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8 and ALEC PETERS

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 PARAMOUNT PICTURES
CORPORATION, a Delaware
13 corporation; and CBS STUDIOS INC., a
Delaware corporation,

14 Plaintiffs,

15 vs.

16 AXANAR PRODUCTIONS, INC., a
17 California corporation; ALEC PETERS,
an individual; and DOES 1-20,

18 Defendants.
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Case No. 2:15-cv-09938-RGK-E

(DISCOVERY MATTER)

**DEFENDANTS AXANAR
PRODUCTIONS, INC. AND ALEC
PETERS' OPPOSITION TO
PLAINTIFFS' *EX PARTE*
APPLICATION FOR ORDER
(A) THAT DEFENDANTS ARE TO
PRODUCE DEFENDANT ALEC
PETERS FOR FURTHER
DEPOSITION AFTER HE
COMPLETES PRODUCTION OF
RELEVANT DOCUMENTS;
(B) THAT FINANCIAL SUMMARY
REGARDING DEFENDANTS'
EXPENDITURES OF FAN FUNDS
BE DE-DESIGNATED; (C) THAT
DEFENDANTS PROVIDE A
PRIVILEGE LOG**

Original Complaint Filed: 12/29/15
First Amended Complaint Filed: 3/11/16
Discovery Cutoff: 11/2/16
Pre-Trial Conference: 1/9/17
Trial: 1/31/17

1 Defendants Axanar Productions, Inc. and Alec Peters (“Defendants”) hereby
2 submit their Opposition to Plaintiffs Paramount Pictures Corporation and CBS
3 Studios, Inc.’s (“Plaintiffs”) *Ex Parte* Application for an order (A) that Defendants
4 are to produce Defendant Alec Peters for further deposition; (B) that financial
5 summary regarding defendants’ expenditures of fan funds be de-designated; and (C)
6 that Defendants provide a Privilege Log (the “*Ex Parte* Application”).

7 **I. INTRODUCTION**

8 Plaintiffs’ *Ex Parte* Application is not only procedurally improper, it is wholly
9 unnecessary. By their *Ex Parte* Application, Plaintiffs belatedly seek to raise
10 discovery issues in contravention of the Court’s rules and are wasting the Court’s time
11 and resources on issues that Defendants have already agreed on, or which Defendants
12 have been trying to resolve with Plaintiffs while Plaintiffs have refused to engage in
13 productive discussions. Even if the Court reaches the merits of the belatedly-raised
14 discovery issues, the relief sought is mooted by offers made by Defendants—both in
15 writing and in person—*before* Plaintiffs filed their *Ex Parte* Application. Indeed,
16 Defendants have already offered to make Alec Peters available for a second
17 deposition; have repeatedly attempted to meet and confer with Plaintiffs about
18 parameters of the privilege log before preparing it; and Defendants informed Plaintiffs
19 that they are making an additional production today that will moot the remaining
20 issues. Plaintiffs’ counsel did not respond to these offers, making clear that Plaintiffs
21 had committed to file their *Ex Parte* Application regardless of Defendants’ response.
22 But Plaintiffs fall far short of demonstrating that they are entitled to the extraordinary
23 relief.

24 Plaintiffs’ alleged emergencies are wholly self-created and amount to little
25 more than Plaintiffs’ failure to raise these issues with the Court in a timely manner,
26 and refusal to *even discuss*, let alone come to reasonable terms regarding the
27 outstanding issues about which they complain. Plaintiffs’ *Ex Parte* Application is a
28 waste of the Court’s and the parties’ time, and should be denied in its entirety.

1 **II. SUMMARY OF FACTS**

2 To date, in response to Plaintiffs' requests, Defendants have produced in excess
3 of 35,000 pages of responsive documents. [Declaration of Erin R. Ranahan (Dkt. 55-
4 1) (¶¶ 16, 18).] This includes nearly 700 emails and all other documents reasonably
5 located in the possession, custody and control of individual Alec Peters and his small
6 fan film company, Axanar Productions. In contrast, Plaintiffs, despite being two large
7 companies prosecuting this case against an individual and a small organization, have
8 produced far less than what Defendants have provided. [Ranahan Decl. (Dkt. 55-1) ¶¶
9 17, 19, 23.] In an effort to obtain the documents that Plaintiffs were withholding that
10 Defendants viewed as critical to their investigation of certain issues, Defendants
11 timely brought a discovery motion before the Magistrate Judge in this case on October
12 21, 2016, which resulted in Plaintiffs being compelled to produce several categories of
13 documents, responses to interrogatories, a witness to testify about certain topic, and a
14 privilege log. (Dkt. 60.)

15 Apparently in response to being required to finally undertake a diligent search
16 for responsive documents, Plaintiffs suddenly decided to manufacture their own
17 discovery issues. Even though the time has run out to properly compel anything under
18 the governing schedule of this case, Defendants have continued to engage in good
19 faith efforts to resolve these disputes, but it appears Plaintiffs were more interested in
20 filing the *Ex Parte* Application than genuinely reaching an efficient and reasonable
21 resolution.

