

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

EXCERPTS OF RECORD

VOLUME V OF V

(Pages 661-848)

Brendan S. Maher
Daniel L. Geysler
Douglas D. Geysler
STRIS & MAHER LLP
6688 N. Central Expy., Ste. 1650
Dallas, TX 75206
Telephone: (214) 396-6630
Facsimile: (210) 978-5430

January 11, 2016

Peter K. Stris
Elizabeth Rogers Brannen
Dana Berkowitz
Victor O'Connell
STRIS & MAHER LLP
725 S. Figueroa St., Ste. 1830
Los Angeles, CA 90017
Telephone: (213) 995-6800
Facsimile: (213) 261-0299
peter.stris@strismaher.com

Counsel for Defendant-Appellant VidAngel, Inc.

TABLE OF CONTENTS

VOLUME I OF V

Pages 1 to 22

ECF	Description	Page
144	Order Granting Plaintiffs' Motion for Preliminary Injunction	ER001

VOLUME II OF V

Pages 23 to 289

ECF	Description	Page
175	[In Chambers] Order Granting Plaintiffs' Ex Parte Application for an Order to Show Cause Why VidAngel Should Not Be Held in Contempt	ER023
172	Ninth Circuit Order Denying VidAngel, Inc.'s Emergency Motion for a Stay Pending Appeal	ER024
167	Declaration of David Quinto	ER026
166	[In Chambers] Order Denying Defendant's Ex Parte Application to Stay Preliminary Injunction Pending Appeal or Alternatively, Pending Decision by the Ninth Circuit on Stay Pending Appeal	ER029
164	VidAngel, Inc.'s Opposition to Plaintiffs' Ex Parte Application for an Order to Show Cause	ER034
164-1	Declaration of Neal Harmon in Support of VidAngel, Inc.'s Opposition to Plaintiffs' Ex Parte Application for an Order to Show Cause	ER050
164-2	Declaration of David Quinto in Support of VidAngel, Inc.'s Opposition to Plaintiffs' Ex Parte Application for an Order to Show Cause	ER060
164-3	Declaration of Jarom McDonald in Support of VidAngel, Inc.'s Opposition to Plaintiffs' Ex Parte Application for an Order to Show Cause	ER070

ECF	Description	Page
163	Plaintiffs' Preliminary Injunction Bond	ER075
158	Declaration of Neal Harmon in Support of VidAngel, Inc.'s Ex Parte Application to Stay Preliminary Injunction Pending Appeal or, Alternatively Pending Decision by the Ninth Circuit on Stay Pending Appeal	ER080
149	VidAngel, Inc.'s Notice of Appeal from Order Granting Motion for Preliminary Injunction; Representation Statement	ER088
145	Court Reporter's Transcript of Proceedings on Monday, November 14, 2016	ER094
123	Order Regarding Hearing Date on Plaintiffs' Motion for Preliminary Injunction	ER218
110	Supplemental Declaration of Neal Harmon in Opposition to Motion for Entry of Preliminary Injunction (with Exhibits)	ER220
109	Declaration of William J. Aho in Support of VidAngel, Inc.'s Opposition to Motion for Entry of Preliminary Injunction	ER283
78	Order Continuing Hearing of Plaintiffs' Motions for Preliminary Injunction and to Dismiss VidAngel's Countercomplaint	ER288

VOLUME III OF V
Pages 290 to 567

ECF	Description	Page
77	Amended Answer and First Amended Counterclaims	ER290
69	Declaration of Tim Wildmon in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER350
68	Declaration of Tim Barton in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER354

ECF	Description	Page
67	Declaration of Theodore Baehr in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER358
66	Declaration of Rick Green in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER362
65	Declaration of Rebecca Hagelin in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER366
64	Declaration of Patrick Trueman in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER371
63	Declaration of Matt Kibbe in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER375
62	Declaration of L. Brent Bozell III in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER378
61	Declaration of George E. Roller in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER383
60	Declaration of Gary Marx in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER387
59	Declaration of Gary Bauer in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER391
58	Declaration of David Bozell in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER395
57	Declaration of David Barton in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER399
56	Declaration of Connor Boyack in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER403
55	Declaration of Harry R. Jackson Jr. in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER407
54	Declaration of Timothy F. Winter in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER411

ECF	Description	Page
53	Declaration of Donna Rice Hughes in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER419
52	Declaration of Bryan and Diane Schwartz in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER428
51	Declaration of Bob Waliszewski in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER433
50	Declaration of Andrea Lafferty in Support of VidAngel's Opposition to Motion for Preliminary Injunction	ER436
46	Declaration of David W. Quinto in Support of VidAngel's Memorandum of Points and Authorities in Opposition to Preliminary Injunction Motion	ER441
45	Declaration of Jaime W. Marquart in Support of VidAngel's Memorandum of Points and Authorities in Opposition to Preliminary Injunction Motion	ER451
45-2	[Redacted] Exhibit B to Declaration of Jaime W. Marquart in Support of VidAngel's Memorandum of Points and Authorities in Opposition to Preliminary Injunction Motion	ER455
45-4	[Redacted] Exhibit D to Declaration of Jaime W. Marquart in Support of VidAngel's Memorandum of Points and Authorities in Opposition to Preliminary Injunction Motion	ER469
44	[Redacted] Declaration of Sigurd Meldal in Support of VidAngel's Memorandum of Points and Authorities in Opposition to Preliminary Injunction Motion	ER470
44-4	Exhibit D to Declaration of Sigurd Meldal in Support of VidAngel's Memorandum of Points and Authorities In Opposition to Preliminary Injunction Motion	ER514

ECF	Description	Page
43	[Redacted] Declaration of Neal Harmon in Support of VidAngel's Memorandum of Points and Authorities In Opposition to Preliminary Injunction Motion	ER520
43-1	Exhibit A to Declaration of Neal Harmon in Support of VidAngel's Memorandum of Points and Authorities In Opposition to Preliminary Injunction Motion	ER545
43-2	Exhibit B to Declaration of Neal Harmon in Support of VidAngel's Memorandum of Points and Authorities In Opposition to Preliminary Injunction Motion	ER547
43-3	Exhibit C to Declaration of Neal Harmon in Support of VidAngel's Memorandum of Points and Authorities In Opposition to Preliminary Injunction Motion	ER551
28	Declaration of Tedd Cittadine in Support of Plaintiffs' Motion for Preliminary Injunction	ER554

VOLUME IV OF V
Pages 568 to 660

ECF	Description	Page
27	[Redacted] Plaintiffs' Notice of Motion and Motion for Preliminary Injunction; Memorandum of Points and Authorities in Support Thereof	ER568
1	Complaint for Copyright Infringement and Violation of Digital Millennium Copyright Act	ER613
	[1/11/2017] Docket Sheet	ER633

VOLUME V OF V
(FILED UNDER SEAL)
Pages 661 to 848

ECF	Description	Page
80-1	Declaration of Neal Harmon in Support of VidAngel's Memorandum of Points and Authorities In Opposition to Preliminary Injunction Motion	ER661
80-2	Declaration of Sigurd Meldal in Support of VidAngel's Memorandum of Points and Authorities in Opposition to Preliminary Injunction Motion	ER686
80-3	Exhibit B to Declaration of Jaime W. Marquart in Support of VidAngel's Memorandum of Points and Authorities in Opposition to Preliminary Injunction Motion	ER709
80-4	Exhibit D to Declaration of Jaime W. Marquart in Support of VidAngel's Memorandum of Points and Authorities in Opposition to Preliminary Injunction Motion	ER723
33	Plaintiffs' Notice of Motion and Motion for Preliminary Injunction; Memorandum of Points and Authorities in Support Thereof	ER804

1 Ryan G. Baker (Bar No. 214036)
rbaker@bakermarquart.com
2 Jaime Marquart (Bar No. 200344)
jmarquart@bakermarquart.com
3 Scott M. Malzahn (Bar No. 229204)
smalzahn@bakermarquart.com
4 Brian T. Grace (Bar No. 307826)
bgrace@bakermarquart.com
5 BAKER MARQUART LLP
2029 Century Park East, Sixteenth Floor
6 Los Angeles, California 90067
Telephone: (424) 652-7800
7 Facsimile: (424) 652-7850

8 Peter K. Stris (Bar No. 216226)
peter.stris@strismaher.com
9 Brendan Maher (Bar No. 217043)
brendan.maher@strismaher.com
10 Elizabeth Brannen (Bar No. 226234)
elizabeth.brannen@strismaher.com
11 Daniel Geyser (Bar No. 230405)
daniel.geyser@strismaher.com
12 STRIS & MAHER LLP
725 South Figueroa Street, Suite 1830
13 Los Angeles, California 90017
Telephone: (213) 995-6800
14 Facsimile: (213) 261-0299

15 David W. Quinto (Bar No. 106232)
dquinto@VidAngel.com
16 3007 Franklin Canyon Drive
Beverly Hills, California 90210
17 Telephone: (213) 604-1777
Facsimile: (732) 377-0388
18 *Attorneys for Defendant and*
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)

**FILED UNDER SEAL PURSUANT
TO ORDER OF THE COURT
DATED SEPTEMBER 14, 2016 (Dkt.
75)**

**DECLARATION OF NEAL
HARMON IN SUPPORT OF
VIDANGEL'S MEMORANDUM OF**

1 VIDANGEL, INC.,
2 Defendant.

**POINTS AND AUTHORITIES IN
OPPOSITION TO PRELIMINARY
INJUNCTION MOTION**

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

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.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



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
28

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
28

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 Software 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



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
28

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
28

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. A02CV01662RPM MJW, 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.
28

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
28

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
28

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
28

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 over
3 \$1.2 million 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
28

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
28

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
28

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).
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. Over its history, much of VidAngel’s revenue comes from the sale and
13 filtered streaming of popular movies within the first four weeks of their release.
14 Each new release DVD or Blu-ray is purchased by VidAngel and is then sold to its
15 customers (after it is bought back by VidAngel) on average 16 times. The average
16 net revenue for each transaction over VidAngel’s history is \$1.20. The average cost
17 for a new release DVD or Blu-ray is \$15.01. This means that VidAngel, on average,
18 contributes \$15.01 in capital for total revenue of \$19.20. In other words, the studios
19 receive approximately 78% of all of the revenue VidAngel receives on a new release
20 title. 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:

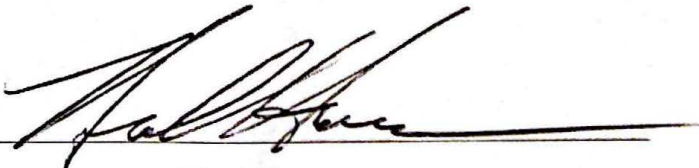
- 6 a. [REDACTED] VidAngel is
7 currently operating at a [REDACTED], this includes
8 Hosting, Credit Card Fees, and Tagging Costs. [REDACTED]
9 [REDACTED]
- 10 b. VidAngel expects to have a user base of [REDACTED]
11 by April 2018 (18 months from the injunction hearing). With a
12 [REDACTED], and a [REDACTED]
13 [REDACTED], the [REDACTED]
14 If VidAngel were to be enjoined, the total value of the customers
15 lost would be [REDACTED]
- 16 c. In Apr 2018, VidAngel's monthly revenue run rate is projected to
17 be at [REDACTED] per month, or an annual [REDACTED]
18 [REDACTED] If VidAngel achieves this goal in the timeframe
19 projected, the company would be valued at, or above, [REDACTED]
20 [REDACTED] All of this potential market value would be lost if
21 VidAngel is enjoined.

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 over a third of
24 that capital, \$1.2 million, 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

1 Ryan G. Baker (Bar No. 214036)
rbaker@bakermarquart.com
2 Jaime Marquart (Bar No. 200344)
jmarquart@bakermarquart.com
3 Scott M. Malzahn (Bar No. 229204)
smalzahn@bakermarquart.com
4 Brian T. Grace (Bar No. 307826)
bgrace@bakermarquart.com
5 BAKER MARQUART LLP
2029 Century Park East, Sixteenth Floor
6 Los Angeles, California 90067
Telephone: (424) 652-7800
7 Facsimile: (424) 652-7850

8 Peter K. Stris (Bar No. 216226)
peter.stris@strismaher.com
9 Brendan Maher (Bar No. 217043)
brendan.maher@strismaher.com
10 Elizabeth Brannen (Bar No. 226234)
elizabeth.brannen@strismaher.com
11 Daniel Geyser (Bar No. 230405)
daniel.geyser@strismaher.com
12 STRIS & MAHER LLP
725 South Figueroa Street, Suite 1830
13 Los Angeles, California 90017
Telephone: (213) 995-6800
14 Facsimile: (213) 261-0299

15 David W. Quinto (Bar No. 106232)
dquinto@VidAngel.com
16 3007 Franklin Canyon Drive
Beverly Hills, California 90210
17 Telephone: (213) 604-1777
Facsimile: (732) 377-0388
18 *Attorneys for Defendant and*
19 *Counterclaimant VidAngel, Inc.*

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

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

26 Plaintiffs,

27 vs.

