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**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

In re: VIDANGEL, INC., Debtor.	Bankruptcy No. 17-29073 (KRA) Chapter 11
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TRUSTEE’S OBJECTION TO CONFIRMATION OF COPYRIGHT CREDITORS’ PLAN

George Hofmann, in his capacity as Chapter 11 Trustee (the “Trustee”) of the bankruptcy estate of VidAngel, Inc. (the “Debtor”), through counsel, OBJECTS to confirmation of *Studios’ Third Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 681] (“Copyright Creditors’ Plan”) filed by Copyright Creditors.¹

¹ “Copyright Creditors” or, as they refer to themselves, the “Studios”, mean and refer to, collectively, Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, Warner Bros.

INTRODUCTION

Copyright Creditors' Plan is not designed to achieve the goals of chapter 11, *i.e.*, reorganizing a debtor and maximizing the value of a bankruptcy estate. Instead, it attempts to force the Debtor, together with the Debtor's management and its shareholders, into a corporate debtors' prison. Copyright Creditors' Plan proposes to trade a false and never-to-be-realized "reduction" in Copyright Creditors' Claims for perpetual handcuffs on the Debtor's business, which also happens to be the business that Copyright Creditors engage in in. Further, Copyright Creditors' Plan imposes those same handcuffs on non-Debtor third-parties, which will remain even if the Debtor is liquidated in short order. Not satisfied with repayment of the money judgment they hold—*i.e.*, the only remedy they are entitled to under non-bankruptcy law—Copyright Creditors' Plan seeks to augment and rewrite copyright law in their favor, to the detriment of the Debtor and its shareholders. Worse still, Copyright Creditors Plan prohibits third-parties from engaging in their First Amendment rights, effectuates a hostile takeover of the Debtor, and includes a "settlement" of the Debtor's claims against them, but with no agreeing counterparty to the settlement.

The Trustee is informed and believes that the Class 4 creditors (customers) and Class 5 equity holders overwhelmingly voted against Copyright Creditors' Plan. Copyright Creditors' Plan was not accepted by any impaired voting class. This alone bars confirmation. On the other hand, the Debtor's credit holders and investors overwhelmingly voted to approve the Trustee's *Plan of Reorganization dated April 9, 2020* (as it may be amended, the "Trustee's Plan"), which pays Copyright Creditors' and other creditors' Claims in full and gives the Debtor the autonomy it needs to flourish in

the future. The Court should heed the preferences of the Debtor’s creditors and equity holders, deny confirmation of Copyright Creditors’ Plan, and confirm the Trustee’s Plan.

ARGUMENT

Summary of Arguments

Code Provision	Summary of Objection
11 U.S.C. §§ 1129(a)(1) and 524(e) – Discharge of Non-Debtor’s Liability	The Plan releases Copyright Creditors from all liabilities, <u>known or unknown</u> , as to the Debtor, the Trustee, the Bankruptcy Estate, and all persons claiming by, through, or under them. This is an overbroad release.
11 U.S.C. § 1129(a)(3) – Good Faith	The Plan is not proposed in good faith. Its purpose is not to reorganize the Debtor’s debts, its purpose is for Copyright Creditors to obtain relief against the Debtor and third-parties that they could not obtain in any court. “Protection of copyrights” and/or destruction of a competitor is not a good faith basis for a plan of reorganization.
11 U.S.C. § 1129(a)(5) – Disclosure of Future Management	The Plan will result in the mass-resignation of the Debtor’s existing management. The Plan does not disclose the identity or affiliations of the proposed “Interim Manager,” and Copyright Creditors do not show how that person’s appointment is consistent with the interests of equity holders, other creditors, or public policy.
11 U.S.C. § 1129(a)(10) – Accepting Impaired Class	There are no accepting impaired classes. Classes 4 and 5 voted against Copyright Creditors’ Plan.
11 U.S.C. § 1129(a)(11) – Feasibility	Copyright Creditors’ Plan makes a “pipe dream” promise to equity holders—that they will obtain some benefit from the proposed “discount” of Copyright Creditors’ Claims. But the Debtor will be immediately liquidated, with most distributions going to Copyright Creditors. Additionally, the Debtor’s long-term upside is restricted by the “forever restrictions” in Copyright Creditors’ Plan.
11 U.S.C. § 1129(b)(2)(C) – Fair and Equitable Treatment	It is not “fair and equitable” to the Debtor’s equity interest holders to put “forever restrictions” on the Debtor’s ability to engage in legal business, and to impose a 15-year lien, without an option for “payoff,” which will likely result in a quick liquidation of the Debtor. This imposes an artificial cap on the Debtor’s ability to grow post-Effective Date.
11 U.S.C. § 1129(c) – Preferences of Creditors and Equity Holders	Classes 4 and 5 have voted to <u>accept</u> the Trustee’s Plan but have voted to <u>reject</u> Copyright Creditors’ Plan. In deference to the views of creditors and equity holders, the Court should