22 Additionally, Defendants made a supplemental production earlier in the week in
23 response to Plaintiffs' complaint about emails, and informed Plaintiffs they intend to
24 produce additional documents Friday, October 28. [Grossman, Exhibit G.] These
25 documents included revised financial documents, designated confidential, and various
26 other items. Plaintiffs refused to wait *one day* to review this supplemental production,
27 deciding to race to the Courthouse in a colossal waste of resources.

1 **III. PLAINTIFFS' EX PARTE APPLICATION CANNOT SATISFY THE**
2 **REQUIREMENTS FOR EX PARTE RELIEF**

3 With less than a week left in discovery, Plaintiffs have not bothered to follow
4 any of the Local Rule 37 or Local Court procedures governing discovery disputes and
5 cannot satisfy the standard to obtain emergency relief. As the Court noted in *In re*
6 *Intermagnetics America Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989):

7 [E]x parte applications throw the system out of whack. They impose an
8 unnecessary administrative burden on the court and an unnecessary
9 adversarial burden on counsel who are required to make a hurried
10 response under pressure, usually for no good reason. Such applications
11 allow the applicant to jump 'ahead of the pack' and 'cut in line ahead of
12 those litigants awaiting determination of their properly noticed and
13 timely filed motions.

14 An *ex parte* application is the procedural equivalent of shouting "Fire!" in a
15 crowded theatre. *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 493
16 (C.D. Cal. 1995) (finding that "[e]x parte motions are rarely justified," as they are
17 "inherently unfair, and they pose a threat to the administration of justice"). There is
18 no fire here. Citing *Mission Power*, this Court's first procedural rule cautions against
19 the misuse of *ex parte* applications, noting that: "*Ex parte* applications are ONLY for
20 extraordinary relief. Sanctions may be imposed for misuse of *ex parte* applications."
21 *Id.* See <https://www.cacd.uscourts.gov/honorable-r-gary-klausner>.

22 This Court also notes in its Pretrial Order that:

23 **Any motion challenging the adequacy of responses to discovery must**
24 **be filed timely, and served and calendared sufficiently in advance of**
25 **the discovery cut-off date to permit the responses to be obtained**
26 **before that date, if the motion is granted.**

27 *Id.* at p. 2, C, (emphasis in original).

28 Plaintiffs apparently do not believe these rules apply to them, waiting until just

1 a few days before the close of the discovery to seek *Ex Parte* relief about various
2 discovery issues for which there is no timely-filed motion, no Local Rule 37 joint
3 stipulation, and Plaintiffs appear in denial about the offers Defendants made that
4 render moot Plaintiffs' requested relief.

5 Plaintiffs also cannot demonstrate that: (1) they will be "irreparably
6 prejudiced;" or that (2) Plaintiff is "without fault in creating the crisis that requires *ex*
7 *parte* relief or that the crisis occurred as a result of excusable neglect." *Mission*
8 *Power Eng'g*, 883 F. Supp. at 490; *ESG Capital Partners LP v. Stratos*, No. 2:13-cv-
9 01639, 2014 WL 1830903, at *1 (C.D. Cal. May 8, 2014) (citing *Missing Power*
10 *Eng'g Co.*, 883 F. Supp. at 492).

11 Plaintiffs do not explain how any of the items they seek are material to the
12 prosecution of their case, and thus cannot explain how they could possibly be
13 "irreparably prejudiced" without emergency relief. Moreover, Plaintiffs cannot show
14 that they were without fault in creating this so-called crisis. Defendants produced the
15 vast majority of their documents in early September 2016—before Plaintiffs produced
16 anything. This includes the documents that Plaintiffs seek to de-designate here.
17 Defendants promptly raised their discovery disputes in accordance with the Court's
18 rules, allowing the Court to order compliance within the discovery period. *See* the
19 Parties' Joint Stipulation Regarding Defendants' Motion to Compel Discovery (Dkt.
20 55); this Court's Order Regarding the Parties' Joint Stipulation (Dkt. 60).

21 With respect to their own discovery disputes, Plaintiffs did not bother following
22 the Local Rule 37 Procedures at all.¹¹ Despite Defendants' counsel being in the same
23 place as Plaintiffs' counsel routinely from late September through October during
24 depositions, Plaintiffs waited until the end of October to seek relief.

25
26
27 ¹¹ Had Plaintiffs followed the joint stipulation procedure, they would have been
28 required to include the requests that are at issue, as well as explained the compromises
they set forth in an attempt to resolve these issues. By moving *ex parte*, Plaintiffs
have managed to entirely ignore these items.

1 **IV. THE EX PARTE APPLICATION IS UNNECESSARY BECAUSE THE**
2 **ISSUES RAISED ARE MOOT**

3 Even if the *Ex Parte* Application were timely, Plaintiffs' *Ex Parte* Application
4 is wholly unnecessary, as the issues are moot. Plaintiffs seek an order (1) requiring
5 Defendant Alec Peters for another deposition; (2) De-Designating a highly sensitive
6 financial summary from "highly confidential;" and (3) requiring a Privilege Log (the
7 "*Ex Parte* Application").

