Preliminary
4 Injunction. I have personal knowledge of the facts set forth herein and, if called as a
5 witness, I could and would testify competently thereto.

6 2. I am the President of the Parents Television Council (PTC). I make
7 this declaration of my personal and first-hand knowledge and, if called and sworn as
8 a witness, I could and would testify competently thereto.

9 3. I have been employed by the PTC since April 1, 2003, and have served
10 in my present capacity as President since January 1, 2007. Since the PTC's
11 founding in 1995, approximately 1.4 million Americans have joined the
12 organization in its mission to protect children from graphic sex, violence and
13 profanity in entertainment.

14 4. The PTC is a non-profit, nonpartisan, secular, grassroots organization.
15 The PTC's membership, its staff, and its governing board of directors are comprised
16 of people who reflect the depth and breadth of national concern about the issue of
17 children and toxic media content. The organization communicates daily with its
18 members, and with members of the public, who are frustrated by the lack of high-
19 quality programming that is free of harmful or offensive content, such as nudity,
20 violence, profanity, sexually-explicit dialogue, etc. They feel that Hollywood has
21 turned its back on most Americans by producing and distributing ubiquitously
22 graphic entertainment. They are hungry for entertainment content that is both
23 family-friendly and high-quality in terms of production value. And they realize that
24 most entertainment products would be appropriate for their consumption but for
25 specific instances that could otherwise be filtered out, without ruining the overall
26 entertainment value.

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1 5. According to a national poll conducted by Rasmussen, 64% of all
2 Americans support federal regulation of indecent broadcasts by the Federal
3 Communications Commission; and 67% said that states should be able to prohibit
4 the sale of violent videogames to children. A national poll conducted by Zogby
5 found 74.6% of all Americans agreed or strongly agreed that there was too much
6 sex, violence and profanity on television. And a recent research report conducted by
7 the PTC found that literally 99% of primetime broadcast television programming
8 that features families as a central part of the storyline included some amount of sex,
9 violence or profanity in the show. The Annenberg Public Policy Center recently
10 reported that the level of gun violence in top-selling PG-13 movies has been rising,
11 and it now exceeds that in the most popular R-rated films.

12 6. More than a thousand scientific research studies confirm what most
13 parents instinctively and intuitively believe to be true: the media content that
14 children consume can have a harmful impact on their mental, physical and
15 emotional wellbeing. Decades worth of scientific research have been conducted by
16 the premier organizations in the nation and, indeed, around the world, such as the
17 American Psychological Association, the American Academy of Pediatrics, the
18 National Institutes of Health, the RAND Corporation; and universities such as
19 Harvard, Stanford, Ohio State, Michigan, Iowa State, Arizona, Indiana, and
20 numerous others, just to name a few. The overwhelming weight of scientific
21 evidence supports a connection between media consumption and behavior,
22 especially for children. Much of the research opposing these findings stems from
23 those who produce and/or profit from explicit media content.

24 7. The compelling government interest in this issue is abundantly clear
25 and cannot be diminished by those who would prefer that such an interest did not
26 exist.

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1 8. The Federal Government, in responding to the scientific evidence and
2 the will of the American people, have demonstrated a keen, decades-long interest in
3 protecting children from explicit entertainment content. Here are but a few of the
4 efforts undertaken at the Federal level:

- 5 a. Congress instructed the Federal Communications Commission
6 (FCC) to enforce indecency guidelines for broadcasts via radio
7 and television during times when children are likely to be in the
8 audience;
- 9 b. In 1978 the Supreme Court of the United States (SCOTUS)
10 upheld the constitutionality of the FCC's enforcement of
11 broadcast indecency in its famous *F.C.C. v. Pacifica Found.*, 438
12 U.S. 726 (1978) decision;
- 13 c. In 1998 the FCC adopted a Report and Order authorizing a V-
14 Chip and an age-based content rating system for broadcast and
15 cable television, thereby allowing viewers at home to block
16 explicit programming based on their personal preferences;
- 17 d. In 2005 the Congress passed the Family Entertainment and
18 Copyright Act (a/k/a the Family Movie Act), the express purpose
19 of which was to allow consumers the ability to lawfully filter
20 explicit content based on their personal preferences;
- 21 e. In 2006 the Congress passed (unanimously in the Senate, and
22 379-35 in the House) the Broadcast Indecency Enforcement Act,
23 increasing by tenfold the fines able to be levied by the FCC
24 against broadcasters for violating the broadcast indecency law;
- 25 f. In 2008 the Congress passed (unanimously in both houses) the
26 Child Safe Viewing Act, instructing the FCC to identify
27 advanced content blocking measures to protect children from
28 explicit content;
- g. In 2009, and again in 2012, SCOTUS refused to overturn its
Pacifica decision, despite multiple lawsuits brought by broadcast
television networks challenging the FCC's continued
enforcement of broadcast indecency laws.

1 The compelling government interest in this issue is abundantly clear and
2 cannot be diminished by those who would prefer that such an interest did not exist.

3 9. Each and every regulatory effort mentioned above was met with
4 animus and/or fierce opposition from forces in Hollywood. When Hollywood's
5 numerous and intense lobbying efforts to kill the aforementioned legislative efforts
6 failed, they quickly followed with legal challenges. Back in the 1990s, when the V-
7 Chip was being considered, forces in Hollywood condemned the technology as
8 government-sponsored censorship. And even today, Hollywood is fighting the
9 efforts of the PTC and other pro-family groups to provide greater accuracy,
10 consistency, transparency and public accountability of the television content ratings
11 system, which triggers the V-Chip to block certain explicit content deemed harmful
12 by parents. The TV networks rate their own programs, and they control the
13 Oversight Monitoring Board that was put in place ostensibly to ensure the rating
14 system's integrity. Hollywood's effort to impede in VidAngel's lawful business is
15 consistent with their efforts to similarly impede in every other business or regulatory
16 effort that would allow a viewer's ability to filter out harmful or explicit content.

17 10. When Congress passed the Family Movie Act, the legislative intent was
18 crystal clear. Guidelines were put in place. And those guidelines properly balanced
19 the legal and reasonable business needs of Hollywood with the strong public interest
20 goals of making content filtering available to American families. VidAngel has
21 carefully crafted its business operations – at great financial peril to itself – so as to
22 meet the guidelines set forth in the legislation. They are clearly in compliance with
23 both the *spirit and the letter* of the Family Movie Act. And, just as the legislation
24 intended, millions of families who otherwise would not be able to view a film or a
25 program are now able to do so. Ironically, the VidAngel service actually broadens
26 the market of potential customers for Hollywood's products.

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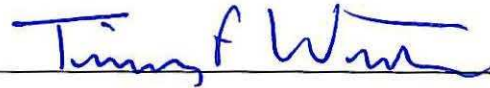
1 11. The studios that are suing VidAngel must believe that if a standard is
2 good, then a double-standard is twice as good. When Hollywood believes content
3 should be altered or filtered, they eagerly step in and do it themselves. About a
4 decade ago, NBC secured the broadcast rights to the beloved children’s animated
5 series *Veggie Tales*; but when the network aired the program, they removed
6 references to God – despite the program being created by Christian producers who
7 hoped to share Christian values. And when the television program *Duck Dynasty*
8 was among the most-watched programs every week, “bleeps” were edited into the
9 programming to suggest harsh profanity was being used, even when no actual
10 profanity was in fact being used. The network wanted to create the false impression
11 in order to bring more “edginess” to the show, despite the fact that the show was so
12 popular precisely because it was squeaky-clean. And on every program on every
13 network, promotional materials are placed above or below the program during its
14 broadcast. The “altering” of the producer’s “work” occurs all hours of every day on
15 every network. The notion that Hollywood must vigorously prevent content
16 filtering or editing for the sake of the creative community doesn’t pass the laugh-
17 test.

18 12. VidAngel is the only service that allows consumers to filter out
19 offensive content while streaming the remaining content to their personal viewing
20 devices, wherever they happen to be. VidAngel is clearly operating within both the
21 spirit and the letter of the Family Movie Act. VidAngel allows each parent and each
22 family to consume entertainment content precisely in accord with their unique
23 standards. If the Hollywood studios convince the Court to impede or interfere with
24 VidAngel’s legitimate and lawful business, American families will be deprived of
25 the very right granted to them by Congress in the Family Movie Act.

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

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4 Executed on September 8, 2016, at Los Angeles CA

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 20 *Counterclaimant VidAngel, Inc.*

21 UNITED STATES DISTRICT COURT
 22 CENTRAL DISTRICT OF CALIFORNIA
 23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
 LUCASFILM LTD. LLC;
 25 TWENTIETH CENTURY FOX FILM
 CORPORATION; AND WARNER
 26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF DONNA RICE
 HUGHES IN SUPPORT OF
 VIDANGEL'S OPPOSITION TO
 MOTION FOR PRELIMINARY
 INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,

vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4
Filed concurrently herewith:

1 I, Donna Rice Hughes, declare:

2 1. I am the President of Enough Is Enough, a non-partisan, 501(c)(3) non-
3 profit organization, which emerged in 1994 as the national leader on the front lines
4 to make the Internet safer for children and families. Since then, EIE has pioneered
5 and led the effort to confront online pornography, child pornography, child stalking
6 and sexual predation with innovative initiatives and effective communications. We
7 are dedicated to continue raising public awareness about the dangers of Internet
8 pornography, sexual predators, other dangers and advance solutions that promote
9 equality, fairness and respect for human dignity with shared responsibility between
10 the public, technology, and the law. We stand for freedom of speech as defined by
11 the Constitution of the United States; for a culture where all people are respected
12 and valued; for a childhood with a protected period of innocence; for healthy
13 sexuality; and for a society free from sexual exploitation.

14 2. I make this declaration based on my personal and first-hand knowledge
15 of the issues discussed herein and am prepared to take follow-up action on this
16 matter as needed. I was employed by Enough Is Enough in 1994 as the
17 Communications Director and have served as the CEO and President since 2002.

18 3. Our constituents and supporters strongly agree that every child deserves
19 a protected age of innocence and the opportunity to thrive during childhood free
20 from Internet-enabled sexual exploitation. Their hearts and minds are innocent,
21 tender, and trusting and need to be safeguarded from the negative influences of
22 increasingly violent and sexualized media.

23 4. Our organization has been a national leading advocate for effective
24 public policy, parental education and empowerment and corporate responsibility to
25 protect children from dangers in the digital age.

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1 5. The lead plaintiff in this case—Disney—claims that VidAngel is
2 harming their business, that shutting down this family-friendly service is in the
3 public interest, and that VidAngel is violating copyright law. Yet, in protecting its
4 own copyright and protecting families from harmful content, Disney has been
5 strangely silent on a matter that has been on EIE’s radar screen for almost 15 years.
6 I first brought an offensive porn site called DisneyPornLand.com to Disney’s
7 attention in the late 1990’s when I discovered it in my early work as an Internet
8 safety advocate. I later brought it to the attention of Disney policy leaders in DC
9 office and the public at large in 2008 when—as the executive producer host of the
10 award winning Internet Safety 101 DVD teaching series and curriculum—I used
11 Disneypornland.com as an example of the misuse of cartoon characters by
12 pornographers . Lastly, a couple of years later while briefing top Disney executives
13 Burbank, CA. on the Internet Safety 101 Program, I showed these same executives
14 the disneypornland.com website and specifically asked them to pursue the many
15 misuses of their beloved Disney characters and the abuse of dozens of possible
16 copyright and trademark infringements. I had hoped at this point, that Disney would
17 take action aggressive action to enforce their copyrights. But today, this website has
18 not been taken down and has only grown to incorporate the latest popular Disney
19 characters.

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1 6. As a leader in the fight to protect children from dangers online, I find
2 Disney's actions in suing VidAngel to be confusing, oddly hypocritical, and
3 squarely against the public interest. Families have the right to view filtered content
4 under the Family Movie Act of 2005. Furthermore, the notion that families should
5 be empowered with technology to protect their children from all manner of
6 objectionable or harmful media and Internet content is reinforced by several
7 Supreme Court decisions on legislation of which I have been involved. Specifically,
8 the Communications Decency Act and the Child Online Protection Act, passed by bi
9 partisan support in Congress, were not upheld by the Supreme Court. A key reason
10 given in each case was that the least restrictive means of protecting children from
11 indecent, harmful, and pornographic content online is through the use of filtering
12 technologies that are available to parents. Filtering technologies allow persons who
13 should not or do not want to be exposed to such content to filter it while permitting
14 adults who wish to see it do so. *Reno v. ACLU*, 521 U.S. 844, (1997); *ACLU v.*
15 *Gonzalez*, 478 F. Supp. 2d 775 (E.D. Pa. 2007), *aff'd sub nom ACLU v. Mukasey*,
16 534 F.3d 181 (3d Cir. 2008), *cert. denied*, 555 U.S. 1137 (2009). In *Reno v. ACLU*,
17 the Court noted that it has "repeatedly recognized the governmental interest in
18 protecting children from harmful materials." *Id.* at 875 (citing cases). Significantly,
19 it noted that a less restrictive alternative to banning all indecent speech on the
20 Internet would be to "require[e] that indecent material be 'tagged' in a way that
21 facilitates parental control of material coming into their homes." *Id.* at 879. Later,
22 in *Ashcroft v. ACLU*, 542 U.S. 656 (2004), the Supreme Court held that filters were
23 a less restrictive than the Child Online Protection Act ("COPA"). It noted that
24 "[t]he primary alternative considered by the District Court was blocking and
25 filtering software. Blocking and filtering software is an alternative that is less
26 restrictive than COPA, and, in addition, likely more effective as a means of
27 restricting children's access to materials harmful to them. The District Court, in
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1 granting the preliminary injunction, did so primarily because the plaintiffs had
2 proposed that filters are a less restrictive alternative to COPA and the Government
3 had not shown it would be likely to disprove the plaintiffs' contention at trial.” *Id.* at
4 666-67. The Supreme Court agreed with the District Court’s determination because
5 “[f]ilters are less restrictive than COPA. They impose selective restrictions on
6 speech at the receiving end, not universal restrictions at the source.” *Id.* at 668.

7 7. In light of these Supreme Court decisions, the burden of protecting
8 children from both soft core pornography (indecenty) and obscene pornography has
9 fallen onto the shoulders of parents. The Internet Safety 101 Program a program of
10 EIE’s for which I served as Executive Producer, is a proven-evidenced based
11 curriculum created in partnership with the Department of Justice and is
12 Congressionally funded. It was designed to prevent Internet-initiated dangers
13 threatening children by educating, equipping and empowering parents to protect
14 children from online pornography, sexual predators and cyberbullies, as well as
15 social media, online gaming and mobile dangers. A key action item for parents
16 emphasized in the 30 minute safety section of the dvd/film program is to implement
17 parental controls tools, specifically filtering.

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1 8. In various ways, the government has sought to guarantee the right of all
2 Americans to enjoy popular culture in private without having their sensibilities
3 assaulted. The Supreme Court, for example, long ago approved the right of the
4 Federal Communications Commission to prohibit radio stations from playing the
5 George Carlin “Seven Dirty Words” or “Filthy Words” monologue during hours
6 when children might be listening. In that vein, Congress enacted the Family Movie
7 Act in 2005. In doing so, Congress wanted to make the filtering of movies and
8 television programs as widely, readily, and inexpensively available to American
9 families. In deference to the major Hollywood studios (which opposed the
10 enactment of the Family Movie Act), Congress required that to fall within the Act’s
11 protections, filtering could be performed only within a family’s home or by a third
12 party and streamed to the family provided that: (i) the family lawfully purchased a
13 copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was
14 performed to specifications chosen by that family; and (iii) no fixed copy of a
15 filtered work was ever made.

16 9. Those requirements attempted to balance the strong public interest in
17 making filtered content available to American families as possible with the interests
18 of the copyright owners, who understandably did not want the market flooded with
19 bootleg or derivative copies of their works and who wanted to protect their
20 exclusive rights to distribute copies of their works and to show them publicly,
21 whether on television, in movie theaters, by streaming, or by using other methods.

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1 10. Of the two methods of filtering authorized by the Family Movie Act, it
2 is my understanding that the third-party filtering and streaming method satisfies the
3 intent of Congress that filtering be widely, readily, and inexpensively available to
4 American families. Works that are filtered and streamed by a third party can be
5 viewed on a wide range of devices, including desk top, lap top, and tablet computers
6 and smart telephones—as well as on television sets. Further, such works can be
7 streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent’s
8 place of business. In contrast, home filtering requires that consumers buy a special
9 DVD player and pay a monthly rental fee for it. More importantly, the DVD player
10 must be connected to a television set, thus making it impractical to use when a
11 family wants to watch content on a television other than the one to which the box is
12 connected, and impossible to use when watching content on any type of computer or
13 a smart telephone. Bottom line, Enough Is Enough’s position for protecting youth
14 from pornography and other objectionable online content should be shared by the
15 government, corporate America and the parents. It seems to me that VidAngel is
16 making it much easier for parents to be empowered to easily and economically
17 manage the type of film content their children view online.

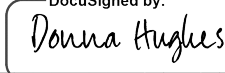
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1 11. VidAngel is the only service that I am aware of that filters and streams
 2 content to consumers wherever they are and to virtually whatever device they
 3 choose. If the studios persuade the Court to enjoin VidAngel from filtering and
 4 streaming content to American families--even though those families have each
 5 lawfully purchased a copy of that content--the studios will succeed in depriving a
 6 great many American families of a very valuable right granted to them by Congress.

7
 8 I declare under penalty of perjury of the laws of the United States that the foregoing
 is true and correct.

9 Executed this 12th day of September, 2016, at _____, _____.

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DocuSigned by:


 Donna Rice Hughes

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19 *Counterclaimant VidAngel, Inc.*

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 DISNEY ENTERPRISES, INC.;
24 LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

28 vs.

CASE NO. 16-cv-04109-AB (PLAx)

**DECLARATION OF BRYAN AND
DIANE SCHWARTZIN SUPPORT
OF VIDANGEL'S MEMORANDUM
OF POINTS AND AUTHORITIES
IN OPPOSITION TO
PRELIMINARY INJUNCTION
MOTION**

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VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

We, Bryan and Diane Schwartz, declare:

1. We are co-founders of Family Goals, a non-profit dedicated to applying the lessons of sports toward creating winning families. We believe that, with the right game plan and consistent training, every family can achieve new levels of excellence, happiness, and influence.

2. As a second round pick in the NFL draft, Bryan enjoyed a successful career as a middle linebacker with the Jacksonville Jaguars for five years. Diane also was a successful two sport college athlete and NCAA All-American volleyball player. Married for twenty-one years with seven children, we took the key lessons we both learned in sports and life and applied them toward a successful family environment.

3. We served as chaplains for the Colorado Rockies from (2009-2014), and we were on the board of the National Prayer Center for years in Washington, DC., and participated in leadership events across the country.

4. When we heard about Disney and others suing VidAngel, we reached out to VidAngel to ask how we could help and we volunteered to start a petition.

1 **Petition to the Court to #SaveFiltering**

2 5. The following language was included in the petition at
3 SaveFiltering.com

4 *We're an active community of young people, parents, and grandparents*
5 *alike, all with one thing in common—we want to #SaveFiltering. This*
6 *amazing technology (created by the good folks at VidAngel) empowers*
7 *us to watch TV shows and movies on modern devices (set top boxes,*
8 *phones, game stations, and tablets) at home in the way that works best*
9 *for us.*

10
11 *It has completely changed our lives!*

12
13 *We're finally able to watch what we want without the stuff we don't*
14 *want, and that opens up a whole universe of new possibilities. No more*
15 *fumbling for the remote with panic, or spastically tapping pause on the*
16 *iPad... entertainment is FINALLY customized for us and our families.*

17
18 *Unfortunately, some of the big Hollywood studios don't like this, and*
19 *are trying to shut VidAngel down. If that happens, where will we go to*
20 *filter movies and TV shows? What options are we left with? Is*
21 *Hollywood really going to overlook all the customers who want to filter*
22 *movies? As consumers, we have the right to choose clean, wholesome,*
23 *uplifting entertainment the way we want it!*

24
25 *Many are asking us how they can help. Here's how you can help*
26 *immediately: 1) Sign the petition and join us today 2) Spread the word*
27 *to all of your friends, family and sphere of influence #SaveFiltering*
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6. We launched the petition on July 6, 2016 at SaveFiltering.com.

7. As of September 12, 2016, at 3:49 Eastern Time, 26,546 people had signed our petition.

8. Here are a sample of the comments coming with the signatures:

“Our world NEEDS a service like VidAngel to protect our families.”

“VidAngel is the only way to watch so many movies. The movie studios don’t realize that they are vastly limiting their audience by producing movies with objectionable content. VidAngel is actually helping their work to reach a broader audience.”

“I have wanted something like vidangel for 15 years! I hoped someone would care enough for our future generations to have the choice to watch the same movies everyone loves to watch without having to subject themselves to indecent and unnecessary violence, language, and nudity. Having 4 children can make movie time limited because of these scenes. VidAngle is such a brilliant idea and gives our whole family the freedom of watching any movie we want and have my husband and I feel good about what we and our children are watching. THANK YOU!!!!!!”

“I have made the choice to not watch movies that say the F word or show sex and vulgarity. Filtering makes it possible for movie makers to have their movies more available to those with kids or those who, like me, avoid watching movies that make me uncomfortable.”

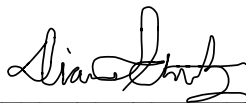
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 12, 2016, at Ponte Vedra Beach, FL.



Bryan Schwartz



Diane Schwartz

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21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF BOB
WALISZEWSKI IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

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vs.
VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4
Filed concurrently herewith:

I, Bob Waliszewski, the director of Focus on the Family's Plugged In department, can say without question after 25 years here that our constituency is greatly concerned about problematic content (most often sexual dialogue, sexual situations, nudity, vulgarity, extreme violence, harsh profanities, misuses of Jesus' Name, pro-drug sentiment, etc.), and desire to watch movies and television only if this type of content is edited out.

Often this concern regards parents wanting to safeguard the hearts and minds of their children. But often (as it is with my wife and me personally), it's adults who choose not be bombarded with said content.

Our website currently has 1,200,000 users each month and 8,000,000 people listen to our Plugged In Movie Review radio features (on 1,100 radio outlets across the U.S.). These constituents come to us because they are equally concerned by entertainment that assaults their personal values.

That is why I, as the director of Focus on the Family's entertainment review department (and PluggedIn.com), strongly support the Family Movie Act of 2005, and agree wholeheartedly with Congress that the filtering of movies and television programs needs to be widely, readily, and inexpensively available to American families. Millions of families have come to depend on our content-central reviews because they are indeed concerned about troublesome content. Traditionally, avoidance of these movies was a discerning family's only solution. The Family Movie Act changed that.

Although the Family Movie Act of 2005 expressly authorizes several means to offer filtered content to families, the first method it offers is the most important because it best allows all families to enjoy filtered content at all times. The first method provides that if a family member lawfully purchases a copy (such as a DVD or Blu-ray disc) of a movie or television show, purchaser may ask a third party to filter it to his or her specifications and transmit (stream) it to the family for private viewing. Unlike methods that require that filtering be performed by a device costing hundreds of dollars that is attached to a television set, the first method allows families to enjoy filtered not only on television sets but on desktop, laptop, and tablet computers, as well as on smart telephones, and allows families to enjoy filtered content in private wherever they are, such as in a hotel room while on vacation.

I believe the congressional intent of the Family Movie Act of 2005 was to allow families, in the privacy of their own home, and with their children's hearts and minds at the forefront, to have the right to watch a movie with problematic content excised from their viewing experience. Again, representing millions of constituents using Focus on the Family's Plugged In, I want to reiterate that I fully support private film editing as allowed by law.

Robert S. Waliszewski
August 5, 2016

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Counterclaimant VidAngel, Inc.

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF ANDREA
LAFFERTY IN SUPPORT OF
VIDANGEL'S OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION**

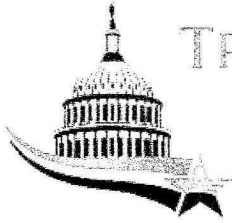
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vs.
VIDANGEL, INC.,
Defendant.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.



TRADITIONAL VALUES COALITION

I, Andrea Lafferty, declare as follows:

1. I am a mother and care about the impact movies and television have on my son and his generation.
2. I am the President of the Traditional Values Coalition. I make this declaration of my personal and first-hand knowledge and, if called and sworn as a witness, I could and would testify competently hereto.
3. I have been employed by the Traditional Values Coalition since 1990 and have served in my present capacity since 2011. Traditional Values Coalition has millions of supporters including 43,000 churches, ministries and individuals and a long record of advocating a Biblical worldview in the public square in Washington, DC and across America.
4. Our churches, ministries and individuals are greatly concerned about their inability to watch movies and television programs in private without being subjected to types of content they regard as inappropriate or indecent. A significant percentage of our adult church leaders and members want to watch popular movies and television programs, but only if they are not exposed to types of content they personally find abhorrent—such as violence, sex, nudity, vulgarity, blasphemy, and the like. Much more commonly, **our churches, ministries and individuals are made up of parents who want to be able to watch movies and television programs with their young children without exposing them to such content.** Their concerns should be respected not only because every family and every child is unique and no one is in a better position to decide what is in a child's best interest than the child's parents, but because they reasonably **fear that watching violence at a young age may desensitize children to violent behavior and could lead to increased incidence of violent behavior later in life and that watching inappropriate content, in general, will degrade our society's moral standards and place current and future generations of Americans in spiritual jeopardy.** As Chief Justice Warren Burger wrote in the landmark parental rights case *Wisconsin v. Yoder*: "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." We hope that courts will give an appropriate weight to this most important parental right, supporting parental direction in their children's upbringing.