28 VIDANGEL, INC.,

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

**FILED UNDER SEAL PURSUANT
TO ORDER OF THE COURT
DATED SEPTEMBER 14, 2016 (Dkt.
75)**

**DECLARATION OF SIGURD
MELDAL IN SUPPORT OF
VIDANGEL'S MEMORANDUM OF
POINTS AND AUTHORITIES IN**

BAKER MARQUART LLP
2029 CENTURY PARK EAST, 16TH FLOOR
LOS ANGELES, CA 90067
Tel: (424) 652-7800 • Fax: (424) 652-7850

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant.

**OPPOSITION TO PRELIMINARY
INJUNCTION MOTION**

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).

25
26
27
28

- (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
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 **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
28

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
28

**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
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-](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;
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.

26
27
28

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

1
2
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.

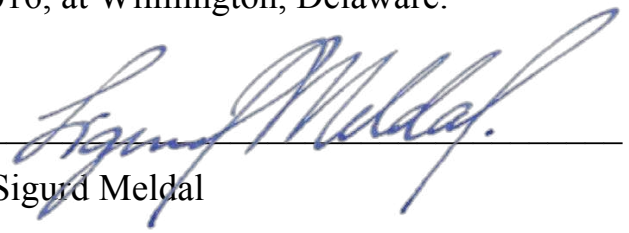
14 44. Importantly, VidAngel’s methodology ensures that any decrypted file
15 can be accessed *only by* the legal purchaser of the disc containing the file, and that
16 no filtered version could ever be conveyed to a member of the public by any means.
17 VidAngel’s decryption technology thus does not 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

**FILED UNDER SEAL PURSUANT
TO ORDER OF THE COURT
DATED SEPTEMBER 14, 2016
(Dkt. 75)**

EXHIBIT B

HIGHLY CONFIDENTIAL

ER709

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
)
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.

eLitigation Services, Inc. - els@els-team.com

HIGHLY CONFIDENTIAL

ER710

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:

21 Q. Have you -- has Fox ever authorized one
22 of its clients to provide filtering of authorized
23 copies of VOD titles?

24 MR. KLAUS: So the -- and just to be
25 clear, is it a -- speaking at a general level

1 without going into any specific agreement, but I
2 think the question is: Are you aware of an
3 agreement that specifically authorizes filtering as
4 Mr. Marquart has described it?

5 THE DEPONENT: Let me think about that.

6 Theoretically, it's possible if we agreed
7 with a client about it.

8 I can't think of a specific agreement
9 offhand. I don't have the agreements with me.

10 That comes to mind is something where the
11 client and -- and Fox have mutually decided to
12 authorize it.

13 BY MR. MARQUART:

14 Q. Okay. So you can't -- you can't, sitting
15 here today, remember any instance in which it has
16 been done?

17 A. Has been agreed upon. I can't -- I can't
18 think of a specific example. Again, I don't know
19 all of the -- I don't have the agreements in front
20 of me, but I can't think of a specific
21 circumstance.

22 Q. Okay. And said, "Theoretically, it's
23 possible." Just clarify that for me.

24 What do you mean?

25 A. So if -- if Fox and the client were to

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
11 mentioned -- I believe you called -- what was your
12 word?

13 A. Video-on-demand, or --

14 Q. Yes.

15 A. -- you can refer to it as "digital
16 rental" --

17 Q. Okay.

18 A. -- in more of a generic sense.

19 Q. Okay. What does that entail?

20 A. It's a -- a -- a limited time frame where
21 a consumer can download and watch a piece of
22 content, whether that's television or -- or film.

23 Q. Okay.

24 A. More prevalent in the -- the film
25 business than in the television business.

1 Q. Does your business have anything to do
2 with physical disc sales?

3 MR. KLAUS: "Your business" meaning --

4 MR. MARQUART: Sorry.

5 MR. KLAUS: -- what he's involved in

6 or --

7 BY MR. MARQUART:

8 Q. Does the business that you're involved in
9 have anything to do with physical disc sales?

10 A. A very -- very minor aspect of it does.

11 Q. Are you where familiar with the
12 technology called "ultraviolet"?

13 A. I am.

14 Q. What is that technology?

15 A. Ultraviolet is a -- is a consortium of
16 companies -- technology companies, content
17 providers, as well as retailers or our -- our
18 clients, that are working together to create better
19 utility for digital content.

20 It involves the interoperability of
21 rights from one retailer to another, meaning you
22 buy a piece of content at Apple, and if you're an
23 Amazon user, that piece of content would be
24 available in your Amazon ecosystem as well as your
25 Apple ecosystem, so it makes the content more

1 usable, as well as a standard set of -- of rights
2 and utility that a customer can get.

3 So whether they buy from Apple or Amazon
4 or another party, you know, they're guaranteed a --
5 a certain amount -- or baseline of utility with
6 that movie.

7 Q. Okay. And how does that -- how does that
8 technology relate to the actual purchase -- the
9 retail purchase of physical discs?

10 MR. KLAUS: Object to the form of the
11 question.

12 THE DEPONENT: I would say that it
13 doesn't specifically relate to the purchase of
14 physical discs.

15 A number of studios, including Fox, have
16 attached what we call an eCopy or eCopy rights to a
17 physical disc --

18 BY MR. MARQUART:

19 Q. Yeah.

20 A. -- where we have voluntarily granted with
21 some our digital retailers the right for the
22 consumer that buys a physical disc to get a digital
23 or electronic copy of that movie.

24 And there -- they would be able to watch
25 that copy at a retailer of their choice, and that

1 would be a retailer that Fox has authorized to
2 offer that.

3 Q. And -- and when that's offered, that's
4 offered for free?

5 MR. KLAUS: Object to the form of the
6 question.

7 THE DEPONENT: That is currently offered
8 for no additional cost --

9 BY MR. MARQUART:

10 Q. Okay.

11 A. -- to the DVD --

12 Q. No additional cost --

13 A. -- or the Blu-ray.

14 Q. -- other than the cost of the DVD or
15 Blu-ray?

16 A. That's correct.

17 Q. Okay. And are -- does that cover all of
18 Fox's new-release titles for major theatrical
19 motion pictures?

20 A. I believe that -- that covers most --
21 most, if not all.

22 Q. Okay.

23 A. A very large percent.

24 Q. And what about Fox's television
25 programs?

1 A. A much more limited selection of tel- --
2 television programs would be available for an
3 electronic copy. And a much smaller percentage of
4 that -- very, very small number would be
5 ultraviolet enabled.

6 Q. Okay. So -- and is ultraviolet becoming
7 more or less popular, in your estimation?

8 A. That's a good question.

9 I am not an -- an expert on ultraviolet.
10 I can only tell you that, in my opinion,
11 ultraviolet has not changed, you know, noticeably
12 in the last, I would say, two years.

13 We have the same number of retailers that
14 have participated in ultraviolet. And our -- our
15 strategy -- as well from like our -- as well as
16 what I can tell from our competitors -- has not
17 materially changed of putting eCopies on discs,
18 some of which are ultraviolet enabled.

19 Q. Okay. Does -- does Fox allow a member of
20 the public who has purchased a digital copy, to
21 filter content of that copy to themselves for
22 private home viewing?

23 MR. KLAUS: Object to the form of the
24 question.

25 THE DEPONENT: Who has purchased the --

1 how was the purchase made in this case?

2 BY MR. MARQUART:

3 Q. Let us use the example of an ultraviolet
4 purchase.

5 A. Okay.

6 Q. An individual has bought a disc at an
7 authorized retailer.

8 A. Okay.

9 Q. That purchase allows them, for free, to
10 access a digital copy.

11 A. Yes.

12 Q. Does Fox allow that user to view their
13 digital copy in a filtered format to their
14 specifications?

15 MR. KLAUS: Object to the form of the
16 question.

17 If you know, you can answer the question.

18 THE DEPONENT: Yes.

19 To my knowledge, it does not allow them
20 to -- to filter the -- the movie that they've
21 purchased physically and then redeem the digital
22 copy of that.

23 BY MR. MARQUART:

24 Q. Does -- to your knowledge, does any other
25 Plaintiff allow that?

1 MR. KLAUS: If you know.

2 THE DEPONENT: Not -- not to my
3 knowledge, but -- but I don't know for -- for
4 sure.

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.

23 Q. Do you have any evidence of actual
24 complaints to you or to anyone at Fox about
25 VidAngel?

1 A. Again, I have not received specific
2 complaints about VidAngel, or rarely receive
3 specific complaints about individual pirate or
4 illegal or unauthorized service from clients. Very
5 rarely.

6 But very frequently, we receive
7 push-back. Whether we're trying to negotiate
8 economic terms or counter-protection terms or
9 consumer-use cases that unauthorized or pirate
10 services don't have to play by the same rules, or
11 the rules do not apply to them.

12 I get frequent push-back about that from
13 a -- from a generic sense about unauthorized
14 services, not specific to a single or -- or
15 multiple authorized services.

16 Q. Okay. But so no one -- no one
17 specifically mentioned VidAngel in that context in
18 any of your negotiations; correct?

19 A. That's correct.

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.

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

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 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

**FILED UNDER SEAL PURSUANT
TO ORDER OF THE COURT
DATED SEPTEMBER 14, 2016
(Dkt. 75)**

EXHIBIT D

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER745

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER748

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER749

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

R764

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

ER765

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER768

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER775

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

ER777

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

ER778

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER779

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER781

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

ER782

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER785

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER787

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER793

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER794

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

R795

Priv ID	Custodian	Date	From	To	CC
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER797

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER799

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ER800

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Priv ID	Custodian	Date	From	To	CC
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1 GLENN D. POMERANTZ (SBN 112503)
glenn.pomerantz@mto.com
2 KELLY M. KLAUS (SBN 161091)
kelly.klaus@mto.com
3 ROSE LEDA EHLER (SBN 296523)
rose.ehler@mto.com
4 ALLYSON R. BENNETT (SBN 302090)
allyson.bennett@mto.com
5 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, Thirty-Fifth Floor
6 Los Angeles, California 90071-1560
Telephone: (213) 683-9100
7 Facsimile: (213) 687-3702

8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
13 TWENTIETH CENTURY FOX FILM
CORPORATION and WARNER
14 BROS. ENTERTAINMENT INC.,
15 Plaintiffs and Counterclaim
Defendants,
16 vs.
17 VIDANGEL, INC.,
18 Defendant and Counter-
19 Claimant.

Case No. 16-cv-04109-AB (PLAx)
**UNREDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**
**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**
Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Crtrm.: 4
Filed concurrently herewith:
(1) Declaration of Tedd Cittadine
(2) Declaration of Rose Leda Ehler
(3) Declaration of Kelly M. Klaus
(4) Declaration of Robert Schumann
(5) [Proposed] Order
(6) Application to File Under Seal
Trial Date: None Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 24, 2016, at 10:00 a.m., before the
3 Honorable André Birotte Jr., in Courtroom 4 of the United States District Court for
4 the Central District of California, located at 312 North Spring Street, Los Angeles,
5 California 90012, Plaintiffs Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth
6 Century Fox Film Corporation, and Warner Bros. Entertainment Inc. (collectively,
7 “Plaintiffs”) will and hereby do move for a Preliminary Injunction restraining
8 Defendant VidAngel, Inc. (“VidAngel”) and all of its officers, agents, servants,
9 employees, and attorneys, and those persons in active concert or participation or
10 privity with any of them, from: [1] violating Plaintiffs’ rights pursuant to § 1201(a) of
11 the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201(a), by
12 circumventing technological measures that effectively control access to Plaintiffs’
13 copyrighted works on DVDs and Blu-ray discs; and [2] infringing by any means,
14 directly or indirectly, Plaintiffs’ exclusive rights under § 106 of the Copyright Act,
15 *id.* § 106, including by reproducing or publicly performing Plaintiffs’ copyrighted
16 works.

17 This Motion is made on the following grounds as explained in the
18 accompanying Memorandum of Points and Authorities and supporting papers:

19 1. Plaintiffs are likely to succeed on the merits because the record
20 evidence clearly shows that VidAngel: (a) uses “ripping” software to circumvent
21 technological protection measures on DVDs and Blu-ray discs that effectively
22 control access to Plaintiffs’ copyrighted motion pictures and television shows on
23 those discs, thereby violating § 1201(a); (b) copies the resulting unprotected digital
24 files containing Plaintiffs’ works to a computer system, thereby infringing Plaintiffs’
25 exclusive rights to reproduce their works under § 106(1); and (c) transmits
26 performances from the unauthorized copies that VidAngel makes to the public,
27 thereby infringing Plaintiffs’ exclusive rights to perform their works publicly under
28 § 106(4).

1 2. VidAngel’s defenses to violating Plaintiffs’ rights are meritless.

2 3. Absent a preliminary injunction, Plaintiffs will suffer irreparable harm,
3 including with respect to their ability to exercise their exclusive rights, their
4 relationships and goodwill with authorized licensees, and the development of the
5 market for on-demand streaming. The balance of equities tips decidedly in
6 Plaintiffs’ favor, and an injunction is in the public interest.

7 This Motion is based upon this Notice of Motion and Motion; the attached
8 Memorandum of Points and Authorities; the Declarations of Tedd Cittadine
9 (“Cittadine Decl.”), Rose Leda Ehler (“Ehler Decl.”), Kelly M. Klaus (“Klaus
10 Decl.”) and Robert Schumann (“Schumann Decl.”) and Exhibits thereto; all
11 documents on file in this action; and such further or additional evidence or
12 argument as may be presented before or at the time of the hearing on this Motion.

