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11 CORPORATION and CBS STUDIOS  
INC.  
12

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
a Delaware corporation,  
18

19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a  
California corporation; ALEC PETERS,  
an individual, and DOES 1-20,  
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23 Defendants.  
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Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' MOTION IN  
LIMINE NO. 1 TO EXCLUDE  
ALTERED FINANCIAL  
STATEMENT AND ITS  
CONTENTS, OR ANY OF THE  
POST-LITIGATION  
TRANSACTIONS REFLECTED  
THEREIN**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 Defendants’ altered financial statement for Axanar Productions, which defendant  
8 Alec Peters created after his first deposition in this case, as well as testimony  
9 regarding such financial statement and any testimony or evidence regarding  
10 financial transactions by Axanar Productions and Peters subsequent to the  
11 commencement of the litigation. This altered financial statement, prepared for the  
12 purpose of this litigation, [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED].

17 After his first deposition, wherein Peters was examined [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 [REDACTED]. This post-lawsuit document is also hearsay,  
24 because it was created for the purpose of this litigation, and testimony regarding this  
25 altered financial statement, or the purported financial transactions reflected in the  
26 altered statement, would be misleading and prejudicial.

27 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
28 counsel. This Motion is based on this Notice, the accompanying Memorandum of

1 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
2 and on such further argument, evidence and authority as may be offered at the time  
3 of hearing.  
4

5 Dated: December 16, 2016

6 LOEB & LOEB LLP  
7 JONATHAN ZAVIN  
8 DAVID GROSSMAN  
9 JENNIFER JASON

10 By: /s/ Jennifer Jason  
11 Jennifer Jason  
12 Attorneys for Plaintiffs  
13 PARAMOUNT PICTURES  
14 CORPORATION and CBS STUDIOS  
15 INC.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) filed this lawsuit on December 29, 2015, based on works created by Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) that infringe Plaintiffs’ copyrighted Star Trek works. Plaintiffs have asserted, in response to Defendants’ fair use defense, that Defendants profited from their infringement and that the Axanar works were a commercial venture. The evidence supporting Peters’ commercial endeavor, and his profit from infringing Plaintiffs’ works includes a financial statement for Axanar created in the normal course of business in October 2015 by Defendants, as well as Mr. Peters’ testimony, [REDACTED]

[REDACTED]. In addition, the financial statement and Peters’ initial testimony establish that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

After his first deposition, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

Plaintiffs anticipate that Defendants will seek to introduce evidence, and argument relating to this altered financial statement (and the transactions reflected therein) that Peters created *after* this litigation was filed and after his initial

1 deposition. The altered financial statement [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]. This altered financial statement and any testimony regarding it,  
5 are not relevant to the case and, as such, they should be excluded at trial.

6 **II. DISCUSSION**

7 **A. The Altered Financial Statement, Its Contents, and Testimony**  
8 **Discussing It are Irrelevant and Should be Excluded.**

9 Federal Rule of Evidence 401 defines “relevant evidence” as “evidence  
10 having any tendency to make the existence of any fact that is of consequence to the  
11 determination of the action more probable or less probable than it would be without  
12 the evidence.” See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir.  
13 2007)(citation omitted).

14 This case was filed on December 29, 2015. Declaration of Jennifer Jason  
15 (“Jason Decl.”), ¶ 3. In response to Plaintiffs’ document requests in this case, Mr.  
16 Peters produced a financial statement for Axanar Productions which had been  
17 created in the normal course of business in October 2015. Jason Decl., ¶ 6, Ex B.  
18 At his first deposition in this case, [REDACTED]  
19 [REDACTED]. *Id.* He testified, [REDACTED]  
20 [REDACTED]. *Id.* Peters [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]. *Id.* He also [REDACTED]  
25 [REDACTED]  
26 [REDACTED]. *Id.* [REDACTED]  
27 [REDACTED]. *Id.* [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
 2 [REDACTED]. *Id.* [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]. *Id.* [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]. *Id.*

7 After his first deposition, [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]. Jason Decl., ¶ 7.

10 After he was deposed [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]

13 [REDACTED]. After he was ordered to attend a second  
 14 deposition, due to his failure to produce documents prior to his initial deposition,  
 15 Mr. Peters [REDACTED]

16 [REDACTED]  
 17 [REDACTED]. Jason Decl., ¶ 7, Ex.  
 18 A (Peters tr. at 395:14-22). The altered financial statement created by Mr. Peters

19 after his initial deposition, [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED].