5. In various ways, the government has sought to guarantee the right of all Americans to enjoy popular culture in private without having their values and sincerely-held religious beliefs assaulted. The Supreme Court, for example, long ago approved the right of the Federal Communications Commission to prohibit radio stations from playing the George Carlin “Seven Dirty Words” or “Filthy Words” monologue during hours when children might be listening. In that vein, Congress enacted the Family Movie Act in 2005. In doing so, Congress wanted to make the filtering of movies and television programs as widely, readily, and inexpensively available to American families as possible. In deference to the major Hollywood studios (which opposed the enactment of the Family Movie Act), Congress required that to fall within the Act’s protections, filtering could be performed only within a family’s home or by a third party and streamed to the family provided that: (i) the family lawfully purchased a copy of the work (i.e., a DVD or, today, a Blu-ray disc); (ii) the filtering was performed to specifications chosen by that family; and (iii) no fixed copy of a filtered work was ever made.
6. Those requirements attempted to balance the strong public interest in making filtered content as widely, readily, and inexpensively available to American families as possible with the interests of the copyright owners, who understandably did not want the market flooded with bootleg or derivative copies of their works and who wanted to protect their exclusive rights to distribute copies of their works and to show them publicly, whether on television, in movie theaters, by streaming, or by using other methods.
7. Of the two methods of filtering authorized by the Family Movie Act, the third-party filtering and streaming method best satisfies the intent of Congress that filtering be widely, readily, and inexpensively available to American families. The reasons why that is so are obvious. Works that are filtered and streamed by a third party can be viewed on a wide range of devices, including desk top, lap top, and tablet computers and smart telephones—as well as on television sets. Further, such works can be streamed to a family virtually anywhere, whether in a hotel, an airport, or a parent’s place of business. In contrast, home filtering requires that consumers buy a special DVD player and pay a monthly rental fee for it. More importantly, the DVD player must be connected to a television set, thus making it impractical to use when a family wants to watch content on a television other than the one to which the box is connected, and impossible to use when watching content on any type of computer or a smart telephone. Given that many of our members of our affiliated-churches want to watch movies or television programs when they are not in front of a home television, the third-party filtering and streaming method is of much greater benefit to them than relying on a special DVD player connected to a television set.
8. One company that filtered content for consumers was not fully compliant with the Family Movie Act because it performed one-size-fits-all filtering, as opposed to filtering pursuant to the homeowner’s specifications. The studios reacted by suing it and forcing it out of business. Although another company still provides home filtering through the use of a DVD player, VidAngel is the only service that filters and streams content to consumers wherever they are and to virtually whatever device they want. If the studios persuade the Court to enjoin VidAngel

from filtering and streaming content to American families--even though those families have each lawfully purchased a copy of that content--the studios will succeed in depriving a great many American families of a very valuable right granted to them by Congress. **We believe the parents are best-suited to protect the interests of their children. Courts, the studios and all levels of government would do well to remember that the common good of our society is best served by fully supporting such conscientious parents.**

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 31 day of August, 2016, at 139 C Street SE
Washington DC 20003

By Andrea Lafferty
Andrea Lafferty

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19 *Attorneys for Defendant and*
20 *Counterclaimant VidAngel, Inc.*

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

28 vs.

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF DAVID W.
QUINTO IN SUPPORT OF
VIDANGEL'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PRELIMINARY
INJUNCTION MOTION**

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VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4

1 I, David W. Quinto, declare as follows:

2 1. I am a member of the Bar of the State of California and of this
3 Court. Since August 1, 2016, I have served as the general counsel of defendant
4 VidAngel, Inc. (“VidAngel”). I submit this declaration in support of defendant and
5 counterclaimant VidAngel’s Memorandum of Points and Authorities in Opposition to
6 Plaintiffs’ Motion for Preliminary Injunction. I make this declaration of my personal
7 and firsthand knowledge and, if called and sworn as a witness, I could and would
8 testify competently hereto.

9
10 **Disney’s Refusal to Permit VidAngel to Address Disney’s**
11 **“Irreparable Injuries” Pending Resolution of This Action**
12 **Confirms That Its Injuries Are Merely Sham and Pretext**

13 2. Because three of the six major motion picture studios refused to sue
14 VidAngel, I will refer to the four plaintiffs herein by the name of the lead plaintiff,
15 Disney. That Disney’s claimed “irreparable injuries” are neither irreparable nor
16 injuries but are purely pretextual is reflected in an e-mail exchange I had with
17 plaintiffs’ counsel, Kelly Klaus, on August 29, 2016. In the first message, I proposed
18 solutions to several of the alleged “irreparable injuries” Disney’s declarant, Tedd
19 Cittadine, identified. I wrote:

20 I was struck by two things while reading Tedd Cittadine’s declaration
21 explaining how VidAngel’s business potentially could harm
22 plaintiffs. One, explained in paragraph 30, is that “VidAngel limits the
23 number of devices to which a consumer can stream.” VidAngel has
24 always sought to work with content owners. It did not realize that
25 limiting the number of devices it allows its customers to use to view
26 streamed content caused a problem for the studios. Unless you
27 immediately advise otherwise, VidAngel will consider removing that
28 limitation in deference to the studios’ concerns.

1 Second, paragraph 29 of Mr. Cittadine’s declaration avers that the “out-
2 of-stock” notices VidAngel sends to its customers after its stock of
3 DVDs and Blu-ray discs of a given movie have sold out are
4 “inconsistent with the idea of video on ‘demand’ and risks causing
5 consumer frustration and confusion, thereby hurting the broader on-
6 demand streaming market.” He explains that the out-of-stock notices
7 are of “particular significance since the ‘always available, never out of
8 stock’ character of on-demand streaming is one of the essential
9 differentiating characteristics of the on-demand experience from that of
10 traditional, physical DVD rental.” Ironically, VidAngel also hates
11 sending such notices. It does not wish to disappoint its customers but
12 wants to make its service available reliably. Given the parties’ mutual
13 interest in avoiding out-of-stock notices, I welcome your thoughts
14 concerning how this problem can best be mitigated while we await a
15 final merits determination of the parties’ rights. Perhaps we could agree
16 on a reasonable license fee to stream filtered content in lieu of sending
17 out-of-stock notices?
18

19 3. Mr. Klaus’s response ignored entirely my suggested means to eliminate
20 the first purported irreparable injury and was less than polite in refusing to discuss any
21 resolution of the second irreparable injury, even pending a merits determination of the
22 parties’ dispute:
23

24 If VidAngel takes its legal obligations seriously, VidAngel will
25 immediately stop ripping my clients’ works from DVDs and Blu-ray
26 discs and will remove those works from its infringing service. We find
27 your email below to be as disingenuous as your original letters to each
28 of my clients. In addition, it is simply astonishing that VidAngel—
while pursuing legally and factually baseless antitrust claims—proposes
to engage my clients in joint licensing discussions. To reiterate what I
have told Baker Marquart multiple times: my clients absolutely will not
engage in any joint licensing discussions.

Unless and until your client stops illegally circumventing the access
control on my clients’ DVDs and Blu-ray discs and stops infringing
their copyrighted works, we have little to discuss. Otherwise, we look
forward to having the Court resolve these issues in October.

4. I then attempted again to find a solution to the purported “irreparable
injuries” by proposing that the parties negotiate a license to permit VidAngel to stream
filtered content, paying Disney a streaming fee while abandoning entirely any
purchase of discs. Mr. Klaus never responded to that message, which stated:

1 VidAngel is willing to abandon its Family Movie Act exemption (and
2 with it the requirement that consumers must purchase copies of discs)
3 and instead pay a streaming license fee to stream filtered content for a
4 number of reasons. Those reasons include, without limitation, that (i)
5 when the studios someday stop selling discs, VidAngel's business
6 model will cease to be viable; (ii) subject to a single exception
7 evidently made for litigation purposes, movies are made available for
8 streaming *before* they are released on disc, meaning that VidAngel must
9 disappoint its customers by not making popular movies available for
10 filtered streaming when other companies make them available for
11 unfiltered streaming; (iii) VidAngel's customers don't like the buy-sell
12 back business model and wonder why they can't pay a simple rental or
13 streaming fee; (iv) VidAngel disappoints its customers every time it
14 sends an "out-of-stock" notice; (v) VidAngel faces an ever increasing
15 administrative burden in managing a constantly increasing number of
16 discs in its vault; (vi) VidAngel would like to avoid the burden of
17 having to purchase discs from multiple sources; and (vii) discs of
18 television shows frequently have differing numbers of episodes, thereby
19 making int monumentally difficult to allow someone who has
20 purchased a disc with just three episodes to watch those three episodes
21 while allowing someone who has purchased a disc with five episodes to
22 watch all five.

13 I take it that if VidAngel agreed to a license to exclusively filter and
14 stream your clients' content while abandoning its disc-purchase business
15 model, that would resolve both the DMCA and the infringement
16 claims. Are your clients open to discussing a license with those
17 parameters?

16 A true and correct copy of my August 29, 2016 e-mail message exchange with Mr.
17 Klaus is attached as Exhibit A.

18 **If Disney Pornography Does Not Cause Injury, Disney Cannot**
19 **Credibly Argue That a Highly-Regarded Filtering Service Would**

19 5. Disney's contentions that if VidAngel customers receive "out-of-stock"
20 notices or are dissatisfied with the quality of VidAngel's service, Disney might
21 possibly be "irreparably damaged" if those acts sully the reputation of all streaming
22 services should be viewed skeptically given the very high bar Disney sets before
23 viewing anything as damaging. Attached as Exhibit B is a true and correct copy of the
24 home page of DisneyPornLand.com, which uses Disney characters to engage in
25 various sex acts, the Disney mark, and the Disney script. The "whois lookup" records
26 reflect that the DisneyPornLand.com registrant has owned that domain name since
27 1999. As a Uniform Domain Name Resolution Policy ("UDRP") panelist accredited
28 by the World Intellectual Property Organization ("WIPO") and as a lawyer who, while

1 in law firm practice, brought several successful *in rem* actions in the Eastern District
2 of Virginia to obtain domain names used in bad faith by unknown or foreign
3 registrants to cause harm to U.S. trademark owners, I know that it would be a simple
4 and inexpensive matter for Disney to take ownership of that domain name. That it has
5 not done so leads me to conclude that Disney does not believe that the association of
6 its mark and characters with pornography injures it, thus rendering its contention that
7 something both wholesome and approved by Congress trivial and commonplace might
8 less than credible.

9 **Disney Would Benefit if It Enjoyed the Reputation VidAngel Is Earning**

10 6. Disney has not offered a shred of evidence showing that consumers
11 cannot distinguish among various streaming services and therefore view all as
12 providing identical quality. If Disney were correct, though, Disney would benefit
13 from that consumer naiveté because VidAngel’s service has attracted glowing praise
14 from the news media, as reflected in the true and correct copies of recent articles
15 concerning VidAngel collectively attached as Exhibit C.

16 **VidAngel’s Filtered Streaming Service Addresses an Important Public Need**

17
18 7. Attached as Exhibit D is a true and correct copy of a letter dated July 26,
19 2000, signed on behalf of the American Academy of Pediatrics, the American Medical
20 Association, the American Academy of Child & Adolescent Psychiatry, the American
21 Academy of Family Physicians, the American Psychological Association, and the
22 American Psychiatric Association presented at the Impact of Entertainment Violence
23 on Children Congressional Public Health Summit. The letter expresses the belief of
24 the signatories that television and movies “are powerful learning tools” but asserts that
25 when they “showcase violence – and particularly in a context which glamorizes or
26 trivializes it – the lessons learned can be destructive.” The signatories further noted
27 that “well over 1000 studios – including reports from the Surgeon General’s Office,
28 the National Institute of Mental Health, and numerous studies conducted by leading

1 figures within our medical and public health organizations . . . point overwhelmingly
2 to a causal connection between media violence and aggressive behavior in some
3 children.”

4 8. Attached as Exhibit E is a true and correct copy of a letter sent to
5 VidAngel by the Deseret Management Corporation on behalf of itself and Bonneville
6 International Corporation, Bonneville Communications, KSL TV and Radio, Deseret
7 Digital Media, Deseret Book Company, and Deseret News Publishing Company “to
8 express our view that VidAngel provides a valuable service that is very much in the
9 public interest.”

10 **Disney Never Expressed any Pre-Litigation Concern to Me**

11 9. In July 2015, and again in August 2015, I wrote to the general counsel of
12 each of 16 content providers, including both motion picture studios and television
13 networks. Among the addressees were the heads of the legal departments of the four
14 plaintiffs herein. (True and correct copies of the letters I sent to Disney are attached to
15 the Harmon Declaration, filed concurrently herewith.) Shortly thereafter, the firm I
16 was then a partner of reversed its earlier decision that I could represent VidAngel and
17 asked that I terminate my representation of it.

18 10. In September 2015, I received a voicemail message from an in-house
19 lawyer at Fox and an e-mail message from an in-house lawyer at Time Warner, Inc.
20 asking that I get in touch with each to discuss my letters. I advised each by return
21 message that I no longer represented VidAngel and referred each to the Baker
22 Marquart firm. Each has now been designated by the plaintiffs as someone who
23 should be given access even to discovery materials designated as “Attorneys’ Eyes
24 Only.” I was therefore surprised to see the suggestion in Disney’s Memorandum of
25 Points and Authorities that the lawyers were incompetent to understand the
26 significance of my letters, which provided a detailed description of VidAngel’s
27 services and asked whether they believed that VidAngel’s service violated the
28

1 copyright laws in any respect: “Mr. Quinto sent the letters to General Counsels, not to
2 people in business development.” *Id.* at 10:16-17.

3 **Disney Has Leveled Numerous Disingenuous or**
4 **Flatly Untruthful Allegations at VidAngel**

5 11. Disney has untruthfully alleged that VidAngel “pays nothing for the
6 rights it exploits,” Complaint, ¶ 1, and has falsely accused VidAngel of “cutting out
7 payments to copyright owners.” *Id.*, ¶ 4. Disney has also mischaracterized VidAngel
8 as “no different from many other unlawful online services,” *id.*, ¶ 1, and leveled the
9 patently false accusation that “VidAngel does not [pay], and it thereby acquires an
10 unjust competitive advantage.” Memorandum of Points and Authorities at 1:23-24. In
11 fact, VidAngel pays a lot. An accounting report I saw showed that through May 2016,
12 VidAngel had spent over a third of its gross revenues to buy DVD and Blu-ray discs
13 sold by the studios and to re-sell to consumers, many of whom would not otherwise
14 watch the movies recorded on them.

15 12. Disney claims that “legitimate services negotiate and pay for the rights
16 they use [but] VidAngel does not, and it thereby acquires an unjust competitive
17 advantage.” Memorandum of Points and Authorities at 1:22-24. As shown above,
18 though, that is simply untrue. VidAngel would love to negotiate to acquire streaming
19 rights to move away from its DVD/Blu-ray disc model, but Disney refuses to
20 negotiate, and even responds boorishly to requests to do so.

21 13. Disney has also misrepresented that VidAngel does not use an
22 “authorized copy” to filter movies. Memorandum of Points and Authorities at 2:19-
23 21; at 21:27-22:2. But as Disney knows, VidAngel buys authorized copies sold by
24 Disney.

25 14. Disney additionally mischaracterizes the “fundamental difference
26 between VidAngel and licensed VOD (video on demand) services” as one of
27 “permission,” Complaint, ¶ 3, but if, as Disney contends, VidAngel users were
28 required to pay a streaming fee after buying a disc, they would pay Disney twice to

1 watch a movie once.

2 15. Disney further misrepresents that “VidAngel makes many newly released
3 titles available for streaming well before they are available via licensed VOD
4 services.” Complaint, ¶ 5. In fact, based on my experience in the industry, virtually all
5 popular motion pictures go through a standard release sequence: First to theaters,
6 second to expensive “collectors’ edition” discs, third to streaming, fourth to ordinary
7 DVD and Blu-ray discs, fifth to subscription television channels, and last to free
8 television channels (unless, of course, they are really bad, in which case they go
9 “direct to DVD,” or, as sometimes called, “dreck to DVD”). Disney implies that this
10 occurred with the most recent *Star Wars* movie. Complaint, ¶ 5. The implication is
11 once again dishonest – in fact, Disney made the film available for digital HD
12 “purchase”¹ (but not a single-day rental) on April 1, four days *before* it was available
13 on DVD (April 5). Thus, as always, VidAngel could not make that title available until
14 after it was available on digital HD. To my knowledge, that was the only time any of
15 the plaintiffs herein made a digital version of a film available for “purchase” only (and
16 not a single-day rental). To my knowledge, VidAngel has never streamed filtered
17 content of a movie “well before,” or at all before, licensed VOD services did so.

18 16. Disney further suggests that VidAngel can “undercut the pricing of
19 authorized distributors,” and can even charge “about the same as Redbox.” Complaint,
20 ¶ 50. (Redbox is a DVD and Blu-ray disc rental service.) In fact, VidAngel and
21 Redbox buy discs at the same time, although Redbox undoubtedly obtains them at
22 lower cost.

23 17. Disney also claims that VidAngel’s “‘buy-sellback’ scheme is an
24 artifice[.]” Memorandum of Points and Authorities at 3:15. In fact, VidAngel sells

25
26 ¹ A VOD “purchase” is not really a purchase, but merely a license to stream a VOD
27 title within the authorized, closed system or a licensed VOD provider, with several
28 restrictions attached that do not allow for filtering. Meldal Dec. ¶¶ 25-27.

1 physical copies of DVDs to its customers at a set \$20 price; VidAngel records the title
2 transfer and removes the purchased DVDs from its available inventory; VidAngel’s
3 customers may retain ownership of the physical DVDs forever without paying any
4 additional fees; and VidAngel’s customers may ask that the DVDs be sent to them.²

5 18. With no small amount of chutzpah, Disney suggests that an earlier
6 VidAngel technology, which relied on filtering content streamed by Google Play, was
7 lawful. Complaint, ¶ 47. Disney claims that VidAngel “decided to ‘pivot’ its business
8 to its current service.” Memorandum of Points and Authorities at 6:1-2. In fact,
9 VidAngel developed technology to filter content using Google Chromecast
10 devices but *the studios prevented VidAngel from proceeding*. They evidently advised
11 Google that their terms of service agreements prohibited Google from allowing any
12 third party to filter their content. Google then disabled filtering on Chromecast,
13 forcing VidAngel to develop its current technology.

14 I declare under penalty of perjury under the laws of the United States of
15 America that the foregoing is true and correct.

16 Executed this 12th day of September, 2016, at Los Angeles, California.

17 

18 _____
19 David W. Quinto

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25 ² Disney does not challenge VidAngel’s right to repurchase disks and re-sell to
26 other customers. Such activity is protected by the first sale doctrine, *Quality King*
27 *Distributors, Inc. v. L'anza Research Int'l, Inc.*, 523 U.S. 135, 140 (1998), and is no
28 different than a college bookstore that buys back books to resell for the next semester.

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21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

28 vs.

CASE NO. CV16-04109-AB (PLAx)

**DECLARATION OF JAIME W.
MARQUART IN SUPPORT OF
VIDANGEL'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PRELIMINARY
INJUNCTION MOTION**

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VIDANGEL, INC.,
Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Courtroom: 4
Filed concurrently herewith:

1 I, Jaime W. Marquart, hereby declare:

2 1. I am a partner at Baker Marquart LLP, attorneys for defendant and
3 counter claimant VidAngel, Inc. (“VidAngel”). I submit this declaration in support
4 of defendant and counterclaimant VidAngel, Inc.’s (“VidAngel’s”) Application to
5 File Under Seal the specific documents described therein. I am over the age of 18
6 and make this declaration of my own personal knowledge. If called upon to testify
7 as to these matters, I would testify as follows.

8 2. On October 9, 2015, I called an in-house lawyer at Fox who is
9 designated to receive Attorneys’ Eyes Only, Highly Confidential documents in this
10 case. I did so after I was advised by David Quinto that she had left a message for
11 him asking that he call her. Mr. Quinto explained that she left the message after he
12 was asked by his then employer to terminate his representation of VidAngel. She
13 did not return my call. On October 16, 2015, I sent an e-mail message to a senior
14 in-house lawyer at Time Warner, Inc., the parent of plaintiff Warner Bros.
15 Entertainment Inc., who has also been designated to receive Attorneys’ Eyes Only,
16 Highly Confidential documents in this case. He responded by e-mail asking that we
17 set a time to discuss the letters Mr. Quinto had sent on VidAngel’s behalf. Although
18 we scheduled a time to speak to one another, he later canceled our scheduled call
19 and did not ask to re-schedule it. Other than those two contacts, I received no
20 communications from any plaintiff or any of their attorneys before they filed suit on
21 June 9, 2016. At no time did any employee, attorney, or representative of any of the
22 plaintiffs (or, for that matter, of any other recipient of Mr. Quinto’s letters sent on
23 VidAngel’s behalf) express any objection to VidAngel’s service to me before this
24 action was commenced.

25 3. Attached as Exhibit A are true and correct copies of excerpts
26 from the August 9, 2016, deposition of Plaintiffs’ Rule 30(b)(6) designee and the
27 senior vice president of digital distribution at Plaintiff Fox, Tedd Cittadine. The
28 excerpts in this exhibit have not been marked confidential pursuant to the protective

1 order in this case (Dkt. 21).

2 4. Attached as Exhibit B true and correct copies of excerpts
3 from the August 9, 2016, deposition of Plaintiffs' Rule 30(b)(6) designee and the
4 senior vice president of digital distribution at Plaintiff Fox, Tedd Cittadine. The
5 excerpts in this exhibit have been marked highly confidential pursuant to the
6 protective order in this case (Dkt. 21).

7 5. Attached as Exhibit C is a true and correct copy of the Errata Sheet
8 from the August 9, 2016, deposition of Plaintiffs' Rule 30(b)(6) designee and the
9 senior vice president of digital distribution at Plaintiff Fox.

10 6. Attached as Exhibit D is a true and correct copy of a privilege log
11 marked Highly Confidential pursuant to the Protective Order entered by this Court
12 on August 19, 2016, Dkt. No. 23.

13 7. Attached as Exhibit E is a true and correct copy of a letter from Kelly
14 Klaus, counsel for Plaintiffs in this matter, to me, dated August 24, 2016.

15
16 I declare under the penalty of perjury under the laws of the United States of
17 America that the foregoing is true and correct.

18 Executed on September 12, 2016, at Los Angeles

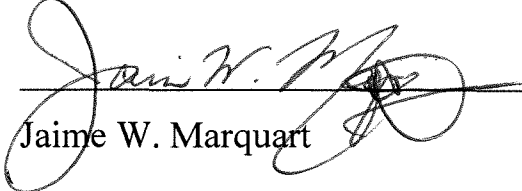
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21 Jaime W. Marquart

EXHIBIT B

REDACTED PUBLIC FILING

HIGHLY CONFIDENTIAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DISNEY ENTERPRISES, INC.;)	
LUCASFILM LTD. LLC;)	
TWENTIETH CENTURY FOX FILM)	
CORPORATION; AND WARNER)	
BROS. ENTERTAINMENT, INC.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. CV16-04109
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VIDANGEL, INC.,)	
)	
Defendant.)	
)	
_____)	
)	
AND RELATED CROSS-ACTION.)	
_____)	
)	

(COMPLETE CAPTION ON THE FOLLOWING PAGE.)

C O N F I D E N T I A L
(PURSUANT TO PROTECTIVE ORDER, THE FOLLOWING
TRANSCRIPT HAS BEEN DESIGNATED
"HIGHLY CONFIDENTIAL")

Pursuant to Rule 30(b)(6)
VIDEOTAPED DEPOSITION OF TEDD CITTADINE
Tuesday, August 9, 2016
at 9:19 a.m.

1 A. Uh-huh.

2 MR. KLAUS: And just -- and so just --
3 just for my purposes, Mr. Marquart, when you're
4 using "filtering" in this depos- -- deposition,
5 unless you say otherwise, that's going to mean
6 "making imperceptible limited portions of audio or
7 video content of a motion picture"?

8 MR. MARQUART: Yes.

9 And I specifically mean to include the
10 examples that the witness gave, which would be
11 bleeping -- he mentioned to filter out or make
12 imperceptible audio -- and removing and cutting,
13 which would be to skip the video.

14 MR. KLAUS: Removing, cutting, skipping
15 video?

16 MR. MARQUART: Yes.

17 MR. KLAUS: Okay.

18 MR. MARQUART: Those were examples of
19 filtering that I also mean to include.

20 BY MR. MARQUART:

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1 A. -- more specifically.

2 Q. Let's talk about those.

3 A. Okay.

4 Q. What's digital sell-through?

5 A. Digital sell-through is a right that we
6 grant our clients to offer consumers the ability to
7 access content for a very long period of time,
8 whether it's by download or whether it's by stream,
9 to a number of authorized devices.

10 Q. Okay. And the second category you

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5 BY MR. MARQUART:

6 Q. And I know the answer to this.

7 But, to your knowledge, does Fox allow
8 any third party to assist that user in filtering
9 out content from their streamed copy?