13
14 DATED: August 22, 2016

MUNGER, TOLLES & OLSON LLP

15
16
17 By: /s/ Kelly M. Klaus

18 KELLY M. KLAUS

19 Attorney for Plaintiffs

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

INTRODUCTION 1

FACTUAL BACKGROUND..... 4

 A. Plaintiffs And Their Copyrighted Works..... 4

 B. VidAngel Builds Its Business By Exploiting Plaintiffs’ Rights..... 5

 1. VidAngel’s Decision To Create An Unlicensed Service 5

 2. How VidAngel Works 7

 3. VidAngel’s Escalating Marketing And Recent Growth..... 9

 C. VidAngel’s Letters To Plaintiffs And Other Studios, And This
 Lawsuit..... 10

ARGUMENT..... 11

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF
 THEIR CLAIMS 11

 A. Plaintiffs Will Succeed On Their DMCA Claim 11

 1. VidAngel Circumvents The Technological Protection
 Measures That Control Access To Plaintiffs’ Works On
 Discs..... 12

 2. VidAngel Has No Defense To Its Violation Of § 1201(a)..... 13

 a. The DMCA Makes No Exception For Businesses
 That Want To Circumvent To Provide Filters 13

 b. The FMA Does Not Authorize Circumvention..... 14

 c. There Is No Fair Use Exemption To § 1201(a)
 Liability 15

 B. Plaintiffs Will Succeed On Their Copyright Infringement Claims 16

 1. Plaintiffs Own Or Control Valid Copyrights In The Works
 That VidAngel Exploits..... 16

 2. VidAngel Violates Plaintiffs’ Exclusive Rights To
 Reproduce And Publicly Perform Their Copyrighted
 Works..... 16

 a. VidAngel Violates Plaintiffs’ Exclusive Right To
 Reproduce Their Works By Making Copies..... 17

TABLE OF CONTENTS
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

		b. VidAngel Violates Plaintiffs’ Exclusive Right To Publicly Perform Their Copyrighted Works	17
		i. VidAngel Publicly Performs Plaintiffs’ Works	17
		ii. VidAngel’s “Buy-Sellback” Scheme Does Not Transform VidAngel’s Public Performances Into Private Ones.....	18
	3.	None of VidAngel’s Defenses Excuse Its Infringement	21
		a. The FMA Does Not Excuse VidAngel’s Infringement	21
		b. VidAngel’s Affirmative Defense Of Fair Use Does Not Excuse Its Infringement	22
		i. VidAngel’s Wholesale Copying And Publicly Performing Plaintiffs’ Works Are Commercial And Non-Transformative	23
		ii. Plaintiffs’ Copyrighted Works Are Highly Creative	24
		iii. VidAngel Copies The Entirety Of Plaintiffs’ Works And Publicly Performs Substantially The Entirety Of Them	24
		iv. VidAngel’s Service Undermines Existing And Potential Markets For Plaintiffs’ Works	25
		c. The First Sale Doctrine Does Not Authorize VidAngel’s Copying or Streaming.....	26
	II.	PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION	27
		A. VidAngel’s Unauthorized Service Causes Immediate And Irreparable Harms	27
		B. Plaintiffs’ Motion Is Timely, And VidAngel’s Assertions of “Delay” Do Not Negate Irreparable Harm	30
	III.	THE BALANCE OF HARDSHIPS TIPS DECISIVELY FOR PLAINTIFFS.....	31
	IV.	A PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST.....	32
	V.	MINIMAL SECURITY SHOULD BE REQUIRED.....	33

**TABLE OF CONTENTS
(continued)**

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION.....33

TABLE OF AUTHORITIES

		Page(s)
1		
2		
3	FEDERAL CASES	
4	<i>321 Studios v. Metro Goldwyn Mayer Studios, Inc.</i> ,	
5	307 F. Supp. 2d 1085 (N.D. Cal. 2004).....	12
6	<i>A & M Records, Inc. v. A.L.W., Ltd.</i> ,	
7	855 F.2d 368 (7th Cir. 1988).....	20
8	<i>A&M Records, Inc. v. Napster, Inc.</i> ,	
9	239 F.3d 1004 (9th Cir. 2001).....	16
10	<i>American Broadcasting Companies, Inc. v. Aereo, Inc.</i> ,	
11	134 S. Ct. 2498 (2014).....	3, 7, 17, 18, 19
12	<i>Apple Inc. v. Psystar Corp.</i> ,	
13	673 F. Supp. 2d 943 (N.D. Cal. 2009).....	32
14	<i>Arc of Cal. v. Douglas</i> ,	
15	757 F.3d 975 (9th Cir. 2014).....	30, 31
16	<i>Arista Records LLC v. Myxer, Inc.</i> ,	
17	No. CV 08-03935 GAF, 2011 WL 11660773 (C.D. Cal. 2011).....	25
18	<i>Authors Guild v. Google, Inc.</i> ,	
19	804 F.3d 202 (2d Cir. 2015).....	24
20	<i>Cadence Design Sys., Inc. v. Avant! Corp.</i> ,	
21	125 F.3d 824 (9th Cir. 1997).....	31
22	<i>Campbell v. Acuff-Rose Music, Inc.</i> ,	
23	510 U.S. 569 (1994).....	23, 24, 25
24	<i>Capitol Records, LLC v. ReDigi Inc.</i> ,	
25	934 F. Supp. 2d 640 (S.D.N.Y. 2013).....	26
26	<i>Central Point Software, Inc. v. Global Software & Accessories, Inc.</i> ,	
27	880 F. Supp. 957 (E.D.N.Y. 1995).....	20
28	<i>Clean Flicks of Colo. v. LLC v. Soderbergh</i> ,	
	433 F. Supp. 2d 1236 (D. Colo. 2006).....	24

TABLE OF AUTHORITIES
(continued)

		Page(s)
1		
2		
3	<i>Columbia Pictures Industries, Inc. v. Redd Horne, Inc.</i> ,	
4	749 F.2d 154 (3d Cir. 1984)	17, 18, 19
5	<i>Dish Network, L.L.C. v. Vicxon Corp.</i> ,	
6	No. 12-CV-9-L WVG, 2013 WL 3894905 (S.D. Cal. July 26, 2013)	15
7	<i>Dr. Seuss Enters., L.P. v. Penguin Books, USA, Inc.</i> ,	
8	109 F.3d 1394 (9th Cir. 1997)	25
9	<i>Eldred v. Ashcroft</i> ,	
10	537 U.S. 186 (2002)	32
11	<i>Elvis Presley Enters., Inc. v. Passport Video</i> ,	
12	349 F.3d 622 (9th Cir. 2003)	23, 24, 25
13	<i>Harper & Row Publishers, Inc. v. Nation Enters.</i> ,	
14	471 U.S. 539 (1985)	23
15	<i>Hooks v. Kitsap Tenant Support Servs., Inc.</i> ,	
16	816 F.3d 550 (9th Cir. 2016)	14
17	<i>Kelly v. Primco Mgmt., Inc.</i> ,	
18	No. CV-14-07263 BRO, 2015 WL 10990368 (C.D. Cal. Jan. 12,	
19	2015)	32
20	<i>L.A. News Serv. v. Tullo</i> ,	
21	973 F.2d 791 (9th Cir. 1992)	25
22	<i>Leadsinger, Inc. v. BMG Music Publ'g</i> ,	
23	512 F.3d 522 (9th Cir. 2008)	23, 25
24	<i>Lotus Dev. Corp. v. Paperback Software Int'l</i> ,	
25	740 F. Supp. 37 (D. Mass. 1990)	30
26	<i>Lydo Enters., Inc. v. City of Las Vegas</i> ,	
27	745 F.2d 1211 (9th Cir. 1984)	30
28	<i>MAI Sys. Corp. v. Peak Computer, Inc.</i> ,	
	991 F.2d 511 (9th Cir. 1993)	17, 22
	<i>MDY Indus., LLC v. Blizzard Entm't, Inc.</i> ,	
	629 F.3d 928 (9th Cir. 2010)	2, 12, 14

TABLE OF AUTHORITIES
(continued)

		Page(s)
1		
2		
3	<i>Monge v. Maya Magazines, Inc.</i> ,	
4	688 F.3d 1164 (9th Cir. 2012).....	23,24
5	<i>On Command Video Corporation v. Columbia Pictures Industries</i> ,	
6	777 F. Supp. 787 (N.D. Cal. 1991).....	18, 19
7	<i>Peker v. Masters Collection</i> ,	
8	96 F. Supp. 2d 216 (E.D.N.Y. 2000).....	26
9	<i>Perfect 10, Inc. v. Amazon.com, Inc.</i> ,	
10	508 F.3d 1146 (9th Cir. 2007).....	22
11	<i>Petrella v. Metro-Goldwyn-Mayer, Inc.</i> ,	
12	134 S. Ct. 1962 (2014).....	4, 30, 31
13	<i>Realnetworks, Inc. v. DVD Copy Control Ass'n</i> ,	
14	641 F. Supp. 2d 913 (N.D. Cal. 2009).....	12, 32
15	<i>Red Baron-Franklin Park, Inc. v. Taito Corp.</i> ,	
16	883 F.2d 275 (4th Cir. 1989).....	26
17	<i>Salinger v. Colting</i> ,	
18	607 F.3d 68 (2d Cir. 2010).....	27
19	<i>Ticketmaster L.L.C. v. RMG Techs., Inc.</i> ,	
20	507 F. Supp. 2d 1096 (C.D. Cal. 2007).....	28
21	<i>Triad Sys. Corp. v. Se. Express Co.</i> ,	
22	64 F.3d 1330 (9th Cir. 1995).....	31
23	<i>TRW Inc. v. Andrews</i> ,	
24	534 U.S. 19 (2001).....	13
25	<i>UMG Recordings, Inc. v. Escape Media Grp., Inc.</i> ,	
26	No. 11 CIV. 8407, 2014 WL 5089743 (S.D.N.Y. Sept. 29, 2014).....	17
27	<i>United Fabrics Int'l, Inc. v. C&J Wear, Inc.</i> ,	
28	630 F.3d 1255, 1257 (9th Cir. 2011).....	16
	<i>United States v. Crippen</i> ,	
	No. CR 09-703 PSG, 2010 WL 7198205 (C.D. Cal. Nov. 23, 2010).....	15, 16

TABLE OF AUTHORITIES
(continued)

		Page(s)
1		
2		
3	<i>Universal City Studios, Inc. v. Reimerdes,</i>	
4	111 F. Supp. 2d 294 (S.D.N.Y. 2000).....	12, 16
5	<i>Warner Bros. Entertainment Inc. v. WTV Systems, Inc.,</i>	
6	824 F. Supp. 2d 1003 (C.D. Cal. 2011).....	18, 19, 27, 29, 33
7	<i>Winter v. Natural Res. Def. Council, Inc.,</i>	
8	555 U.S. 7 (2008)	11
9	<i>Worldwide Church of God v. Philadelphia Church of God, Inc.,</i>	
10	227 F.3d 1110 (9th Cir. 2000).....	24
11	<i>WPIX, Inc. v. ivi, Inc.,</i>	
12	691 F.3d 275 (2d Cir. 2012)	28
13	FEDERAL STATUTES	
14	17 U.S.C. § 101.....	3, 17, 22
15	17 U.S.C. § 106.....	14, passim
16	17 U.S.C. § 106(1).....	1, 17
17	17 U.S.C. § 106(3).....	26
18	17 U.S.C. § 106(4).....	1, 3, 17
19	17 U.S.C. § 107.....	15, 22
20	17 U.S.C. § 109(a)	26
21	17 U.S.C. § 110.....	14, 15, 21
22	17 U.S.C. § 110(11).....	2, passim
23	17 U.S.C. § 117(c)	31
24	17 U.S.C. § 410(c)	16
25	17 U.S.C. § 1201.....	14, 15
26	17 U.S.C. § 1201(a)	1, passim
27		
28		

TABLE OF AUTHORITIES
(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

17 U.S.C. § 1201(c) 15

17 U.S.C. § 1201(d)-(j) 13

FEDERAL REGULATIONS

37 CFR pt. 201.40 13

LEGISLATIVE MATERIALS

151 Cong. Rec. S501-S502 (daily ed. Jan. 25, 2005)..... 2, 15, 22

H.R. 4586, Serial No. 94 (June 17, 2004) 15

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Defendant VidAngel operates an online on-demand video streaming service
4 that blatantly violates Plaintiffs’ rights under the DMCA and the Copyright Act:

- 5 • VidAngel starts by circumventing the technological protection
6 measures on DVDs and Blu-ray discs (collectively, “Discs”) that
7 control access to the digital media files of Plaintiffs’ copyrighted
8 movies and television shows—or, as VidAngel’s employees say, they
9 “rip[]” the movies—a violation of § 1201(a) of the DMCA. Schumann
10 Decl. ¶¶ 7, 35-38, 43, Ex. C at 23; Dkt. 11(Counter-Complaint) ¶ 61.
- 11 • VidAngel then copies to computer servers the copyrighted works that
12 VidAngel has ripped—a violation of Plaintiffs’ exclusive rights to
13 reproduce their works under § 106(1) of the Copyright Act. Schumann
14 Decl. ¶¶ 37, 40-42, Ex. C at 23-25; Ehler Decl. Ex. EE at Tr. 58:1-4.¹
- 15 • VidAngel then streams performances of those copyrighted works over
16 and over again to numerous VidAngel customers, i.e., “to the public”—
17 a violation of Plaintiffs’ exclusive rights to publicly perform their
18 works under § 106(4). Schumann Decl. ¶¶ 7-8, Ex. C at 23-25; Ehler
19 Decl. Ex. EE at Tr. 90:18-22.