23 Jason Decl., ¶¶ 7-8, Ex. C.

24 Defendants have asserted the defense of fair use. Therefore, Plaintiffs will  
 25 seek to introduce evidence regarding [REDACTED]  
 26 [REDACTED], which are relevant to  
 27 Plaintiffs' argument regarding the commercial nature of the Axanar works, and the  
 28 benefits/profits Peters received and/or intended to receive from Axanar. On the

1 other hand, Defendants’ [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED].

5 The altered financial document itself is hearsay because it was prepared for  
6 litigation. *PEAT, Inc. v. Vanguard Research, Inc.*, 378 F.3d 1154, 1160-61 (11th  
7 Cir. 2004)(document prepared during the course of litigation to respond to discovery  
8 request was hearsay because summary records prepared for litigation are  
9 inadmissible). In addition, the jury’s consideration of Peters’ claim that [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] would be highly prejudicial and very confusing to the jury,  
13 which must only consider the actions Peters took prior to the filing of this lawsuit.  
14 *Escrow Disbursement Ins. Agency, Inc. v. Am. Title & Ins. Co.*, 551 F. Supp. 302,  
15 305 (S.D. Fla. 1982)(“ This report was prepared two years after the filing of the  
16 instant lawsuit. The implication is strong that it was prepared with the pending  
17 litigation in mind. Thus, even if the report was not hearsay; or, if hearsay, was  
18 admissible under the public records exception, it is still inadmissible under FRE 403  
19 as it is unduly prejudicial.”). Further, Peters’ claim that [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED].

23 Accordingly, the Court should exclude any evidence and argument relating to  
24 the altered financial statement and its contents, or any of the financial transactions  
25 after the commencement of the litigation.

26 **III. CONCLUSION**

27 For the foregoing reasons, Plaintiffs request that the altered financial  
28 statement, its contents, and testimony discussing the altered financial statement and

1 its contents, or any of the post-litigation transactions reflected therein, should be  
2 excluded from the trial.

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Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

By: /s/ Jennifer Jason  
Jennifer Jason  
Attorneys for Plaintiffs  
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13 UNITED STATES DISTRICT COURT  
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16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
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19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a  
California corporation; ALEC PETERS,  
an individual, and DOES 1-20,  
22

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

**PLAINTIFFS' MOTION IN  
LIMINE NO. 2 TO EXCLUDE  
SCRIPTS CREATED AFTER THE  
LITIGATION WAS FILED AND  
TESTIMONY DISCUSSING  
THEM**

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

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 scripts created after this litigation was filed on December 29, 2015, as well as  
8 testimony regarding such scripts. Scripts created after this litigation was filed bear  
9 no relevance on this case, because Plaintiffs have not filed suit based on these  
10 scripts.

11 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
12 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
13 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
14 and on such further argument, evidence and authority as may be offered at the time  
15 of hearing.

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Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

By: /s/ Jennifer Jason  
Jennifer Jason  
Attorneys for Plaintiffs  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) filed this lawsuit on December 29, 2015, based on works created by Defendants Axanar Productions Inc. and Alec Peters (collectively, “Defendants”) that infringe Plaintiffs’ copyrighted Star Trek works, including a script that Defendants created with the intention of turning it into a full-length “independent Star Trek film.” Plaintiffs anticipate that Defendants will seek to introduce evidence and argument relating to versions of scripts that they created *after* this litigation was filed. Such scripts, and any testimony regarding them, are not relevant to the case because Plaintiffs have not filed suit regarding such scripts and, as such, they should be excluded at trial.