10 MR. KLAUS: Object to the form of the
11 question, outside the scope, calls for a legal
12 conclusion.

13 If you know of any third-party agreements
14 that specifically authorize that, you can say "Yes"
15 or "No."

16 THE DEPONENT: No.

17 BY MR. MARQUART:

18 Q. Okay. Based on your counsel's
19 clarification, I have another question.

20 Does -- do you believe that Fox has to
21 authorize the filtering of that digital copy before
22 it may legally be filtered by the user?

23 MR. KLAUS: Object to the form of the
24 question, calls for a legal conclusion. It's
25 outside the scope of the deposition topics.

1 If it were illegal, I would object to --
2 to that behavior, yes.

3 BY MR. MARQUART:

4 Q. The -- the second example you mentioned
5 on Harm Number 2 --

6 A. Uh-huh.

7 Q. -- control of revenue and license
8 agreements was -- the second specific example you
9 gave, was that existing VOD users might complain to
10 you.

11 Do you recall that?

12 A. Existing VOD users being existing VOD
13 clients?

14 Q. Yeah. Sorry.

15 A. Yeah.

16 Q. Let me specify that.

17 A. Yeah.

18 Q. So your existing VOD clients might come
19 to you and complain about the unauthorized
20 distributors' activities and say that it's harming
21 their business?

22 A. Yes, they do complain.

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24 **REDACTED**
25 **REDACTED**

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20 Q. And you don't normally receive specific
21 complaints? They're normally generic?

22 A. Regarding specific unauthorized services,
23 that's --

24 Q. If you --

25 A. -- that's correct.

1 A. A -- a document called "Standard terms
2 and conditions"?

3 Q. Yes.

4 A. Yes, we typically have -- have that in
5 our documents.

6 **REDACTED**
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22 Q. Okay. And just so I'm clear, in that --
23 that term that I just described -- making the
24 alteration, modification, or deletion -- that would
25 be a form of filtering like we discussed

**EXHIBIT D FOR
PUBLIC FILING HAS
BEEN REDACTED IN
ITS ENTIRETY**

EXHIBIT D

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20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 DISNEY ENTERPRISES, INC.;
24 LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,

26 Plaintiffs,

27 vs.

28 VIDANGEL, INC.,

CASE NO. 16-cv-04109-AB (PLAx)
**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

**DECLARATION OF SIGURD
MELDAL IN SUPPORT OF
VIDANGEL'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PRELIMINARY
INJUNCTION MOTION**

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Defendant.

VIDANGEL, INC.,
Counterclaimant,
vs.
DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
BROS. ENTERTAINMENT, INC.,
Counterclaim Defendants.

1 I, Dr. Sigurd Meldal, declare:

2 1. I submit this declaration in support of defendant and counterclaimant
3 VidAngel, Inc.’s (“VidAngel’s”) Memorandum of Points and Authorities in
4 Opposition to Plaintiffs’ Motion for Preliminary Injunction. I have personal
5 knowledge of the facts set forth herein and, if called and sworn as a witness, I could
6 and would testify competently hereto.

7 2. I have been retained by VidAngel as an expert in this case. I am a
8 professor of computer engineering, software engineering and computer science at
9 San Jose State University and a computer scientist for Quandary Peak Research and
10 I have served as a consulting Professor in the Electrical Engineering Department at
11 Stanford University.

12 3. I have received several honors and awards over the course of my
13 career, including the Fulbright-Hayes Fellowship, the Carl-Erik Fröberg Award, a
14 Certificate of Recognition from the California State Assembly, and a Certificate of
15 Special Recognition from the U.S. House of Representatives.

16 **Professional Honors and Experience**

17 4. I have served on many professional committees and organizations. For
18 example, I serve as a Commissioner of the national Engineering Accreditation
19 Commission of the Accreditation Board for Engineering and Technology (ABET.)
20 (The Engineering Accreditation Commission of ABET defines the standards for
21 engineering education and determines whether programs are up to those standards or
22 not.) I am also a member of the Fulbright Association, and a Senior Member of the
23 Institute of Electrical and Electronics Engineers (IEEE) and of the Association for
24 Computing Machinery (ACM).

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1 5. I have more than 30 years of experience working on security and
2 networked systems, starting with contributions to the surveillance systems for the
3 nuclear arms treaties of the '80s and including the creation of degree curricula in
4 security and privacy. I was the founding director of the Silicon Valley Big Data and
5 Cybersecurity Center as well as a member of the Strategic Task Force on
6 Cybersecurity for the State of California. I am also Co-Director of the NSF Science
7 and Technology Center for Research in Ubiquitous Secure Technologies (the "NSF
8 TRUST Center") at the University of California, Berkeley.

9 6. I have previously testified in a number of cases concerning intellectual
10 property that relates to mobile devices, networked systems and services-oriented
11 architectures, including in particular smartphones, wireless communication and
12 telephony, network-based data systems, location-oriented web services and mobile
13 device positioning systems as well as streaming video content across the internet.
14 My Curriculum Vitae is attached as Exhibit A.

15 **Documents and Things Reviewed**

16 7. The opinions expressed in this declaration are based on my professional
17 experience as well as my use and review of VidAngel's service and the following
18 documents:

- 19 (i) VidAngel's Answer and Counter Complaint (Dkt. 11);
 - 20 (ii) The deposition testimony of Tedd Cittadine and Neal Harmon;
 - 21 (iii) Deposition exhibit 15 (a description of VidAngel's filtering
22 technology), deposition exhibit 16 (a description of VidAngel's process for
23 preparing discs for streaming), deposition exhibit 17 (VidAngel's instructions
24 for adding new movie and television show titles to its inventory), and
25 deposition exhibit 19 (VidAngel's encoding and segmenting checklist);
- 26
27
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- 1 (vi) The Plaintiffs’ Motion for a Preliminary Injunction (Unredacted) (Dkt.
2 27), declarations of Tedd Cittadine (Unredacted) (Dkt. 28) and Robert
3 Schumann (Unredacted) (Dkt. 29) in support of Plaintiffs’ Motion for
4 Preliminary Injunction;
- 5 (v) The Digital Entertainment Group’s DEG Year-End 2006 Home
6 Entertainment Sales Update;
- 7 (vi) The standard terms of service for VOD Google Play, Amazon Video,
8 Vudu, iTunes Store, and YouTube;
- 9 (vii) ClearPlay, Inc.’s website available at <https://www.clearplay.com>.

10 **DVD and Blu-ray Discs Dominated the**
11 **Home Entertainment Market in 2005**

12 8. In the mid to late 1990s, digital versatile discs (“DVDs”) began to
13 replace VHS tapes as the primary media onto which motion pictures were recorded
14 for sale in the home entertainment market. By 2005, the home entertainment market
15 was dominated by DVDs. Attached as Exhibit B is a true and correct copy of a
16 Digital Entertainment Group report dated January 8, 2007, stating that in 2005,
17 approximately 94% of digital home entertainment was consumed using discs. By
18 2006, this percentage increased to well over 99%. But as I will explain later, the
19 home entertainment market is now moving rapidly away from physical discs, to
20 services that stream a title directly to a user’s television or other device.

21 **Discs Were Encrypted by the Late 1990s**

22 9. Encryption of DVDs also dates back to the 1990’s, and was the subject
23 of an appellate opinion in 2001. *Universal City Studios, Inc. v. Corley*, 273 F.3d
24 429 (2d Cir. 2001). In 2005, DVDs and Blu-ray discs bore security features,
25 commonly known as “encryption,” that encoded the content in such a way that the
26 disc’s contents could not be accessed, copied or modified without a decryption key.
27 A disc cannot be used without first decrypting it. Common forms of encryption
28 included Content Scramble System (“CSS”) for DVDs and Advanced Access

1 Content System (“AACS”) for Blu-ray discs. I have read the Declaration of Robert
2 Schumann in Support of Plaintiffs’ Motion for Preliminary Injunction (“Schumann
3 Dec.”) and, for the purposes of my opinion expressed in this declaration, agree with
4 his descriptions of how CSS, AACS and BD+ each function (but disagree with his
5 assessment of their effectiveness, as noted below). (Schumann Dec. ¶¶ 20-34.)
6 CSS, AACS, and to a lesser extent BD+, remain the most common forms of
7 encryption for DVDs and Blu-ray discs today. (Schumann Dec. ¶¶ 20, 27.)

8 10. By definition, it is impossible to access, view, copy or alter in any way
9 a motion picture contained on an encrypted digital disc without first unlocking the
10 encryption. In 2005, all household DVD players were equipped with digital keys
11 that unlocked the encryption on the digital disc prior to sending the video to the
12 user’s television.

13 **The Digital Millennium Copyright Act**

14 11. The DMCA addresses, to some extent, the forms of encryption
15 described above and in Mr. Schumann’s Declaration. It provides that “a
16 technological measure [i.e., encryption] ‘effectively controls access to a work’ if the
17 measure, in the ordinary course of its operation, requires the application of
18 information, or a process or a treatment, with the authority of the copyright owner,
19 to gain access to the work.”

20 12. In the case of the encryption commonly used to access motion pictures
21 on Blu-rays and DVDs, it is undisputed that software capable of removing these
22 measures is ubiquitous and easily accessible, despite the fact that much of that
23 software is no longer readily sold in the United States. In light of the ease with
24 which one may currently decrypt a DVD or Blu-ray disc using readily available
25 software, DVD and Blu-ray encryption does not “effectively control access to a
26 work,” because these measures may be easily removed in the ordinary course of
27 their operation to gain access to the work. Accordingly, Robert Schumann’s opinion
28

1 expressed throughout Paragraphs 20-34 (under the headings, “CSS Is An Effective
2 Access-Control System for DVDs,” and “AACs and BD+ Are Effective Access-
3 Control Systems for Blu-ray Discs”) that CSS, AACs and BD+ are effective access-
4 control systems is incorrect.

5 **The 2005 Family Movie Act Authorized**
6 **Third Parties (Such as VidAngel) to Filter**
7 **Motion Pictures in Either of Two Ways**

8 13. I understand that The Family Home Movie Act of 2005 (“FMA”)
9 provides the legal context for the expert opinions expressed herein. The FMA
10 specifically provides that “it is not a violation of copyright” to:

11 [make] imperceptible, by or at the direction of a member of a private
12 household, of limited portions of audio or video content of a motion
13 picture, during a performance in or transmitted to that household for
14 private home viewing, from an authorized copy of the motion picture,
15 or. . .creat[e] or provi[de]. . .a computer program or other technology
that enables such making imperceptible and that is designed and
marketed to be used, at the direction of a member of a private
household, for such making imperceptible, if no fixed copy of the
altered version of the motion picture is created by such computer
program or other technology.

16 17 U.S.C. § 110(11). As used in the FMA, “motion picture” is defined to include
17 television programs. The “making imperceptible . . . limited portions of audio or
18 video content of a motion picture” referenced in the FMA is commonly referred to
19 as “filtering.”

20 14. The plain language of the FMA quoted above expressly authorizes and
21 exempts from copyright infringement two distinct methods for filtering motion
22 pictures. The first – and today far more important method – is the “transmission” or
23 streaming method. The word “transmission” has broad meaning in the context of
24 the Copyright Act. “To ‘transmit’ a performance or display is to communicate it by
25 any device or process whereby images or sounds are received beyond the place from
26 which they are sent.” 17 U.S.C. § 101. In turn, “device,” “machine,” and “process”
27 are defined to include “one now known or later developed.” *Id.* Accordingly, the
28

1 FMA expressly authorized future processes for privately transmitting filtered
2 versions of motion pictures to members of households at their direction. In the
3 transmission method, a third party, at the direction of a member of the household,
4 makes imperceptible limited portions of an authorized copy of a motion picture's
5 audio or video content in a “transmission” to that household. This first method is
6 the more important today because it works across every type of device and mobile
7 platform for viewing content. This is also the method that VidAngel employs, as
8 described in more detail below.

9 15. The FMA also exempts any computer program or other technology that
10 filters an authorized copy of a motion picture “during a performance in” a private
11 household 17 U.S.C. § 110(11). In 2005, when the FMA was being created, this was
12 the only type of filtering service that existed. It was provided by a company called
13 ClearPlay, which sold specialized hardware to be installed in the user’s home. The
14 ClearPlay hardware unlocked encryption through the use of a built-in DVD/Blu-ray
15 disc drive equipped with a CSS “key” that unlocked the DVD’s CSS encryption. *See*
16 <https://www.clearplay.com/p-450-clearplay-blu-ray-player-cp1126.aspx>, a true and
17 correct copy of which is attached as Exhibit C. All DVD player manufacturers
18 obtained CSS keys through licenses from the DVD Copy Control Association
19 (“DVD CCA”) so that every home DVD player could unlock CSS encryption. Once
20 the home DVD player unlocked the CSS encryption, the ClearPlay set top box
21 provided the filtering. Because no fixed copy of the altered work was ever created
22 by the ClearPlay box, its service was expressly authorized by the FMA. The
23 ClearPlay set top box recently retailed for \$249.99 and required an additional \$7.99
24 per month subscription to ClearPlay for the filters. The ClearPlay method did not
25 allow a user to access filtered content on modern mobile devices. *See*
26 https://www.clearplay.com/t-streaming_support.aspx, a true and correct copy of
27 which is attached as Exhibit D (noting the ClearPlay Streaming Player works only
28

1 on a Mac or PC computer using a Chrome browser, and only when the computer is
2 attached to the TV via HDMI cable or the “tab-cast” feature of the Chromecast in
3 order to work).

4 16. The FMA expressly does not require that the household or the
5 technology provider operating at the direction of the household obtain the consent of
6 the copyright holder prior to filtering a work, provided that no fixed copy of the
7 altered work is created. 17 U.S.C. § 110(11). This lack of a consent requirement for
8 filtering is essential to any functioning market for filtering motion pictures because
9 the major studios that own those works and the directors that create them were
10 vehemently opposed to the enactment of the FMA and to companies that provided
11 filtering technology. In fact, I have reviewed the deposition testimony of Tedd
12 Cittadine, who testified that no studio to his knowledge has ever privately licensed
13 any third party to filter any of its works. Deposition Transcript of Tedd Cittadine
14 attached as Exhibit B to the Declaration of Jaime W. Marquart filed concurrently
15 herewith (“Marquart Dec.”) at Tr. 83:21-84:21.

16 17. Digitally encoded motion pictures to be distributed commercially are
17 usually *encrypted*. The content of the movie is transformed from its viewable format
18 into a representation where the content is no longer distinguishable from random
19 data – *encrypted data*. Without a subsequent *decryption*, the content information is
20 not accessible – it cannot be viewed or manipulated in any meaningful way. Thus
21 before the movie content can be displayed to a viewer, the encrypted data has to be
22 *decrypted*, or *unlocked*, reversing the encryption process to yield the original
23 information content.

24 18. Since the encrypted representation of the content is indistinguishable
25 from random data, the movie content cannot be analyzed for objectionable content
26 subject to filtering, nor can such filtering be applied without the content first
27 becoming viewable again. It is thus impossible to view or filter for viewing a
28

1 motion picture stored in a digitally encrypted format without first unlocking the
2 encryption. This is true in the case of DVD viewing, where a key contained within a
3 DVD player unlocks the encryption, and it also true in the case of streaming, where
4 a viewing application provided by the streaming service unlocks the encryption.
5 The reason for this is that, by definition, encryption prevents accessing, copying or
6 altering the content of the original files.

7 19. In drafting the FMA, Congress obviously considered known
8 technologies. When Congress enacted the FMA, encrypted physical discs were the
9 dominant technology in the market. To *transmit* a filtered version of a motion
10 picture stored on any physical disc sold in the home entertainment market, one must
11 first unlock the encryption of the content and make an intermediate version. The
12 reason for this is that a filter has to modify the movie content to be delivered to the
13 viewer, a process that requires the substitution of original content with the filtered
14 (e.g., muted audio or hidden video) content based on information regarding the time
15 points where the filter is to be invoked, and how. Such manipulation of the original
16 content cannot occur without that content being available, i.e., the encrypted data
17 has to be decrypted before any filtering can occur.

18 20. It is inherent in the decryption process that a local version of the
19 unlocked content be created – be it in memory or other storage.

20 21. Having made the movie content ready for a filtered transmission,
21 further transient versions are created. It is common to create different versions of the
22 content adapted to various presentation formats (e.g., for standard and high
23 definition resolutions) and for different transmission bandwidth environments (e. g.,
24 slower vs. faster connections between the servers and the consumer). Finally, for
25 broadly distributed content, when a customer requests a particular movie (as filtered
26 by filtering technologies such as VidAngel’s), the streaming media is usually moved
27 from the central servers to so-called “edge servers” to place the multimedia data
28

1 repository closer to the consumer to avoid the massive network traffic congestion
2 that would result if all multimedia were transmitted from a single hub. (This is
3 commonly referred to as a “pull cache” technology.)

4 22. The strategy of creating temporary versions of data such as movie
5 content to enable streaming transmissions is referred to as “caching,” and is a
6 standard practice in the computer and networking professions generally, and with
7 respect to streaming media content in particular.

8 23. As is common industry practice for delivering of commercial digital
9 content, VidAngel’s technology ensures the integrity and the protection of such
10 content against illegal access by encrypting the content prior to its delivery across
11 the Internet to the customer (see below for details).

12
13 **Technological Measures Implemented
by VOD Providers Impede Filtering**

14 24. Today, physical discs are rapidly being replaced by Video on Demand
15 (“VOD”) distribution. None of the VOD services described in Plaintiffs’ Complaint
16 – Netflix, Hulu, iTunes, Google Play, Amazon Video and VUDU – existed in April
17 2005, when the FMA was enacted. To deliver VOD content to a consumer, standard
18 VOD files are transmitted from the VOD provider’s server to a user’s television,
19 computer or mobile device in an encrypted format. The most popular VOD
20 providers all use a combination of legal and technological means to prevent
21 filtering. First, all the most popular VOD providers provide their own studio-
22 approved form of encryption for the motion picture files they stream to their users.
23 See, e.g., Marquart Dec. Ex A at Tr. 80:13 – 81:16. Second, their VOD distribution
24 systems are “closed systems.” In closed systems, the files are encrypted prior to
25 transmission to the user’s device and then may be opened and viewed only by using
26 a proprietary software application loaded on the user’s device. The use of a closed
27 system is intended to prevent any third party (or the user) from accessing or altering
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1 any VOD file transmitted to it. In closed systems, access to the VOD provider’s
2 proprietary software is necessary to alter the file, and no user or third party may
3 access, alter or add to that software. Id.

4 25. I have read the declaration and deposition transcript of Plaintiffs’
5 witness, Tedd Cittadine, who testified that the market for VOD titles is divided into
6 two general types of transactions, rental (usually for a small period of time, such as
7 24-48 hours) and what the VOD providers characterize as “sell-through.” This
8 comports with my understanding of the market for VOD titles. In general, “sell-
9 through” is meant to mimic in some, but not other, respects the purchase of a
10 physical disc, and VOD providers generally refer to a sell-through transaction as a
11 “Purchase.” The price for a purchase of a VOD title is commensurate with the price
12 for purchasing a physical disc at retail, though it is usually reduced by a small
13 amount (as much as \$5.00 for a new release), which reflects costs saved by not
14 having to manufacture, package, store, distribute and ship discs. A “sell-through”
15 transaction differs from a traditional purchase of a physical disc, however, in that it
16 is merely a license to view the VOD title within the VOD provider’s viewing
17 software subject to a long list of restrictions contained in terms of service
18 agreements that must be accepted to complete the “purchase.” The same is true of
19 “renting” a VOD title, with the additional term that a customer’s window to watch
20 the title expires within a short time.

21 26. Third, their terms of service agreements prohibit filtering. I have
22 reviewed the standard terms of use for the four VOD providers mentioned in
23 Plaintiffs’ Complaint as marketing major motion pictures on a rental and “sell-
24 through” basis: Vudu, Google Play, iTunes, and Amazon Instant Video. Two other
25 services mentioned in Plaintiffs’ Complaint – Netflix and Hulu – provide VOD titles
26 on a subscription basis. However, I understand that Plaintiffs in this case have
27 compared VidAngel’s service to the non-subscription-based VOD providers. True
28

1 and correct copies of the terms of service agreements for the four non-subscription-
2 based services are attached collectively as Exhibit E. Each of them provides that
3 the user may not modify any digital content purchased through the provider's
4 system. Because these terms of service expressly prohibit modification of
5 audiovisual content in the ways necessary to filter (through automatic skipping and
6 muting), a user may not filter VOD content without violating the VOD provider's
7 terms of service.

8 27. Fourth, in addition to VOD terms of service, which prohibit filtering,
9 several technological issues make it impractical to apply filters accurately to a VOD
10 title after it is opened within the VOD provider's proprietary software on a user's
11 device. Due to varying transfer rates and other technical functionalities unique to
12 each VOD provider's viewing application software, as well as operational
13 differences unique to each user's device, it has not been possible for a third party to
14 create software compatible across multiple devices and applications to filter titles
15 after they have been opened in a particular VOD provider's viewing application.
16 More importantly, such software cannot be written for even a simple application.
17 Closed systems contain security features that prevent the creation of filtering
18 software compatible with that system absent assistance from the VOD provider. To
19 develop filtering software that functions within a VOD provider's closed system, a
20 developer typically must have the consent and participation of the VOD provider to
21 access its software for the purpose of developing software compatible with it. I
22 have been informed, and have confirmed in part through my review of Mr.
23 Cittadine's deposition transcript, that no VOD provider and no Plaintiff has ever
24 consented to allow a third party to create software compatible with a VOD
25 provider's closed system to allow users to apply customized filters to titles viewed
26 within the provider's closed system.

27
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**Google’s Purported YouTube Player “Exception”
Demonstrates That Plaintiffs Have Made It Infeasible to
Provide Filtered VOD Content to Consumers**

1
2
3 28. One exception to the closed VOD delivery systems architecture and
4 terms of service described above is the YouTube Embeddable Player and its
5 application programming interface (“API”). The YouTube Embeddable Player API
6 also did not exist in April 2005, when the FMA was enacted. An API is a set of
7 function and interface definitions, the protocols for their use, and associated
8 programming tools that affords software developers controlled access to the API
9 owner’s software. An API permits the development of other software programs that
10 can interact with the API owner’s software. The additional software is often referred
11 to as a “plug-in” to the API owner’s software. In theory, the YouTube Embeddable
12 Player API allows a software developer to create a plug-in for the YouTube
13 Embeddable Player capable of allowing automatic skipping and muting of undesired
14 content in an encrypted motion picture file after the file is opened for viewing by the
15 YouTube Embeddable Player in a user’s Google Chrome browser. To my
16 knowledge, no other VOD provider’s player contains an API that would allow for
17 the creation of a plug-in capable of allowing automatic skipping and muting of
18 undesired content in an encrypted motion picture file after the file is opened for
19 viewing by the VOD provider’s player.

20 29. Paragraph 47 of Plaintiffs’ Complaint alleges that the YouTube API
21 allows a third party – such as VidAngel – to filter VOD titles purchased from
22 Google. This is inaccurate in a number of ways. To begin, YouTube’s terms of
23 service – attached as Exhibit F – expressly prohibit a user (or anyone directed by the
24 user) from “alter[ing] or modify[ing] any part of” a motion picture viewed on the
25 YouTube Embeddable Player. The user also “agree[s] not to access Content
26 through any technology or means other than the video playback pages of the Service
27 itself, the Embeddable Player, or other explicitly authorized means YouTube may
28 designate.” The YouTube Paid Service Terms of Service – a true and correct copy

1 of which is attached as Exhibit G – further prohibits copying the Paid Services or
2 the sublicensing them to any third party. These terms of service also do not allow a
3 user to “circumvent, reverse-engineer, modify, disable, or otherwise tamper with
4 any security technology that YouTube uses to protect the Paid Service or encourage
5 or help anyone else to do so.” All these restrictions expressly make it a violation of
6 YouTube’s Terms of Service to engage in any of the activities necessary to filter a
7 motion picture through YouTube’s Embeddable Player.

8 30. In addition, the YouTube API Services Terms of Service for developers
9 writing software plug-ins that interact with the API – a true and correct copy of
10 which is attached as Exhibit H – also prohibit any technology capable of filtering
11 motion pictures viewed through the YouTube Player API. They provide that
12 developers may not “separate, isolate, or modify the audio or video components of
13 any YouTube audiovisual content made available through the YouTube API.”
14 Thus, any third party that attempts to provide a filtering plug-in for a YouTube
15 Embeddable Player does so in violation of YouTube’s terms of use. I have also read
16 Exhibit A to the Declaration of Neal Harmon, which is a notification from YouTube
17 informing VidAngel that its filtering plug-in for the YouTube Embeddable Player
18 violates the YouTube API Services Terms of Service.

19 31. There are also several technological limits to creating a plug-in
20 compatible with the YouTube Embeddable Player API capable of accurately and
21 seamlessly filtering motion pictures purchased lawfully for viewing on the YouTube
22 Embeddable Player. To begin with, the Embeddable Player plug-in works only with
23 standard-definition content, not with the popular high-definition format typical of
24 DVDs or Blu-ray discs. More importantly, because the plug-in is not officially
25 supported by Google, changes to YouTube can cause the filters to fail. When that
26 happens, filtering is ineffective and users will see content that they did not want to
27 see until the plug-in is updated. Finally, slower computers cannot process both the
28

1 video and the filter at the same time, resulting in missed filters. The end result is
2 that – without Google’s technical support and cooperation – no method of using a
3 YouTube Embeddable Player plug-in provides a consistent filtering experience for
4 the majority of users and no method would provide a high-definition filtering
5 experience for any user. In addition, this method does not work on modern mobile
6 devices.¹

7 32. Furthermore, these approaches to enabling a filtering functionality for
8 the customer suffer from reductions in the quality of the viewer experience such as
9 lower resolution, delays or stops, stuttering, and other impediments to smooth
10 viewing. Consequently, the commercial quality a viewer would expect when
11 enjoying the filtered content would be significantly jeopardized and diminished.