8 **A. Defendants Already Agreed To A Second Deposition of Mr. Peters**

9 First, Defendants agreed—both in writing and in person *before* Plaintiffs filed
10 their *Ex Parte* Application—to put up Alec Peters for another deposition to allow
11 Plaintiffs to question Mr. Peters about the new documents Plaintiffs have obtained
12 since his October 19, 2016 deposition. [Declaration of David Grossman ("Grossman
13 Decl.") ("Dkt. 62-1") Ex. G.] Plaintiffs initially made their email request to take
14 another deposition of Alec Peters on October 24, 2016. Grossman Decl., Ex. G.
15 Plaintiffs made another demand via email on October 26, 2016 at 10:21 a.m., asking
16 for a response by "noon tomorrow". Grossman Decl. (Dkt. 62-1) Exh. F, para. 3.

17 Defendants responded eight hours before the requested deadline, at 3:30 a.m.,
18 stating, among other things, that they agreed to make Alec Peters available for a
19 second deposition to discuss documents received since his October 19, 2016
20 deposition. *This email is attached to Mr. Grossman's declaration as Exhibit G.*
21 Plaintiffs did not respond to this email. And again, *before* Plaintiffs' filed their *Ex*
22 *Parte* Application, counsel for Plaintiffs and Defendants were both present during the
23 October 27 deposition ordered by the Court in its October 21 Order, where Plaintiffs'
24 counsel raised for the first time Plaintiffs' intent to file an *Ex Parte* Application.
25 [Ranahan Decl. ¶18.] Counsel for the parties then discussed these issues for the first
26 time in person, and Defendants reiterated that in a recent email, Defendants' counsel
27 had offered to put up Mr. Peters for a second deposition. [*Id.*] Remarkably,
28 Plaintiffs' counsel, Mr. Grossman, refused to accept this point, and claimed during

1 that discussion that he was not aware of this offer, even though Mr. Grossman
2 *attached as Exhibit G to his declaration* the email communication in which
3 Defendants’ counsel made that offer. [*Id.*]

4 **B. Plaintiffs Have Refused To Engage In A Meaningful Discussion**
5 **With Defendants About The Privilege Log**

6 Second, with respect to the privilege log, after Plaintiffs repeatedly referred to
7 privilege logs as “useless” when trying to avoid producing their own privilege log,
8 Defendants have repeatedly attempted to engage Plaintiffs in a discussion about what
9 Plaintiffs are now interested in being logged on Defendants privilege log. [Ranahan
10 Decl. ¶¶ 2, 7, 8, 9, 10 and Exh. 1] Plaintiffs have repeatedly refused to respond or
11 engage in this discussion. *Id.* As Defendants have explained repeatedly to Plaintiffs,
12 they did not collect from Mr. Peters a folder containing only his attorney
13 communications, which included privileged communications between Mr. Peters and
14 attorneys about any personal or business issue from any time. Defendants expressed
15 their willingness to collect and review that folder, but believed it would be most
16 productive to understand the scope of what attorney-related documents Plaintiffs
17 expected to be logged, such as subjects, search terms, or types of attorney discussions
18 Plaintiffs believe should be logged. Plaintiffs have refused to have this discussion so
19 that they can apparently prop up another manufactured dispute in an attempt to obtain
20 some belated relief from the Court.

21 **C. Defendants Produced (Irrelevant) Updated Expenditure Information**
22 **Designated “Confidential” Despite Plaintiffs’ Repeated Refusal To**
23 **Honor Confidentiality Agreements In This Case**

24 Third, Plaintiffs want to be able to de-designate from “highly confidential”
25 certain highly sensitive financial information consisting of thousands of pages of Alec
26 Peters’ Quicken financial notes about expenditures in furtherance of creating *Prelude*
27 *to Axanar* and the unfinished *Axanar*. As a preliminary matter, these documents are
28 simply not relevant. How Defendants specifically spent funds that were donated by

1 enthusiastic fans for *Axanar* projects—one of which is not even complete because this
2 lawsuit interrupted it—has no bearing on any issue in this case.² Plaintiffs obviously
3 have no standing to scrutinize or complain about money not going to the fan film they
4 are trying to shut down. Contrary to Plaintiffs’ representation in their *Ex Parte*
5 Application, these notes were not prepared by an accountant, but were notes by Alec
6 Peters. This information is currently being reviewed by an accountant. As
7 Defendants have explained, these were preliminary notes from Quicken and were not
8 a final accounting, which is still being prepared. Despite Defendants’ position that
9 these documents lack any relevance to this case, Defendants produced the financial
10 information they had available at the time in an effort to be cooperative and avoid
11 wasting the Court’s time on discovery disputes. Defendants fully intend to seek to
12 exclude these expenditures before trial.

13 Plaintiffs’ assertion that Defendants’ designation is based on “embarrassment”
14 is utterly false and ignores the actual reasons Defendants provided Plaintiffs in writing
15 for not wanting to de-designate this document before they decided to file their *Ex*
16 *Parte* Application. [Grossman Decl., Ex. G.] This includes that Plaintiffs have been
17 careless and disregarded confidentiality agreements in this case on several occasions,
18 including (i) after originally claiming that the fact of the settlement discussions should
19 remain confidential, Plaintiffs made a public announcement about these ongoing
20 discussions; (ii) allowing a non-attorney to view an “attorneys eyes only” document
21 during a deposition; (iii) describing these financial documents in various pleadings
22 without redacting or seeking to file this information under seal; and (iv) citing
23 information from depositions in their *Ex Parte* Application when it was agreed that all
24 deposition testimony would be treated as confidential until further discussion.
25 [Ranahan Decl., ¶ 14] Plaintiffs are also in frequent contact with individuals who
26 have made clear that it is their goal to leak *Axanar* and Mr. Peters’ confidential

27 ² Notably, Plaintiffs objected, and the Court agreed, to producing their own
28 expenditures relating to the Plaintiffs’ works. Obviously expenditures are not
“profits,” and in fact would presumably be subtracted from any revenue to assess any
profits.