20 Legitimate on-demand streaming services—e.g., iTunes, Amazon and Google
21 Play—run their businesses without illegally circumventing and with authorization to
22 copy and stream Plaintiffs’ works. These legitimate services negotiate and pay for
23 the rights they use. VidAngel does not, and it thereby acquires an unjust
24 competitive advantage that VidAngel touts in its advertising. *Id.* Ex. A (examples).

25 _____
26 ¹ All transcript references are to the 30(b)(6) deposition of VidAngel’s CEO, Neal
27 Harmon on August 11, 2016, excerpts at Ehler Decl., Ex. EE. The “Tr.” references
28 are to the page and line of the original deposition transcript rather than the page as
consecutively numbered in the Exhibits.

1 VidAngel’s illegal conduct threatens imminent, irreparable harm by depriving
2 Plaintiffs of their rights to control their content, interfering with relationships with
3 licensees, and undercutting the growth of the legitimate on-demand streaming
4 market. Even VidAngel’s followers recognize VidAngel causes harm. *Id.* Ex. C (“I
5 could watch Star Wars 7 on VidAngel (only filtering one small thing) for \$1 before
6 any other video streaming service had it available. If you guys are allowed to rip,
7 stream, and resell DVDs, the other streaming services will want to do it too – it’s
8 only fair.”).

9 VidAngel tries to defend its service with three meritless arguments.

10 First, VidAngel argues that Congress sanctioned all of its unlawful conduct
11 under the Family Movie Act of 2005 (“FMA”), 17 U.S.C. § 110(11), because
12 VidAngel allows its users to select content “filters” that skip or mute content from
13 streamed movies. The claims at issue have nothing to do with the filtering aspects
14 of VidAngel’s service, and the FMA provides VidAngel no shelter on this motion.
15 The FMA says that one does not infringe copyright by making motion picture
16 content “imperceptible” (or providing software that does the same) in the context of
17 private home viewing. *Id.* The FMA does not say that a business that filters thereby
18 has a total exemption from the DMCA or from having to license the right to copy
19 and publicly stream movies. On the contrary, the FMA makes clear that the relevant
20 filtering must be done from an “authorized copy,” which VidAngel does not make
21 and from which it does not stream. *Id.*; *see* 151 Cong. Rec. S501-S502 (daily ed.
22 Jan. 25, 2005) (Sen. Hatch) (“[A]n infringing transmission of a performance to a
23 household, [is] not rendered non-infringing by section 110(11) by virtue of the fact
24 that limited portions [of the performance] are made imperceptible.”). Filtering does
25 not make an underlying unlicensed service legal. And the FMA provides no defense
26 to circumventing, which is “distinct from infring[ing].” *MDY Indus., LLC v.*
27 *Blizzard Entm’t, Inc.*, 629 F.3d 928, 946, 950 (9th Cir. 2010).

28

1 Second, VidAngel claims it does not violate the public performance right
2 because it makes only “private” performances to users who “purchase” Discs from
3 VidAngel. That is wrong. When it streams movies over the Internet, VidAngel is
4 “transmitting” performances to users. Transmissions infringe § 106(4) where, as
5 here, the defendant makes them “to the public, by means of any device or process,
6 whether the members of the public capable of receiving the performance or display
7 receive it in the same place or in separate places and at the same time or at different
8 times.” 17 U.S.C. § 101 (defining “[t]o perform . . . a work ‘publicly’”). A long
9 line of precedent construing this provision (the “Transmit Clause”)—including in
10 the Supreme Court’s recent decision in *American Broadcasting Companies, Inc. v.*
11 *Aereo, Inc.*, 134 S. Ct. 2498 (2014)—makes it clear that VidAngel’s online, on-
12 demand transmissions are public performances. They do not become “private”
13 performances just because VidAngel purports to “sell” its users the Discs (which
14 VidAngel then immediately offers to buy back for a net access price of \$1 a day).
15 VidAngel’s “buy-sellback” scheme is an artifice—what its CEO called a “creative
16 way” to compete while trying to be “buttoned up legally.” Ehler Decl. Ex. DD at
17 366. This sleight of hand does not cure VidAngel’s infringement. What matters is
18 whether VidAngel is transmitting performances to the public, not the label that
19 VidAngel uses to describe its transactions. *Aereo*, 134 S. Ct. at 2509 (“[W]hen
20 Aereo streams the same television program to multiple subscribers, it ‘transmit[s]
21 . . . a performance’ to all of them”). VidAngel publicly performs without a license.

22 Third, VidAngel argues that Plaintiffs forfeited the right to a preliminary
23 injunction because they did not immediately sue VidAngel when its outside litigator
24 (and recently appointed General Counsel) sent letters describing parts of the service
25 to Plaintiffs and other motion picture studios in July 2015. Dkt. 11, Ex. A. At that
26 point, as noted in those letters, VidAngel had fewer than 5,000 users and described
27 its service as being in a “limited beta.” *Id.* The letters did not say when VidAngel
28 would launch publicly, and Plaintiffs could not have known whether the service

1 would survive, let alone thrive. As the Supreme Court has recognized, “[e]ven if an
2 infringement is harmful, the harm may be too small to justify the cost of litigation.”
3 *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962, 1976 (2014). Copyright
4 owners do not have to immediately sue anyone who infringes, or forever lose the
5 right to seek a preliminary injunction; such a requirement would lead to unnecessary
6 litigation and burdens on the courts. VidAngel started to advertise more
7 aggressively earlier this year and gained traction in the press and online blogs; it
8 now has more than [100,000] active monthly users (and more than [400,000] total)
9 and continues to grow. Ehler Decl. Ex. D; *id.* Ex. AA at 317. Plaintiffs were
10 justified in suing when they did, and they satisfy all the requirements for injunctive
11 relief.

12 **FACTUAL BACKGROUND**

13 **A. Plaintiffs And Their Copyrighted Works**

14 Plaintiffs, directly or through affiliates, invest substantial resources and effort
15 to produce and distribute some of the most popular and critically acclaimed movies
16 and television programs in the world. Their works include, among many others,
17 *Frozen* (2013) (Disney), *Star Wars: The Force Awakens* (2015) (Lucasfilm), *Avatar*
18 (2009) (Fox), and *Harry Potter and the Sorcerer’s Stone* (2001) (Warner Bros.).

19 Copyright protection is critical to Plaintiffs’ ability to obtain a return on their
20 substantial investments in these and other works and to underwrite the production of
21 new creative content, often at great financial risk. Cittadine Decl. ¶ 8. A studio will
22 spend tens or even hundreds of millions of dollars producing, distributing and
23 marketing a major motion picture. *Id.* ¶ 7. Third parties that wish to exercise
24 Plaintiffs’ rights to exploit their works must negotiate to obtain those rights. *Id.*
25 ¶ 14.

26 Plaintiffs employ different strategies to make their content available to meet
27 consumer demand, but each Plaintiff tries to tailor the value and price for each
28 offering—or “distribution channel”—to the willingness of customers (and licensees)

1 to pay for those offerings. *Id.* ¶ 9. Plaintiffs distribute and license their content for
2 home entertainment across a number of channels. These include, among others:
3 (1) physical Discs; (2) digital download through services like iTunes, VUDU or
4 Amazon Video; (3) on-demand streaming for short-term viewing on a per-
5 transaction fee (e.g., iTunes Store or Google Play Store); or (4) subscription on-
6 demand streaming (e.g., Netflix or Hulu). *Id.*

7 Plaintiffs’ strategic process of releasing their content across different
8 distribution channels and to different licensees over time is called “windowing.” *Id.*
9 ¶ 15. A Plaintiff may decide to release specific titles only through certain channels
10 for a prescribed period, e.g., releasing titles for purchase on Discs or digital
11 download before releasing them to on-demand streaming. *Id.* ¶¶ 15, 33. Plaintiffs
12 often negotiate higher licensing fees in exchange for granting a licensee the
13 exclusive right to perform a movie or television show during a particular time
14 period. *Id.* ¶ 15. The online and digital channels have become increasingly
15 important revenue sources. *Id.* ¶ 10.

16 Especially in this digital age, to exercise their exclusive rights under
17 copyright, Plaintiffs must protect their content from piracy and unauthorized use.
18 Technological protection measures that control access (here, “access controls”) are
19 one way in which Plaintiffs ensure that copies of their content stored on Discs
20 cannot be easily copied and disseminated digitally. Schumann Decl. ¶¶ 20, 27. The
21 access controls that encrypt the digital files on Discs can lawfully be unencrypted
22 for playback or copying only by authorized devices. *Id.* ¶¶ 20-34.

23 **B. VidAngel Builds Its Business By Exploiting Plaintiffs’ Rights**

24 **1. VidAngel’s Decision To Create An Unlicensed Service**

25 In the fall of 2013, VidAngel first launched a standalone filtering service
26 through a web browser plug-in. Ehler Decl. Ex. EE at Tr. 135:12-136:7. This
27 technology permitted a user to apply filters to content streamed from YouTube (and
28 if a full-length movie, obtained legitimately through Google Play). *Id.*

1 In the fall of 2014, VidAngel decided to “pivot” its business to its current
2 service, which does not simply provide filtering but offers unauthorized streaming
3 for a daily fee. *Id.* Ex. V at 217; *Id.* Ex. EE at Tr. 136:8-12. VidAngel knew from
4 surveying users who stopped using its prior service that [47% of them “didn’t want
5 to pay for rentals on YouTube/Google Play.”] *Id.* Ex. V at 227. It also had
6 information that only 1% of Americans would actually pay to watch filtered
7 versions of movies if you charged them to use a filter. *Id.* Ex. E at 61. VidAngel
8 decided that, rather than provide filters to run on streams from licensed services, it
9 would rip and copy Discs and charge users for streaming. When investors
10 questioned whether the company was getting into a [declining business (movies on
11 Discs)], Mr. Harmon, the CEO, assured them that [“VidAngel is NOT a disc service.
12 VidAngel is a *streaming* service.”] *Id.* Ex. W at 234 (emphasis added).²

13 From the outset of its “pivot,” VidAngel knew it would need licenses to run a
14 streaming business. VidAngel, however, decided on a strategy of asking for
15 forgiveness, not permission. As Mr. Harmon put it in a fall 2014 email to an
16 investor: [“[i]n the future we plan to negotiate licenses for content directly from
17 Hollywood (as Netflix) did. . . . We need disc[s] right[] [now] on the streaming
18 platform (which is growing at over 20 percent annually), not an upward trend in disc
19 sales.”] *Id.*; *see also id.* Ex. DD at 366 (Feb. 2015: Mr. Harmon saying VidAngel
20 would “have to be a lot bigger” to “get licensing from Hollywood. . . . Until then,
21 we sell DVDs and Blu-Rays to you, vault them in our warehouse, and stream you a
22 filtered movie. The buyback system was the most creative way we could come up
23 with in order to offer you the value of a Redbox while staying buttoned up
24 legally.”); *id.* Ex. X at 257 (Sept. 2015: Mr. Harmon saying VidAngel [REDACTED])

25 _____
26 ² At deposition, Mr. Harmon claimed this email was discussing a model for users to
27 “trade or share” their own Discs. Ehler Decl. Ex. EE at Tr. 146:8-148:6. But the
28 statement that VidAngel would be a [“streaming service,” “NOT a disc service,”]
was true regardless of the source of Discs. *Id.* Ex. W at 234.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED]

2. How VidAngel Works

For every movie or TV show it streams, VidAngel first rips a digital copy of the content from a single Disc. *Id.* Ex. EE at Tr. 127:6-131:7; Schumann Decl. ¶¶ 37-39, 42, Exs. C at 23, D. Using RedFox AnyDVD HD software—popularly known as a “ripping” tool—VidAngel circumvents the technological protections—CSS, AACS, BD+—that Plaintiffs use to control access to their content. Ehler Decl. Ex. S. VidAngel previously used the same software sold by the same developers and staff of SlySoft, a ripping software company whose owner was found guilty of distributing illegal circumvention tools. *Id.* Exs. F, EE at Tr. 68:9-69:16.

After circumventing the access controls, VidAngel copies the underlying digital files (i.e., the movie or television show) onto its computers and then saves additional copies on leased third-party servers. Schumann Decl. ¶ 40-42. VidAngel uses the ripped digital copies stored on those servers to stream content. *Id.*; Ehler Decl. Ex. EE at Tr. 90:18-22.

VidAngel charges customers for its on-demand streaming through a sham “buy-sellback” scheme. VidAngel adopted this scheme as part of the “pivot,” believing that it provided a loophole from public performance liability in light of dicta in the *Aereo* decision. *Id.* Ex. V at 217. As discussed at pp. 18-21, *infra*, VidAngel’s reliance on “buy-sellback” does not change its liability. The facts showing “buy-sellback” to be a fiction, however, speak volumes about VidAngel’s credibility in defending its service.