12 **VidAngel Transmits Filtered Versions of Plaintiffs’**
13 **Motion Pictures to Owners of Authorized Copies of**
14 **the Motion Pictures Pursuant to the FMA**

15 33. VidAngel is an online video filtering service that operates under the
16 “transmission” filtering method authorized by the FMA. Its service allows
17 customers to stream filtered feature films and television shows via the Internet to a
18 wide range of devices, including desktop computers, laptops, iPads, smart phones,
19 and televisions (through devices like Roku, Google Chromecast, or Apple TV).

20 ¹ I am also aware of certain “digital rights locker services,” such as UltraViolet
21 and Disney Movies Anywhere and disc-to-digital services such as VUDU and
22 Flixter, that claim to allow consumers to convert previously purchased DVDs or
23 Blu-ray discs into high quality digital files. See 37 CFR Part 201 (Exemption
24 to Prohibition on Circumvention of Copyright Protection Systems for Access
25 Control Technologies). These services merely provide the same digital right to a
26 user that he or she would obtain if purchasing a “sell-through” license from a VOD
27 provider for the disc the customer owns. The user then must follow the same terms
28 of service attendant to that VOD license, which prevent any third-party filtering in
the same way that other VOD services prevent filtering. Marquart Dec. Ex. B at Tr.
96:11-102:4.

1 VidAngel users can select from more than 80 unique filters when viewing a film or
2 television show. The filters have the effect of skipping audiovisual content or
3 muting audio content in categories created by VidAngel and selected by the user.
4 Example categories include sexual activity, nudity, drug use, obscenity, vulgarity,
5 the “F” word, blasphemy and violence. All users must select at least one filter, and
6 each user has the option to select as many other filters as apply to that content, thus
7 permitting users in most instances to select many thousands of different
8 combinations of filters, thus making a customer’s viewing experience individualized
9 and unique.

10 VidAngel’s Filtering Technology

11 34. VidAngel follows the first, “transmission,” method contemplated by
12 the FMA, requiring the purchase of an authorized copy of a physical disc, a filtered
13 version of which is then streamed to the user without making a fixed copy of the
14 filtered work. VidAngel delivers filtered content to users by streaming it over the
15 Internet using a video content delivery protocol called HTTP Live Streaming²
16 (“HLS”). HLS divides the audiovisual content into short segments that are
17 frequently less than 4 seconds and never more than 10 seconds that are delivered
18 separately to a user’s device when viewed. The user’s device downloads each
19 segment individually. At the beginning of an HLS streaming session, the user’s
20 device downloads an index file which provides the device with a list of segment
21 files that the device can then request and play to display the content.³

22 35. VidAngel’s filtering technology divides each feature film or television
23 show into hundreds or sometimes thousands of small segments (ranging from 2
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25 ² R. Pantos, W. May, “HTTP Live Streaming,” Internet Engineering Task Force,
26 Apr. 4, 2016 (retrieved from [https://tools.ietf.org/html/draft-pantos-http-live-](https://tools.ietf.org/html/draft-pantos-http-live-streaming-19)
27 [streaming-19](https://tools.ietf.org/html/draft-pantos-http-live-streaming-19), Sept. 3, 2016)

28 ³ *Id.*

1 tenths of a second to 10 seconds in length), for which each segment is identified and
2 “tagged” as associating with one or more available categories of filterable content.
3 When a user selects a filter category and streams a feature film or television show,
4 all segments that are tagged for that filter are omitted from the stream.

5 36. If the filter concerns audiovisual content, the user’s device will not
6 download the segments that have been tagged for that filter. If the filter affects only
7 the audio, the user’s device downloads a version of the segment with the voice
8 soundtrack muted while other soundtracks continue to play, but leaves the video
9 portion unchanged.

10 37. Based on my review of the documents that VidAngel has provided to
11 me, it is my understanding that VidAngel’s system is designed and operates as
12 follows:

- 13 (i) VidAngel lawfully purchases DVDs and Blu-ray discs;
- 14 (ii) VidAngel places a DVD or Blu-ray disc into the optical drive of a
15 computer. VidAngel then uses a commercially available software program such as
16 AnyDVD HD to automatically allow read-access for the purpose of mounting the
17 DVD or Blu-ray files for uploading onto a computer, in the process necessarily
18 removing restrictions on DVD or Blu-ray content access;
- 19 (iii) VidAngel uses a software program to extract the subtitle/caption data
20 files and then creates temporary (“locally cached”) Matroska files (erroneously
21 referred to by Plaintiffs’ expert, Robert Schumann, as “Mastroska” files) of the
22 feature films. Matroska files are multimedia files that can hold an unlimited number
23 of video, audio, picture, or subtitle tracks in one file;
- 24 (iv) VidAngel uploads the subtitle/caption data files and Matroska files
25 (collectively known as the “pre-filter files” or “PF” files) onto a secure folder on a
26 third-party Internet service provider’s cloud storage service (“PCSS”) and uploads
27 the subtitle/caption into a separate PCSS folder (“PCSS cache” of these intermediate
28

1 files);
2 (v) VidAngel destroys the locally cached Matroska file;
3 (vi) VidAngel boots an encoding and segmenting server (“ESS”) to run two
4 scripts, including an encoding script and a segmenting script, as follows:
5 a. The encoding script temporarily copies the PF files from the PCSS
6 cache to the ESS, uses ffmpeg to prepare the PF files for tagging and filtering,
7 creates a single mp4 file (640 kilobytes per second bitrate) for tagging (when that is
8 not performed beforehand on YouTube or when corrections need to be made to the
9 tags), copies the mp4 file from the ESS to a secure PCSS location, creates four
10 Transport Stream files (“TS files”) at 640, 1200, 2040 and 4080 bitrates for filtering,
11 copies the TS files to a secure location on the PCSS, and deletes all copies and files
12 on the ESS. This script is run once for each title’s Matroska file.
13 b. The segmenting script temporarily copies the TS files from the PCSS to
14 the ESS, segments the TS files for adaptive bitrate streaming (as per the HLS
15 specification) based on both 9-10 second intervals and the locations of each tag for
16 the title (which could be as short as 2 tenths of a second), creates thumbnail files for
17 player scrubbing preview for each non-filterable segment, saves a comma-separated
18 values (CSV) file containing the results of the segmenting process for each segment,
19 uploads the CSV file for use by the filtering system, encrypts the segments of each
20 bitrate with a new and unique encryption key, copies the unencrypted segments
21 from the ESS to a secure location on the PCSS, copies the encrypted segments from
22 the ESS onto a publicly accessible location on the PCSS (the “TS cache”), copies
23 the encryption keys from the ESS to a secure location on the PCSS, deletes older
24 revision files on the PCSS, and deletes all copies and files on the ESS;
25 (vii) VidAngel lawfully purchases additional DVDs and Blu-ray discs;
26 (viii) VidAngel enters the information concerning the additional discs into an
27 inventory system;
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- 1 (ix) VidAngel applies bar codes to the disc packages;
- 2 (x) VidAngel sells specific discs to specific customers;
- 3 (xi) VidAngel requires each customer to select one or more filters; and
- 4 (xii) VidAngel streams encrypted content from the discs to each purchaser
- 5 while applying the filters chosen by that customer.

6 (xiii) At the customer's device VidAngel software assembles the segments in
7 sequence, and for each segment decrypts the content, displays it and then discards
8 the segment.

9
10 **VidAngel's Technology Prevents File Sharing and Does
Not Create Any Watchable Copy of Plaintiffs' Works**

11 38. Based on my understanding of VidAngel's system, at no point during
12 this process does VidAngel create a fixed copy of the altered (filtered) movie or
13 television show viewed by any user. In fact, VidAngel's service does not even
14 make a "copy" of the original motion picture in any traditional sense. Rather, the
15 feature film or television show is altered (filtered) as it is divided into hundreds or
16 thousands of small segments and streamed to the user's device using the HLS
17 protocol. A user can view the contents of each segment only after it has been
18 streamed in sequence, decrypted with the correct keys (keys which, themselves, are
19 protected and accessible only by a user who has legally purchased a disc from
20 VidAngel), and rendered with a VidAngel media player. After each unencrypted
21 segment is viewed, it is removed from the device's memory by the player and, for all
22 intents and purposes, is gone.

23 39. I have read the description of VidAngel's service in the Declaration of
24 Robert Schumann (Paragraphs 7 to 19 and 35 to 42), and the service, as he describes
25 it, also creates no fixed copy of the altered movie or television show.

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**The Purported Legal Violations Plaintiffs Complain of
Are Necessary to Provide any Filtering/Streaming
Service Authorized by the FMA**

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3 40. The FMA provides that it is not a violation of copyright to “transmit” a
4 filtered motion picture to a consumer who lawfully purchased a copy of the
5 unfiltered work. To *transmit* a filtered version of a movie or television show from a
6 DVD or Blu-ray disc to a household, VidAngel must first unlock the encryption on
7 the DVD or Blu-ray disc. Only after the encryption is unlocked can VidAngel tag
8 audiovisual and audio segments of the movie or television show for filtering. This
9 process of unlocking the encryption contained on the disc is the functional
10 equivalent of what occurs every time a person places the disc in a player to view the
11 contents of the disc.

12 41. As is common practice for Internet content delivery services (and
13 multimedia services in particular), VidAngel employs multiple delivery servers for
14 caching purposes to ensure that its users receive a seamless stream and avoid
15 creating network traffic congestion. VidAngel streams filtered content to users from
16 one of eight or more servers located in different parts of the United States. The
17 content is streamed to the user from whichever server is closest. The closer the user
18 is to the server, the faster the content reaches the user’s device, reducing the need
19 for buffering. Without the use of distributed servers, a viewer would see and hear a
20 motion picture briefly before it froze while the next segment of the motion picture
21 loaded, thereby diminishing the presentation quality of the media content. Rather
22 than see continuous motion, the viewer would experience a maddening start, stop,
23 start, stop viewing of the motion picture.

24 42. Each VidAngel user experiences an individualized stream based on the
25 filters he or she selects. A user can choose from many thousands of different
26 combinations of filters for any movie or television show, creating a private viewing
27 experience. For two people to watch all of the exact same segments of a filtered
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1 motion picture streamed through VidAngel’s process, they would have to choose the
2 same combination of filter settings and receive each of the segments from the same
3 server.

4 43. Decrypting and streaming a filtered version of a motion picture
5 contained on a DVD or Blu-ray disc that the user has lawfully purchased is the only
6 method a third party such as VidAngel can employ to *transmit* a filtered version of a
7 motion picture to a household absent an express VOD license from the copyright
8 owner. It is my understanding that the studios refuse to license VOD rights to
9 VidAngel (or any other service that filters content). Moreover, the closed systems
10 of the VOD providers prevent the creation of technology that could permit filtering
11 without their consent and participation. Thus, VidAngel’s method is the only
12 known method a third party could use to transmit filtered content to a household
13 without first obtaining the copyright holder’s consent.

14 44. Importantly, VidAngel’s methodology ensures that any decrypted file
15 can be accessed *only by* the legal purchaser of the disc containing the file, and that
16 no filtered version could ever be conveyed to a member of the public by any means.
17 VidAngel’s decryption technology thus does not and cannot harm the market for the
18 work, nor does VidAngel’s decryption process result in injury to copyright owners.

19 45. Tedd Cittadine declares that the following four harms he claims will
20 befall Plaintiffs if VidAngel’s service is not enjoined: (1) the service harms the
21 studios’ “basic right to control how, when and through which channels our content
22 is disseminated for viewing by consumers”; (2) the service causes “harm to the
23 online distribution of our content and to our relationships with authorized
24 distributors”; (3) the service causes “harm to our ability to secure and protect
25 content in an online environment”; and (4) the service causes “harm to the overall
26 development of the on-demand streaming market by the provision of user-viewing
27 experiences without our rigorous quality controls.” To begin with, I have reviewed
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1 Mr. Cittadine’s declaration and his deposition transcript and have found no direct
2 evidence that VidAngel has actually caused any of these injuries; rather, Mr.
3 Cittadine has merely testified that VidAngel “threatens” serious harm to the studios.
4 More importantly, *any* service that transmits a filtered version of Plaintiffs’ motion
5 pictures pursuant to the FMA would “harm” the studios in each of these ways. By
6 definition, filtering does not allow Plaintiffs to control the manner in which a user
7 filters their works, and the FMA states that filtering shall occur without the studios’
8 consent. This necessarily means that viewing experiences will occur outside of the
9 studios’ control.

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.

12 Executed on September 11, 2016, at Menlo Park, California.

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15 _____
16 Dr. Sigurd Meldal
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1 I, Dr. Sigurd Meldal, declare:

2 1. I submit this declaration in support of defendant and counterclaimant
3 VidAngel, Inc.’s (“VidAngel’s”) Memorandum of Points and Authorities in
4 Opposition to Plaintiffs’ Motion for Preliminary Injunction. I have personal
5 knowledge of the facts set forth herein and, if called and sworn as a witness, I could
6 and would testify competently hereto.

7 2. I have been retained by VidAngel as an expert in this case. I am a
8 professor of computer engineering, software engineering and computer science at
9 San Jose State University and a computer scientist for Quandary Peak Research and
10 I have served as a consulting Professor in the Electrical Engineering Department at
11 Stanford University.

12 3. I have received several honors and awards over the course of my
13 career, including the Fulbright-Hayes Fellowship, the Carl-Erik Fröberg Award, a
14 Certificate of Recognition from the California State Assembly, and a Certificate of
15 Special Recognition from the U.S. House of Representatives.

16 **Professional Honors and Experience**

17 4. I have served on many professional committees and organizations. For
18 example, I serve as a Commissioner of the national Engineering Accreditation
19 Commission of the Accreditation Board for Engineering and Technology (ABET.)
20 (The Engineering Accreditation Commission of ABET defines the standards for
21 engineering education and determines whether programs are up to those standards or
22 not.) I am also a member of the Fulbright Association, and a Senior Member of the
23 Institute of Electrical and Electronics Engineers (IEEE) and of the Association for
24 Computing Machinery (ACM).

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- (vi) The Plaintiffs’ Motion for a Preliminary Injunction (Unredacted) (Dkt. 27), declarations of Todd Cittadine (Unredacted) (Dkt. 28) and Robert Schumann (Unredacted) (Dkt. 29) in support of Plaintiffs’ Motion for Preliminary Injunction;
- (v) The Digital Entertainment Group’s DEG Year-End 2006 Home Entertainment Sales Update;
- (vi) The standard terms of service for VOD Google Play, Amazon Video, Vudu, iTunes Store, and Youtube;
- (vii) ClearPlay, Inc.’s website available at <https://www.clearplay.com>.

DVD and Blu-ray Discs Dominated the Home Entertainment Market in 2005

8. In the mid to late 1990s, digital versatile discs (“DVDs”) began to replace VHS tapes as the primary media onto which motion pictures were recorded for sale in the home entertainment market. By 2005, the home entertainment market was dominated by DVDs. Attached as Exhibit B is a true and correct copy of a Digital Entertainment Group report dated January 8, 2007, stating that in 2005, approximately 94% of digital home entertainment was consumed using discs. By 2006, this percentage increased to well over 99%. But as I will explain later, the home entertainment market is now moving rapidly away from physical discs, to services that stream a title directly to a user’s television or other device.

Discs Were Encrypted by the Late 1990s

9. Encryption of DVDs also dates back to the 1990’s, and was the subject of an appellate opinion in 2001. *Universal City Studios, Inc. v. Corley*, 273 F.3d 429 (2d Cir. 2001). In 2005, DVDs and Blu-ray discs bore security features, commonly known as “encryption,” that encoded the content in such a way that the disc’s contents could not be accessed, copied or modified without a decryption key. A disc cannot be used without first decrypting it. Common forms of encryption included Content Scramble System (“CSS”) for DVDs and Advanced Access

1 Content System (“AACs”) for Blu-ray discs. I have read the Declaration of Robert
2 Schumann in Support of Plaintiffs’ Motion for Preliminary Injunction (“Schumann
3 Dec.”) and, for the purposes of my opinion expressed in this declaration, agree with
4 his descriptions of how CSS, AACs and BD+ each function (but disagree with his
5 assessment of their effectiveness, as noted below). (Schumann Dec. ¶¶ 20-34.)
6 CSS, AACs, and to a lesser extent BD+, remain the most common forms of
7 encryption for DVDs and Blu-ray discs today. (Schumann Dec. ¶¶ 20, 27.)

8 10. By definition, it is impossible to access, view, copy or alter in any way
9 a motion picture contained on an encrypted digital disc without first unlocking the
10 encryption. In 2005, all household DVD players were equipped with digital keys
11 that unlocked the encryption on the digital disc prior to sending the video to the
12 user’s television.

13 **The Digital Millennium Copyright Act**

14 11. The DMCA addresses, to some extent, the forms of encryption
15 described above and in Mr. Schumann’s Declaration. It provides that “a
16 technological measure [i.e., encryption] ‘effectively controls access to a work’ if the
17 measure, in the ordinary course of its operation, requires the application of
18 information, or a process or a treatment, with the authority of the copyright owner,
19 to gain access to the work.”

20 12. In the case of the encryption commonly used to access motion pictures
21 on Blu-rays and DVDs, it is undisputed that software capable of removing these
22 measures is ubiquitous and easily accessible, despite the fact that much of that
23 software is no longer readily sold in the United States. In light of the ease with
24 which one may currently decrypt a DVD or Blu-ray disc using readily available
25 software, DVD and Blu-ray encryption does not “effectively control access to a
26 work,” because these measures may be easily removed in the ordinary course of
27 their operation to gain access to the work. Accordingly, Robert Schumann’s opinion
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1 expressed throughout Paragraphs 20-34 (under the headings, “CSS Is An Effective
2 Access-Control System for DVDs,” and “AACs and BD+ Are Effective Access-
3 Control Systems for Blu-ray Discs”) that CSS, AACs and BD+ are effective access-
4 control systems is incorrect.

5 **The 2005 Family Movie Act Authorized**
6 **Third Parties (Such as VidAngel) to Filter**
7 **Motion Pictures in Either of Two Ways**

8 13. I understand that The Family Home Movie Act of 2005 (“FMA”)
9 provides the legal context for the expert opinions expressed herein. The FMA
10 specifically provides that “it is not a violation of copyright” to:

11 [make] imperceptible, by or at the direction of a member of a private
12 household, of limited portions of audio or video content of a motion
13 picture, during a performance in or transmitted to that household for
14 private home viewing, from an authorized copy of the motion picture,
15 or . . . creat[e] or provi[de]. . . a computer program or other technology
that enables such making imperceptible and that is designed and
marketed to be used, at the direction of a member of a private
household, for such making imperceptible, if no fixed copy of the
altered version of the motion picture is created by such computer
program or other technology.

16 17 U.S.C. § 110(11). As used in the FMA, “motion picture” is defined to include
17 television programs. The “making imperceptible . . . limited portions of audio or
18 video content of a motion picture” referenced in the FMA is commonly referred to
19 as “filtering.”

20 14. The plain language of the FMA quoted above expressly authorizes and
21 exempts from copyright infringement two distinct methods for filtering motion
22 pictures. The first – and today far more important method – is the “transmission” or
23 streaming method. The word “transmission” has broad meaning in the context of
24 the Copyright Act. “To ‘transmit’ a performance or display is to communicate it by
25 any device or process whereby images or sounds are received beyond the place from
26 which they are sent.” 17 U.S.C. § 101. In turn, “device,” “machine,” and “process”
27 are defined to include “one now known or later developed.” *Id.* Accordingly, the
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1 FMA expressly authorized future processes for privately transmitting filtered
2 versions of motion pictures to members of households at their direction. In the
3 transmission method, a third party, at the direction of a member of the household,
4 makes imperceptible limited portions of an authorized copy of a motion picture's
5 audio or video content in a “transmission” to that household. This first method is
6 the more important today because it works across every type of device and mobile
7 platform for viewing content. This is also the method that VidAngel employs, as
8 described in more detail below.

9 15. The FMA also exempts any computer program or other technology that
10 filters an authorized copy of a motion picture “during a performance in” a private
11 household 17 U.S.C. § 110(11). In 2005, when the FMA was being created, this was
12 the only type of filtering service that existed. It was provided by a company called
13 ClearPlay, which sold specialized hardware to be installed in the user’s home. The
14 ClearPlay hardware unlocked encryption through the use of a built-in DVD/Blu-ray
15 disc drive equipped with a CSS “key” that unlocked the DVD’s CSS encryption. *See*
16 <https://www.clearplay.com/p-450-clearplay-blu-ray-player-cp1126.aspx>, a true and
17 correct copy of which is attached as Exhibit C. All DVD player manufacturers
18 obtained CSS keys through licenses from the DVD Copy Control Association
19 (“DVD CCA”) so that every home DVD player could unlock CSS encryption. Once
20 the home DVD player unlocked the CSS encryption, the ClearPlay set top box
21 provided the filtering. Because no fixed copy of the altered work was ever created
22 by the ClearPlay box, its service was expressly authorized by the FMA. The
23 ClearPlay set top box recently retailed for \$249.99 and required an additional \$7.99
24 per month subscription to ClearPlay for the filters. The ClearPlay method did not
25 allow a user to access filtered content on modern mobile devices. *See*
26 https://www.clearplay.com/t-streaming_support.aspx, a true and correct copy of
27 which is attached as Exhibit D (noting the ClearPlay Streaming Player works only
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1 on a Mac or PC computer using a Chrome browser, and only when the computer is
2 attached to the TV via HDMI cable or the “tab-cast” feature of the Chromecast in
3 order to work).

4 16. The FMA expressly does not require that the household or the
5 technology provider operating at the direction of the household obtain the consent of
6 the copyright holder prior to filtering a work, provided that no fixed copy of the
7 altered work is created. 17 U.S.C. § 110(11). This lack of a consent requirement for
8 filtering is essential to any functioning market for filtering motion pictures because
9 the major studios that own those works and the directors that create them were
10 vehemently opposed to the enactment of the FMA and to companies that provided
11 filtering technology. In fact, I have reviewed the deposition testimony of Tedd
12 Cittadine, who testified [REDACTED]

13 [REDACTED] Deposition Transcript of Tedd Cittadine
14 attached as Exhibit B to the Declaration of Jaime W. Marquart filed concurrently
15 herewith (“Marquart Dec.”) at Tr. 83:21-84:21.

16 17. Digitally encoded motion pictures to be distributed commercially are
17 usually *encrypted*. The content of the movie is transformed from its viewable format
18 into a representation where the content is no longer distinguishable from random
19 data – *encrypted data*. Without a subsequent *decryption*, the content information is
20 not accessible – it cannot be viewed or manipulated in any meaningful way. Thus
21 before the movie content can be displayed to a viewer, the encrypted data has to be
22 *decrypted*, or *unlocked*, reversing the encryption process to yield the original
23 information content.

24 18. Since the encrypted representation of the content is indistinguishable
25 from random data, the movie content cannot be analyzed for objectionable content
26 subject to filtering, nor can such filtering be applied without the content first
27 becoming viewable again. It is thus impossible to view or filter for viewing a
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1 motion picture stored in a digitally encrypted format without first unlocking the
2 encryption. This is true in the case of DVD viewing, where a key contained within a
3 DVD player unlocks the encryption, and it also true in the case of streaming, where
4 a viewing application provided by the streaming service unlocks the encryption.
5 The reason for this is that, by definition, encryption prevents accessing, copying or
6 altering the content of the original files.

7 19. In drafting the FMA, Congress obviously considered known
8 technologies. When Congress enacted the FMA, encrypted physical discs were the
9 dominant technology in the market. To *transmit* a filtered version of a motion
10 picture stored on any physical disc sold in the home entertainment market, one must
11 first unlock the encryption of the content and make an intermediate version. The
12 reason for this is that a filter has to modify the movie content to be delivered to the
13 viewer, a process that requires the substitution of original content with the filtered
14 (e.g., muted audio or hidden video) content based on information regarding the time
15 points where the filter is to be invoked, and how. Such manipulation of the original
16 content cannot occur without that content being available, i.e., the encrypted data
17 has to be decrypted before any filtering can occur.

18 20. It is inherent in the decryption process that a local version of the
19 unlocked content be created – be it in memory or other storage.

20 21. Having made the movie content ready for a filtered transmission,
21 further transient versions are created. It is common to create different versions of the
22 content adapted to various presentation formats (e.g., for standard and high
23 definition resolutions) and for different transmission bandwidth environments (e. g.,
24 slower vs. faster connections between the servers and the consumer). Finally, for
25 broadly distributed content, when a customer requests a particular movie (as filtered
26 by filtering technologies such as VidAngel’s), the streaming media is usually moved
27 from the central servers to so-called “edge servers” to place the multimedia data
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1 repository closer to the consumer to avoid the massive network traffic congestion
2 that would result if all multimedia were transmitted from a single hub. (This is
3 commonly referred to as a “pull cache” technology.)

4 22. The strategy of creating temporary versions of data such as movie
5 content to enable streaming transmissions is referred to as “caching,” and is a
6 standard practice in the computer and networking professions generally, and with
7 respect to streaming media content in particular.