1 information. *Id.* In any event, and despite the serious concerns Defendants have about
2 Plaintiffs' disregard for honoring the confidentiality designations made in this case,
3 and even though Defendants intend to contest the relevance of this information if
4 Plaintiffs seek to introduce it, Defendants had already planned and indeed did
5 produce a revised version of Mr. Peters' Quicken notes today (Friday, October 28)
6 that will be designated only "confidential," which moots this issue. Defendants
7 would expect that going forward, Plaintiffs would take better care in honoring the
8 confidentiality designations governing this case.

9 **V. CONCLUSION**

10 The Court should deny Plaintiffs' *Ex Parte* Application in its entirety and issue
11 sanctions against Plaintiffs for filing an *Ex Parte* Application knowing full well that
12 the requested relief was moot.

13
14 Dated: October 28, 2016

WINSTON & STRAWN LLP

15
16 By: /s/ Erin R. Ranahan
17 Erin R. Ranahan
18 Diana Hughes Leiden
19 Kelly N. Oki
Attorneys for Defendants,
AXANAR PRODUCTIONS, INC.
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20 LA:419093.2

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9 **UNITED STATES DISTRICT COURT**
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12 PARAMOUNT PICTURES
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Case No. 2:15-cv-09938-RGK-E

(DISCOVERY MATTER)

**DECLARATION OF ERIN R.
RANAHAN IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' *EX PARTE*
APPLICATION**

Discovery Cutoff: November 2, 2016
Pre-Trial Conference: January 9, 2017
Trial: January 31, 2017

1 **DECLARATION OF ERIN R. RANAHAH**

2 1. I am an attorney at the law firm of Winston & Strawn LLP, attorneys for
3 Defendants Axanar Productions, Inc. and Alec Peters (jointly, “Defendants”) in this
4 matter. I am licensed to practice before the Courts of the State of California and this
5 United States District Court. I have personal knowledge of the matters set forth
6 herein, and if called as a witness, could and would competently testify thereto.

7
8 **Privilege Log**

9 2. Defendants have repeatedly attempted to hold meaningful meet and
10 confers regarding Plaintiffs’ belated demands for a privilege log.

11 3. We first discussed a privilege log at our initial in-person meet and confer
12 on June 21, 2016, where Plaintiffs’ counsel, Mr. Zavin, made clear that he believed
13 privilege logs served no purpose. I responded that in this case, where Plaintiffs were
14 claiming that the majority of relevant documents we were seeking were privileged, we
15 considered Plaintiffs production of a privilege log to be useful here. Plaintiffs thus
16 agreed to produce a privilege log during our June 21, 2016 meet and confer, and did
17 not ask that Defendants prepare or produce one.

18 4. When several months went by without Plaintiffs producing the privilege
19 log they had promised, I reached out to Plaintiffs’ counsel in September and inquired
20 as to the status of Plaintiffs’ privilege log. *See* Exhibit A to the Decl. of David
21 Grossman (Dkt. 62-1) (“Grossman Decl.”).

22 5. On September 26, 2016, Plaintiffs’ counsel responded that he did not
23 “recall an agreement on a privilege log,” stated that privilege logs are “generally not
24 productive,” and demanded a privilege log from Defendants in exchange for
25 Plaintiffs’ agreement to produce one themselves. *See* Grossman Decl., Exh. A.

26 6. In response to Plaintiffs’ counsel’s September 26, 2016 email, I informed
27 Plaintiffs’ counsel that I find privilege logs useful. I further informed Plaintiffs’
28 counsel that we had not withheld anything privileged communications (*see* Grossman

1 Decl. Exh. A). This was because we decided not to collect the attorney
2 communications file that contained only privileged information, knowing that
3 Plaintiffs had repeatedly expressed that they had no interest in privilege logs.

4 7. On October 3, 2016 I requested that Plaintiffs articulate the scope of what
5 they sought with respect to Defendants’ preparation of a privilege log, but Plaintiffs’
6 counsel refused to engage in such a discussion. I specifically stated to Mr. Grossman:

7 [Defendants] understand that [Plaintiffs’] views of privilege
8 logs is they are largely worthless (both you and Mr. Zavin
9 expressed this view—he back in June during our in person meet
10 and confer, and you noted they are generally “not productive”
11 in your 9/26 email), and while you previously agreed to
12 produce one (Mr. Zavin in June) you have never asked us for
13 one or expressed any interest in reviewing one until now. Are
14 you suggesting that we should log emails with other attorneys
15 Alec has spoken to about defending him in this case? Or about
16 anything? This request is way overbroad and does not extend
17 to anything relevant you are attempting to uncover in
18 prosecuting this action. If there are specific attorneys who you
19 are questioning whether the communication is privileged we are
20 happy to gather and log those. Otherwise, you are simply
21 raising this issue as a “tit for tat” to overburden Defendants,
22 without any regard to whether such communications bear any
23 relevance whatsoever to prosecuting your case.