“Buy-sellback” works like this: Users pay an upfront fee of \$20, purportedly to “purchase” a physical Disc. *Id.* Ex. P at 181, 198 (“like a ‘security deposit’”). VidAngel then associates the user with an individual Disc that VidAngel has bar-coded and stored at its facility (the so-called “vault copy”). *Id.* Ex. EE at Tr. 51:5-20; 184:22-185:9. The user does not control or possess the vault copy; VidAngel

1 does. *Id.* at 124:21-25. VidAngel claims that, upon request, it will transfer
2 possession of the vault copy to the user. *Id.* at 228:21-229:1. To date, however,
3 VidAngel has received only [eight] requests from users to receive the physical Disc
4 and has returned only [four] Discs—out of more than [1.5 million] purported “sales”
5 thus far in 2016 alone. *Id.* at 229:2-12; 189:21-190:8.³

6 Furthermore, VidAngel does not actually stream from the vault copy—the
7 copy that VidAngel claims the customer “owns.” *Id.* at 127:6-20. Rather, VidAngel
8 circumvents the access controls on a Disc, copies the content and then streams from
9 the ripped copy that resides on VidAngel’s leased server. *Id.* at 130:20-131:17.
10 VidAngel then encourages the user to “sell back” the Disc at a “buyback” price that
11 goes down by \$1 or \$2 for each 24-hour period. *Id.* Ex. G at 93-94 (VidAngel
12 promotional clips on YouTube).⁴ The net effect is that the user pays \$1 or \$2 a day
13 for on-demand access to stream the movie or television show—daily prices which
14 VidAngel prominently features in its advertising. *Id.* Ex. G.

15 VidAngel constantly encourages users to treat the service as an online rental
16 service, which they can do by simply clicking to “sellback” the movie for credit.
17 Among other things, VidAngel provides: (1) an icon in the corner of the viewing
18 screen, allowing the user to initiate sellback during the stream; (2) a sellback
19 “popup” box at the end of the movie; (3) a link to sellback in the user dashboard;

20 _____
21 ³ Other inconsistencies expose the fiction that VidAngel is performing the contents
22 of a Disc the user “owns.” For example, the [four] users who actually requested and
23 received physical Discs can still stream the same content via VidAngel—proving
24 the stream comes from a different copy. *Id.* at 235:6-21. And, users who want to
25 watch a television show “purchase” access only to a single episode. *Id.* Ex. H.
26 Discs of Plaintiffs’ television shows contain entire seasons. If a user actually
27 “owned” the Disc, the user could watch the full season.

28 ⁴ “How VidAngel \$1 Movie Works in 15 Seconds” is available on YouTube at
<https://www.youtube.com/watch?v=map6EIP41bY> (last visited Aug. 21, 2016).
“How \$1 Movies Work on VidAngel Sellback” is available at
<https://www.youtube.com/watch?v=wvcF4x1d0xo> (last visited Aug. 21, 2016).

1 (4) an email reminder about the sellback option after 24 hours; and (5) until this
2 lawsuit, an “auto-sellback” default setting, whereby users would automatically set
3 their devices to sellback, and thus be assured the equivalent of a rental transaction.
4 *Id.* Ex. BB at 336-37.

5 3. VidAngel’s Escalating Marketing And Recent Growth

6 VidAngel’s strategy has involved rapidly growing its user base. In July 2015,
7 VidAngel had fewer than 4,848 users, but ambitious growth plans. Dkt. 11, Ex. A at
8 3. A November 2015 investor presentation projected that for 2016, VidAngel would
9 reach [REDACTED] customers and [REDACTED] in revenue; for 2017, [REDACTED]
10 customers and [REDACTED] in revenue; and for 2018, [REDACTED] customers and
11 [REDACTED] in revenue—with projected profit margins of [REDACTED]. Ehler
12 Decl. Ex. Y at 283.

13 To achieve these ends, VidAngel this year embarked on an aggressive
14 marketing campaign, explicitly contrasting its \$1-a-day (or \$2 for HD) price
15 (because it foregoes license fees) with the more typical \$4.99 or \$5.99 daily fee
16 charged by licensed services; VidAngel also boasts of its ability to offer movies not
17 available on other services. Ehler Decl. Exs. A, B. VidAngel’s users have
18 responded to VidAngel’s marketing cues:

19 One more thing I love about VidAngel is that I can easily
20 download NEW movies cheaper than anywhere else! I
21 probably won’t edit this one for our family, but I’m so
happy I can still just rent it for \$2 a night!

22 *Id.* Ex. I at 98; *see also id.* at 101 (“We bought Star Wars and sold it back for a total
23 of \$1 when it was like \$5 to rent on Amazon. So even if you don’t need content
24 cleaned, it’s a great video service.”).

25 This spring, VidAngel began adding more of Plaintiffs’ works to its service,
26 with a particular focus on marketing movies as soon as they were released on Disc.
27 On April 5, 2016, VidAngel offered *Star Wars: The Force Awakens*. *Id.* Ex. J.
28 April 5 was the same day that *The Force Awakens* was released for purchase on

1 Disc and digital download, but was not yet available to the on-demand streaming
2 market. Cittadine Decl. ¶ 16. VidAngel also released Disney’s *Zootopia*, Warner
3 Bros.’s *Batman v. Superman: Dawn of Justice* and *Keanu*, and Fox’s *DeadPool* and
4 *The Revenant*, among others, within a week of their release on Disc and, for some of
5 these titles, before they were released on any other on-demand streaming service.
6 Ehler Decl. Ex. N.

7 By June 2016, when Plaintiffs filed suit, VidAngel had grown to nearly
8 [500,000] monthly transactions across well over [100,000] monthly active users. *Id.*
9 Ex. AA at 315, 317. VidAngel had also streamed over [1.5 million] movies in the
10 first half of 2016. *Id.* Ex. EE at Tr. 189:21-190:8. VidAngel continues to
11 aggressively market its service using Plaintiffs’ copyrighted content.

12 **C. VidAngel’s Letters To Plaintiffs And Other Studios, And This**
13 **Lawsuit**

14 Late last summer, VidAngel’s then-outside counsel, David Quinto, sent letters
15 to Plaintiffs or their corporate parents, ostensibly expressing interest in purchasing
16 more Discs directly from each company. Dkt. 11, Ex. A. Mr. Quinto sent the letters
17 to General Counsels, not to people in business development. He purported to
18 describe VidAngel’s nascent service, which he said was in “limited beta” testing.
19 *Id.* at 3. Mr. Quinto said nothing about VidAngel circumventing the access-control
20 measures on Discs. He said nothing about VidAngel marketing its service for \$1-a-
21 day on-demand streaming through its “buy-sellback” scheme or offering Plaintiffs’
22 content before that content was available to authorized licensees.

23 Plaintiffs started investigating their potential legal claims against VidAngel
24 almost immediately after receiving Mr. Quinto’s letter. Cittadine Decl. ¶ 35.
25 Starting earlier this year, VidAngel launched a much broader advertising offensive
26 and started to gain traction in the press and on blogs, and its service started to grow
27 to significant user numbers. On June 9, 2016, Plaintiffs filed this suit.
28

1 In response, VidAngel modified certain aspects of its service. Before being
2 sued, VidAngel allowed users to filter for either the opening or closing credits as the
3 single required filter, meaning users could stream essentially the entire movie
4 without filters (users could even set this as the default filter).⁵ Ehler Decl. Ex. EE at
5 Tr. 247:24-248:21. To the chagrin of its users, VidAngel suspended this option in
6 response to this litigation, although users still must only select one filter to use the
7 service.⁶ *Id.* at 246:10-247:22.

8 ARGUMENT

9 Plaintiffs satisfy all the requirements for a preliminary injunction: They
10 likely will succeed on the merits and suffer irreparable harm absent preliminary
11 relief; the balance of equities tip in their favor, and an injunction is in the public
12 interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

13 I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF 14 THEIR CLAIMS

15 A. Plaintiffs Will Succeed On Their DMCA Claim

16 To prevail on their circumvention claim, Plaintiffs must prove that VidAngel
17 “circumvent[s] a technological measure that effectively controls access to a work
18 protected” by copyright. 17 U.S.C. § 1201(a)(1)(A). A violation of the DMCA is
19 “*independent* of traditional copyright infringement,” and no “nexus” to copyright
20

21
22 ⁵ This was a popular option particularly for Disney works. When VidAngel offered
23 this option, customers watched [23.61%] of streams of *Up*, [22.36%] of streams of
24 *Finding Nemo*, [20.91%] of streams of *Monsters, Inc.*, [20.46%] of streams of *Wall-*
25 *E* and [20.36%] of streams of *Big Hero 6* essentially unfiltered by selecting only the
credits filter. Ehler Decl. Ex. CC. For Warner Bros.’s *An Innocent Man*, customers
viewed [44.90%] of streams using only this filter. *Id.*

26 ⁶ Users were upset that they would have to filter actual movie content (rather than
27 the credits) to cheaply stream movies: “@VidAngel and you took away censoring
28 the end credits which was an easy choice if I didn’t really want to censor anything.”
Ehler Decl. Ex. FF; *id.* Ex. K (examples); *see also id.* Ex. O.

1 infringement is required. *See MDY Indus.*, 629 F.3d at 946, 949, 952 (expressly
2 declining to adopt a “infringement nexus requirement”) (emphasis added).

3 **1. VidAngel Circumvents The Technological Protection**
4 **Measures That Control Access To Plaintiffs’ Works On Discs**

5 A technological measure effectively controls access to a copyrighted work if,
6 “in the ordinary course of its operation, [it] requires the application of information,
7 or a process or a treatment, with the authority of the copyright owner, to gain access
8 to the work.” 17 U.S.C. § 1201(a). Plaintiffs use CSS, AACS and BD+ to prevent
9 unauthorized access to their content on Discs. Schumann Decl. ¶¶ 20, 27. All three
10 qualify as DMCA access controls. *See id.* ¶¶ 20-34; *Realnetworks, Inc. v. DVD*
11 *Copy Control Ass’n*, 641 F. Supp. 2d 913, 932 (N.D. Cal. 2009) (“CSS . . .
12 effectively controls access to . . . copyrighted DVD content”); *321 Studios v. Metro*
13 *Goldwyn Mayer Studios, Inc.*, 307 F. Supp. 2d 1085, 1095 (N.D. Cal. 2004);
14 *Universal City Studios, Inc. v. Reimerdes*, 111 F. Supp. 2d 294, 317-18 (S.D.N.Y.
15 2000).

16 VidAngel circumvents these access controls. To circumvent is “to
17 descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid,
18 bypass, remove, deactivate, or impair a technological measure, without the authority
19 of the copyright owner.” 17 U.S.C. § 1201(a)(3)(A). VidAngel *admits* that it “uses
20 a commercially available software program to automatically allow read-access for
21 the purpose of mounting the DVD [and Blu-ray] files for uploading onto a
22 computer, *in the process removing restrictions on DVD [and Blu-ray] encryption.*”
23 Dkt. 11 ¶ 50(ii) (emphasis added); *see Ehler Decl. Ex. S* (invoice for AnyDvd HD);
24 Schumann Decl. ¶¶ 35-39. In short, VidAngel circumvents technological measures
25 that control access, and is liable under § 1201(a).

1 **2. VidAngel Has No Defense To Its Violation Of § 1201(a)**

2 **a. The DMCA Makes No Exception For Businesses That**
3 **Want To Circumvent To Provide Filters**

4 VidAngel argues that its circumvention is lawful because “the making of a
5 decrypted copy [is] the necessary first step in making a lawfully purchased DVD
6 capable of being filtered.” *See* Dkt. 11 (Counter-Complaint) ¶¶ 61-62. That is not
7 true as a factual matter and is irrelevant as a legal matter. As VidAngel admits,
8 other services provide software that allows consumers to apply filters to Discs they
9 have purchased. *See id.* ¶ 34 (describing ClearPlay’s DVD-filtering service). What
10 VidAngel means is that circumventing is a “necessary first step” for the type of
11 business VidAngel wants to run—one that provides unauthorized on-demand access
12 to content streamed from copies ripped from Discs. Circumvention makes it easier
13 and cheaper for VidAngel to run its business, but that does not make the
14 circumvention lawful.

15 VidAngel’s circumvention does not fit into any enumerated exception to the
16 anti-circumvention right or any additional exception promulgated by the Librarian
17 of Congress.⁷ 17 U.S.C. § 1201(d)-(j). Where, as here, “Congress explicitly
18 enumerates certain exceptions to a general prohibition, additional exceptions are not
19 to be implied, in the absence of evidence of a contrary legislative intent.” *TRW Inc.*
20 *v. Andrews*, 534 U.S. 19, 28 (2001) (quotations omitted).

21
22
23
24
25 ⁷ The DMCA calls for the Librarian of Congress to engage in triennial rulemaking to
26 determine if certain noninfringing uses of a copyrighted work are entitled to an
27 exception. 17 U.S.C. § 1201(a)(1)(B)-(C). The exceptions the Librarian has
28 promulgated are at 37 CFR Part 201.40, and none applies to VidAngel. Indeed, the
Librarian has never even been asked to consider such an exception for filtering.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. The FMA Does Not Authorize Circumvention

VidAngel argues that the FMA shows Congress’s intent to exempt VidAngel from § 1201(a) liability. The FMA’s text and legislative history show the opposite is true.