8 23. As is common industry practice for delivering of commercial digital
9 content, VidAngel’s technology ensures the integrity and the protection of such
10 content against illegal access by encrypting the content prior to its delivery across
11 the Internet to the customer (see below for details).

12 **Technological Measures Implemented** 13 **by VOD Providers Impede Filtering**

14 24. Today, physical discs are rapidly being replaced by Video on Demand
15 (“VOD”) distribution. None of the VOD services described in Plaintiffs’ Complaint
16 – Netflix, Hulu, iTunes, Google Play, Amazon Video and VUDU – existed in April
17 2005, when the FMA was enacted. To deliver VOD content to a consumer, standard
18 VOD files are transmitted from the VOD provider’s server to a user’s television,
19 computer or mobile device in an encrypted format. The most popular VOD
20 providers all use a combination of legal and technological means to prevent
21 filtering. First, all the most popular VOD providers provide their own studio-
22 approved form of encryption for the motion picture files they stream to their users.
23 See, e.g., Marquart Dec. Ex A at Tr. 80:13 – 81:16. Second, their VOD distribution
24 systems are “closed systems.” In closed systems, the files are encrypted prior to
25 transmission to the user’s device and then may be opened and viewed only by using
26 a proprietary software application loaded on the user’s device. The use of a closed
27 system is intended to prevent any third party (or the user) from accessing or altering
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1 any VOD file transmitted to it. In closed systems, access to the VOD provider’s
2 proprietary software is necessary to alter the file, and no user or third party may
3 access, alter or add to that software. Id.

4 25. I have read the declaration and deposition transcript of Plaintiffs’
5 witness, Tedd Cittadine, who testified that the market for VOD titles is divided into
6 two general types of transactions, rental (usually for a small period of time, such as
7 24-48 hours) and what the VOD providers characterize as “sell-through.” This
8 comports with my understanding of the market for VOD titles. In general, “sell-
9 through” is meant to mimic in some, but not other, respects the purchase of a
10 physical disc, and VOD providers generally refer to a sell-through transaction as a
11 “Purchase.” The price for a purchase of a VOD title is commensurate with the price
12 for purchasing a physical disc at retail, though it is usually reduced by a small
13 amount (as much as \$5.00 for a new release), which reflects costs saved by not
14 having to manufacture, package, store, distribute and ship discs. A “sell-through”
15 transaction differs from a traditional purchase of a physical disc, however, in that it
16 is merely a license to view the VOD title within the VOD provider’s viewing
17 software subject to a long list of restrictions contained in terms of service
18 agreements that must be accepted to complete the “purchase.” The same is true of
19 “renting” a VOD title, with the additional term that a customer’s window to watch
20 the title expires within a short time.

21 26. Third, their terms of service agreements prohibit filtering. I have
22 reviewed the standard terms of use for the four VOD providers mentioned in
23 Plaintiffs’ Complaint as marketing major motion pictures on a rental and “sell-
24 through” basis: Vudu, Google Play, iTunes, and Amazon Instant Video. Two other
25 services mentioned in Plaintiffs’ Complaint – Netflix and Hulu – provide VOD titles
26 on a subscription basis. However, I understand that Plaintiffs in this case have
27 compared VidAngel’s service to the non-subscription-based VOD providers. True
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1 and correct copies of the terms of service agreements for the four non-subscription-
2 based services are attached collectively as Exhibit E. Each of them provides that
3 the user may not modify any digital content purchased through the provider's
4 system. Because these terms of service expressly prohibit modification of
5 audiovisual content in the ways necessary to filter (through automatic skipping and
6 muting), a user may not filter VOD content without violating the VOD provider's
7 terms of service.

8 27. Fourth, in addition to VOD terms of service, which prohibit filtering,
9 several technological issues make it impractical to apply filters accurately to a VOD
10 title after it is opened within the VOD provider's proprietary software on a user's
11 device. Due to varying transfer rates and other technical functionalities unique to
12 each VOD provider's viewing application software, as well as operational
13 differences unique to each user's device, it has not been possible for a third party to
14 create software compatible across multiple devices and applications to filter titles
15 after they have been opened in a particular VOD provider's viewing application.
16 More importantly, such software cannot be written for even a simple application.
17 Closed systems contain security features that prevent the creation of filtering
18 software compatible with that system absent assistance from the VOD provider. To
19 develop filtering software that functions within a VOD provider's closed system, a
20 developer typically must have the consent and participation of the VOD provider to
21 access its software for the purpose of developing software compatible with it. I
22 have been informed, [REDACTED]
23 [REDACTED] that no VOD provider and no Plaintiff has ever
24 consented to allow a third party to create software compatible with a VOD
25 provider's closed system to allow users to apply customized filters to titles viewed
26 within the provider's closed system.

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**Google’s Purported YouTube Player “Exception”
Demonstrates That Plaintiffs Have Made It Infeasible to
Provide Filtered VOD Content to Consumers**

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3 28. One exception to the closed VOD delivery systems architecture and
4 terms of service described above is the YouTube Embeddable Player and its
5 application programming interface (“API”). The YouTube Embeddable Player API
6 also did not exist in April 2005, when the FMA was enacted. An API is a set of
7 function and interface definitions, the protocols for their use, and associated
8 programming tools that affords software developers controlled access to the API
9 owner’s software. An API permits the development of other software programs that
10 can interact with the API owner’s software. The additional software is often referred
11 to as a “plug-in” to the API owner’s software. In theory, the YouTube Embeddable
12 Player API allows a software developer to create a plug-in for the YouTube
13 Embeddable Player capable of allowing automatic skipping and muting of undesired
14 content in an encrypted motion picture file after the file is opened for viewing by the
15 YouTube Embeddable Player in a user’s Google Chrome browser. To my
16 knowledge, no other VOD provider’s player contains an API that would allow for
17 the creation of a plug-in capable of allowing automatic skipping and muting of
18 undesired content in an encrypted motion picture file after the file is opened for
19 viewing by the VOD provider’s player.

20 29. Paragraph 47 of Plaintiffs’ Complaint alleges that the YouTube API
21 allows a third party – such as VidAngel – to filter VOD titles purchased from
22 Google. This is inaccurate in a number of ways. To begin, YouTube’s terms of
23 service – attached as Exhibit F – expressly prohibit a user (or anyone directed by the
24 user) from “alter[ing] or modify[ing] any part of” a motion picture viewed on the
25 YouTube Embeddable Player. The user also “agree[s] not to access Content
26 through any technology or means other than the video playback pages of the Service
27 itself, the Embeddable Player, or other explicitly authorized means YouTube may
28 designate.” The YouTube Paid Service Terms of Service – a true and correct copy

1 of which is attached as Exhibit G – further prohibits copying the Paid Services or
2 the sublicensing them to any third party. These terms of service also do not allow a
3 user to “circumvent, reverse-engineer, modify, disable, or otherwise tamper with
4 any security technology that YouTube uses to protect the Paid Service or encourage
5 or help anyone else to do so.” All these restrictions expressly make it a violation of
6 YouTube’s Terms of Service to engage in any of the activities necessary to filter a
7 motion picture through YouTube’s Embeddable Player.

8 30. In addition, the YouTube API Services Terms of Service for developers
9 writing software plug-ins that interact with the API – a true and correct copy of
10 which is attached as Exhibit H – also prohibit any technology capable of filtering
11 motion pictures viewed through the YouTube Player API. They provide that
12 developers may not “separate, isolate, or modify the audio or video components of
13 any YouTube audiovisual content made available through the YouTube API.”
14 Thus, any third party that attempts to provide a filtering plug-in for a YouTube
15 Embeddable Player does so in violation of YouTube’s terms of use. I have also read
16 Exhibit A to the Declaration of Neal Harmon, which is a notification from YouTube
17 informing VidAngel that its filtering plug-in for the YouTube Embeddable Player
18 violates the YouTube API Services Terms of Service.

19 31. There are also several technological limits to creating a plug-in
20 compatible with the YouTube Embeddable Player API capable of accurately and
21 seamlessly filtering motion pictures purchased lawfully for viewing on the YouTube
22 Embeddable Player. To begin with, the Embeddable Player plug-in works only with
23 standard-definition content, not with the popular high-definition format typical of
24 DVDs or Blu-ray discs. More importantly, because the plug-in is not officially
25 supported by Google, changes to YouTube can cause the filters to fail. When that
26 happens, filtering is ineffective and users will see content that they did not want to
27 see until the plug-in is updated. Finally, slower computers cannot process both the
28

1 video and the filter at the same time, resulting in missed filters. The end result is
2 that – without Google’s technical support and cooperation – no method of using a
3 YouTube Embeddable Player plug-in provides a consistent filtering experience for
4 the majority of users and no method would provide a high-definition filtering
5 experience for any user. In addition, this method does not work on modern mobile
6 devices.¹

7 32. Furthermore, these approaches to enabling a filtering functionality for
8 the customer suffer from reductions in the quality of the viewer experience such as
9 lower resolution, delays or stops, stuttering, and other impediments to smooth
10 viewing. Consequently, the commercial quality a viewer would expect when
11 enjoying the filtered content would be significantly jeopardized and diminished.

12 **VidAngel Transmits Filtered Versions of Plaintiffs’**
13 **Motion Pictures to Owners of Authorized Copies of**
14 **the Motion Pictures Pursuant to the FMA**

15 33. VidAngel is an online video filtering service that operates under the
16 “transmission” filtering method authorized by the FMA. Its service allows
17 customers to stream filtered feature films and television shows via the Internet to a
18 wide range of devices, including desktop computers, laptops, iPads, smart phones,
19 and televisions (through devices like Roku, Google Chromecast, or Apple TV).

20 ¹ I am also aware of certain “digital rights locker services,” such as UltraViolet
21 and Disney Movies Anywhere and disc-to-digital services such as VUDU and
22 Flixter, that claim to allow consumers to convert previously purchased DVDs or
23 Blu-ray discs into high quality digital files. *See* 37 CFR Part 201 (Exemption
24 to Prohibition on Circumvention of Copyright Protection Systems for Access
25 Control Technologies). These services merely provide the same digital right to a
26 user that he or she would obtain if purchasing a “sell-through” license from a VOD
27 provider for the disc the customer owns. [REDACTED]
28 [REDACTED]

1 VidAngel users can select from more than 80 unique filters when viewing a film or
2 television show. The filters have the effect of skipping audiovisual content or
3 muting audio content in categories created by VidAngel and selected by the user.
4 Example categories include sexual activity, nudity, drug use, obscenity, vulgarity,
5 the “F” word, blasphemy and violence. All users must select at least one filter, and
6 each user has the option to select as many other filters as apply to that content, thus
7 permitting users in most instances to select many thousands of different
8 combinations of filters, thus making a customer’s viewing experience individualized
9 and unique.

10 VidAngel’s Filtering Technology

11 34. VidAngel follows the first, “transmission,” method contemplated by
12 the FMA, requiring the purchase of an authorized copy of a physical disc, a filtered
13 version of which is then streamed to the user without making a fixed copy of the
14 filtered work. VidAngel delivers filtered content to users by streaming it over the
15 Internet using a video content delivery protocol called HTTP Live Streaming²
16 (“HLS”). HLS divides the audiovisual content into short segments that are
17 frequently less than 4 seconds and never more than 10 seconds that are delivered
18 separately to a user’s device when viewed. The user’s device downloads each
19 segment individually. At the beginning of an HLS streaming session, the user’s
20 device downloads an index file which provides the device with a list of segment
21 files that the device can then request and play to display the content.³

22 35. VidAngel’s filtering technology divides each feature film or television
23 show into hundreds or sometimes thousands of small segments (ranging from 2
24

25 ² R. Pantos, W. May, “HTTP Live Streaming,” Internet Engineering Task Force,
26 Apr. 4, 2016 (retrieved from <https://tools.ietf.org/html/draft-pantos-http-live-streaming-19>, Sept. 3, 2016)

27 ³ *Id.*

28

1 tenths of a second to 10 seconds in length), for which each segment is identified and
2 “tagged” as associating with one or more available categories of filterable content.
3 When a user selects a filter category and streams a feature film or television show,
4 all segments that are tagged for that filter are omitted from the stream.

5 36. If the filter concerns audiovisual content, the user’s device will not
6 download the segments that have been tagged for that filter. If the filter affects only
7 the audio, the user’s device downloads a version of the segment with the voice
8 soundtrack muted while other soundtracks continue to play, but leaves the video
9 portion unchanged.

10 37. Based on my review of the documents that VidAngel has provided to
11 me, it is my understanding that VidAngel’s system is designed and operates as
12 follows:

- 13 (i) VidAngel lawfully purchases DVDs and Blu-ray discs;
- 14 (ii) VidAngel places a DVD or Blu-ray disc into the optical drive of a
15 computer. VidAngel then uses a commercially available software program such as
16 AnyDVD HD to automatically allow read-access for the purpose of mounting the
17 DVD or Blu-ray files for uploading onto a computer, in the process necessarily
18 removing restrictions on DVD or Blu-ray content access;
- 19 (iii) VidAngel uses a software program to extract the subtitle/caption data
20 files and then creates temporary (“locally cached”) Matroska files (erroneously
21 referred to by Plaintiffs’ expert, Robert Schumann, as “Mastroska” files) of the
22 feature films. Matroska files are multimedia files that can hold an unlimited number
23 of video, audio, picture, or subtitle tracks in one file;
- 24 (iv) VidAngel uploads the subtitle/caption data files and Matroska files
25 (collectively known as the “pre-filter files” or “PF” files) onto a secure folder on a
26 third-party Internet service provider’s cloud storage service (“PCSS”) and uploads
27 the subtitle/caption into a separate PCSS folder (“PCSS cache” of these intermediate
28

1 files);

2 (v) VidAngel destroys the locally cached Matroska file;

3 (vi) VidAngel boots an encoding and segmenting server (“ESS”) to run two
4 scripts, including an encoding script and a segmenting script, as follows:

5 a. The encoding script temporarily copies the PF files from the PCSS
6 cache to the ESS, uses ffmpeg to prepare the PF files for tagging and filtering,
7 creates a single mp4 file (640 kilobytes per second bitrate) for tagging (when that is
8 not performed beforehand on YouTube or when corrections need to be made to the
9 tags), copies the mp4 file from the ESS to a secure PCSS location, creates four
10 Transport Stream files (“TS files”) at 640, 1200, 2040 and 4080 bitrates for filtering,
11 copies the TS files to a secure location on the PCSS, and deletes all copies and files
12 on the ESS. This script is run once for each title’s Matroska file.

13 b. The segmenting script temporarily copies the TS files from the PCSS to
14 the ESS, segments the TS files for adaptive bitrate streaming (as per the HLS
15 specification) based on both 9-10 second intervals and the locations of each tag for
16 the title (which could be as short as 2 tenths of a second), creates thumbnail files for
17 player scrubbing preview for each non-filterable segment, saves a comma-separated
18 values (CSV) file containing the results of the segmenting process for each segment,
19 uploads the CSV file for use by the filtering system, encrypts the segments of each
20 bitrate with a new and unique encryption key, copies the unencrypted segments
21 from the ESS to a secure location on the PCSS, copies the encrypted segments from
22 the ESS onto a publicly accessible location on the PCSS (the “TS cache”), copies
23 the encryption keys from the ESS to a secure location on the PCSS, deletes older
24 revision files on the PCSS, and deletes all copies and files on the ESS;

25 (vii) VidAngel lawfully purchases additional DVDs and Blu-ray discs;

26 (viii) VidAngel enters the information concerning the additional discs into an
27 inventory system;

28

- 1 (ix) VidAngel applies bar codes to the disc packages;
- 2 (x) VidAngel sells specific discs to specific customers;
- 3 (xi) VidAngel requires each customer to select one or more filters; and
- 4 (xii) VidAngel streams encrypted content from the discs to each purchaser
- 5 while applying the filters chosen by that customer.

6 (xiii) At the customer's device VidAngel software assembles the segments in
7 sequence, and for each segment decrypts the content, displays it and then discards
8 the segment.

9
10 **VidAngel's Technology Prevents File Sharing and Does
Not Create Any Watchable Copy of Plaintiffs' Works**

11 38. Based on my understanding of VidAngel's system, at no point during
12 this process does VidAngel create a fixed copy of the altered (filtered) movie or
13 television show viewed by any user. In fact, VidAngel's service does not even
14 make a "copy" of the original motion picture in any traditional sense. Rather, the
15 feature film or television show is altered (filtered) as it is divided into hundreds or
16 thousands of small segments and streamed to the user's device using the HLS
17 protocol. A user can view the contents of each segment only after it has been
18 streamed in sequence, decrypted with the correct keys (keys which, themselves, are
19 protected and accessible only by a user who has legally purchased a disc from
20 VidAngel), and rendered with a VidAngel media player. After each unencrypted
21 segment is viewed, it is removed from the device's memory by the player and, for all
22 intents and purposes, is gone.

23 39. I have read the description of VidAngel's service in the Declaration of
24 Robert Schumann (Paragraphs 7 to 19 and 35 to 42), and the service, as he describes
25 it, also creates no fixed copy of the altered movie or television show.

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**The Purported Legal Violations Plaintiffs Complain of
Are Necessary to Provide any Filtering/Streaming
Service Authorized by the FMA**

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3 40. The FMA provides that it is not a violation of copyright to “transmit” a
4 filtered motion picture to a consumer who lawfully purchased a copy of the
5 unfiltered work. To *transmit* a filtered version of a movie or television show from a
6 DVD or Blu-ray disc to a household, VidAngel must first unlock the encryption on
7 the DVD or Blu-ray disc. Only after the encryption is unlocked can VidAngel tag
8 audiovisual and audio segments of the movie or television show for filtering. This
9 process of unlocking the encryption contained on the disc is the functional
10 equivalent of what occurs every time a person places the disc in a player to view the
11 contents of the disc.

12 41. As is common practice for Internet content delivery services (and
13 multimedia services in particular), VidAngel employs multiple delivery servers for
14 caching purposes to ensure that its users receive a seamless stream and avoid
15 creating network traffic congestion. VidAngel streams filtered content to users from
16 one of eight or more servers located in different parts of the United States. The
17 content is streamed to the user from whichever server is closest. The closer the user
18 is to the server, the faster the content reaches the user’s device, reducing the need
19 for buffering. Without the use of distributed servers, a viewer would see and hear a
20 motion picture briefly before it froze while the next segment of the motion picture
21 loaded, thereby diminishing the presentation quality of the media content. Rather
22 than see continuous motion, the viewer would experience a maddening start, stop,
23 start, stop viewing of the motion picture.

24 42. Each VidAngel user experiences an individualized stream based on the
25 filters he or she selects. A user can choose from many thousands of different
26 combinations of filters for any movie or television show, creating a private viewing
27 experience. For two people to watch all of the exact same segments of a filtered
28

1 motion picture streamed through VidAngel’s process, they would have to choose the
2 same combination of filter settings and receive each of the segments from the same
3 server.

4 43. Decrypting and streaming a filtered version of a motion picture
5 contained on a DVD or Blu-ray disc that the user has lawfully purchased is the only
6 method a third party such as VidAngel can employ to *transmit* a filtered version of a
7 motion picture to a household absent an express VOD license from the copyright
8 owner. It is my understanding that the studios refuse to license VOD rights to
9 VidAngel (or any other service that filters content). Moreover, the closed systems
10 of the VOD providers prevent the creation of technology that could permit filtering
11 without their consent and participation. Thus, VidAngel’s method is the only
12 known method a third party could use to transmit filtered content to a household
13 without first obtaining the copyright holder’s consent.

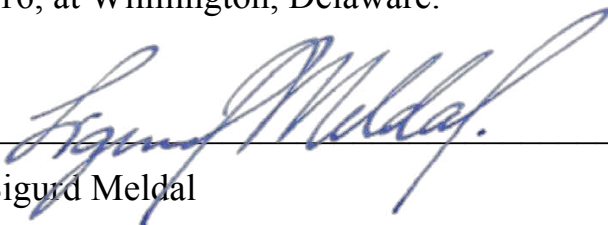
14 44. Importantly, VidAngel’s methodology ensures that any decrypted file
15 can be accessed *only by* the legal purchaser of the disc containing the file, and that
16 no filtered version could ever be conveyed to a member of the public by any means.
17 VidAngel’s decryption technology thus does not and cannot harm the market for the
18 work, nor does VidAngel’s decryption process result in injury to copyright owners.

19 45. Tedd Cittadine declares that the following four harms he claims will
20 befall Plaintiffs if VidAngel’s service is not enjoined: (1) the service harms the
21 studios’ “basic right to control how, when and through which channels our content
22 is disseminated for viewing by consumers”; (2) the service causes “harm to the
23 online distribution of our content and to our relationships with authorized
24 distributors”; (3) the service causes “harm to our ability to secure and protect
25 content in an online environment”; and (4) the service causes “harm to the overall
26 development of the on-demand streaming market by the provision of user-viewing
27 experiences without our rigorous quality controls.” To begin with, I have reviewed
28

1 Mr. Cittadine’s declaration and his deposition transcript and have found no direct
2 evidence that VidAngel has actually caused any of these injuries; rather, Mr.
3 Cittadine has merely testified that VidAngel “threatens” serious harm to the studios.
4 More importantly, *any* service that transmits a filtered version of Plaintiffs’ motion
5 pictures pursuant to the FMA would “harm” the studios in each of these ways. By
6 definition, filtering does not allow Plaintiffs to control the manner in which a user
7 filters their works, and the FMA states that filtering shall occur without the studios’
8 consent. This necessarily means that viewing experiences will occur outside of the
9 studios’ control.

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.

12 Executed on September 11, 2016, at Wilmington, Delaware.

13
14 
15 _____
16 Dr. Sigurd Meldal

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EXHIBIT D

Home > [ClearPlay Streaming Instructions & FAQ](#)
[ClearPlay Streaming Instructions & FAQ](#)

How does it work?

1. Select your favorite movies to watch from our list of streaming titles (requires Google Chrome). You can pick from our [List of Movies](#) you wish to view.

2. Click "Watch Instantly" at the top of the movie page.

Watch INSTANTLY with ClearPlay Streaming

Captain America: Winter Soldier

After the events of The Avengers, Captain Rogers (aka Captain America) risks his life to help S.H.I.E.L.D. help to keep the world safe. But there is a sinister plot growing inside of S.H.I.E.L.D., and when Nick Fury is taken out, it's up to Captain America to find the traitors and hunt down the mysterious Winter Soldier before an old enemy gets its hands on a weapon that could kill millions.

ClearPlay In Action!

ClearPlay mutes around 15 instances of language, mostly of the mild variety. There is no sexuality or nudity, but this is a grittier, more violent film than previous Marvel offerings. There are numerous beatdowns and gun battles, so things can get a little jumpy during some of the action.

Include Formals
DVD Yes

3. You will be taken to our ClearPlay Streaming Player.

CLEARPLAY

LOGIN
To your ClearPlay account.

RENT
Rent movies and TV shows.

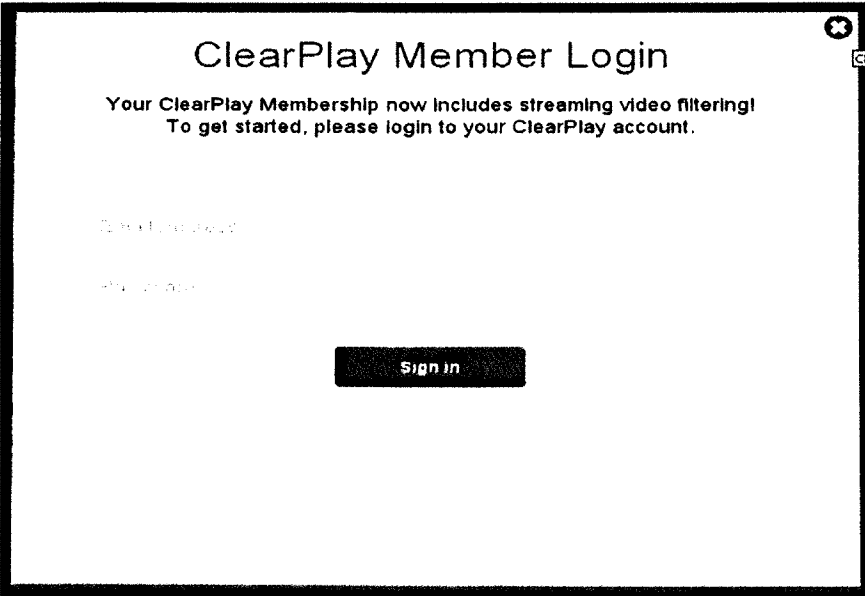
WATCH
Watch movies and TV shows.

Start My Free Trial
New to ClearPlay? Click here to register and start a free trial.