24 Plaintiffs’ counsel did not respond to my October 3, 2016 inquiries. A true and
25 correct copy of the October 3, 2016 email to Plaintiffs’ counsel is attached hereto as
26 **Exhibit 1.**

27 8. On October 10, 2016, I further sought to clarify with Plaintiffs’ counsel
28 what they sought by Defendants’ production of a privilege log. I specifically stated to
Mr. Grossman:

[Defendants] are not refusing to produce a privilege log – we
did not collect any privileged communications in our own
documents, so did not withhold any to log I also offered
below to discuss what you were concerned about with respect
to documents that we may have withheld as privileged, and
what communications you expected to be in the production that
may have been withheld or not otherwise produced. You have
not provided a single substantive example If you want us
to go out and collect certain categories of privileged emails so
that we can log them, we are merely trying to understand what
you believe those should be so that we can evaluate the

1 proportionality of the request (not simply “any discussion that
2 Alec had with a lawyer,” which is what you requested below.)

3 Plaintiffs’ counsel again failed to provide a substantive response to my inquiry. A
4 true and correct copy of the October 10, 2016 email is attached hereto as **Exhibit 2**.

5 9. On October 19, 2016, after the deposition of Defendant Peters, I again
6 attempted to engage in a meaningful discussion regarding the privilege log with
7 Plaintiffs’ counsel. Mr. Grossman called me a “liar” for saying that we had not
8 “withheld” documents as privileged, and I again explained that the privileged
9 documents were all in one folder, and because Plaintiffs repeatedly expressed that
10 privilege logs were useless, we did not collect the folder, did not load them, did not
11 review them, so we did not “withhold” them. I then again asked if Plaintiffs wanted to
12 discuss some scope of what communications Plaintiffs want collected and logged, so
13 we could proceed with preparing a privilege log commensurate with the needs of this
14 case. Plaintiffs’ counsel was not responsive to my attempts to resolve this issue.

15 10. On October 27, 2016, I again sought to clarify with Plaintiffs’ counsel
16 what attorney communications Plaintiffs wanted Defendants to include in the privilege
17 log, and what the corresponding document request numbers from the discovery
18 Plaintiffs propounded were. I specifically stated to Mr. Grossman:

19 With respect to your request for a privilege log, I am perplexed
20 by your newfound desire to obtain a privilege log, as you and
21 Jonathan [Zavin] have both told me repeatedly that you find
22 them useless Is there actually something you are
23 specifically concerned about that you believe we have
24 improperly withheld as privileged? You have not identified any
25 type of communication that you question the privilege
26 designation (instead you reference communications that are
27 undoubtedly privileged), and surely you do not believe that
28 every communication Alec had with a lawyer is relevant to
Axanar or should be logged. I have never represented that Alec
has not had discussions with lawyers at any point. What I
intended with my last written communication on this was that
when we collected all Axanar documents, we intentionally did
not collect the attorney communications folder, so did not load
them into the system, as it is an entire folder that is dedicated to
Alec’s attorney discussions, for any matter, for any purpose.
What I have now asked you multiple times, is – what attorney
communications are you interested in us collecting, reviewing,

1 and including on the privilege log? I have still not been
2 provided with a response. And for what requests do you
believe these are called for? Perhaps it will be easier to discuss.

3 *See* Grossman Decl., Exh. G. Plaintiffs' counsel again failed to provide a substantive
4 response to my inquiry.

5

6 **Plaintiffs' October 3 Letter**

7 11. With respect to Plaintiffs' October 3, 2016 letter Plaintiffs, for some
8 inexplicable reason, chose to hand deliver the letter, only to me, while I was out of
9 town that week in Maui for an ABTL Conference. Plaintiffs' counsel did not include
10 other members of Defendants' defense team on the communication, and did not email
11 a courtesy copy to the rest of the defense team. This was a departure from how the
12 parties have communicated and sent correspondence the entire case, and is in direct
13 contravention to the practice of copying every member of both teams on all
14 communications the parties had previously engaged in. *See* Grossman Decl., Exh. G).
15 Because of this method of delivery, neither I nor anyone on my team saw the letter
16 when it was delivered, and did not discover the letter until Plaintiffs' counsel
17 mentioned it during the deposition of Alec Peters on October 19. It is curious that
18 with various depositions and other opportunities that we saw Plaintiffs' counsel during
19 this time (such as during the depositions of Rob Burnett (10/11), Diana Kingsbury
20 (10/12), Liz Kalodner (10/13)), Plaintiffs never bothered to ask about whether I had
21 received the letter, or attempted to engage in discussions about the items raised by the
22 letter.

23 12. On October 19, I immediately began investigating the issues raised
24 therein, and informed Plaintiffs I would take another look through any emails we had
25 collected and marked as non-responsive, which was about 160 emails. I personally
26 looked through every one, marked some of those that were remotely related to the
27 issues in this case for production, and as a result produced some additional emails on
28 October 25, 2016.