**II. DISCUSSION**

**A. Post-Litigation Scripts and Testimony Discussing Them are Irrelevant and Should be Excluded.**

Federal Rule of Evidence 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *See United States v. Curtin*, 489 F.3d 935, 948 (9th Cir. 2007)(citation omitted).

This case was filed on December 29, 2015. Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3. One of the infringing works identified in Plaintiffs’ complaint is the Axanar Script, which Defendants were in the process of converting into a full-length film. Mr. Peters testified that [REDACTED]  
[REDACTED]  
[REDACTED]. *Id.*, ¶ 6, Ex. A, ¶ 7, Ex. C. Defendants had already shot one scene of the film, the Vulcan Scene. Jason Decl., ¶ 8, Ex. A. Plaintiffs anticipate that Defendants will introduce evidence or

1 arguments of later versions of the script that they created after this litigation was  
2 filed, including version 10.0-NX, which is dated July 1, 2016.

3 Any versions of the script created after this litigation was filed (or any  
4 testimony regarding them) bear no relevance to Plaintiffs' claims for infringement  
5 because Plaintiffs have not filed suit based on these scripts. Defendants could  
6 continue to prepare scripts ad infinitum and such scripts would be irrelevant because  
7 they are not the subject of this lawsuit. Nothing in any script created after the  
8 lawsuit was filed could be probative of whether the November 26, 2015 script, or  
9 any movie based on that script, infringes Plaintiffs' rights, which is the issue for trial  
10 in this case. *See Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528  
11 U.S. 167, 189 (2000) ("It is well settled that a defendant's voluntary cessation of a  
12 challenged practice does not deprive a federal court of its power to determine the  
13 legality of the practice") (internal quotations and citation omitted). If allowed to  
14 introduce later created scripts, Defendants could render any trial virtually impossible  
15 by simply creating yet another new script the day before the trial. The jury's  
16 consideration of evidence of different scripts created after this litigation would be  
17 irrelevant, highly prejudicial and very confusing to the jury, which must only  
18 consider the scripts at issue. *Chlopek v. Fed. Ins. Co.*, 499 F.3d 692, 700 (7th Cir.  
19 2007) (trial court properly excluded evidence of subsequent remedial measures,  
20 which would have been unfairly prejudicial).

21 Accordingly, the Court should exclude any evidence and argument relating to  
22 scripts created after December 29, 2015.

23 **III. CONCLUSION**

24 For the foregoing reasons, Plaintiffs request that scripts created after the  
25 litigation was filed and testimony discussing them be excluded from trial.

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Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

By: /s/ Jennifer Jason  
Jennifer Jason  
Attorneys for Plaintiffs  
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CORPORATION and CBS STUDIOS  
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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
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16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
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19 Plaintiffs,

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

**PLAINTIFFS' MOTION IN  
LIMINE NO. 3 TO EXCLUDE  
TESTIMONY OR DOCUMENTS  
BY J.J. ABRAMS AND JUSTIN  
LIN AND THEIR PUBLIC  
STATEMENTS, OR ANYTHING  
RELATED TO THEIR PUBLIC  
STATEMENTS OR DOCUMENTS  
REGARDING THIS MATTER**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 the testimony of J.J. Abrams and Justin Lin and their public statements regarding the  
8 litigation because they are not the copyright owners of the infringed works, or  
9 authorized to speak on behalf of the copyright owners, and their testimony or  
10 personal opinions of fan films in general are irrelevant, particularly given the fact  
11 that at the time of these statements they had not seen all of the Defendants’ works at  
12 issue.

13 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
14 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
15 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
16 and on such further argument, evidence and authority as may be offered at the time  
17 of hearing.

