

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.

No. 16-56843

**DEFENDANT-APPELLANT'S
MOTION TO SEAL PORTIONS
OF APPELLANT'S APPENDIX,
VOLUME 3 (DKT. 16) AND
APPELLEES' SUPPLEMENTAL
APPENDIX VOLUME 5 (DKT. 19)**

Pursuant to this Court's Order dated January 4, 2017 (Dkt. 22), Defendant-Appellant VidAngel, Inc. ("VidAngel") hereby moves to seal limited portions of Appellant's Appendix Volume 3, originally filed on December 30, 2016 (Dkt. 16) and Appellees' Supplemental Appendix Volume 5, originally filed January 2, 2017 (Dkt. 19) (together, the "Appendices").

VidAngel respectfully seeks an order to seal a small amount of highly sensitive and confidential information contained in the Appendices. The information sought to be sealed is identified in the attached Exhibit A.

In the district court, the information at issue was identified by VidAngel as "Confidential" or "Highly Confidential" pursuant to the Stipulated Protective Order entered on August 19, 2016 (Dkt. 23) and was ordered sealed. See D.Ct. Dkt. 25, 41

& 88 (Applications to File Under Seal); D.Ct. Dkt. 32, 75 & 97 (Orders Granting Applications to Seal). VidAngel's counsel have again carefully reviewed the previously sealed material and have determined that disclosure of the information identified in Exhibit A threatens to harm VidAngel.

There are compelling reasons to keep the information in question under seal. It consists of detailed statements about (1) the mechanics of VidAngel's filtering technology (which was developed at considerable expense), (2) market data acquired through VidAngel's novel position in the marketplace, and (3) key financial projections and other sensitive financial data, such as that of VidAngel's profit margins and its appraisal of fair market value. This information is some of VidAngel's most sensitive, is extremely confidential, has never been disclosed to the public, and is not even shared with many of VidAngel's employees. As such, it easily constitutes VidAngel's "confidential business strategies and other commercially sensitive information" properly subject to seal. *Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d 820, 822 n.1 (9th Cir. 2011). And there is no countervailing reason to disclose the information to the public—it does not affect public health and safety and does not concern any public entities or officials; rather it concerns only the private inner workings of VidAngel's business.

The information also constitutes VidAngel’s trade secrets because it “ can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.” Restatement (Third) of Unfair Competition § 39 (1995). On this basis as well, it may properly be sealed. *Id.* cmt. e (“A trade secret is entitled to protection as long as it “provide[s] an actual or potential economic advantage over others who do not possess the information. The advantage however, need not be great.” (emphasis added)). In fact, disclosure of the information threatens serious competitive harm to VidAngel because it would enable the development of competitor services at lower cost, particularly in light of VidAngel’s first-mover position in an emerging market. See *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (“business information that might harm a litigant’s competitive standing” is properly subject to a motion to seal).

VidAngel has filed herewith proposed redacted versions of the Appendices.¹ VidAngel respectfully requests that the Court make the proposed versions publicly available and retain the originally filed unredacted versions under seal.

¹ Earlier today, Plaintiffs-Appellees filed a request to seal one page of a deposition transcript included in Appellant’s Appendix Volume 3. VidAngel has also redacted that page in the accompanying proposed redacted Appellant’s Appendix Volume 3.

Dated: January 18, 2017

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Respectfully submitted,

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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:

DEFENDANT-APPELLANT'S MOTION TO SEAL PORTIONS OF APPELLANT'S APPENDIX, VOLUME 3 (DKT. 16) AND APPELLEES' SUPPLEMENTAL APPENDIX VOLUME 5 (DKT. 19) [PROPOSED REDACTED] APPELLANT'S APPENDIX VOLUME 3 [PROPOSED REDACTED] APPELLEES' SUPPLEMENTAL APPENDIX VOLUME 5

Signature: s/ Victor O'Connell

(use "s/" format with typed name)

Date: January 18, 2017