The FMA addresses a narrowly specified type of activity (the making imperceptible of certain audio and video), which, if it falls within the FMA is “not an infringement[] of copyright.” 17 U.S.C. § 110(11). Section 1201, however, provides a separate cause of action that is not a claim of infringement. As the Ninth Circuit explained—in the course of declining to adopt the requirement of a “nexus” between a DMCA violation and infringement—the DMCA “create[d] a *new* anticircumvention right in § 1201(a) *distinct from infringement.*” *See MDY Indus.*, 629 F.3d at 950 (emphasis added). “Infringement” is the violation of one of copyright’s exclusive rights, which are found in § 106. It is not the same as circumvention. The FMA further states that nothing in that exception to infringement (§ 110(11)) “shall be construed to imply further rights under section 106 of this title, *or to have any effect on defenses or limitations on rights granted under any other section of this title* or under any other paragraph of this section.” 17 U.S.C. § 110 (final sentence) (emphasis added). Section 1201(a) embodies rights and defenses relating to circumvention and not infringement. The FMA by its plain language provides VidAngel no defense.

Because “the statutory language is unambiguous and the statutory scheme is coherent and consistent,” there is no need to examine legislative history. *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 562 (9th Cir. 2016). But the legislative history *confirms* that the FMA does not excuse circumvention. The section-by-section analysis by the FMA’s Senate sponsor states that the FMA “does *not* provide any exemption from the anti-circumvention provisions of section 1201,” and that it:

1 would not be a defense to a claim of violation of section
2 1201 that the circumvention is for the purpose of engaging
3 in the conduct covered by this new exemption in section
4 110(11) [the FMA], just as it is not a defense under section
5 1201 that the circumvention is for the purpose of engaging
6 in any other non-infringing conduct.

7 151 Cong. Rec. S502 (daily ed. Jan. 25, 2005); *see id.* (“Any suggestion that support
8 for the exercise of viewer choice . . . requires violation of either the copyright in the
9 work or of the copy protection schemes that provide protection for such work should
10 be rejected.”).⁸ The FMA provides VidAngel no defense to its § 1201(a) violations.

11 **c. There Is No Fair Use Exemption To § 1201(a) Liability**

12 The fair use defense under § 107 does not apply to § 1201(a) violations. *See,*
13 *e.g., Dish Network, L.L.C. v. Vicxon Corp.*, No. 12-CV-9-L WVG, 2013 WL
14 3894905, at *6 (S.D. Cal. July 26, 2013) (“[P]otential lawful or fair use is not a
15 defense to § 1201(a) when its requirements are established.”); *United States v.*
16 *Crippen*, No. CR 09-703 PSG, 2010 WL 7198205, at *2 (C.D. Cal. Nov. 23, 2010)
17 (“A reading of § 1201(c) that adds the fair use arrow to a defendant’s § 1201(a)
18 quiver contradicts the plain meaning of the statute and must be rejected.”).

19 ⁸ When Congress first considered the FMA, in 2004, Representative Goodlatte
20 expressed concern that it might interfere with copyright owners’ rights under
21 § 1201. Hearing on H.R. 4586, Serial No. 94 (June 17, 2004) at 84. He asked about
22 including an explicit provision to make clear that the FMA has no effect on § 1201.
23 *Id.* In a letter, the Register of Copyrights stated that such an explicit provision was
24 unnecessary because “[t]he anticircumvention provisions of section 1201 apply even
25 in cases where circumvention is carried out in order to engage in an act that is not an
26 act of infringement under the copyright statute.” *Id.* at 89. The Register advised
27 against including a specific statement confirming the inapplicability of the FMA to
28 § 1201 claims, noting such a provision could create needless confusion regarding
the other exemptions from infringement in § 110 (where the FMA is codified) and
elsewhere in the Copyright Act: “To include in this new exemption a reference to
section 1201 when none of the other exemptions in section 110 or elsewhere in the
Copyright Act make such reference will imply that those existing exemptions also
apply to liability under the anticircumvention provisions, when it should be clear
that they do not.” *Id.*

1 “[T]he decision not to make fair use a defense to a claim under Section
2 1201(a) was quite deliberate.” *Reimerdes*, 111 F. Supp. 2d at 322. Congress was
3 well aware “that technological controls on access to copyrighted works might erode
4 fair uses by preventing access even for uses that would be deemed ‘fair,’” and
5 “struck a balance among the competing interests.” *Id.* (citing Commerce Com. Rep.
6 25-26). Reading a fair use defense into § 1201(a) would upset that balance and be
7 contrary to the statute. *Crippen*, 2010 WL 7198205, at *5 (§ 1201(a) is a
8 “rebalancing of interests that attempts to deal with special problems created by the
9 so-called digital revolution”; “[t]hat balancing [is] done by the DMCA, not by
10 adding fair use to the circumvention equation”) (citation omitted).

11 **B. Plaintiffs Will Succeed On Their Copyright Infringement Claims**

12 Plaintiffs easily establish prima facie infringement claims because they
13 (1) “show ownership” and (2) demonstrate a violation of “at least one exclusive
14 right” (sections 1 and 2, *infra*). *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004,
15 1013 (9th Cir. 2001). VidAngel’s claimed defenses are meritless (section 3, *infra*).

16 **1. Plaintiffs Own Or Control Valid Copyrights In The Works
17 That VidAngel Exploits**

18 Certificates of registration issued by the Copyright Office for the copyrighted
19 works identified in the Complaint are included with this filing. Klaus Decl. Exs. A-
20 RR. The certificates create a presumption of copyright validity and ownership. 17
21 U.S.C. § 410(c); *United Fabrics Int’l, Inc. v. C&J Wear, Inc.*, 630 F.3d 1255, 1257
22 (9th Cir. 2011). It is undisputed that VidAngel currently offers all the works listed
23 in Exhibit A to the complaint and, unless enjoined, will continue to offer these
24 works and other future releases. Ehler Decl. Ex. EE at Tr. 27:19-29:14; 30:3-20;
25 31:6-37:4.

26 **2. VidAngel Violates Plaintiffs’ Exclusive Rights To Reproduce
27 And Publicly Perform Their Copyrighted Works**

28 VidAngel infringes at least two distinct § 106 rights, each of which is

1 sufficient to render VidAngel liable.

2 **a. VidAngel Violates Plaintiffs’ Exclusive Right To**
3 **Reproduce Their Works By Making Copies**

4 Plaintiffs have the exclusive right “to reproduce” their works “in copies.” 17
5 U.S.C. § 106(1). VidAngel admits to making copies of Plaintiffs’ works onto
6 computer system and third-party servers, thereby violating the reproduction right.
7 Ehler Decl. Ex. EE at Tr. 58:1-4. This is infringement. *MAI Sys. Corp. v. Peak*
8 *Computer, Inc.*, 991 F.2d 511, 518 (9th Cir. 1993) (transferring digital work “from a
9 permanent storage device to a computer’s RAM [or storage]” infringes the
10 reproduction right); *see UMG Recordings, Inc. v. Escape Media Grp., Inc.*, No. 11
11 CIV. 8407, 2014 WL 5089743, at *20 (S.D.N.Y. Sept. 29, 2014) (“uploaded copies”
12 of works violate reproduction right).

13 **b. VidAngel Violates Plaintiffs’ Exclusive Right To**
14 **Publicly Perform Their Copyrighted Works**

15 *i. VidAngel Publicly Performs Plaintiffs’ Works*

16 Plaintiffs have the exclusive right “to perform the copyrighted work
17 publicly.” 17 U.S.C. § 106(4). VidAngel violates that right under the Transmit
18 Clause. VidAngel “transmits” “performances” “of the work[s].” 17 U.S.C. § 101
19 (definition of public performance and “to transmit”); *Aereo*, 134 S. Ct. at 2508
20 (Internet streams trigger the Transmit Clause). And VidAngel streams “to the
21 public,” i.e., VidAngel’s thousands of users. Under the Transmit Clause, the fact
22 that VidAngel’s users receive those performances “in separate places” and “at
23 different times” does not change the fact that VidAngel is performing “to the
24 public.” 17 U.S.C. § 101; *Aereo*, 134 S. Ct. at 2510.

25 VidAngel’s public performance liability follows from Transmit Clause
26 precedent. *Columbia Pictures Industries, Inc. v. Redd Horne, Inc.*, 749 F.2d 154 (3d
27 Cir. 1984), held that a remote video rental service—wherein patrons selected videos
28 from a store, which transmitted performances from the videos to private in-store

1 booths—violated the public performance right. The court held that the store
2 “show[ed] each copy [of a movie] repeatedly to different members of the public,”
3 and that the service was “essentially the same as a movie theatre, with the additional
4 feature of privacy.” *Id.* at 159.

5 *On Command Video Corporation v. Columbia Pictures Industries*, 777 F.
6 Supp. 787 (N.D. Cal. 1991), held that a hotel’s “electronic rental” system—in which
7 the hotel rented movies to guests and transmitted performances from the main office
8 to individual hotel rooms—infringed the public performance right. The court held
9 that the “relationship between the transmitter of the performance, On Command,
10 and the audience, hotel guests,” was “a commercial, ‘public’ one regardless of
11 where the viewing takes place.” *Id.* at 788.

12 *Warner Bros. Entertainment Inc. v. WTV Systems, Inc.*, 824 F. Supp. 2d 1003
13 (C.D. Cal. 2011) (“*Zediva*”), held that the *Zediva* service—which streamed
14 performances from DVDs and DVD players purportedly assigned to specific
15 users—violated the public performance right. *Id.* at 1006-07, 1010.

16 And *Aereo* held that Internet streaming of content captured from over-the-air
17 broadcast signals by thousands of separate antennae—each of which, *Aereo*
18 claimed, was assigned separately to individual subscribers—infringed. The Court
19 squarely rejected *Aereo*’s claim that its technical design (using an individual
20 antenna to make a separate transmission path to each user) made the performances
21 private. *Aereo*, 134 S. Ct. at 2508-09 (noting subscribers would not “care much”
22 about the service’s technical design).

23 Like its predecessors, VidAngel “transmits” (by streaming) performances “to
24 the public” (its users). VidAngel’s liability is clear.

25 *ii. VidAngel’s “Buy-Sellback” Scheme Does Not*
26 *Transform VidAngel’s Public Performances Into*
Private Ones

27 VidAngel argues that it makes private, not public, performances because it
28 transmits streams of movies that users purportedly “buy” from VidAngel. VidAngel

1 claims support for this argument in dicta from *Aereo*, stating that a different analysis
2 might apply where users “receive performances in their capacities as owners or
3 possessors of the underlying works.” *Aereo*, 134 S. Ct. at 2510. This argument
4 fails.

5 First, the Court’s description of the ownership/possessory relationship that
6 might be relevant is plainly inapplicable to VidAngel. The Court said that the
7 difference between a valet returning cars to their owners and a dealership selling
8 new cars provided a potential analogy to the private/public distinction: “we would
9 not say that the [valet] provides cars ‘to the public’ . . . [w]e would say that a car
10 dealership . . . provide[s] cars to the public, for it sells cars to individuals who lack a
11 pre-existing relationship to the cars.” *Id.* The Court said *Aereo* was more like a car
12 dealership because it “transmits to large numbers of paying subscribers who lack
13 any prior relationship to the works.” *Id.* The same is true of VidAngel, whose users
14 have no “prior relationship” with the works they watch, but instead receive access
15 by paying VidAngel a fee.

16 Second, as *Aereo* and the other cases discussed above make clear, courts must
17 look at the reality of what the defendant is doing rather than the stratagem it
18 employs to characterize its performances as private. The Court rejected *Aereo*’s
19 claim that associating each user with an antenna made its streams private
20 performances. The Court explained that this gimmickry did not “render *Aereo*’s
21 commercial objective any different from that of cable companies,” and did not
22 “significantly alter the viewing experience.” *Id.* at 2508. It is unfathomable that the
23 courts in *Redd Horne*, *On Command*, and *Zediva* would have deemed the
24 performances private if the defendants had said they were “selling” videos to
25 customers and “buying them back” after each performance.

26 The courts’ focus on substance rather than labels is fatal to VidAngel’s
27 “private performance” argument. VidAngel streams the same copyrighted works to
28 multiple users (“the public”) in a manner that is fundamentally the same as other on-

1 demand services. VidAngel’s own internal documents make it clear that
2 [“VidAngel is NOT a disc service. VidAngel is a *streaming* service.”] Ehler Decl.
3 Ex. W at 234 (emphasis added). VidAngel’s labeling the transaction a “sale” does
4 not affect the user’s viewing experience. Given that only [eight] users have ever
5 requested a copy of the Disc they purportedly “bought”—out of [millions] of
6 purported “sales”—it is obvious that VidAngel’s users do not treat the service as
7 selling them Discs. *Id.* Ex. EE at Tr. 189:21-190:8, 229:2-12; *see also id.* Ex. I at
8 120 (“VidAngel – An Honest Review”⁹). VidAngel’s business model depends on
9 consumers treating the “buy-sellback” option just like an on-demand streaming
10 rental service, and it encourages this behavior at every turn by repeatedly reminding
11 users to “sellback,” sending email reminders, and even offering “auto-sellback.” *Id.*
12 at Ex. BB at 336-37. VidAngel’s labeling of the transaction cannot disguise what is
13 really taking place.¹⁰

14 Third, even if VidAngel were right (which it is not) that the Court should look
15 at how VidAngel characterizes its service (at least in its legal papers as opposed to
16 its marketing materials), that would not help VidAngel. VidAngel streams
17 performances to paying subscribers from a master copy stored on a server (not a
18 Disc temporarily assigned to the user) in the same way licensed services do—*except*
19 VidAngel’s master copy is unauthorized and VidAngel has no license to stream.