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Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

By: /s/ Jennifer Jason  
Jennifer Jason  
Attorneys for Plaintiffs  
PARAMOUNT PICTURES  
CORPORATION and CBS STUDIOS  
INC.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) will seek to introduce the testimony and public statements regarding this lawsuit by a producer/director and director of certain Star Trek Films, J.J. Abrams and Justin Lin. Testimony from individuals such as these, who are neither the copyright owners (Plaintiffs are) nor employees/authorized representatives of Plaintiffs with respect to this matter, is not relevant and should be excluded, particularly where those individuals have not even seen the Axanar works at issue.

**II. The Abrams and Lin Testimony is Irrelevant and Should be Excluded**

Federal Rule of Evidence 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir. 2007)(citation omitted).

J.J. Abrams is a director and producer of two Star Trek films and a producer of one additional Star Trek film, and Justin Lin is the director of the 2016 film *Star Trek Beyond*. Neither has been involved with any of the Star Trek television series. Plaintiffs anticipate that Defendants will seek to introduce testimony by J.J. Abrams regarding [REDACTED]

[REDACTED]. Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3, Ex. A. Similarly, Plaintiffs anticipate that Defendants will seek to introduce testimony by Justin Lin regarding [REDACTED]

[REDACTED]  
[REDACTED]



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[REDACTED]

[REDACTED]. *Id.* Plaintiffs also anticipate that Defendants will seek to introduce the public statements made by Abrams and Lin about this lawsuit. All of this evidence is irrelevant.

This testimony and related public statements of persons such as Lin and Abrams are not relevant because they are not the copyright holders of the Star Trek works, nor are they employees of or authorized representatives of Plaintiffs in this matter. Any expression of their personal opinions is not probative of any issue in this case, and given the lack of probative value, the possibility of prejudice far outweighs the value of any testimony or evidence regarding their statements or opinions. *Head v. Glacier Nw., Inc.*, 413 F.3d 1053, 1062-63 (9th Cir. 2005) (lay witness opinion excluded when it was not helpful to the jury). Moreover, at issue in this case are Defendants’ infringing Axanar works, which include *Prelude to Axanar*, the Vulcan Scene, and the Axanar Script. [REDACTED]

[REDACTED]

[REDACTED]. Jason Decl., ¶ 4, Exs. B and C. Accordingly, any purported position taken by them as to this lawsuit lacks foundation.

Further, any statements regarding fan films are irrelevant as discussed in Plaintiffs’ Motion in Limine No. 6. Moreover, any statements by Abrams regarding Axanar as a “fan film” are without foundation because Abrams [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Jason Decl., ¶ 4, Ex. B.

Therefore, any statements made by Abrams regarding fan films is irrelevant for the additional reason that the Axanar works, [REDACTED]

[REDACTED]

[REDACTED].

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request that testimony or documents by  
3 J.J. Abrams and Justin Lin and their public statements, or anything related to their  
4 public statements or documents regarding this matter be excluded from trial.

5  
6 Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

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9 By: /s/ Jennifer Jason  
10 Jennifer Jason  
11 Attorneys for Plaintiffs  
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CORPORATION, a Delaware  
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18 Plaintiffs,

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an individual, and DOES 1-20,

22 Defendants.  
23

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

**PLAINTIFFS' MOTION IN  
LIMINE NO. 4 TO EXCLUDE  
TESTIMONY OR DOCUMENTS  
BY REECE WATKINS**

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

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4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 the testimony and documents of Reece Watkins (“Watkins”). Watkins’ testimony is  
8 primarily inappropriate lay opinion, and is otherwise hearsay and, anecdotal and of  
9 no probative value.

10 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
11 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
12 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
13 and on such further argument, evidence and authority as may be offered at the time  
14 of hearing.