Axanar Expenditures

1
2 13. The financial documents Defendants previously produced, and which
3 Defendants produced an updated version of on October 28, 2016, contain highly
4 sensitive information. In particular, the financial documents contain Defendant Alec
5 Peters’ preliminary notes, which are currently being reviewed by an accountant and
6 have not yet been verified. Given the sensitivities about leaking premature
7 information to donors and other parties, serious harm to Defendants could result if the
8 financial documents are shared with third parties, mischaracterized and misused.
9 These concerns extend to third parties who have demonstrated their desire to leak
10 confidential information from this lawsuit in an effort to disparage Defendants. I
11 explained all of this in Exhibit G to the Declaration of David Grossman.

12 14. Plaintiffs’ assertion that Defendants’ designation is based on
13 “embarrassment” is utterly false and ignores the actual reasons Defendants provided
14 Plaintiffs in writing before they decided to file their *Ex Parte* Application. As I
15 explained, and which Plaintiffs have not responded, this includes that Plaintiffs have
16 been careless and disregarded confidentiality agreements in this case on several
17 occasions, including:

- 18 (a) In May 2016, after Mr. Zavin made an agreement with me that the fact of
19 the settlement discussions should remain confidential, Plaintiffs made a
20 public announcement about these ongoing discussions in violation of that
21 agreement;
- 22 (b) During the deposition of Alec Peters on October 19, Plaintiffs allowed a
23 non-attorney to view an “attorneys eyes only” document during a
24 deposition, and it was not until I caught it happening that Plaintiffs
25 acknowledged he should not have seen it and asked him to leave the
26 room;

1 (c) On multiple occasions, Plaintiffs have generally described the contents of
2 the financial documents in various pleadings without redacting or seeking
3 to file this information under seal (*see* Dkt. 55, 56); and

4 (d) Plaintiffs cited information from depositions in their *Ex Parte*
5 Application when it was agreed that all deposition testimony would be
6 treated as confidential until further discussion between the parties.

7 (e) Plaintiffs publicly filed Exhibit G to the Grossman Decl. even though I
8 marked it “CONFIDENTIAL” at the top given the discussion about the
9 financial information.

10 15. Understandably, Defendants do not have the utmost faith that Plaintiffs
11 abide by confidentiality agreements, or that Plaintiffs’ counsel are able to control their
12 clients when it comes to confidentiality designations. This is especially true because
13 there are third party witnesses in this case that have made it quite clear through social
14 media postings they seek to leak confidential information, and certain of Plaintiffs’
15 witnesses testified that they were in contact with these witnesses.

16 16. Despite the highly sensitive nature of the financial documents at issue,
17 Defendants are producing a revised version of this information that it will designate
18 “Confidential,” thus mootng the issue.

19
20 **A Second Deposition of Defendant Alec Peters**

21 17. Defendants have agreed on multiple occasions to allow Plaintiffs to
22 depose Defendant Alec Peters again, *before* Plaintiffs resorted to filing their *Ex Parte*
23 Application, including in an October 27, 2016 email to Plaintiffs’ counsel, and again
24 in person on October 27, 2016. Defendants agreed to make Defendant Peters
25 available for a second deposition for the express purpose of obtaining his testimony
26 regarding documents Plaintiffs have received from both Defendants and third parties
27 since October 19, 2016, the date of Defendant Peters’ first (but quite recent)
28 deposition. *See* Grossman Decl, Exh. G. This fact notwithstanding, Plaintiffs filed

EXHIBIT 1

Ranahan, Erin R.

From: Ranahan, Erin R.
Sent: Monday, October 03, 2016 7:10 PM
To: 'David Grossman'
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly; Mornin, Joe
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Dear David,

(1) Please let us know if 10/17 still works for Gossett-- we are now available on that date and want to confirm in the calendar;

(2) Can you confirm that Terry McIntosh's deposition in Seattle is taking place on 10/14, at the place and time specified in the subpoena? We want to arrange our travel plans for that ASAP.

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If there are specific attorneys who you are questioning whether the communication is privileged we are happy to gather and log those. Otherwise, you are simply raising this issue as a "tit for tat" to overburden Defendants, without any regard to whether such communications bear any relevance whatsoever to prosecuting your case. As we have explained, we actually see value in reviewing what communications you have dubbed privileged based on our discussions about the common interest privilege, as well as any communications with J.J. Abrams and Justin, which we don't believe are privileged at all based on your insistence that these are third parties that do not speak for Plaintiffs. We believe these communications are relevant to our defense against your assertion of willfulness, and to your claim that Plaintiffs have been damaged by Axanar, or have had their market impacted by Axanar. A privilege log will allow us to view the basis of the communications and whether an attorney was actually included, or whether privilege was potentially broken with the inclusion of third parties. Further, given that Paramount has not produced a single email whatsoever (which is remarkable for a Plaintiff), and your 30(b)(6) witness was clueless about whether any such collection had taken place, we are attempting to investigate whether you collected any emails at all, or whether you collected emails and then determined they were all privileged.