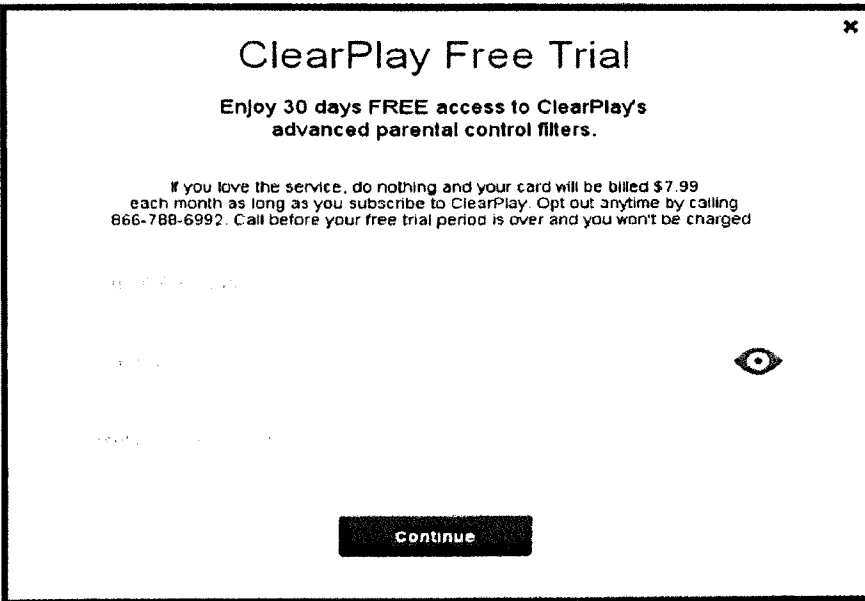
I'm a Member
Already a member? Sign in to your existing ClearPlay account.

Filter Settings

4a. Log into our online streaming player with your ClearPlay account info.



4b. If you aren't already a ClearPlay member, you can try it free for 30 days.



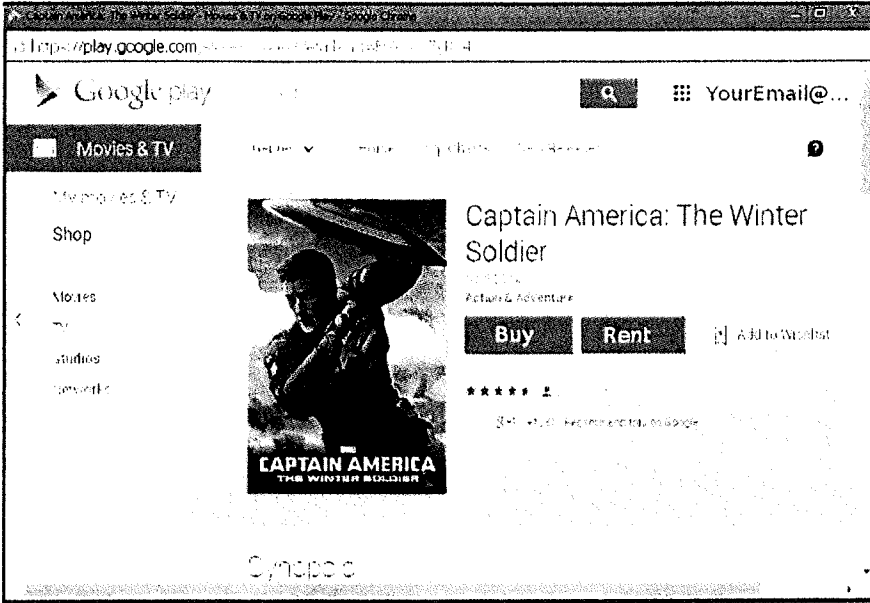
5a. We stream movies from Google Play. Log into your Google Account to confirm the rental/purchase of the movie you want to stream.



5b. If you have not rented/purchased the movie you will be asked to rent or buy the movie in a new pop up window.



5c. Confirm rental or purchase terms (rentals are available within a limited timeframe after confirmation).



6. Change your filter settings at the bottom of the screen and enjoy the show!



Enjoy The Stream!

- Does it cost extra?

Rental and purchase fees may apply but the filtering service is included free with your Clearplay membership

- Do I need the wireless FilterStik to make it work?

Nope. The FilterStick is only used for our players.

- What devices can I use to watch the movie?

Currently, Mac or PC.

-Can I adjust what I want to filter out?

Of course! Before the movie starts you can adjust your filter settings below the player window.

-Which movies can I watch?

All the movies listed on our streaming [movie list](#). (There are a lot.)

- Does this work on all streaming services?

ClearPlay Streaming works exclusively with rentals and purchases made through Google Play.

- If I watch the movie directly on Google Play will it be filtered?

No. After renting/purchasing the movie at Google Play, begin filtered playback by clicking the ClearPlay Streaming individual movie page.

- Can I use Google's Chromecast?

If you have a Chromecast then you can mirror your desktop or laptop to your TV by using the Chrome Browser "cast" feature. Be aware that we have seen some slowness with the video being playing on the TV when mirroring.

NOTE: Do not click on the "cast" icon on the ClearPlay streaming player. This will play the movie on your TV through the Chromecast but it will not be filtered."

- Can I use Apple Air Play?

If you have an Apple TV then you can use Air Play to mirror your laptop to your TV. This works natively for Safari on a Mac product. If you are on a windows platform then there are several third party software's that will mirror your laptop or desktop to your Apple TV.

- How Can I display the movie on my TV?

If you're using a laptop or desktop that has an HDMI port you can use an HDMI cable to go from your computer to the TV. There are plenty of tutorials on the web that will walk you through how to do that with your computer and Operating System. If your computer does not have an HDMI cable port you can also use cables like VGA to HDMI or DVI to HDMI, depending on how your computer is set up. You can find them on Amazon or at any electronic store.

-Why won't the movie play after renting/purchasing it?

Be sure you're using the latest version of **Google Chrome** to stream it (other browsers tend to run into caching problems). If you're experiencing problems, or really want to try a different browser, clearing your browser's cache can help. Here's how:

[Internet Explorer](#)

[Mozilla Firefox](#)

[Google Chrome](#)

[Apple Safari](#)

I cleared my browser's cache and I'm still getting an error message when I try to watch my movie.

ClearPlay filtering is applied to the movie as it streams from Google Play, so if you're running into issues your best bet is to check Google Play [support documentation](#).

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ClearPlay Patents: 6,889,383; 6,898,799; 7,526,784; 7,543,318; 7,577,970; 7,975,021; 8,117,282. More Pending



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20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 DISNEY ENTERPRISES, INC.;
24 LUCASFILM LTD. LLC;
25 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
26 BROS. ENTERTAINMENT, INC.,

27 Plaintiffs,

28 vs.

CASE NO. 16-cv-04109-AB (PLAx)

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

**DECLARATION OF NEAL
HARMON IN SUPPORT OF
VIDANGEL'S MEMORANDUM OF
POINTS AND AUTHORITIES IN**

1 VIDANGEL, INC.,
2 Defendant.

**OPPOSITION TO PRELIMINARY
INJUNCTION MOTION**

3 VIDANGEL, INC.,
4 Counterclaimant,
5 vs.
6 DISNEY ENTERPRISES, INC.;
7 LUCASFILM LTD. LLC;
8 TWENTIETH CENTURY FOX FILM
CORPORATION; AND WARNER
9 BROS. ENTERTAINMENT, INC.,
10 Counterclaim Defendants.

11
12 I, Neal Harmon, declare:

13 1. I am a founder and the Chief Executive Officer of defendant and
14 counterclaimant VidAngel, Inc. (“VidAngel”). I submit this declaration in support
15 of VidAngel’s Memorandum of Points and Authorities in Opposition to Plaintiffs’
16 Motion for Preliminary Injunction. I have personal knowledge of the facts set forth
17 herein and, if called as a witness, I could and would testify competently thereto.

18 **Why My Family Wanted to Watch Filtered Content**

19 2. Throughout my life, I have been a consumer of family-friendly movies
20 and television programs. I was raised in rural Idaho. We did not watch movies with
21 sex or nude scenes or with excessive violence and profanity in our home. For much
22 of my childhood, this meant that my family did not have access to many mainstream
23 movies and television shows, as they often included content at odds with my
24 family’s beliefs and values. At times, we felt left out of popular American culture,
25 as we were unable to watch the most popular movies and shows. Even
26 entertainment offerings with messages and themes compatible with my family’s
27 values and beliefs still included some scenes with content we found objectionable.
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Figure 1 - I was the third of 9 children and our family enjoyed movie experiences together. Here we are with our parents, spouses and young children. We had movie night out on the lawn for our family reunion using VidAngel.

We decided not to watch certain offerings we were interested in, because we could never know when a particular scene in a broad family comedy might include material that made us uncomfortable. For this reason, my family was very excited about the CleanFlicks service that debuted in 2000.

3. CleanFlicks was a business that produced edited versions of films to remove content that was inappropriate for children or that other viewers might find offensive. CleanFlicks removed sexual content, profanity and some references to violence from movies, either by muting audio or cutting entire portions of the track. My family and I used the CleanFlicks service to watch the same movies the rest of the country found enjoyable and moving, without compromising our values. To our regret, a group of Hollywood directors engaged in litigation with CleanFlicks for copyright infringement and in 2006 a federal district court found that CleanFlicks’ filtered movies infringed their copyrights. CleanFlicks’ service was held to infringe because, contrary to the requirements of the Family Movie Act (“FMA”), CleanFlicks did not allow each consumer to decide what to mute or delete. It also created fixed copies of filtered works. When CleanFlicks and similar services were put out of business, my family lost a major source of family-friendly content.

4. The FMA was enacted in 2005, in response to a lawsuit against a number of different filtering companies, including ClearPlay. The FMA promised a

1 clearly legal way to filter out content from popular films and television shows that
2 families like mine found objectionable.

3 5. In 2012, Google announced the debut of Google Play. Google Play is a
4 digital distribution service operated and developed by Google. Among other things,
5 Google Play serves as a digital media store, offering music, magazines, books,
6 movies and television programs. It is similar to services such as Apple iTunes,
7 VUDU and Amazon Video. Google Play allows users to download media to various
8 digital devices, including phones and Google TV. When Google debuted Google
9 Play, I had already been experimenting with the YouTube JavaScript application
10 programming interface (“API”). It allowed me to write program codes that
11 permitted automatic skipping and muting of movies and television shows purchased
12 through Google Play and watched on a YouTube Player in a Google Chrome web
13 browser.

14 6. Around the time Google Play debuted, I realized that the way users
15 consume movies and other visual narratives was undergoing a profound shift away
16 from traditional physical embodiments like DVDs and Blu-ray discs to digital
17 streaming. The popularity of smart phones and tablets along with the development
18 of internet infrastructure and other technologies offered users the potential to stream
19 movies and television shows to many types of devices whenever a user desired.
20 Remembering my family’s struggle to find appropriate film and television content, I
21 realized there was a tremendous opportunity to serve the vast market of households
22 with religious, moral and other objections to the adult content of most mainstream
23 studio offerings in the context of this massive shift to streaming distribution.

24 7. Sometime in 2012, my brothers and I asked ourselves, “Why isn’t there
25 a content filtering service for streaming?” Using my coding knowledge, I coded a
26 filtering tool for the movie “Cinderella Man” on the YouTube Player in the Google
27 Chrome browser. (YouTube is owned by Google.) The tool filtered the film for
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1 swearing and a couple of especially gruesome punches. While it would play only the
2 standard definition (“SD”) version of the movie on a computer, the tool succeeded
3 in removing the objectionable content. “Cool,” we said, “it seems to work for SD
4 content on the Chrome browser.” At the time, though, we realized that high
5 definition (“HD”) content would become the industry standard for digital movie
6 distribution. Realizing this, my brothers and I started to look for ways to create a
7 filtering tool that would work on HD content streams.

8 **The Development That Led Us to Found VidAngel**

9 8. In 2013, Google announced that it would conduct a private beta test of
10 the Chromecast streaming device. Chromecast is a line of digital media players
11 developed by Google. The players are physically small dongles and play video
12 content on high-definition televisions by streaming it directly to a television set via
13 Wi-Fi from the Internet or a local network. Users select the media to play using
14 mobile and web apps that work with the Google Chromecast technology. The first-
15 generation Chromecast was a video-streaming device that was made available for
16 purchase in July 2013. When Chromecast was announced, there was no company
17 providing a content filtering service pursuant to the FMA that worked with HD
18 video streams. My brothers and I saw a market opportunity to provide families with
19 such a tool.

20 9. “The Chromecast is how we get filtered HD content on the television,”
21 my brothers and I said to each other. “It’s time to build this.” To confirm our
22 intuitions concerning the potential market for such a service, we conducted research
23 and found that about half of American parents would use a filtering service.
24 Although we created VidAngel because we wanted it for our own children, we knew
25 many other families would want to use it as well. We then set about creating the
26 technology, business plan and infrastructure necessary for a filtering service. After
27 many months of hard work, we launched a private beta VidAngel filtering service
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1 capable of filtering HD content through Chromecast. It was and is my
2 understanding that our beta service fully complied with the provisions of the FMA.
3 We simply provided users with a tool they could use to filter digital content streams
4 from Google Play using the Chromecast's technology.

5 **The Studios' First Attempt to Block VidAngel**

6 10. In January 2014, we raised \$600,000 to launch VidAngel.com. After
7 the private beta launch, we reached out to Google to ask whether we could purchase
8 Chromecast devices at wholesale and then sell them to families who wanted to use
9 VidAngel's filtering service. Google responded that it would consider a bulk
10 purchase agreement only after VidAngel successfully launched a public beta of its
11 Softward Development Kit (SDK) on February 3, 2014. The day of Google's
12 Chromecast API launch, even though we were attending a conference in California,
13 we were so excited to launch that we did not sleep the entire night trying to get the
14 system to work and be the first out the door on the list of Chromecast applications. It
15 never worked.

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Figure 2 - I took this photo of my brothers Daniel and Jordan in our Redwood City, CA hotel on Tuesday, Feb 4, 2014 at 8:05am after working through the night trying to understand why our programs no longer worked

11. We discovered that Google removed the technology from their SDK that made the filtering service possible on native Chromecast. Google did not notify us or publicly announce the removal of its technology. Based on conversations I later had with a Google representative, I am informed and believe that Google removed this technology at the request of the movie studios, which claimed that Google would be in violation of its agreement with them if it enabled VidAngel’s filtering.

12. Also, on December 5, 2013, VidAngel received a notification from YouTube that VidAngel’s YouTube Player API programming violated the developers’ API Terms of Service for YouTube. Attached as Exhibit A is a true and correct copy of that notification. Again based on later conversations with a Google representative, I am informed and believe that YouTube sent this notification because the studios told Google that it would be in violation of its agreement with

1 them if it enabled VidAngel’s filtering. As explained in more detail in Paragraphs
2 48-50 below, I later obtained a copy of Google Play’s VOD Distribution Agreement
3 with Sony, which confirmed this belief.

4 13. That the technology enabling filtering had been quietly removed gave
5 me pause about moving forward with the VidAngel service. Even though I
6 understood that our service was legal under the FMA, I was aware of the studios’
7 historical hostility to filtering. In light of that hostility, I was concerned that the
8 studios might again try to shut down our service despite the clear protections of the
9 FMA. VidAngel was a startup company without the deep pockets and litigation
10 budgets of the major studios, and I feared that the studios would wage a legal
11 campaign that would bankrupt VidAngel’s business – before VidAngel could
12 prevail in court under the FMA.

13 **VidAngel’s Attempt to Partner with Google Play**
14 **and the Studios’ Interference with Those Efforts**

15 14. Because we had already raised money, we decided to test different
16 models and ultimately opted for seeing how many customers we could acquire if we
17 gave the filtering away for free -- even if users could watch only on the YouTube
18 Player in the Chrome browser on their computer, and only in SD format.

19 15. While VidAngel was working with counsel to develop a filtering
20 technology compliant with the law, someone from a different division of Google
21 reached out to partner with VidAngel to provide a filtering feature for all of Google
22 Play. VidAngel was thrilled to pursue this option, realizing that with Google’s
23 resources and reach in digital markets, VidAngel would finally be able to serve the
24 vast market of Americans desiring an effective digital streaming filtering tool. The
25 partnership did not materialize because Google’s distribution contracts required
26 them to seek permission from the studios to develop a filtering tool. I was advised
27 by Google that the studios refused Google’s requests to develop such a tool with
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1 VidAngel.

2 16. After the studios rejected Google’s requests to allow the use of a
3 filtering tool, VidAngel realized that a small startup could not possibly negotiate a
4 filtering license with the studios. With the help of legal counsel, VidAngel then
5 decided to pursue the launch of its current filtering system.

6 **VidAngel’s Current Streaming Technology**

7 17. By mid-2014, it was clear that the VidAngel service, as it was then
8 structured, using the YouTube Player API, could never achieve commercial success.
9 It required users first to create an account on VidAngel and then with Google Play.
10 Users would use their Google Play accounts to rent content viewable on YouTube,
11 but then had to return to the VidAngel site to select the filtering they desired. After
12 those steps, users could watch only an SD version of the content and only on their
13 computer. This multi-step process confused and frustrated customers. In addition,
14 the filters often did not work properly because computer processors struggled with
15 YouTube’s API. Further, the service was not then adapted to modern industry
16 standards for digital content streaming – users demanded HD content and needed to
17 be able to watch the content on their mobile devices and high-definition set-top
18 boxes. By mid-2014, people simply did not watch SD movies exclusively on their
19 desktops computers and no major distributor of digital content limited their
20 distribution in this way.

21 18. In June 2014, the Supreme Court published its decision in American
22 Broadcasting Companies v. Aereo, 573 U.S. ___, 134 S. Ct. 2498. In that decision,
23 the Court noted: “an entity that transmits a performance to individuals in their
24 capacities as owners or possessors does not perform to ‘the public.’” This language
25 prompted me to seek legal advice concerning ways to provide a lawful filtering
26 service to the owners of movies under the FMA.

27 19. I am familiar with some of the litigation involving filtering technology
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1 and the FMA. I know that in 2005, a federal court in Colorado dismissed a
2 copyright infringement claim against ClearPlay based on the FMA. *Huntsman v.*
3 *Soderbergh*, No. Civ. A02CV01662RPMMJW, 2005 WL 1993421 (D. Colo. 2005).
4 The Court found that the FMA protected ClearPlay’s service from the studios’
5 infringement claims: “the effect of the Family Movie Act is that Congress made a
6 policy decision that those who provide the technology to enable viewers to edit
7 films for their private viewing should not be liable to the copyright owners for
8 infringing their copyright” I am also aware that the FMA protects a technology
9 that filters content “transmitted to [the] household for private home viewing.”
10 Today, VidAngel follows the FMA and transmits filtered content to users’ homes
11 without making a “fixed copy of the altered version of the motion picture.”
12 VidAngel specifically designed its current technology to comply with the FMA and
13 the relevant Court decisions interpreting the FMA and copyright law.

14 20. Under the current service, customers buy an authorized DVD or Blu-
15 ray disc from VidAngel (which buys it at retail after the studios release it) and then
16 choose various filters provided by VidAngel to apply to the movie. VidAngel then
17 streams the filtered movie to the user’s home. VidAngel allows users to sell back
18 their disc to VidAngel if they choose not to own the movie permanently.

19 21. In early 2015, VidAngel began privately testing the new service with
20 customers. Over the course of a few months, the service improved substantially and
21 we were able to expand it to the Google Play app store and Chromecast.

22 **VidAngel Announces Its New Service to the Studios**

23 22. By July of 2015, VidAngel felt confident enough in its service to seek
24 feedback from the major movie studios. To that end, with the help of counsel,
25 VidAngel sent a letter on July 23, 2015, to the major studios and television networks
26 (including all plaintiffs herein) explaining its service and technology. A true and
27 correct copy of that July 23, 2015 letter as sent to Disney is attached as Exhibit B.
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1 VidAngel’s letter explained that VidAngel operates under the FMA’s filtering
2 exemption, and works as follows: (1) VidAngel “purchases the DVD or Blu-ray disc
3 for the customer and stores it in a physical vault;” (2) it “streams” the contents of the
4 disc to the customer in a filtered format chosen by the customer; and (3) it then “re-
5 purchase[s] the disc at a discount from the sale price. . .based on the length of time
6 the customer has owned the disc.” VidAngel explained that it had grown from 43 to
7 4848 users in just under six months (a 10,000% growth rate) and now wished to buy
8 directly from the studios “to scale its business.” The letter invited the studios to
9 access the service and concluded:

10
11 If you have any questions concerning VidAngel’s technology or
12 business model, please feel free to ask. If you disagree with
13 VidAngel’s belief that its technology fully complies with the Copyright
14 Act or otherwise does not adequately protect the rights of copyright
15 owners, please let us know. VidAngel wants to take the concerns of
16 content owners into consideration and address them to the extent it can.

17 Unbeknownst to VidAngel at the time, Disney almost immediately accessed its
18 service. Attached as Exhibit C is true and correct copy of a printout from a
19 VidAngel user account showing that, on August 6, 2015, a Disney employee signed
20 up for a VidAngel account using a non-descript Gmail account and provided
21 payment information for a Director of Antipiracy Operations at Disney. Even
22 though they were obviously investigating VidAngel, Plaintiffs did not respond to
23 VidAngel’s letter, so it sent a second letter on August 21, 2015. A true and correct
24 copy of the August 21, 2015 letter is attached as Exhibit D. VidAngel had over 750
25 titles available for the new filtering service when it sent its letters to Disney. Prior
26 to filing suit on June 9, 2016, none of the plaintiffs, nor any of the dozen other
27 entities to which VidAngel wrote, ever expressed to VidAngel that they believed its
28 services infringed their copyrights and none ever sent a cease and desist letter to
VidAngel.

23. I understand that two of the plaintiffs confirmed receipt of VidAngel’s

1 letters and called or emailed VidAngel’s counsel. Warner Bros. Entertainment
2 Inc.’s parent, Time Warner, Inc., emailed VidAngel in October. VidAngel promptly
3 returned the email and even scheduled a call to answer his questions. Time Warner
4 later cancelled the call and never rescheduled it. Fox called VidAngel’s counsel in
5 September 2015 and left a message, but in my understanding did not return phone
6 calls placed to it in September and October by VidAngel’s counsel. Thereafter,
7 VidAngel heard nothing from Plaintiffs, through counsel or otherwise, until this
8 lawsuit was filed.

9 **VidAngel Wanted the Studios’ Feedback for Many Reasons**

10 24. The letters were an important part of VidAngel’s strategy of developing
11 new technology. Although VidAngel believed its new filtering system complied
12 with the FMA, as a practical matter we understood that any legal challenge from the
13 studios would have significant financial consequences for VidAngel even if its
14 technology were ultimately vindicated by the Courts. It was important to assess the
15 studios’ attitude toward VidAngel’s new streaming system early on, to provide
16 VidAngel’s investors (and potential investors) with accurate information about the
17 studios’ position with respect to VidAngel’s technology. For that reason, the letters
18 requested feedback from the studios and invited them to examine VidAngel’s
19 technology and ask any questions they might have about it. Because the letters
20 invited a response from the studios and clearly described VidAngel’s technology,
21 VidAngel assumed that, to the extent the studios had a problem with VidAngel’s
22 technology, they would inform VidAngel if any of them disagreed that VidAngel’s
23 service complied with the FMA. Further, as VidAngel’s model involved purchasing
24 DVDs from the studios and was serving a market of customers that would never
25 watch un-filtered studio content, VidAngel was creating new revenue for the
26 studios. VidAngel believed then (and continues to believe) that there are very good
27 business reasons for the studios to support VidAngel’s model. Since VidAngel’s
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1 service contributes to the studios' bottom line, it was another reason to view the
2 studios' silence in response to VidAngel's letters as tacit approval of its service.
3 Had any studio expressed a complaint to VidAngel in response to the letters,
4 VidAngel would have discussed and considered any proposal to resolve it. In
5 particular, VidAngel could have adapted its technology in some way or, to the
6 extent the studios expressed an opinion that VidAngel's technology was infringing,
7 VidAngel could have filed a declaratory relief suit concerning its technology.

8 25. Having received no feedback or objections to our technology from the
9 studios after sending two very direct letters, VidAngel opened its services to the
10 public in August 2015.

11 26. The version of the system that was publicly launched in August 2015
12 solved the problems of the 2014 design: it simplified the user-interface, required
13 users to register only once with VidAngel, allowed users to watch HD content on
14 their favorite mobile devices and set-top boxes, and improved the filters so that they
15 were more seamless. By bringing VidAngel's technology up to and beyond industry
16 standards and offering the features users expect of any content streaming service,
17 VidAngel found a large market for filtered movie and television content. As a
18 result, its customer base began to shoot up almost immediately.

19 27. In fact, today, VidAngel's apps are rated higher by users than the
20 leading studio distribution platforms. For example, the VidAngel rating on Google
21 Play is 4.8 stars whereas Netflix is 4.4 stars, Hulu is 4.1 stars, and Disney Movies
22 Anywhere is 3.9 stars. For all ratings on the Apple App Store, VidAngel has 5 stars,
23 Netflix has 3.5 stars, Hulu has 2 stars, and Disney Movies Anywhere has 3.5 stars.
24 On Roku, VidAngel has 4.5 stars, Netflix has 3 stars, Hulu has 3.5 stars and Disney
25 Movies Anywhere has 3.5 stars.

26 28. By the end of 2015, VidAngel's monthly disc sales had grown to over
27 100,000. In January 2016, USA Today published an article about VidAngel's
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1 services and the ability to stream filtered versions of Star Wars prequels for a net
2 cost (after buy and sellback) of as little as \$1. A true and correct copy of this USA
3 Today article is attached as Exhibit E. On January 12, a Disney employee -- using
4 the secret VidAngel account created with payment information from Disney's
5 Director of Antipiracy Operations -- logged on to VidAngel account and purchased
6 Frozen and a Star Wars prequel. (See Exhibit F hereto.) This same employee
7 purchased and sold back 17 total titles over the next four months.