20
21

22 ⁹ “VidAngel – An Honest Review” is available on YouTube at
23 <https://www.youtube.com/watch?v=KG7xgmDHF40> (last visited Aug. 21, 2016).

24 ¹⁰ In analogous contexts, courts have recognized “rentals” couched as “sales”
25 through a sell-buyback structure as gimmicks and held that it is the substance that
26 matters. *A & M Records, Inc. v. A.L.W., Ltd.*, 855 F.2d 368, 370 (7th Cir. 1988)
27 (rejecting buyback scheme under Record Rental Amendment of 1984); *Central*
28 *Point Software, Inc. v. Global Software & Accessories, Inc.*, 880 F. Supp. 957, 964
(E.D.N.Y. 1995) (rejecting buyback scheme under Computer Software Rental
Amendments Act of 1990).

1 Schumann Decl. ¶¶ 7, 42. In sum, VidAngel’s attempt to characterize its
2 performances as private fails.

3 **3. None of VidAngel’s Defenses Excuse Its Infringement**

4 **a. The FMA Does Not Excuse VidAngel’s Infringement**

5 The statutory text and Congress’s clear intent establish that the FMA is
6 narrow and does not exempt VidAngel’s infringement of Plaintiffs’ rights.

7 First, as a textual matter, the FMA exempts only (1) “the making
8 imperceptible” and (2) “the creation or provision of a computer program or other
9 technology that enables such making imperceptible.” 17 U.S.C. § 110(11). Every
10 other word in the FMA narrows the circumstances in which these two exemptions to
11 § 106 apply. The savings clause, moreover, clarifies the FMA shall not be
12 “construed to imply further rights under” § 106. *Id.* § 110 (final sentence).

13 VidAngel argues that a business that offers filtering software has statutory
14 authorization to publicly perform Plaintiffs’ works because the FMA permits
15 filtering “during a performance . . . transmitted to that household for private home
16 viewing.” Dkt. 11 (Counter-Complaint) ¶ 65 (quoting 17 U.S.C. § 110(11)
17 (omissions in original)). The plain text of the FMA defies this reading. VidAngel’s
18 reading ignores the requirement that the performance be from an “authorized copy.”
19 17 U.S.C. § 110(11). If Congress wanted to grant filtering businesses a total
20 exemption from copyright infringement—a radical notion with no historical
21 support—it would have said that directly. The fact that the transmission must come
22 from an “authorized copy” of the copyrighted work makes clear that Congress did
23 not provide a blanket exemption to the reproduction or public performance right. *Id.*
24 VidAngel’s answer to this is that it purchases authorized copies of Plaintiffs’ movies
25 on Discs. But VidAngel does not stream from those Discs (and even if it did, it
26 would still be publicly performing them without the necessary license, as discussed
27 above). VidAngel does not stream from an “authorized copy;” it streams from a
28

1 ripped digital copy that it obtained by violating § 1201(a) and then by violating
2 Plaintiffs’ reproduction right.¹¹ Schumann Decl. ¶¶ 35-42.

3 The FMA was “targeted narrowly and specifically” at the act of filtering and
4 did not impact other rights and obligations under the Copyright Act. The statute
5 was not intended to be a blanket license for every business that engaged in
6 filtering.¹²

7 **b. VidAngel’s Affirmative Defense Of Fair Use Does Not**
8 **Excuse Its Infringement**

9 VidAngel must show it likely will succeed on its defense that copying and
10 publicly performing Plaintiffs’ works are fair uses. *Perfect 10, Inc. v. Amazon.com,*
11 *Inc.*, 508 F.3d 1146, 1158 (9th Cir. 2007). VidAngel cannot meet its burden. All
12 four factors that § 107 directs the Court to consider weigh against VidAngel.

13 _____
14 ¹¹ Even if VidAngel’s reading were correct—which it is not—VidAngel could not
15 rely on the statute because it [REDACTED]
16 [REDACTED]. Schumann Decl. Ex. C at 25; Ehler Decl. Ex. EE at Tr.
17 95:22-96:14. The FMA only applies “if no fixed copy of the altered version of the
18 motion picture is created by such computer program or other technology.” 17
19 U.S.C. § 110(11). VidAngel’s documents make clear that it [REDACTED]

20 Schumann Decl. Ex. C at 25. A copy is fixed if it is “sufficiently permanent or
21 stable to permit it to be perceived, reproduced, or otherwise communicated for a
22 period of more than transitory duration.” *MAI Sys. Corp.*, 991 F.2d at 518 (citing 17
23 U.S.C. § 101). VidAngel’s server copy segments are fixed because they are stored
24 for more than a transitory duration. *Id.* (software loaded to a computer’s RAM is
25 fixed, even if for the sole purpose of viewing the system and running an error log).

26 ¹² Senator Hatch, a sponsor of the bill, explained that the FMA “would not exempt
27 from liability an otherwise infringing performance, or a transmission of a
28 performance, during which limited portions of audio or video content of the motion
picture are made imperceptible” and infringing performances “are not rendered non-
infringing by section 110(11) by virtue of the fact that limited portions of audio or
video content of the motion picture being performed are made imperceptible during
such performance or transmission.” 151 Cong. Rec. S501 (daily ed. Jan. 25, 2005)
(Sen. Hatch) (emphasis added).

1 i. *VidAngel’s Wholesale Copying And Publicly*
2 *Performing Plaintiffs’ Works Are Commercial And*
3 *Non-Transformative*

4 The first factor asks whether VidAngel’s use is commercial and
5 transformative. *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 530 (9th Cir.
6 2008).

7 VidAngel’s use of Plaintiffs’ works obviously is commercial: VidAngel
8 copies and publicly performs Plaintiffs’ works to profit in its business. *Harper &*
9 *Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 562 (1985). VidAngel’s
10 commercial use weighs against fair use because VidAngel “stands to profit from
11 exploitation of the copyrighted material without paying the customary price.”
12 *Leadsinger*, 512 F.3d at 530 (quotations omitted).

13 VidAngel’s commercial use is not transformative. A transformative use adds
14 “something new, with a further purpose or different character, altering the first
15 [work] with new expression, meaning or message.” *Campbell v. Acuff-Rose Music,*
16 *Inc.*, 510 U.S. 569, 579 (1994). VidAngel’s wholesale copying of Plaintiffs’ works
17 “in their entirety” to its computer system adds nothing new to those works and is not
18 transformative. *Worldwide Church of God v. Philadelphia Church of God, Inc.*, 227
19 F.3d 1110, 1117 (9th Cir. 2000).

20 VidAngel’s public performance of those works—in which VidAngel makes
21 the entire copied work available to users and allows them to selectively filter out
22 small portions of Plaintiffs’ works— also is not transformative. Removing portions
23 of the works obviously does not add anything new to them. VidAngel instead is
24 “simply rebroadcast[ing] for entertainment purposes [works] that Plaintiffs
25 rightfully own”—which is not transformative. *Elvis Presley Enters., Inc. v.*
26 *Passport Video*, 349 F.3d 622, 628-29 (9th Cir. 2003), *overruled on other grounds*
27 *as recognized in Seltzer v. Green Day, Inc.*, 725 F.3d 1170 (9th Cir. 2013); *see*
28 *Monge v. Maya Magazines, Inc.*, 688 F.3d 1164, 1174 (9th Cir. 2012) (“neither
minor cropping nor the inclusion of headlines or captions transformed the

1 against VidAngel. *See Campbell*, 510 U.S. at 586; *Elvis Presley Enters.*, 349 F.3d
2 at 630; *L.A. News Serv. v. Tullo*, 973 F.2d 791, 798 (9th Cir. 1992).

3 *iv. VidAngel’s Service Undermines Existing And*
4 *Potential Markets For Plaintiffs’ Works*

5 The fourth factor considers current market harm and “whether unrestricted
6 and widespread conduct of the sort engaged in by the defendant . . . would result in a
7 substantially adverse impact on the potential market’ for the original.” *Campbell*,
8 510 U.S. at 590 (citations omitted). Where, as here, the defendant uses the works
9 “for commercial gain, the likelihood of market harm may be presumed.”

10 *Leadsinger*, 512 F.3d at 531-32 (quotations omitted); *see Campbell*, 510 U.S. at 591
11 (presumption of market harm “makes common sense” in cases involving “copying
12 of the original in its entirety for commercial purposes”) (quotation marks and
13 alterations omitted). To rebut this presumption, VidAngel must “bring forward
14 favorable evidence about relevant markets.” *Arista Records LLC v. Myxer, Inc.*, No.
15 CV 08-03935 GAF, 2011 WL 11660773, at *43 (C.D. Cal. 2011) (quoting *Dr. Seuss*
16 *Enters., L.P. v. Penguin Books, USA, Inc.*, 109 F.3d 1394, 1403 (9th Cir. 1997)).

17 This VidAngel cannot do.

18 VidAngel plainly undermines existing and developing markets for Plaintiffs’
19 works. VidAngel’s own marketing materials and strategy compare it to legitimate
20 on-demand streaming services such as iTunes, Google Play, Amazon Video, and
21 Netflix. Ehler Decl. Exs. A, B. Further, as explained by the Senior Vice President,
22 Digital Distribution at Fox, VidAngel undercuts the market for Plaintiffs’ works in a
23 number of ways. Cittadine Decl. ¶¶ 16-22; 26-34. For example when VidAngel
24 released *Star Wars: The Force Awakens* on the same day it was released to Disc and
25 for digital download, VidAngel was “competing directly with these other exclusive
26 viewing options and preempting legitimate on-demand streaming services” which
27 did not yet have rights to stream that title. *Id.* ¶ 16. Likewise, “[b]y offering
28 consumers on-demand streaming at a lower price—which VidAngel can offer only

1 because it misappropriates Fox’s content—VidAngel threatens the business of all of
2 [Fox’s licensees] who have negotiated legal, authorized licenses [with Fox and other
3 Plaintiffs] for those rights.” *Id.* ¶ 20. Many VidAngel customers are using the
4 service because of its price as compared to authorized services—a differential that
5 exists only because VidAngel does not pay for the rights it exploits. Ehler Decl. Ex.
6 I (examples).

7 In sum, fair use is not a defense to VidAngel’s blatant infringement.

8 **c. The First Sale Doctrine Does Not Authorize VidAngel’s**
9 **Copying or Streaming**

10 VidAngel claims that Plaintiffs’ attempt to enforce their reproduction and
11 public performance rights violates the first sale doctrine, *see* 17 U.S.C. § 109(a),¹³
12 because VidAngel buys Discs and resells them via its “buy-sellback” model. Dkt.
13 11 (Counter-Complaint) ¶¶ 53-59. Even if VidAngel were actually selling Discs
14 (which it is not), the argument would be a red herring. The first sale doctrine
15 applies only to Plaintiffs’ right of distribution, which is not at issue here. *See Red*
16 *Baron-Franklin Park, Inc. v. Taito Corp.*, 883 F.2d 275, 280-81 (4th Cir. 1989)
17 (“the first sale doctrine has no application to the rights of the owner of a copyright
18 guaranteed by § 106, except the right of distribution”); *Capitol Records, LLC v.*
19 *ReDigi Inc.*, 934 F. Supp. 2d 640, 655 (S.D.N.Y. 2013) (“[T]he first sale defense
20 does not apply to ReDigi’s infringement of those [reproduction] rights.”); *Peker v.*
21 *Masters Collection*, 96 F. Supp. 2d 216,221 (E.D.N.Y. 2000) (“no defense that
22 [defendant] used a lawfully acquired object to achieve its unlawful goal of
23 copying”).

24
25 _____
26 ¹³ “Notwithstanding the provisions of section 106(3), the owner of *a particular copy*
27 . . . lawfully made under this title, or any person authorized by such owner, is
28 entitled, without the authority of the copyright owner, to sell or otherwise dispose of
the possession of *that copy*” 17 U.S.C. § 109(a) (emphasis added).

1 **II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT AN**
2 **INJUNCTION**

3 A court may find that a copyright owner’s harm is likely “irreparable” for
4 many reasons, including that a particular loss is “difficult to replace,” “difficult to
5 measure,” or of a kind “that one should not be expected to suffer.” *Salinger v.*
6 *Colting*, 607 F.3d 68, 81 (2d Cir. 2010). VidAngel’s illegal conduct puts Plaintiffs
7 at risk of suffering imminent, irreparable harms; VidAngel’s “delay” defense does
8 not change this fact.