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Regards,

-Erin

Erin R. Ranahan
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D: +1 (213) 615-1835
F: +1 (213) 615-1750
<http://www.winston.com>

-----Original Message-----

From: David Grossman [mailto:dgrossman@loeb.com]
Sent: Thursday, September 29, 2016 6:13 PM
To: Ranahan, Erin R.
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

Again, we did not agree to produce a privilege log in June. However, we are working on one and will provide it by October 14. That is subject to your agreement that Alec Peters and Axanar will provide a log as well. You did not respond to my prior email where I pointed out that Alec Peters had spoken to counsel other than Winston & Strawn. If his position is that he has not spoken to any other attorneys about this matter, he can provide a declaration this week stating that.

We also have not received any verifications from Defendants yet - unless I am mistaken. Please let us know when those will be provided.

Finally, I have been asking for the last two weeks for all of the source documents that Defendants used to create the Axanar works - your response that any documents will be provided three days before a deposition is not sufficient. Please speak to your client and let me know what source documents were used in the creation of the Axanar works, other than films. They have publicly stated that documents - that have not yet been produced - were used to create the Axanar works, and yet those documents have not yet been provided.

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077
Fax: 310.919.3943

-----Original Message-----

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Wednesday, September 28, 2016 9:14 PM
To: David Grossman
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.

Subject: Re: Axanar-- Verifications, Common Interest, etc.

David,

Once again, when will Plaintiffs produce a privilege log? We have been requesting these since June, and it's part of your obligation under the Federal Rules to produce if you are withholding documents as privileged. It's long overdue and you are prejudicing our ability to review in time to challenge any items.

Can you produce this week?

Thanks,

-Erin

Sent from my iPhone

On Sep 26, 2016, at 5:24 PM, David Grossman <dgrossman@loeb.com<mailto:dgrossman@loeb.com>> wrote:

Erin,

We will not be providing a privilege log on 10/3, which is Rosh Hashanah. Further, we have not taken a "broader interpretation" of privilege than the defendants. Moreover, the conversation that you referred to which I had with Diana regarding pre-lawsuit joint defense communications was in a meet and confer relating to the 30b6 depositions and did not address documents. I said, in that discussion, that I was not aware of any pre-lawsuit discussions regarding whether or not to file this lawsuit that did not involve lawyers. If you are insisting on the production of a log, we will put one together in due course. As for your assertion that there is nothing privileged that has been withheld by Alec Peters and Axanar, I am not sure that is correct as Alec has publicly stated that he has spoken with other attorneys other than you - both before and after you were retained. If you are demanding a privilege log, the defendants need to provide one as well.

You have not responded to my question from last week regarding the third party witnesses you are representing and whether you will be producing their documents this week. These deponents were noticed for several weeks ago and while we agreed to move the depositions at your firm's request to October, we did not agree to delay the production of documents and I requested your agreement that those documents would be produced ahead of time. Please confirm that they will be provided by 9/30.

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]

Sent: Monday, September 26, 2016 3:11 PM

To: David Grossman; Jonathan Zavin; Jennifer Jason

Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.

Subject: RE: Axanar-- Verifications, Common Interest, etc.

Hi David,

Jonathan and I specifically discussed the privilege log point during the June meet and confer (which you and Jennifer were present for, though it was several months ago). Jonathan made the same point you make below, and I explained that I had recently had a motion where we obtained documents that had been designated privileged in another case, and that we do believe privilege logs can be useful, especially in a case like this, because you are withholding documents that we may want to challenge as not-privileged based on those that are party to the communications (which will be apparent from the privilege log itself).

We are not withholding anything from before the lawsuit was filed as privileged, and we are only withholding post-lawsuit communications that include an attorney on the communication. It sounds like you have taken a far broader interpretation of privileged; hence, the need to review your privilege log.

Please provide by 10/3.

Best,

-Erin

Erin R. Ranahan

Partner

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From: David Grossman [mailto:dgrossman@loeb.com]
Sent: Monday, September 26, 2016 3:03 PM
To: Ranahan, Erin R.; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

We will work on getting the verifications this week.

The common interest discussion related to whether that doctrine extended to pre-litigation discussions. I believe that it does. Purely non-legal communications (that are also not protected by work product) would likely not fall under that category. However, I don't believe any documents have been withheld that fall into that latter category.

I don't recall any agreement on a privilege log. They are generally not productive but if you are demanding that a log be provided, let us know when the defendants intend to provide theirs.

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
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From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Monday, September 26, 2016 2:44 PM
To: David Grossman; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: Axanar-- Verifications, Common Interest, etc.

Counsel,

I believe we are still waiting for Plaintiffs' verifications for all three sets of interrogatories. Can you please send those ASAP? Back in June you assured we would have these shortly. We would like them in advance of the depositions this week.

David-you and Diana discussed at the last in person meet and confer (9/8) whether Plaintiffs were standing by the position that communications between non-lawyers at CBS and Paramount about the lawsuit are covered by a "comment interest" privilege. You were going to look into this and get back to us. If you are standing by this, please provide the authority for this. We also understood from our June meet and confer that you would be producing a privilege log, which should include any of the documents you are withholding on this basis. Please advise.

Also, we are confirming that the depositions Wednesday and Friday are starting at 10am. Please provide us the name of all attendees from your side so that we can add to the security list.