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Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
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By: /s/ Jennifer Jason

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PARAMOUNT PICTURES  
CORPORATION and CBS STUDIOS  
INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively,  
4 “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters  
5 (collectively, “Defendants”) will seek to introduce the testimony and documents of  
6 Reece Watkins (“Watkins”), including his personal opinion on the impact of  
7 *Prelude to Axanar* on Plaintiffs’ copyrighted works. Plaintiffs also anticipate that  
8 Defendants will seek to introduce inadmissible and irrelevant hearsay evidence for  
9 Watkins. Watkins is not a qualified expert and may not testify as to his opinion, or  
10 about facts outside of his personal knowledge, under Federal Rule of Evidence 602.  
11 Any admissible testimony Watkins may present to the jury will be anecdotal to the  
12 point of irrelevance. Therefore, the Court should exclude testimony from this  
13 witness in its entirety.

14 **II. DISCUSSION**

15 **A. Watkins is a Lay Witness Who May not Provide Opinion**  
16 **Testimony.**

17 Under Federal Rule of Evidence 602, “[a] witness may testify to a matter only  
18 if evidence is introduced sufficient to support a finding that the witness has personal  
19 knowledge of the matter. Evidence to prove personal knowledge may consist of the  
20 witness’s own testimony.” Where lay witnesses give their opinions, their testimony  
21 should be limited to “those opinions or inferences which are (a) rationally based on  
22 the perception of the witness and (b) helpful to a clear understanding of the witness’  
23 testimony or the determination of a fact at issue.” *United States v. LaPierre*, 998  
24 F.2d 1460, 1465 n.4 (9th Cir. 1993) (quoting Federal Rule of Evidence 701).

25 Based on Watkins’ declaration filed in support of Defendants’ motion for  
26 summary judgment, Watkins will likely attempt to testify regarding his own  
27 experience viewing *Prelude to Axanar*, and how it allegedly renewed his interest in  
28 Plaintiffs’ merchandise. Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3, Ex. A.

1 Through the production of a Facebook post from October 25, 2016, Watkins will  
2 likely also present his personal belief that *Prelude to Axanar* could not cause harm  
3 to Plaintiffs. *Id.* Watkins may support this opinion by showing a number of  
4 positive replies to his Facebook post, most of which express similar opinions. *Id.*

5 Watkins has never been presented by Defendants as an expert, but, as outlined  
6 above, this witness will likely offer extensive opinion testimony for consumption by  
7 the jury. As a lay witness, Watkins risks usurping the function of the jury by  
8 presenting his personal opinions regarding Star Trek fan films and the public's  
9 reaction thereto. In this case, the Court should exclude the testimony of Watkins  
10 except to the extent it relates to his own personal knowledge.

11 **B. The Testimony of Watkins Includes Inadmissible Hearsay.**

12 Plaintiffs also move to exclude the expected testimony of Watkins because it  
13 will include, or will be based upon, inadmissible hearsay. Such testimony and  
14 evidence is inadmissible under Federal Rules of Evidence 801 and 802 and related  
15 to statutory and case authority. *See, e.g., Anderson v. United States*, 417 U.S. 211,  
16 219-20 (1974) (“[t]he primary justification for the exclusion of hearsay is the lack of  
17 any opportunity for the adversary to cross-examine the absent declarant whose out-  
18 of-court-statement is introduced into evidence”).

19 The potential testimony and documentary evidence of Watkins will rely  
20 extensively, if not exclusively, on hearsay. In his declaration, Watkins attaches a  
21 Facebook post made by him on October 25, 2016, as well as fifty-six replies thereto.  
22 Jason Decl. ¶ 3, Ex. A. Each of these replies will likely be presented by Watkins for  
23 its truth, principally that at least those people were also triggered to purchase  
24 Plaintiffs' merchandise by watching *Prelude to Axanar*. However, Watkins does  
25 not have any actual knowledge of the activities of any of the people who replied to  
26 his Facebook post. Therefore, to the extent Watkins testifies about the contents of  
27 these Facebook replies, or presents them to the jury, he will be providing  
28 inadmissible hearsay. If Defendants wish to relay the experience of any of Watkins'

1 responders, they must produce these individuals so that Plaintiffs are given the  
2 opportunity of cross-examination. Otherwise, this testimony and evidence should be  
3 excluded.