	confirm the Trustee's Plan and deny confirmation of Copyright Creditors' Plan.
28 U.S.C. §§ 157 and 1334	Copyright Creditors' Plan proposes terms and injunctions that exceed the jurisdiction and authority of the Bankruptcy Court to grant.
11 U.S.C. §§ 1129(a)(1) & 1123(b)(3) & Bankruptcy Rule 9019 – No Adequate Means for Implementation. The Trustee has not accepted the compromise or settlement proposed by Copyright Creditors.	Under the Bankruptcy Code, whether to settle or compromise a claim against the Estate, and whether to concede the Debtor's legal rights, is submitted to the sound business judgment of the Trustee. The Bankruptcy Code does not permit the Bankruptcy Court to usurp the Trustee's function, or to substitute its own business judgment for that of the Trustee. Rather, the Court is to defer to the Trustee's decision and to approve agreements made by the Trustee if the Trustee's actions are not arbitrary or capricious. Both "settlements" and "covenants" are bilateral, not unilateral. The Trustee, however, did not negotiate the terms in Copyright Creditors' Plan. Where the Trustee has not accepted Copyright Creditors' offer, there is no agreement (covenant or settlement) to approve.

I. Non-Insider Creditors and Equity Holders Prefer the Trustee's Plan.

As an initial matter, the Trustee understands that Class 4 Claims and Class 5 Interests under Copyright Creditors' Plan have voted to **reject** Copyright Creditors' Plan. Thus, even if the Court finds that Copyright Creditors' Plan is confirmable under Bankruptcy Code §§ 1129(a) and (b), then the Court must look to Bankruptcy Code § 1129(c) to determine whether to confirm Copyright Creditors' Plan or the Trustee's Plan. "The most significant element in choosing between two confirmable plans is the statutory direction to the court to 'consider the preferences of creditors and equity security holders in determining which plan to confirm.' The preference of creditors is reflected in the voting results." In re TCI 2 Holdings, LLC, 428 B.R. 117, 183–84 (Bankr. D.N.J. 2010) (quoting 11 U.S.C. § 1129(c)).

If the preferences of creditors and equity holders are considered, then the Court should deny confirmation of Copyright Creditors' Plan and confirm the Trustee's Plan.

II. Copyright Creditors' Plan Does Not Satisfy Bankruptcy Code § 1129(a)(10).

Bankruptcy Code § 1129(a)(10) requires that “[i]f a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.”

The Court should treat Copyright Creditors as “insiders” with respect to their Plan.

Congress intended that an insider includes “one who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arms length with the debtor.” S.Rep. No. 989, 95th Cong., 2d Sess. 25 (1978); H.R.Rep. No. 595, 95th Cong., 1st Sess. 312 (1979), U.S.Code Cong. & Admin.News 1978, pp. 5787, 5810, 6269 (legislative history to 11 U.S.C. § 101(30)).

The rules of construction for the Bankruptcy Code specifically state that the terms “includes” and “including” “are not limiting.” 11 U.S.C. § 102(3). The use of the term “insider” at 11 U.S.C. § 101(30) provides an illustrative, rather than an exhaustive list of the persons or entities which may qualify as insiders of the debtor. *In re Henderson*, 96 B.R. 820, 824–25 (Bankr.E.D.Tenn.1989).

In re Allegheny Int'l, Inc., 118 B.R. 282, 298 (Bankr. W.D. Pa. 1990). In Allegheny, the bankruptcy court found that a creditor who was a plan proponent was an insider, in part because it had “received a great volume of information that was not available to other creditors, shareholders, and the general public. This delivery of information was voluminous and thorough. This type of information is available only to insiders.” Id. Because it had “sought and received inside information as a proponent of a plan,” the Court found that the creditor was “an insider and a fiduciary for purpose of this reorganization.” Id. at 299.

Similar to the creditor in Allegheny, Copyright Creditors have requested and received substantial information that is not available to any party but an insider. They have engaged in discovery with respect to every aspect of the Debtor’s business. They

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