

UNITED STATES COURT OF APPEAL  
FOR THE NINTH CIRCUIT

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

Plaintiffs-Appellees,

v.

VIDANGEL, INC.,

Defendant-Appellant.

No. 16-56843

**PLAINTIFFS-APPELLEES’  
MOTION TO SEAL PORTIONS OF  
VIDANGEL’S APPENDIX  
VOLUME 3 (DKT. NO. 16)**

Pursuant to this Court’s Order dated January 4, 2017 (Dkt. 22), Plaintiffs-Appellees Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment Inc. (“Plaintiffs-Appellees”) hereby move to seal a single page, A.612, of Appellant’s Appendix Volume 3, originally filed on December 30, 2016 (Dkt. 16).

Before the district court, Plaintiffs identified portions of the Rule 30(b)(6) deposition of Plaintiffs’ witness, Tedd Cittadine, Senior Vice President, Digital Distribution at 20th Century Fox Home Entertainment (with Twentieth Century Fox Film Corporation, collectively “Fox”), as “Highly Confidential” under the Protective Order. Designation as “Highly Confidential” is reserved for confidential information that reveals, among other things “current or future business plans or strategies . . . agreements with third parties. . . and other highly

sensitive non-public commercial, financial, research or technical information.” D.Ct. Dkt. 23 at 1-2. The district court sealed these portions of Mr. Cittadine’s transcript. *See* D.Ct. Dkt. 41 (Application to File Under Seal); D.Ct. Dkt. 75 (Order Granting Application to Seal).

Plaintiffs’ counsel have again carefully reviewed the previously sealed material to determine if disclosure threatens harm to Fox (the Plaintiff whose confidential material was submitted to the district court). Counsel believes that page A.612 should be sealed because the testimony therein discusses Fox’s licensing terms, which Fox maintains in confidence and does not disclose to competitors or other parties.

There are compelling reasons to maintain the information described on page A.612 under seal. Confidential material that reveals “business information that might harm a litigant’s competitive standing” is properly subject to a motion to seal. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (discussing standard), *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016).

The excerpt of Mr. Cittadine’s deposition at page A.612 discusses Fox’s confidential terms from third-party agreements with Fox’s licensees. Fox does not disclose those terms publicly. Disclosure of those terms to Fox’s competitors (other content owners, including the other Plaintiffs) or to Fox’s licensees who

may or may not be bound by a similar term threatens competitively disadvantaged Fox in being able to negotiate those terms going forward. Accordingly, sealed treatment is appropriate here. *See Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d 820, 822 n.1 (9th Cir. 2011) (sealed treatment appropriate for “confidential business strategies and other commercially sensitive information.”).

Plaintiffs-Appellees respectfully request that the page A.612 of Appellant’s Appendix Volume 3 be sealed. Because VidAngel may also be seeking to seal portions of this Appendix, Plaintiffs-Appellees have not included a revised redacted version, but will do so promptly if the Court so requests.

Dated: January 18, 2017

Respectfully submitted,

s/ Kelly M. Klaus  
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# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## CERTIFICATE OF SERVICE SEALED DOCUMENTS INTERIM CIRCUIT RULE 27-13

**Case Number:** 16-56843

**Case Title:** VidAngel, Inc. v. Disney Enterprises, Inc., et al.

**Note:** Documents to be filed under seal are to be submitted electronically. As the parties will not have online access to those documents once they are submitted, the CM/ECF electronic notice of filing will not act to cause service of those documents under FRAP 25(c)(2) and Ninth Circuit Rule 25-5(f). Interim Circuit Rule 27-13(c) therefore requires an alternative method of serving the motion or notice to seal and the materials to be sealed.

I certify that I have provided a paper copy of the document(s) listed below to all other parties via personal service, mail, or third-party commercial carrier on the date noted below. *See* FRAP 25(c)(1)(A) – (C).

I certify that, having obtained prior consent, I have provided a copy of the document(s) listed below to all other parties via electronic mail. *See* FRAP 25(c)(1)(D); Interim Circuit Rule 27-13(c).

### DESCRIPTION OF DOCUMENTS:

PLAINTIFFS-APPELLEES' MOTION TO SEAL PORTIONS OF VIDANGEL'S APPENDIX  
VOLUME 3 (DKT. NO. 16)

**Signature:** s/ Kelly M. Klaus

(use "s/" format with typed name)

**Date:** January 18, 2017