4 **C. The Testimony Watkins is Irrelevant, Anecdotal and Unduly**  
5 **Prejudicial.**

6 Federal Rule of Evidence 401 defines “relevant evidence” as “evidence  
7 having any tendency to make the existence of any fact that is of consequence to the  
8 determination of the action more probable or less probable than it would be without  
9 the evidence.” See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir.  
10 2007)(citation omitted).

11 Watkins’ non-hearsay testimony is irrelevant, completely anecdotal, and non-  
12 probative in the context of *Star Trek*’s worldwide popularity. Presumably,  
13 Defendants will use Watkins’ testimony to illustrate the fact that at least one fan of  
14 *Prelude to Axanar* also spent money on merchandise licensed by Plaintiffs. It is, of  
15 course, possible that Watkins purchased Plaintiffs’ merchandise because he watched  
16 *Prelude to Axanar*. However, that fact is irrelevant to the jury’s inquiry in this case,  
17 which does not turn on whether Plaintiffs’ licensed merchandise has experienced a  
18 de minimis benefit from *Prelude to Axanar*. Instead, market harm exists where, “if  
19 the challenged use ‘should become widespread, it would adversely affect the  
20 potential market for the copyrighted work’... This inquiry must take account not  
21 only of harm to the original but also of harm to the market for derivative works.”  
22 *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 568 (1985)  
23 (citation omitted). Watkins’ purely anecdotal claim that *Prelude to Axanar* inspired  
24 him to engage more with Plaintiffs’ merchandise is irrelevant to whether  
25 Defendants’ film does or does not occupy Plaintiffs’ marketplace for Plaintiffs’ *Star*  
26 *Trek*. If anything, Watkins’ potential testimony seems to indicate that *Prelude to*  
27 *Axanar* is the exact type of work that Plaintiffs may create and rely upon to generate  
28 interest in their merchandise. This testimony is irrelevant and should be excluded.

1           Furthermore, the fact that a single fan of *Star Trek* purchased Plaintiffs’  
2 merchandise after watching *Prelude to Axanar* is too anecdotal to offer any  
3 probative value for the jury. For over fifty years, *Star Trek* has been a global  
4 entertainment phenomenon with millions of fans. The actions of a single fan, who  
5 also happens to be a guest-blogger for Axanar.com and a self-described “staunch  
6 supporter” of Defendants, would present an unfair and prejudicial representation of  
7 *Star Trek* fans in general to the jury. Jason Decl. ¶¶ 4-5, Exs. B-C. Therefore,  
8 Watkins’ testimony should be excluded.

9           **III. CONCLUSION**

10           For the foregoing reasons, Plaintiffs request that testimony or documents by  
11 Watkins regarding this matter be excluded from trial.

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Dated: December 16, 2016

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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
a Delaware corporation,  
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19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a  
California corporation; ALEC PETERS,  
an individual, and DOES 1-20,  
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23 Defendants.  
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Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' MOTION IN  
LIMINE NO. 5 TO EXCLUDE  
TESTIMONY AND DOCUMENTS  
OF JONATHAN LANE**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 as irrelevant or improper all testimony and documents of Jonathan Lane, including  
8 his personal opinions regarding the impact of *Prelude to Axanar* on Plaintiffs’ Star  
9 Trek films and television series.

10 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
11 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
12 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
13 and on such further argument, evidence and authority as may be offered at the time  
14 of hearing.

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Dated: December 16, 2016

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INC.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) will seek to introduce the testimony and documents of Jonathan Lane (“Lane”), including his personal opinions on *Prelude to Axanar* and his compendium of *Star Trek* fan films. This witness is not a qualified expert and he may not present opinion testimony, or testify regarding facts outside of his personal knowledge, under Federal Rule of Evidence 602. Additionally, his expected testimony will be irrelevant to this case and prohibitively time consuming. Therefore, the Court should exclude testimony from this witness in its entirety.