9 **A. VidAngel’s Unauthorized Service Causes Immediate And**
10 **Irreparable Harms**

11 First, VidAngel interferes with Plaintiffs’ basic right to control how, when
12 and through which channels consumers can view their copyrighted works. “As the
13 copyright holders, Plaintiffs have the exclusive right to decide when, where, to
14 whom, and for how much they will authorize transmission of their Copyrighted
15 Works to the public.” *Zediva*, 824 F. Supp. 2d at 1012 (citation omitted). Where
16 defendants operate an “infringing service without the normal licensing restrictions
17 imposed by Plaintiffs, [it] interfere[s] with Plaintiffs’ ability to control the use and
18 transmission of their Copyrighted works, thereby, causing irreparable injury.” *Id.* at
19 1012 (citation omitted). Plaintiffs’ exclusive rights under copyright are critical to
20 providing Plaintiffs the opportunity to earn a return on their substantial
21 investments—often tens of millions of dollars for a major motion picture—in
22 creating content. Cittadine Decl. ¶¶ 7-8. This harm is ongoing and worsening as
23 VidAngel continues to add Plaintiffs’ works and grow its user base. *Id.* ¶ 34.

24 Plaintiffs exercise their rights through agreements with authorized
25 distributors. Some licenses grant the licensee an exclusive time window for
26 performing a title. *Id.* ¶ 15. The price for such a license is based, in part, on the
27 promise and scope of exclusivity. *Id.* VidAngel operates without any license and
28 performs Plaintiffs’ works during negotiated exclusivity periods. As of this filing,

1 VidAngel offers (at least) two of Plaintiffs’ works—*The Martian* and *Brooklyn*—
2 during periods these works are exclusive to an authorized licensee, HBO. *Id.* ¶ 30.
3 As noted, VidAngel offered *Star Wars: The Force Awakens* when no service had
4 rights to distribute it for on-demand streaming. *Id.* ¶ 16; Ehler Decl. Ex. J.
5 VidAngel flaunts its interference with exclusive windows as a competitive
6 advantage over authorized services by expressly promoting titles that are available
7 on VidAngel but “NOT on Netflix.” Ehler Decl. Ex. A at 13-15, 23-38. VidAngel
8 thus interferes with Plaintiffs’ exercise of their exclusive rights and frustrates
9 Plaintiffs’ ability to negotiate for similar rights in the future. Cittadine Decl. ¶¶ 17,
10 36.

11 Second, VidAngel threatens harm to Plaintiffs’ relationships and goodwill
12 with authorized distributors by undermining their ability to provide licensed
13 offerings. *See Ticketmaster L.L.C. v. RMG Techs., Inc.*, 507 F. Supp. 2d 1096, 1115
14 (C.D. Cal. 2007) (irreparable harm includes “damage to goodwill”). VidAngel
15 poses a threat to the businesses of Plaintiffs’ legitimate licensees and, in turn, to
16 Plaintiffs’ relationships with them and the goodwill Plaintiffs have worked to create.
17 Cittadine Decl. ¶¶ 18-22. VidAngel’s users often compare the service to Plaintiffs’
18 licensees, commenting that they prefer VidAngel because it provides inexpensive
19 access to Plaintiffs’ copyrighted works. *See Ehler Decl. Ex. I* (examples).
20 Licensees complain to Plaintiffs that their business suffers from competition with
21 unlicensed services that offer low-cost or free content because they do not obtain
22 licenses. Cittadine Decl. ¶ 19. VidAngel’s unrestrained conduct thus threatens the
23 legitimate online distribution market. *Id.* ¶¶ 19, 22; *see WPIX, Inc. v. ivi, Inc.*, 691
24 F.3d 275, 286 (2d Cir. 2012) (holding that unrestrained unauthorized Internet
25 retransmissions of broadcast programming “would encourage” other services to
26 follow suit, diminish plaintiffs’ negotiating position, adversely affect “quantity and
27 quality of efforts put into creating” new works, and “drastically change the industry,
28 to plaintiffs’ detriment”).

1 Third, VidAngel threatens harm to Plaintiffs’ ability to secure and protect
2 their content in the online environment. Online distribution carries with it a
3 heightened risk of piracy because the Internet facilitates the ability to exploit
4 copyrighted content on a mass scale. Cittadine Decl. ¶ 24. Plaintiffs require
5 licensees to employ specified security measures to prevent piracy. *Id.* ¶ 25. Because
6 VidAngel streams Plaintiffs’ works without negotiating a license, Plaintiffs are
7 deprived of their right to impose those terms on VidAngel. *Id.* VidAngel
8 jeopardizes Plaintiffs’ content and harms Plaintiffs’ relationships with licensees who
9 are required to abide by security requirements to which VidAngel is not bound. *Id.*

10 Fourth, VidAngel threatens harm to the overall development of the on-
11 demand streaming market by the provision of inferior user-viewing experiences.
12 *See Zediva*, 842 F. Supp. 2d at 1014 (*Zediva* “threatens the development of a
13 successful and lawful video on demand market by offering a sub-optimal customer
14 experience and, thus, tarnishing customers’ perception of video on demand as an
15 attractive option for viewing Plaintiffs’ Copyrighted Works.”). Plaintiffs require
16 their licensees to have quality controls, which maintain predictable standards and
17 allow customers to view Plaintiffs’ movies under consistently positive conditions.
18 Cittadine Decl. ¶ 27. VidAngel threatens these efforts and provides an inferior user-
19 viewing experience that tarnishes Plaintiffs’ brands because it is not bound to
20 comply with Plaintiffs’ quality controls. *Id.* This possibility is not merely
21 theoretical: VidAngel’s social media pages contain customer complaints about the
22 service’s poor streaming quality. Ehler Decl. L (attaching numerous examples).

23 VidAngel also threatens the lawful market by confusing consumers that
24 VidAngel is engaged in lawful conduct. *See Zediva*, 824 F. Supp. 2d at 1013
25 (finding that the *Zediva* service threatened “to create incorrect but lasting
26 impressions with consumers about what constitute[d] lawful video on demand
27 exploitation” of copyrighted works). VidAngel publicly justifies its unlicensed
28

1 activities as “legal” under the FMA. Ehler Decl. Ex. M. But VidAngel’s service is
2 not legal, and it creates incorrect expectations about the value of Plaintiffs’ content.

3 **B. Plaintiffs’ Motion Is Timely, And VidAngel’s Assertions of**
4 **“Delay” Do Not Negate Irreparable Harm**

5 VidAngel has asserted that Plaintiffs face no irreparable harm because they
6 did not sue as soon as they learned of VidAngel when they received Mr. Quinto’s
7 letters in July 2015. Plaintiffs are not required to act immediately to sue, or to seek
8 to enjoin, every potential infringer. *See Petrella*, 134 S. Ct. at 1976 (“Even if an
9 infringement is harmful, the harm may be too small to justify the cost of
10 litigation.”). A rule that required a copyright holder to pursue every possible
11 threat—no matter how nascent—would generate a rash of litigation and motion
12 practice, which would not serve the Courts, the parties, or the public interest. *See*
13 *Lotus Dev. Corp. v. Paperback Software Int’l*, 740 F. Supp. 37, 82 (D. Mass. 1990)
14 (“Prudent business judgment, Rule 11, and basic common sense required [the
15 plaintiff] first to ascertain that the threat to its intellectual property interest was
16 serious, and that its legal position was sound, before filing suit.”) (internal
17 quotations omitted). Courts are “loath to withhold relief” solely on the ground that a
18 party delayed seeking an injunction. *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th
19 Cir. 2014) (citing *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1214 (9th
20 Cir. 1984)).

21 Plaintiffs filed this suit when VidAngel’s conduct was sufficiently egregious
22 to require litigation and when it was apparent VidAngel would continue operating.
23 *See Arc of Cal.*, 757 F.3d at 991 (“The significance of such a prudent delay in
24 determining irreparable harm may become so small as to disappear.”). To require
25 Plaintiffs to “sue soon, or forever hold [their] peace” would force Plaintiffs to mount
26 a federal case to stop services that might never get off the ground—which is often
27 the case. *Petrella*, 134 S. Ct. at 1976 (describing “seemingly innocuous
28 infringements”). Plaintiffs filed suit after they had conducted their investigation and

1 analysis, and when it was clear that litigation was necessary to stop VidAngel's
2 illegal conduct.

3 Moreover, each new title that VidAngel offers gives rise to a new
4 infringement claim and inflicts new immediate, irreparable harm.¹⁴ *Id.* at 1969
5 (“[e]ach wrong gives rise to a discrete ‘claim’ that ‘accrue[s]’ at the time the wrong
6 occurs”). VidAngel has added more and more of Plaintiffs’ titles in recent months
7 and promises to continue to do so, especially with Plaintiffs’ most popular releases.
8 Ehler Decl. Exs. N (examples of titles recently added); EE at Tr. 32:9-37:4, R
9 (VidAngel offers new movies that reach more than [\$10 million] in domestic sales).

10 The harm that VidAngel causes is not over and done with, but continuing and
11 growing. The time a party takes initially in seeking judicial protection “is not
12 particularly probative in the context of ongoing, worsening injuries.” *Arc of Cal.*,
13 757 F.3d at 990-91 (citations omitted). VidAngel’s growth, increased marketing
14 and more brazen conduct have increased the immediacy and magnitude of the harm
15 to Plaintiffs, further justifying injunctive relief. *See id.*

16 **III. THE BALANCE OF HARDSHIPS TIPS DECISIVELY FOR**
17 **PLAINTIFFS**

18 The threat of harm to Plaintiffs, as demonstrated above, is substantial. In
19 contrast, VidAngel “cannot complain of the harm that will befall it when properly
20 forced to desist from its infringing activities.” *Triad Sys. Corp. v. Se. Express Co.*,
21 64 F.3d 1330, 1338 (9th Cir. 1995), *superseded on other grounds by* 17 U.S.C.
22 § 117(c); *see Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 830 (9th Cir.
23 1997) (“Where the only hardship that the defendant will suffer is lost profits from an
24 _____

25 ¹⁴ For example, on July 20, 2016, VidAngel made *Batman v. Superman: Dawn of*
26 *Justice (Ultimate Edition)* available, when that title was not yet available to
27 legitimate on-demand streaming services. *See Ehler Decl. Ex. N* at 155. On August
28 4, VidAngel offered *Keanu*, when that title was not yet available to legitimate on-
demand services. *See id.* at 157.

1 activity which has been shown likely to be infringing, such an argument in defense
2 merits little equitable consideration”) (quotations and citations omitted); *Apple Inc.*
3 *v. Psystar Corp.*, 673 F. Supp. 2d 943, 950 (N.D. Cal. 2009) (“Since [small start-up
4 defendant] does not (and cannot) claim any *legitimate* hardships as a result of being
5 enjoined from committing unlawful activities, and Apple would suffer irreparable
6 and immeasurable harms if an injunction were not issued, this factor weighs
7 strongly in favor of Apple’s motion.”).

8 VidAngel does not suffer a legitimate hardship if it is enjoined because the
9 very core of its business involves circumvention and infringement. The fact that
10 VidAngel’s litigation counsel sent letters to a number of general counsel makes
11 clear that VidAngel knew from the outset it was on thin ice. Nonetheless, VidAngel
12 proceeded at its peril.

13 **IV. A PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST**

14 Upholding copyright protection is in the public interest. *See Eldred v.*
15 *Ashcroft*, 537 U.S. 186, 212 n.18 (2002) (“[t]he economic philosophy behind the
16 [Copyright] [C]lause . . . is the conviction that encouragement of individual effort by
17 personal gain is the best way to advance public welfare through the talents of
18 authors and inventors”) (citation omitted); *Kelly v. Primco Mgmt., Inc.*, No. CV-14-
19 07263 BRO, 2015 WL 10990368 at *16 (C.D. Cal. Jan. 12, 2015) (“[I]t is virtually
20 axiomatic that the public interest can only be served by upholding copyright
21 protections”); *Realnetworks, Inc.*, 641 F. Supp. 2d at 943 (“By making it a
22 DMCA violation to distribute products that enable consumers to override copyright
23 owner preferences against unauthorized copying, Congress determined that the
24 public interest is best served by outlawing such products.”).

25 VidAngel’s circumvention violations and infringements undermine
26 Congress’s purposes in the DMCA and Copyright Act. Congress believed that
27 content owners must have exclusive rights, as set forth in § 106, and also the ability
28 to safeguard access to their works, in order to be able to earn returns on their (often

1 substantial) investments. VidAngel’s violation of Plaintiffs’ rights flouts Congress’s
2 goals and harms Plaintiffs. An injunction serves the public interest in upholding the
3 law.

4 **V. MINIMAL SECURITY SHOULD BE REQUIRED**

5 The required security need not be substantial. *See Zediva*, 824 F. Supp. 2d at
6 1015 (requiring \$50,000 bond). Any hardship VidAngel faces results from its
7 voluntary decision to build a business around violating Plaintiffs’ rights. Plaintiffs
8 respectfully submit that security in the amount of \$50,000 is appropriate.

9 **CONCLUSION**

10 The Court should grant Plaintiffs’ motion for a preliminary injunction.

11
12 DATED: August 22, 2016

MUNGER, TOLLES & OLSON LLP

13
14
15 By: /s/ Kelly M. Klaus

16 KELLY M. KLAUS

17 Attorneys for Plaintiffs
18
19
20
21
22
23
24
25
26
27
28