8 29. On March 3, 2016, Disney announced that it would release Star Wars:
9 The Force Awakens on DVD on April 5. The film would be available for digital
10 "purchase" (but not a shorter rental period) on April 1. I am aware that Plaintiffs
11 have used Star Wars: The Force Awakens to show that VidAngel purportedly makes
12 titles available before they become available in other digital markets. This is untrue.
13 In fact, the film was available for digital download purchase four days before
14 VidAngel could buy DVDs. Attached as Exhibit F is a true and correct copy of an
15 article regarding Disney's announcement. While the film was not made available
16 for shorter-term rentals when VidAngel began to make the filtered film available,
17 this is irrelevant because VidAngel does not rent titles. In any event, Star Wars:
18 The Force Awakens is the only major title released in this way, and it was clearly
19 done so at a time when the plaintiffs were planning litigation against VidAngel.
20 Despite VidAngel's growing popularity, the imminent release of Star Wars: The
21 Force Awakens, and the fact that Plaintiffs had been discussing VidAngel with one
22 another and outside counsel for over seven months, Plaintiffs did not send VidAngel
23 a cease and desist letter or seek an injunction. Instead, on April 5, Plaintiffs
24 purchased, streamed and sold back the film. (See Exhibit C.)

25 **VidAngel Invested Millions in Reliance Upon the Studios' Silence**

26 30. During the ten and a half months from VidAngel's first letter to the
27 filing of Plaintiffs' suit, VidAngel openly streamed filtered versions of every one of
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1 Plaintiffs’ most popular titles as soon as they were available on DVD. During this
2 time, VidAngel continued to purchase DVDs. In total, VidAngel has spent [REDACTED]
3 [REDACTED] purchasing discs at retail. VidAngel has also spent millions of dollars
4 in funding since it wrote to Plaintiffs in July 2015. Attached as Exhibit G is a true
5 and correct copy of an article from October 2015 announcing that VidAngel had
6 raised \$2.5 million in additional funding. VidAngel invested most of that funding to
7 develop its current model prior to Plaintiffs filing suit. Prior to the filing of this
8 lawsuit, VidAngel also had applications approved on every major mobile
9 application store and set-top box (e.g., Roku, Apple App Store, Apple TV, Amazon
10 Fire TV, Android TV and Kindle Fire). Monumental efforts went into each one of
11 these apps. In fact, VidAngel hired scores of tech, support and content employees.
12 VidAngel also hired scores of contractors to support the employees. Also, VidAngel
13 updated all the streaming technology to play more smoothly and built a multi-
14 thousand title content library. After several months passed without objection from
15 the studios, VidAngel concluded that the studios did not object to its service. In
16 response to media inquiries about the legality of its service, I cited VidAngel’s
17 letters and the studios’ lack of objection as a basis for VidAngel believing its service
18 did not infringe. Attached as Exhibit H are news articles containing my quotes
19 about the studios having no objection to VidAngel’s service. Today, over 500,000
20 families have used VidAngel’s filtering service.

21 31. In fact, it was not until VidAngel announced its intention to seek
22 significant financing that Disney finally decided to sue. On May 24, 2016, a couple
23 of weeks before the suit, VidAngel informed its better customers (including Disney,
24 which has purchased 17 titles with its secret VidAngel account) of its intent to raise
25 additional funds through Regulation A+ financing. Then, and only then, did Disney
26 finally decide to sue. I believe this litigation was intentionally timed to cut off
27 VidAngel’s access to cash flow at a critical stage in its development and prevent our
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1 modern filtering service from growing.

2 **VidAngel Is a Filtering Company**

3 32. Because VidAngel has catered only to people who want to filter the
4 motion pictures they watch in their homes, we did not immediately recognize that
5 others might try to abuse VidAngel’s service or exploit loopholes in our service to
6 watch motion pictures without filtering. At the very early stages of our service, our
7 system allowed one to stream a movie even if no filter was selected. At that time,
8 we trusted that our audience was using our service for filtering.

9 33. In December 2015, we created a #StopJarJar marketing campaign to
10 coincide with Star Wars 7 movie launch, giving away a free \$20 Star Wars movie.
11 We discovered that the campaign was attracting users who were watching Star Wars
12 without filters. We therefore halted the campaign and began requiring filters to
13 watch movies on VidAngel.

14 34. Later on, we discovered that other customers were setting a single
15 global filter (e.g., Jar Jar Binks) and then watching movies on the Roku that didn’t
16 have any tags for the selected filter, resulting in a few unfiltered streams. As soon as
17 we discovered potential loophole, we altered the system again so that it ensured that
18 a filter was set on each streamed movie. It has upset a few customers, but it has
19 allowed us to stay focused on our original target market of FMA-compliant filtering.

20 35. When the studios sued us, they complained that the opening and
21 closing credits were another loophole of sorts. Because we had always tried to
22 prevent improper use of VidAngel, we immediately removed the opening and
23 closing credits tags altogether. VidAngel received a few complaints from those who
24 were abusing the system, but it also got complaints from those who used those
25 filters for legitimate purposes. One reason these filters were created was that credits
26 are often more than mere lists of the people who did certain tasks in creating the
27 film. Some movies save the most offensive content for the credits. The titles and
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1 credits feature allowed users to avoid such content. We are now updating our apps
2 to allow our customers to use the opening and closing credits filters provided that
3 they also pick at least one additional filter.

4 36. All of the above steps to remove potential loopholes and focus
5 VidAngel’s viewing experience on filtering have been a part of our evolution, as we
6 become known to a larger audience of people. VidAngel is committed to ensuring
7 that people come to VidAngel to view filtered versions of motion pictures.

8 37. Despite there being a few times where the system has been abused, our
9 data shows that 95.93 percent of VidAngel’s purchases came from users who
10 voluntarily chose more than one filter. VidAngel also ran these numbers for July
11 2016, and found that more recently 96.93 percent of VidAngel’s purchases came
12 from users who voluntarily chose more than one filter. This indicates that our users
13 are overwhelmingly using VidAngel for filtering, and that the number of users
14 choosing multiple filters is increasing.

15 38. The studios claim that VidAngel is threatening the “legitimate
16 streaming market” because VidAngel’s sellback model allows a net cost of \$1, but
17 the data prove otherwise. Because almost 96% of VidAngel’s purchasers have
18 selected multiple filters over VidAngel’s entire history, this means the version of the
19 film or television show VidAngel streams to them is of a different character than the
20 version available through other VOD providers like Google Play, Amazon Video,
21 VUDU and iTunes. VidAngel has had a long history of ensuring that it is reaching
22 its target filtering market.

23 39. VidAngel has additional data showing that most of its users would not
24 have watched the movie they chose to see absent filtering:

25 SURVEY QUESTION: Would you have watched "[title]" without a filter?

26 Out of 180,227 movies watched, 92,225 users said they would not have
27 watched the movie at all without filters (as of 8/26/2016). These answers come from
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1 the account holders (usually parents). The numbers do not fully account for
2 hundreds of comments like these:

3 I would let my 13+ year old children watch without the filter. My younger
4 kids had to wait until Vidangel provided it.

5 My kids love this movie especially at Halloween but I hate it because it
6 needed to be edited. Thank you for editing it and putting it on your site.

7 The filter was great with younger kids watching (13 yr old in my case)

8 The filter was for the kids.

9 I wouldn't have let me kids watch without the filters.

10 My husband and I love the movie "Apollo 13" but we have never watched it
11 with our kids (youngest is age 7.) We muted the language that we feel is
12 inappropriate for our own household and were able to watch it with our
13 children. They loved it :)

14 I would have watched it without a filter with my older kids, but not the
15 youngsters.

16 40. This means that, while over half of all movies would not have been
17 watched by the account holders without filters at all, far more users would not have
18 watched the movie with their family without filters. This filtered-only viewership is
19 entirely additive to the studios' market, and the purchases of those films and shows
20 would not have occurred without VidAngel.

21 VidAngel's Marketing Is About Filtering

22 41. VidAngel is constantly testing advertising messages and the studios
23 have cherry picked a few that never even got traction. While the studios say
24 VidAngel has an "unfair advantage" using its net cost with sellback and filters as a
25 marketing hook, what they fail to acknowledge is that VidAngel is not a direct
26 competitor to their distribution partners because those partners do not offer filtering.

27 42. VidAngel learned in its early market testing that the market for filtered
28 content was far larger if customers did not have to pay an additional fee for filtering.
It seemed that customers felt they should be able to watch the movie however they
wanted after they had purchased the movie. As a company strategy, VidAngel

1 wanted to reach broadest filtering audience possible and adjusted its marketing
2 messages accordingly.

3 43. Historically, those who would like to enjoy filtered content had to pay a
4 premium price for the ability to do so (even purchase expensive hardware and a
5 subscription in addition to the cost of the movie). VidAngel’s messaging helps those
6 who think that filtering is more expensive and more difficult to realize that the
7 opposite is true. An analogy explains why VidAngel’s marketing references other
8 VOD services. People may believe that flying in an airplane is dangerous. Airlines
9 may highlight that the chances of dying in a car are higher than the chances of dying
10 in an airplane to dispel that myth and attract people to purchasing plane tickets.
11 Plane tickets do not directly compete with car sales, but the comparison is useful to
12 customers.

13 44. The number of users voluntarily choosing more than one filter (over 96
14 percent in July) are evidence that the studios have mistakenly concluded that
15 VidAngel’s marketing highlighting net cost gives VidAngel an “unfair advantage,”
16 when the approach is ultimately attracting a filtering audience rather than competing
17 with all the many distributors who do not offer filtering.

18 **The Studios Are Being Disingenuous Concerning the Lawsuit**

19 45. In their Complaint, the studios say they are suing VidAngel because it
20 is allegedly operating an "unlicensed VOD streaming service" even though
21 VidAngel is operating a remote filtering service under the FMA.

22 46. Plaintiffs claim that "The FMA requires that any copy or performance
23 made pursuant to that statute be otherwise 'authorized'— that is, not violating the
24 copyright owner’s other exclusive rights." Complaint (Dkt No. 1), ¶ 44. Under this
25 position, the authority to filter content in the home resides with the studios, not with
26 the family. This position would essentially repeal the FMA, which does not require
27 any consent from the studios to filtering (consent they would definitely not give).
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1 47. The ultimate irony is that the studios will not sell a streaming license
2 that permits filtering to anyone, putting companies like VidAngel in a Catch-22
3 position. Indeed, 10 years after the studios were compelled by the FMA to dismiss a
4 lawsuit with ClearPlay, the market has yet to see a studio-licensed streaming
5 product that supports filtering.

6 **DVDs and Blu-ray Discs Are the Only “Authorized”**
7 **Copies of Plaintiff’s Movies Available for Filtering**

8 48. Due to the agreement the studios have made with the Directors Guild of
9 America (“DGA”), major studio agreements with their distributors have language
10 similar to the Sony/Google agreement posted on WikiLeaks (which I found doing a
11 Google search for “VOD license agreement”):

12 **CUTTING, EDITING AND INTERRUPTION.** Licensee [Google]
13 shall not make, or authorize any others to make, any modifications,
14 deletions, cuts, alterations or additions in or to any Included Program
15 without the prior written consent of Licensor [Sony]. For the
16 avoidance of doubt, no panning and scanning, time compression or
17 similar modifications shall be permitted. Without limiting the
18 forgoing, Licensee shall not delete the copyright notice or credits from
the main or end title of any Included Program or from any other
materials supplied by Licensor hereunder. No exhibitions of any
Included Program hereunder shall be interrupted for intermission,
commercials or any other similar commercial announcements of any
kind.

19 49. Discovering this language in the studios’ actual agreements helped me
20 realize that this was the reason Google was forced to remove technical support for
21 filtering HD content on the Chromecast and was forced to seek permission from the
22 studios to enable filtering on Google Play.

23 50. What’s more, when the studios sign a deal for the rights to a specific
24 title, they seem to be required to include the following language in all of their
25 agreements. For example, in Sony’s agreement for the movies Fury and American
26 Hustle, the following language binds Sony:

27 [Sony] shall have the right...to make any and all changes and
28

1 modifications in the Picture; provided, [Sony] shall comply with any
2 contractual right of first opportunity to make such changes granted to
3 Director.

4 51. Given this language and the studio interpretation of the FMA, this
5 language trickles down through all agreements and ultimately hands the authority to
6 make any changes to the movie back to the director of the movie.

7 52. The legislative history of the FMA reflect that the DGA refused to
8 testify or cooperate with Congress in any way when FMA was being debated in
9 Congress. The DGA and the studios would not seek a business deal with filtering
10 companies in 2004. And these are the same organizations who have not filled the
11 market need for filtering for the last decade, leading a few brothers from Idaho to
12 ask themselves, “Why isn’t there filtering for streaming?”

13 53. If the court were to interpret the law as argued by the studios, then
14 VidAngel will not be able to operate under the “transmitted” language of the FMA
15 because the studios will not sell VidAngel a license that permits filtering. In fact,
16 they are unable to do so without cooperation from the DGA. And lack of
17 cooperation from the DGA is the reason the FMA was passed by Congress in the
18 first place. VidAngel is the only entity that provides a filtering service under the
19 FMA for those viewing title on modern mobile devices such as smartphones, tablets,
20 and SmartTVs.

21 **VidAngel Would Love to Purchase a Filtered Streaming License**

22 54. VidAngel has various business reasons for which it is preferable to
23 purchase a streaming license that allows for filtering. For example:

- 24 a) Discs will increasingly become less available and may eventually be
25 phased out of existence.
26 b) New customers complain about VidAngel’s buy/sellback model and
27 ask why they can’t just rent the movies.
28 c) A streaming license would allow VidAngel to provide both filtered and
unfiltered versions of movies.

1 d) There is a lot of overhead and waste in managing a vault of physical
2 discs.

3 e) Acquiring physical discs through retailers is time consuming and
4 difficult.

5 f) When customer demand exceeds our supply, VidAngel has to send
6 customers out-of-stock notices. VidAngel sent out almost 60,000 unique customers
7 over 250,000 out of stock notices last month alone. This means that VidAngel
8 turned away 250,000 requests for streams that it could have received income for if it
9 had a standard VOD distribution agreement that allows for filtering.

10 g) When VidAngel purchases more discs than it is ultimately able to sell,
11 it ends up with hundreds or thousands of discs that it will never sell.

12 55. VidAngel assumed that it needed to have significant size before the
13 studios would ever consider a filtered licensing deal. Some contacts in Hollywood
14 told me to wait until we had over 1 million users, preferably over 5 million.

15 56. In fact, VidAngel started talking with a local distributor in Utah about a
16 licensing deal in May of 2016, before the lawsuit. This distributor has agreed to
17 licensing its latest film to VidAngel because it has not signed an agreement with the
18 DGA and can permit filtering of content.

19 57. After Plaintiffs filed their lawsuit, VidAngel inquired of some of the
20 plaintiffs whether they were open to a business solution rather than litigation.

21 58. VidAngel also met with Sony, Lionsgate and Paramount about a
22 licensing deal since those studios had not sued them. VidAngel has reached out to
23 many others. These studios have either said, “this is complicated legally,” or
24 “maybe we can solve the problem with the airline cut,” or “you have to get the DGA
25 to agree first.” Multiple studios said they would get back to me after meeting with
26 their legal teams and never did.

27 59. Finally, I am aware that my counsel has emailed counsel for Disney
28

1 and offered to make certain changes to VidAngel’s model and that Plaintiffs’
2 counsel responded: “my clients absolutely will not engage in any joint licensing
3 discussions.” Counsel for VidAngel then offered to abandon its FMA exemption
4 defense (and with it the requirement that consumers must purchase copies of discs)
5 and instead pay a streaming license fee to stream filtered content, noting that this
6 arrangement would resolve Disney’s DMCA and infringement claims. Disney has
7 not responded to this offer.

8 60. It appears that VidAngel is back to 2005 again, with no business
9 solution available to VidAngel.

10 **New Releases on VidAngel Generate**
11 **Revenue Share Similar to Studio Contracts**

12 61. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 [REDACTED]. By comparison, the Google Play and VUDU VOD Distribution Agreements
21 with Sony calls for Sony to receive 70% of the revenue day one, and receive 65%
22 for the four weeks thereafter for all new release rentals.

23 **VidAngel Maintains It Has Robust Records of Every Transaction**
24 **In Its History Related to Each of Plaintiffs’ Titles**

25 62. VidAngel maintains records of every transaction. Those records
26 include the date purchased, date sold back, amounts paid to purchase and sell back,
27 the specific disc purchased and filters used. VidAngel maintains that data for every
28

1 title VidAngel users have ever filtered and streamed.

2 **VidAngel Will Suffer Tremendous Hardship If an Injunction Issues**

3 63. In the event that VidAngel is enjoined on October 24, 2016, the
4 following financial damages (immediate, and future) would be incurred in the
5 estimated 18-month timeframe for the trial to occur:

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 VidAngel, formed just three years ago, has only 20 full-time employees. To date,
23 VidAngel has been capitalized with over \$3.6 million and has spent [REDACTED]
24 [REDACTED], purchasing discs.

1 64. VidAngel developed its filter-and-stream technology just as consumer
2 preferences were beginning to move away from getting physical DVDs/Blu-ray
3 discs to watch on a home television to having content streamed to them to watch on
4 all sorts of devices, which now are only infrequently a television set. Consumers
5 increasingly want to avoid having to obtain discs and want the freedom to watch
6 content on tablet, laptop, and desktop computers, smart telephones, and other
7 devices, and want to be able to watch content wherever they may be, in private. As
8 consumer preferences involving digital technologies always do, the preference for
9 streamed content is happening rapidly and the bulk of the transition will likely be
10 complete in less than three years. VidAngel is the only company currently
11 streaming filtered content to customers. (The only other content filtering service
12 sells devices that consumers may use at home to filter the content of physical DVD
13 and Blu-ray discs being watched on a television set.) As the sole competitor
14 offering to provide filtered streamed content to modern devices, VidAngel
15 obviously has a significant head start over potential competitors in developing its
16 technology and increasing its know-how. Further, VidAngel owes a large portion of
17 its success to the highly capable and competent employees and independent
18 contractors it has attracted, trained, and retained. Were VidAngel to be enjoined
19 during the pendency of this action, it would lose all the advantages described above.

20 I declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true and correct.

22 Executed on September 12, 2016, at Provo, Utah.

23
24
25
26
27
28


Neal Harmon

EXHIBIT A



Neal Harmon <nealsharmon@gmail.com>

[6-573900002296] YouTube Terms of Service

legal-youtube@google.com <legal-youtube@google.com>
To: neal@vidangel.com

Thu, Dec 5, 2013 at 3:16 PM

December 5, 2013

VIA EMAIL (neal@vidangel.com)

Hi Mr. Harmon,

We are following up on correspondence between you and Brian Mendonca, legal counsel for Chromecast. The Chromecast team remains concerned that your use of Chromecast marketing assets, including but not limited to hosting a Chromecast video in a lightbox on your site, creates confusion as to the affiliation between Chromecast and VidAngel. We ask that you address these concerns as soon as possible.

In addition, I'm writing to discuss a couple of specific aspects of VidAngel's use of the YouTube embedded player: that you are modifying the YouTube player, specifically the play button; and that you are modifying the audio and video components of YouTube content.

We've worked hard to create YouTube offsite playback functionality that supports our uploaders' expectations and maintains a consistent user experience -- so that users around the Web know what they can expect when encountering YouTube content (player navigation, branding, ability to get back to the YouTube.com site, etc). I'd like to draw your attention to Section II.8 of the API Terms of Service, which prohibits applications that "modify the audio or visual components of any YouTube audiovisual content" as well as Section 4B of the YouTube Terms of Service which states that "You agree not to alter or modify any part of the Service." Also, Section F of the YouTube Terms of Service that says "if you use the Embeddable Player on your website, you may not modify, build upon, or block any portion or functionality of the Embeddable Player."

As I'm concerned that your implementation takes away from the YouTube experience, I'm asking that you utilize our embedded player for any YouTube video on your site in a manner consistent with our YouTube Terms of Service (<http://www.youtube.com/t/terms>) and API Terms of Service (<https://developers.google.com/youtube/terms>).

Thanks for your time, and please let us know if you have any questions.

Thanks,

The YouTube Legal Team

D_14771

EXHIBIT B

KUPFERSTEIN MANUEL & QUINTO LLP

11845 W. OLYMPIC BOULEVARD
SUITE 1000
LOS ANGELES, CA 90064

PHONE (424) 248-6650
FAX (424) 248-6652

July 23, 2015

Alan Braverman, Esq.
General Counsel
The Walt Disney Company
500 S. Buena Vista Street
Burbank, CA

Re: Proposed VidAngel Movie Streaming Service

Dear Mr. Braverman:

We are counsel to VidAngel, Inc. We are writing to request The Walt Disney Company's input concerning VidAngel's proposed streaming service for motion pictures and television programs, specifically to inquire about buying DVD and Blu-ray discs directly from The Walt Disney Company.

At the outset, we want to be clear concerning two things. First, the service VidAngel proposes to provide is not intended to compete with existing services that stream content "as-is." Rather, it is designed to allow consumers who might not otherwise purchase a particular DVD or Blu-ray movie or television show, due to personal preferences, to choose what they wish to have "muted or skipped" while the disc is played and streamed to them. These consumers generally want customized ("muted or skipped") playback out of a concern that the DVD or Blu-ray might contain material they feel is inappropriate for their children or that they wish not to view or hear. Second, VidAngel wants to work with content-providers, and eventually purchase its Blu-ray and DVD discs directly from The Walt Disney Company, rather than from distributors. VidAngel believes that it can, in essence, partner with content-providers to allow consumers to benefit from the Family Home Movie Act, 17 U.S.C. 110 § (12), while enabling a bigger market reach.

This is how VidAngel's business works:

1. VidAngel lawfully purchases DVD or Blu-ray movies and television shows that it plans to stream.
2. VidAngel's community users review and tag the content to identify over 20 categories of content that a customer might wish to have excluded when

Alan Braverman, Esq.
General Counsel
July 23, 2015
Page 2

streamed to his or her family, such as profanity, vulgarity, blasphemy, nudity, sex acts, etc.

3. Customers select movies/shows they wish to see, purchase them, and choose which of the 20+ categories they want "muted or skipped" during the streaming. Note that the original content is unchanged; however, the playback experience is customized. Customers can adjust individual tags within the categories. For example, a customer can choose to mute the "F" word or skip a rape scene in a movie while keeping any or all of the other tagged content, thus allowing a customer to feel comfortable permitting younger audiences to watch the movie. Significantly, VidAngel does not make a copy of the altered version of the movie; it customizes the playback to skip or mute particular words or scenes based on each customer's preferences.
4. VidAngel purchases the DVD or Blu-ray disc for the customer and stores it in a physical vault. The purchase of the disc is on a one-to-one disc-to-customer basis prior to streaming its content to any customer. That is to say, there is a physical copy owned by every customer prior to streaming any content to any customer.
5. VidAngel's customers are allowed to have the contents of the discs they own streamed to them as many times as they want, with the types of content they identified muted or skipped. VidAngel does not, however, allow any one customer to have a work streamed to two devices simultaneously, nor does it allow any work to be streamed to any device that the customer has not previously logged into using his or her personal VidAngel account.
6. At a customer's request, VidAngel will ship any physical DVD or Blu-ray the customer owns to him or her or will re-purchase the disc at a discount from the sale price. The amount of the discount is based on the length of time the customer has owned that disc.

VidAngel began a limited beta test of its technology in January 2015 starting with 43 users and has grown the number of beta users to 4,848 users in June. To date, the service has proved very popular among beta users. VidAngel has already legally purchased many thousand Blu-ray and DVD discs to support these customers. Having tested demand for the service, VidAngel now needs to discuss direct purchasing of DVD and Blu-ray content in order to scale its business.

To gauge the interest its service will generate among all parents, as opposed to just the Beta test participants, VidAngel commissioned a consumer survey of randomly

Alan Braverman, Esq.
General Counsel
July 23, 2015
Page 3

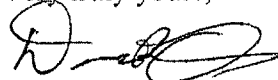
selected parents nationwide which asked whether they would use parental control software that filters swearing and other content they view as inappropriate from movies streamed to their homes. Forty-seven percent of the survey respondents said that they would a) likely or b) very likely use it.

Significantly, VidAngel appears to be largely attracting consumers who would not otherwise watch certain DVD or Blu-ray content, as opposed to taking business away from other companies that purchase Blu-ray and DVD copies of content. Since launching the beta test in January, VidAngel has continuously surveyed its customers to ask whether they would have watched the content they selected had VidAngel not provided for their ability to mute or skip material they found offensive or did not wish to see or hear. The survey found that 77 percent of viewers would not have purchased that content had the ability to skip or mute certain language or content not been offered. If its business is successful, VidAngel's service will help grow the industry and will likely result in a substantial net increase in the total sales of DVD and Blu-ray discs.

You may access VidAngel's services at www.VidAngel.com. If you have any questions concerning VidAngel's technology or business model, please feel free to ask. If you disagree with VidAngel's belief that its technology fully complies with the Copyright Act or otherwise does not adequately protect the rights of copyright owners, please let us know. VidAngel wants to take the concerns of content owners into consideration and address them to the extent it can. VidAngel hopes that it will be viewed as a partner to content providers, substantially increasing legal sales of DVDs and Blu-ray copies of content. Finally, VidAngel would appreciate knowing the volumes required to buy DVD and Blu-Ray discs directly from The Walt Disney Company.

Please do not hesitate to contact with us any questions or concerns you might have.