Best,

-Erin

Erin R. Ranahan

Partner

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winston.com<<http://www.winston.com>>

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EXHIBIT 2

Ranahan, Erin R.

From: Ranahan, Erin R.
Sent: Monday, October 10, 2016 4:13 PM
To: 'David Grossman'
Cc: Jonathan Zavin; Leiden, Diana Hughes; Oki, Kelly
Subject: RE: Axanar-- Verifications, Common Interest, etc.

David--

A couple of responses to the substantive issues below:

(1) We are not refusing to produce a privilege log-- we did not collect any privileged communications in our documents, so did not withhold any to log. Conversely, there are at least 111 separate documents that you DID produce with mysterious redactions on them, including on emails with no attorney on them at all (such as emails between Burke and Van Citters. e.g., PL0006993). You have also informed us that you consider other documents privileged that do not include lawyers (e.g., between Paramount and CBS). We are entitled to understand the basis of those withholdings. I also offered below to discuss what you were concerned about with respect to documents that we may have withheld as privileged, and what communications you expected to be in the production that may have been withheld or not otherwise produced. You have not provided a single substantive example. And Mr. Zavin did agree during our in person meet and confer in June to provide a privilege log for Plaintiffs' documents, and there was never any request that we provide one until your email below. If you want us to go out and collect certain categories of privileged emails so that we can log them, we are merely trying to understand what you believe those should be so that we can evaluate the proportionality of the request (not simply "any discussion that Alec had with a lawyer," which is what you requested below.)

(2) Of course we have discussed this with our clients, and believe we have already produced the source documents that they maintained a physical copy of. Again, I invite you to let me know if you are aware of any that are missing, or you are free to ask the witnesses about those source documents in their depositions.

Best,

-Erin

Erin R. Ranahan
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-----Original Message-----

From: David Grossman [mailto:dgrossman@loeb.com]
Sent: Tuesday, October 04, 2016 5:36 PM
To: Ranahan, Erin R.
Cc: Jonathan Zavin; Leiden, Diana Hughes; Oki, Kelly
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

I have been checking with Gossett's counsel and he doesn't know if Gossett can do the 17th anymore. Gossett is working on a project and proposed that we take him on Saturday the 22nd, which I can do if that works from your end. He is also going to figure out if there is a weekday(or days) that he can make work, including the 17th.

Terry McIntosh works nights and is requesting an afternoon start date, so we will have to adjust the time and potentially the date as well. I am waiting on him to confirm his availability and will let you know as soon as I have it.

With respect to your third paragraph, I disagree with everything you have stated. You can refer to my prior emails regarding the privilege log issue - there was no agreement in June with Jonathan and the meeting you reference included me and Jen Jason, who later emailed a confirmation letter describing the discovery items that had been agreed to. And there certainly never would have been an agreement to unilaterally provide a privilege log if Defendants were not willing to do so. Please provide a basis for your refusal to provide a privilege log for your clients.

Regarding production of the materials that your clients used to create the Axanar works, I requested that you speak to your clients and provide confirmation that all such documents have been produced. Your email is not responsive to that request. Please respond and confirm that all documents that were used to create the Axanar works have been produced, and that you have confirmed that fact with your clients (including Rob Burnett and Bill Hunt).

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077
Fax: 310.919.3943

-----Original Message-----

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Monday, October 03, 2016 7:10 PM
To: David Grossman
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly; Mornin, Joe
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Dear David,

(1) Please let us know if 10/17 still works for Gossett-- we are now available on that date and want to confirm in the calendar;

(2) Can you confirm that Terry McIntosh's deposition in Seattle is taking place on 10/14, at the place and time specified in the subpoena? We want to arrange our travel plans for that ASAP.

(3) As far as the privilege log: thank you for agreeing to produce a privilege log 10/14. We understand that your views of privilege logs is they are largely worthless (both you and Mr. Zavin have expressed this view--he back in June during our in person meet and confer, and you noted they are generally "not productive" in your 9/26 email), and while you previously agreed to produce one (Mr. Zavin in June) you have never asked us for one or expressed any interest in reviewing one until now. Are you suggesting that we should log emails with other attorneys Alec has spoken to about defending him in this case? Or about anything? This request is way overbroad and does not extend to anything relevant you are attempting to uncover in prosecuting this action.

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Regards,

-Erin

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-----Original Message-----

From: David Grossman [mailto:dgrossman@loeb.com]
Sent: Thursday, September 29, 2016 6:13 PM
To: Ranahan, Erin R.
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

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David Grossman
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10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077
Fax: 310.919.3943

-----Original Message-----

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Wednesday, September 28, 2016 9:14 PM
To: David Grossman
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: Re: Axanar-- Verifications, Common Interest, etc.

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Sent from my iPhone

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Erin,
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From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Monday, September 26, 2016 3:11 PM
To: David Grossman; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
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Please provide by 10/3.

Best,

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Erin R. Ranahan

Partner

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Sent: Monday, September 26, 2016 3:03 PM
To: Ranahan, Erin R.; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: RE: Axanar-- Verifications, Common Interest, etc.

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From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Monday, September 26, 2016 2:44 PM
To: David Grossman; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: Axanar-- Verifications, Common Interest, etc.

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[winston.com](http://www.winston.com)<<http://www.winston.com>>

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