Very truly yours,



David W. Quinto

cc: Neal Harmon

D 14743

EXHIBIT C

We've updated our Services Agreement to make it more consistent and better reflect the new products we've launched, including Connect and Relay.

LIVE 100%
Search

GENERAL

- Dashboard
- Customers

TRANSACTIONS

- Payments
- Disputes
- Transfers
- Balance

MEMBERSHIPS

- Subscriptions
- Plans
- Coupons

RELAY

- Products
- Orders

INTEGRATIONS

- Events & webhooks
- Logs

cus_7i2iEMfgDMOWBT

Customer details

ID: **cus_7i2iEMfgDMOWBT**

Created: **2016/01/12 17:10**

Email: **[REDACTED]**

Description: **Customer for walter.roy12345@gmail.com**

Metadata

[REDACTED]

Cards

DEFAULT
✕ Delete
✎ Edit

Name: **AI Podrasky** Address: [REDACTED]

Number: [REDACTED] CVC: [REDACTED] **Passed** ✓

Fingerprint: [REDACTED] CVV check: **Passed** ✓

Expires: [REDACTED] Zip check: **Failed** ✕

Type: [REDACTED]

Bank accounts

[REDACTED]

Payments

\$20.00 USD	Star Wars: The Phantom M...	Customer for walter.roy123...	2016/01/13 12:52:55	...
\$20.00 USD	1.1 Winter Is Coming for \$...	Customer for walter.roy123...	2016/01/12 17:50:26	...
\$20.00 USD	Big Hero 6 for \$ 20.00[115...	Customer for walter.roy123...	2016/01/12 17:43:08	...
\$20.00 USD	Frozen (2013) for \$ 20.00[1...	Customer for walter.roy123...	2016/01/12 17:34:02	...

[View all payments >](#)

Active Subscriptions

[REDACTED]

Pending invoice items

[REDACTED]

Invoices

[REDACTED]

Orders

[REDACTED]

Discount

[REDACTED]

Logs

200 OK	POST /v1/charges	2016/01/13 12:52:55
200 OK	POST /v1/charges	2016/01/12 17:50:27
200 OK	POST /v1/charges	2016/01/12 17:43:09
200 OK	POST /v1/charges	2016/01/12 17:34:03
200 OK	POST /v1/customers	2016/01/12 17:10:46

[View all logs >](#)

Events

cus_7i2iEMfgDMOWBT was charged \$20.00	2016/01/13 12:52:55
cus_7i2iEMfgDMOWBT was charged \$20.00	2016/01/12 17:50:27
cus_7i2iEMfgDMOWBT was charged \$20.00	2016/01/12 17:43:08
cus_7i2iEMfgDMOWBT was charged \$20.00	2016/01/12 17:34:03
Customer cus_7i2iEMfgDMOWBT added a new Visa ending in 6756	2016/01/12 17:10:46

[View more events >](#)

Delete Customer

- ACCOUNTS
- AUTHENTICATION AND AUTHORIZATION
- AUTHTOKEN
- CAMPAIGNS
- CREDITS
- DJANGO O
- INVENTORY
- PAYMENTS
- PYTHON SOCIAL AUTH
- STREAMING
- WORKS
- SUPPORT TOOLS

Transaction Tool

Email

Search

Email: walter.roy12345@gmail.com
 User id: 5fd68d34-9266-4c26-909b-7d7265817c7b
 User Join Date: Aug. 6, 2015, 6:08 p.m.
 Account Balance: \$61.00
 Purchase Amount: \$-19.00
 Deposit - Refund Amount: \$80.00
 Non Refundable Amount: \$0.00
 Works Owned : 0
 Purchase Total: 17
 Sellback Total: 17

New Transaction

Description	Type	Amount	Purchased Amount	Running Amount	Works Owned	Created
1.15 Born Free sold back for \$ 19.00 (Website)	Sellback	19.00		61.00	0	04/25/2016 6:05 PM
1.12 Born Free for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	42.00	1	04/25/2016 6:04 PM
Star Wars: The Force Awakens sold back for \$ 19.00 (Autosellback 24hrs)	Sellback	19.00		62.00	0	04/16/2016 12:30 PM
Star Wars: The Force Awakens for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	43.00	1	04/15/2016 12:26 PM
Star Wars: The Force Awakens sold back for \$ 18.00 (Autosellback 24hrs)	Sellback	18.00		63.00	0	04/06/2016 3:55 PM
Star Wars: The Force Awakens for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-2.00	45.00	1	04/05/2016 3:52 PM
Ant-Man sold back for \$ 19.00 (Autosellback 24hrs)	Sellback	19.00		65.00	0	02/24/2016 5:55 PM
Big Hero 6 sold back for \$ 19.00 (Website)	Sellback	19.00		46.00	1	02/23/2016 5:55 PM
Big Hero 6 for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	27.00	2	02/23/2016 5:55 PM
Big Hero 6 sold back for \$ 19.00 (Website)	Sellback	19.00		47.00	1	02/23/2016 5:55 PM
Big Hero 6 for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	28.00	2	02/23/2016 5:54 PM
Big Hero 6 sold back for \$ 18.00 (Website)	Sellback	18.00		48.00	1	02/23/2016 5:54 PM
Ant-Man for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	30.00	2	02/23/2016 5:52 PM
Big Hero 6 for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-2.00	50.00	1	02/23/2016 5:51 PM
Ant-Man sold back for \$ 19.00 (Autosellback End of Movie)	Sellback	19.00		70.00	0	02/23/2016 2 PM
Ant-Man for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	51.00	1	02/23/2016 1:52 PM
Ant-Man sold back for \$ 19.00 (Autosellback 24hrs)	Sellback	19.00		71.00	0	02/23/2016 11:35 AM
Ant-Man for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	52.00	1	02/22/2016 11:34 AM
Cinderella (2015) sold back for \$ 19.00 (autosellback)	Sellback	19.00		72.00	0	02/02/2016 2:45 PM
Big Hero 6 sold back for \$ 19.00 (autosellback)	Sellback	19.00		53.00	1	02/02/2016 2:30 PM
Cinderella (2015) for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	34.00	2	02/01/2016 2:41 PM
Big Hero 6 for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	54.00	1	02/01/2016 2:28 PM
1.1 Winter Is Coming sold back for \$ 19.00 (autosellback)	Sellback	19.00		74.00	0	01/26/2016 3:25 PM
1.1 Winter Is Coming for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	55.00	1	01/25/2016 3:21 PM
Star Wars: The Phantom Menace sold back for \$ 19.00	Sellback	19.00		75.00	0	01/25/2016 3:16 PM
Star Wars: The Phantom Menace for FREE (\$ 20.00 in credit used)	Purchase	-20.00	-1.00	56.00	1	01/25/2016 3:07 PM
Star Wars: The Phantom Menace sold back for \$ 19.00	Sellback	19.00		76.00	0	01/14/2016 12:55 PM
1.1 Winter Is Coming sold back for \$ 19.00	Sellback	19.00		57.00	1	01/13/2016 5:55 PM
Big Hero 6 sold back for \$ 19.00	Sellback	19.00		38.00	2	01/13/2016 5:45 PM
Frozen (2013) sold back for \$ 19.00	Sellback	19.00		19.00	3	01/13/2016 5:35 PM
Star Wars: The Phantom Menace for \$ 20.00	Purchase	-20.00	-1.00	0.00	4	01/13/2016 12:53 PM
Star Wars: The Phantom Menace for \$ 20.00	Deposit	20.00		20.00	3	01/13/2016 12:53 PM
1.1 Winter Is Coming for \$ 20.00	Purchase	-20.00	-1.00	0.00	3	01/12/2016 5:50 PM
1.1 Winter Is Coming for \$ 20.00	Deposit	20.00		20.00	2	01/12/2016 5:50 PM
Big Hero 6 for \$ 20.00	Purchase	-20.00	-1.00	0.00	2	01/12/2016 5:43 PM
Big Hero 6 for \$ 20.00	Deposit	20.00		20.00	1	01/12/2016 5:43 PM
Frozen (2013) for \$ 20.00	Purchase	-20.00	-1.00	0.00	1	01/12/2016 5:34 PM
Frozen (2013) for \$ 20.00	Deposit	20.00		20.00	0	01/12/2016 5:34 PM

1 GLENN D. POMERANTZ (SBN 112503)
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2 KELLY M. KLAUS (SBN 161091)
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3 ROSE LEDA EHLER (SBN 296523)
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6 Los Angeles, California 90071-1560
Telephone: (213) 683-9100
7 Facsimile: (213) 687-3702

8 Attorneys for Plaintiffs

9

10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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14

DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
TWENTIETH CENTURY FOX FILM
CORPORATION and FOX BROS.
ENTERTAINMENT INC.,

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Plaintiffs and Counter-
Defendants,

18

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vs.

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VIDANGEL, INC.,

21

Defendant and Counter-
Claimant.

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23

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27

28

Case No. 16-cv-04109-AB (PLAx)

**DECLARATION OF TEDD
CITTADINE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. André Birotte Jr.

Date: October 24, 2016

Time: 10:00 a.m.

Crtrm.: 4

Trial Date: None Set

1 I, Tedd Cittadine, declare as follows:

2 1. I am the Senior Vice President, Digital Distribution at 20th Century
3 Fox Home Entertainment, which is part of Plaintiff Twentieth Century Fox Film
4 Corporation (“Fox”). I submit this declaration in support of the motion by Plaintiffs
5 in this action for a preliminary injunction. Except as to those matters stated on
6 information and belief, the facts stated herein are known to me personally. As to
7 those matters stated on information and belief, I am informed of the facts and
8 believe them to be true. If called upon and sworn as a witness, I could and would
9 testify competently to the contents of this Declaration.

10 **INTRODUCTION**

11 2. In my position, I generally oversee our digital business, including the
12 negotiation of digital distribution agreements in the United States and Canada with
13 third party companies who provide our copyrighted entertainment content (motion
14 pictures and television shows, collectively “content”) directly to customers. We
15 refer to these business partners as our “clients.” I have worked in digital distribution
16 in various roles at Fox since 2009.

17 3. From my professional experience, I am familiar with Fox’s efforts to
18 partner with our clients to distribute our content to consumers across a range of
19 digital viewing options. Through publicly available sources, such as industry
20 publications and the media, I also have knowledge about the analogous efforts of
21 other motion picture studios and the general means by which other studios,
22 including the other Plaintiffs in this action, distribute their content.

23 4. I understand that Defendant VidAngel, Inc. markets a service that
24 allows consumers to stream our content, and the content of other creators of motion
25 pictures and television shows, over the internet for a fee of \$1 or \$2 a day. This sort
26 of consumer offering—daily access to a particular movie or television show—is
27 known generally as on-demand streaming. VidAngel does not have a license
28 agreement with Fox to copy, distribute or transmit Fox’s copyrighted content.

1 8. The lynchpin of our business is our ability to charge for the right to
2 reproduce, distribute, perform or otherwise use our intellectual property. Being able
3 to control the exploitation of the exclusive rights we hold in our copyrighted works
4 is crucial to this endeavor. Copyright protection ensures this control, which allows
5 us to earn returns on our substantial investment and to continue producing film and
6 television content in the future.

7 9. We offer Fox content to the public through a range of offerings that
8 meet customer demand and at retail price points (set by our clients) tailored to those
9 choices. Currently, Fox (as I understand is also true of the other Plaintiffs),
10 individually and through our affiliates and licensees, offer the following options:

- 11 • Customers can see our movies in the theater;
- 12 • they can buy a copy on DVD or Blu-ray Disc (“purchase a physical
13 Disc copy”);
- 14 • they can download and license long-term digital rights to a copy
15 through a service like iTunes or Amazon Video (“purchase a digital
16 download copy”);
- 17 • they can rent a physical copy at a brick-and-mortar store or kiosk, like
18 Redbox;
- 19 • they can rent a movie on demand for a limited period of time through a
20 cable, satellite, or internet video-on-demand platform, such as iTunes
21 or Google Play (transactional “on-demand streaming”);
- 22 • they can access and view a movie on demand through a subscription
23 streaming service like Netflix, Hulu, HBO NOW or HBO GO¹
24 (subscription “on-demand streaming”);

26 ¹ HBO offers HBO NOW as a standalone on-demand streaming service. HBO GO
27 also streams on-demand but is included with the HBO cable television subscription
28 channel.

- 1 • they can watch it on a subscription cable television channel like HBO;
- 2 or
- 3 • they can, eventually, watch it for free on network television.

4 Each of these options is known as a “distribution channel” and is designed to
5 provide different value to consumers matched to their willingness to pay. My
6 business focuses on the multiple online distribution channels.

7 10. Fox’s digital distribution business has become increasingly important
8 in recent years, and we are always looking for new opportunities to grow our
9 business and respond to consumer demand through partnerships with current and
10 new clients.

11 11. Fox’s partnerships with clients take time and resources. Including
12 myself, we have approximately 73 individuals who work full time either negotiating
13 or maintaining our relationships with our digital clients.

14 12. We have also been very deliberate in our digital strategy and the terms
15 and conditions on which we have agreed to license our content to online services
16 like VUDU, iTunes, Google Play, Netflix and others. Just by way of general
17 example, Fox’s agreements for streaming often include, among other terms:
18 (a) detailed provisions requiring technological measures to protect the security of
19 the transmission of the content to ensure against unlawful access, copying and
20 piracy, (b) provisions requiring a certain level of quality for the content’s display, to
21 ensure that consumers are receiving appropriate value, and (c) restrictions on
22 making the content available during certain blackout periods where other clients
23 have paid for exclusive distribution rights. Unlicensed services such as VidAngel
24 act independent of these terms, thereby undermining our business and the market
25 more generally.

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1 making our movies available during windows occupied by different distribution
2 channels or exclusivity periods held by one or more specific clients, thus interfering
3 with Fox's contractual commitments, its relationship with its clients and its ability to
4 negotiate similar deals in the future.

5 16. I am aware that VidAngel has interfered with legitimate services'
6 negotiated rights by offering Plaintiffs' content during exclusive windows. The
7 most salient example—albeit of a non-Fox title—is *Star Wars: The Force Awakens*
8 (2015), owned by Plaintiff Lucasfilm. It is well known that *The Force Awakens* was
9 an immensely popular motion picture. Its release to the home entertainment market
10 was very much anticipated and scheduled for April 5, 2016. Public reports made
11 clear that it would be available on DVD, Blu-ray Disc and digital download, but that
12 it would *not* be offered for on-demand streaming in that same window. On the very
13 same day, April 5th, VidAngel released *The Force Awakens* for on-demand
14 streaming, thereby competing directly with these other exclusive viewing options
15 and preempting legitimate on-demand streaming services.

16 17. Although *Star Wars: The Force Awakens* is not a Fox title, unlicensed
17 use of such a popular film concerns me. VidAngel's conduct shows that it has
18 interfered and (unless enjoined) will continue to interfere with exclusive windowing
19 rights, undermining our clients' ability to maximize the value of the rights we grant
20 them and, in turn, harming Fox's relationships with them and ability to negotiate for
21 similar rights in the future.

22 ***VidAngel Harms Plaintiffs' Relationships With Clients By Undermining Their***
23 ***Ability to Provide Licensed Offerings***

24 18. Fox's relationships with the companies that distribute and perform our
25 content are very important. The success of our business is very much intertwined
26 with the success of their business.

27 19. Our clients worry about unlicensed services in the market that compete
28 with their business on unfair terms. They complain to us in partnership meetings,

1 and especially in negotiations, that it is difficult to compete with services that, like
2 VidAngel, do not act pursuant to licensing restrictions. This is especially true for
3 unlicensed services that do not pay for the content they exploit. Our clients
4 complain that it is difficult to compete with unlicensed services' low-cost (or even
5 free) offerings. As a result, these unlicensed services are a problem for the entire
6 legitimate market for home entertainment, and in particular, for the online
7 distribution market.

8 20. VidAngel is a quintessential example of the sort of unlicensed service
9 that undermines the market for authorized content and interferes with our client
10 relationships. VidAngel markets itself as offering discounted streaming—a mere \$1
11 or \$2 per day for movies and television episodes. In contrast, licensed services'
12 transactional on-demand streaming retail prices typically are \$2.99 to \$5.99 per
13 rental and their digital download prices typically are \$9.99 to \$19.99 for a
14 permanent copy. By offering consumers on-demand streaming at a lower price—
15 which VidAngel can offer only because it misappropriates Fox's content—
16 VidAngel threatens the business of all of our clients who have negotiated legal,
17 authorized licenses for those rights.

18 21. VidAngel's marketing and advertising further threatens to confuse
19 consumers and upset the balance between on-demand streaming and physical
20 rentals. VidAngel operates an on-demand streaming service but some of its
21 marketing compares it to physical DVD rental services, like Redbox. This threatens
22 to confuse consumers because the two distribution channels offer different value
23 propositions. Fox makes its titles available in physical disc form to Redbox, which
24 generally operates in a *later* window than on-demand streaming services and only
25 offers physical rentals. Because consumers generally have a lower willingness to
26 pay in later release windows, Redbox charges a lower price to consumers (e.g., \$1
27 per night for DVD rentals from its kiosks). In contrast, on-demand streaming
28 services operate in an earlier window and have the rights to stream Fox's content

1 over the internet, which many consumers find more convenient. VidAngel’s
2 marketing confuses the two—seemingly trying to convince consumers that they can
3 have the value of on-demand streaming of newer releases for the price of a Redbox
4 rental. By confusing consumers as to the different value propositions, VidAngel
5 threatens to undermine our clients’ abilities to provide their licensed offerings.

6 22. These harms, in particular, only worsen as VidAngel grows. As a
7 relative matter, a very small and unknown unlicensed service does less harm
8 because it does not pose a serious threat to our clients’ businesses. Once an
9 unlicensed service reaches a certain size or level of notoriety, however, the threat
10 increases dramatically. I am aware that VidAngel, in recent months, has been
11 aggressively marketing its service to consumers and has grown its user-base
12 substantially. This concerns me because as VidAngel continues to grow and gain
13 consumers (at the expense of lawful services) the threat to our relationships with
14 clients and the market for authorized streaming will only increase.

15 ***VidAngel Harms Plaintiffs’ Ability To Secure And Protect Their Content***

16 23. VidAngel takes away Fox’s right to control the security with which our
17 content is transmitted to the public. This undermines the steps that Fox and the
18 other Plaintiffs take to prevent unauthorized access, illegal copying, and piracy—
19 problems that threaten serious harm to our industry.

20 24. The internet has been a very valuable tool for digital distribution of our
21 content, especially with the rise of mobile devices. However, the internet can also
22 be used to access, copy and exploit our content on a mass scale. Our industry has
23 responded to this challenge by developing rigorous digital rights management
24 (“DRM”) technology and other means of ensuring the security of digital streams and
25 copies transmitted over the internet.

26 25. Before Fox grants any client the right to stream or digitally distribute
27 our content, we do a thorough and detailed review of the service’s security
28 protocols. After investigating these security measures, we negotiate stringent

1 security and protection requirements that the client must follow. Our agreements
2 also contain provisions for steps a client must take if there is a breach of that
3 security. Because VidAngel's transmission of Fox's content is unlicensed, Fox has
4 not had the ability to vet and negotiate security protocols to protect our content
5 when streamed by VidAngel. Likewise, Fox has no recourse if whatever security
6 measures VidAngel does use fail.

7 ***VidAngel Undermines Our Ability To Insist On Quality Controls, Which In Turn***
8 ***Threatens The Continued Development Of The Online Market***

9 26. VidAngel's unlicensed service further threatens the development and
10 growth of the on-demand streaming market. Fox works closely with its clients to
11 ensure that customers receive an optimal viewing experience. Customers' positive
12 experiences with on-demand streaming encourages them to use licensed services
13 more. This is important to the continued and sustained growth of the on-demand
14 streaming market, and to digital home entertainment more broadly.

15 27. VidAngel harms consumers' perceptions of the on-demand streaming
16 market by providing a sub-optimal consumer experience, thereby tarnishing
17 consumer perception of on-demand streaming generally and discouraging
18 consumers from using legitimate on-demand streaming services. For instance,
19 before granting a client the rights to transmit our movies, Fox vets that entity to
20 ensure that it will provide a high-quality viewing experience to customers. In
21 contrast, Fox has no control over the quality of the transmission of the movies from
22 VidAngel and thus I worry that poor quality transmissions could lead to consumer
23 dissatisfaction and damage to consumer perception of on-demand streaming.

24 28. A bad viewing experience could also tarnish consumers' views of Fox
25 and our branded content. Consumers may come to associate the poor quality with
26 the Fox film they were attempting to watch (in addition to, or instead of VidAngel).
27 We want the movie-watching public to have the best possible experience so they
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1 continue to choose watching movies and television, and Fox-branded content in
2 particular, for their entertainment.

3 29. I understand that VidAngel may tell its customers that certain movies
4 are “out-of-stock.” This message of unavailability is inconsistent with the idea of
5 video “on demand” and risks causing consumer frustration and confusion, thereby
6 hurting the broader on-demand streaming market. This is of particular significance
7 since the “always available, never out of stock” character of on-demand streaming is
8 one of the essential differentiating characteristics of the on-demand experience from
9 that of traditional, physical DVD rental (e.g. Redbox).

10 30. I also understand that VidAngel limits the number of devices to which
11 a consumer can stream. The ability to stream on several devices for personal or
12 family use (e.g. mobile phone and tablet) is another value proposition of the on-
13 demand streaming market. Again, this availability across a number of devices
14 differentiates on-demand streaming from physical DVD rentals and is important to
15 encouraging consumers to purchase from authorized on-demand services.

16 31. Fox invests significant amounts of money to market and promote the
17 availability of its various motion pictures and television shows for on-demand
18 streaming. Fox also expends substantial effort and resources in working with our
19 clients to ensure the best possible viewing experience for consumers. These efforts
20 will be hampered if VidAngel’s sub-optimal experience turns consumers away from
21 the on-demand streaming market and Fox’s movies and television shows.

22 ***The Harms That VidAngel Causes Are Immediate And Irreparable***

23 32. VidAngel threatens immediate harm to Fox because it directly
24 interferes with exclusive releases to particular licensees. For example, Fox grants
25 HBO exclusive windows for certain movies, in which they are not available for on-
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1 demand streaming on other services.³ Right now, both *The Martian* (2015) and
2 *Brooklyn* (2015) are within these HBO exclusive windows. Customers can watch
3 them on the HBO subscription cable channel through on-demand streaming on HBO
4 NOW or HBO GO. They are not available on other on-demand streaming services.
5 VidAngel nonetheless has these same movies available for on-demand streaming on
6 its service—directly impacting HBO’s exclusive window.

7 33. Likewise, VidAngel threatens immediate harm to Fox because it
8 interferes with the exclusive windows for other distribution channels. New releases
9 are first released to distributors that sell digital download copies. Shortly thereafter
10 they are released for purchase on physical Disc. During these initial release
11 windows, they are typically not available for on-demand streaming. VidAngel,
12 however, offers newly released titles soon after they are released for purchase on
13 physical Disc. Accordingly, for each new release that VidAngel offers, it interferes
14 with the exclusive window that iTunes, Google Play, VUDU and others have to sell
15 digital downloads before the title becomes available for on-demand streaming.

16 34. The threat from each of the harms that I have described above has
17 increased and continues to increase as VidAngel grows in size and more
18 aggressively markets its service. Specifically, each new Fox title that VidAngel
19 adds to its service poses a new threat to Fox’s ability to control its copyrighted
20 works and that work in particular.

21 35. I am informed and believe that, in or around July 2015, VidAngel’s
22 outside counsel sent letters to the General Counsel of Fox’s corporate parent (and
23 the General Counsels of the corporate parents of the other Plaintiffs as well as other
24 motion picture studios) regarding its service. I understand from reviewing that letter
25 that VidAngel at that time claimed to have fewer than 5,000 users and was still in a
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27 ³ During these windows consumers can purchase permanent copies of Fox’s movies
28 through purchasing a physical Disc copy or a digital download copy.

1 “limited beta test.” That letter does not say when VidAngel planned to launch its
2 service publicly. I am informed and believe that my colleagues in Fox’s legal
3 department, in conjunction with legal counsel through the Motion Picture
4 Association of America (“MPAA”), immediately commenced investigation of
5 VidAngel’s potential liability. I am further informed and believe that Fox’s legal
6 department, in conjunction with counsel for the other Plaintiffs, continued to
7 monitor VidAngel’s activities and growth through the first part of 2016 as VidAngel
8 began to more aggressively market its service, ultimately filing suit on June 9.

9 36. VidAngel’s growth has been cause for concern. Our clients would not
10 notice (let alone complain) about a service with a mere 5,000 users, but one with
11 100,000 users is much more problematic. I am not aware of any specific complaints
12 about VidAngel, but know that VidAngel’s presence as one more, quickly growing,
13 unlicensed service in the market will frustrate our client relationships, negotiations
14 and the growth of the on-demand streaming market more generally.

15 37. It is my strong belief that these harms to our relationships with clients
16 and the on-demand streaming market, though they are likely to be very significant,
17 will be extremely hard to measure in dollar terms. It will be extraordinarily difficult
18 to assess what impact VidAngel has on the on-demand streaming market, and how
19 much of that it is a result of negative consumer experiences with services like
20 VidAngel, and even more difficult to assess the effect on Fox of the disruption of its
21 relationships with legitimate licensees.

22 38. For these reasons, Fox and the Plaintiffs will suffer immediate and
23 irreparable injury unless the Court enjoins VidAngel’s service.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on August 22, 2016 at Century City, California.



Tedd Cittadine