### II. DISCUSSION

#### **A. Lane is a Lay Witnesses Who May not Provide Opinion Testimony.**

Under Federal Rule of Evidence 602, “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony.” Where lay witnesses give their opinions, their testimony should be limited to “those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact at issue.” *United States v. LaPierre*, 998 F.2d 1460, 1465 n.4 (9th Cir. 1993) (quoting Federal Rule of Evidence 701).

Based on Lane’s declaration filed in support of Defendants’ motion for summary judgment, Lane will likely testify that he is a “Star Trek fan,” with “extensive knowledge...of, Star Trek fan fiction.” Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3, Ex. A. Based solely on this qualification, Defendants will attempt to introduce a document of over one hundred pages authored by Lane purporting to give a comprehensive overview of every Star Trek fan film ever made. *Id.* This document includes Lane’s own synopses of each film’s plot, quality, and

1 impact on the industry. *Id.* Apart from links to YouTube, where most films are  
2 available for viewing, the document is a complete work of opinion.

3 Lane has never been presented by Defendants as an expert, but, as outlined  
4 above, he will likely offer extensive opinion testimony for consumption by the jury.  
5 As a lay witness, Lane risks usurping the function of the jury by presenting his  
6 personal opinions regarding Star Trek fan films and the public's reaction thereto.  
7 Therefore, the Court should exclude the testimony of Lane except to the extent it  
8 relates to his own personal knowledge.

9 **B. The Testimony of Lane Includes Inadmissible Hearsay.**

10 Plaintiffs also move to exclude the expected testimony of Lane because it will  
11 include, or will be based upon, inadmissible hearsay. Such testimony and evidence  
12 is inadmissible under Federal Rules of Evidence 801 and 802 and related statutory  
13 and case authority. *See, e.g., Anderson v. United States*, 417 U.S. 211, 219-20  
14 (1974) (“[t]he primary justification for the exclusion of hearsay is the lack of any  
15 opportunity for the adversary to cross-examine the absent declarant whose out-of-  
16 court-statement is introduced into evidence”).

17 The potential testimony and documentary evidence of Lane will rely  
18 extensively, if not exclusively, on hearsay. Lane's compendium of Star Trek fan  
19 films presents hundreds of anecdotes and data points about dozens of fan films.  
20 Jason Decl. ¶ 3, Ex. A. Other than YouTube links, this document is largely  
21 unsourced. *Id.* Lane does not claim personal knowledge of any specific fact  
22 presented, nor does he explain how he came to know the contents of this document.  
23 *Id.* The only reasonable assumption is that *someone* told Lane these facts, or else he  
24 read them *somewhere*. In either case, these facts are hearsay and inadmissible under  
25 the Federal Rules of Evidence. Therefore, any testimony by Lane about Star Trek  
26 fan films, as well as his compendium of fan films, should be excluded.

27 **C. The Testimony of Lane is Irrelevant.**

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1 Federal Rule of Evidence 401 defines “relevant evidence” as “evidence  
2 having any tendency to make the existence of any fact that is of consequence to the  
3 determination of the action more probable or less probable than it would be without  
4 the evidence.” See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir. 2007)  
5 (citation omitted).

6 Lane’s compendium of fan-produced Star Trek films is completely irrelevant  
7 to this matter. For the reasons set forth in Plaintiffs’ Motion in Limine No. 6,  
8 evidence regarding Star Trek fan films should be excluded. Also, presumably,  
9 Defendants will introduce Lane’s testimony to highlight the number and type of  
10 films that have been produced by Star Trek fans without legal action by Plaintiffs.  
11 However, Plaintiffs’ decision to proceed against infringers other than Defendants  
12 also has no bearing on liability. Plaintiffs are under no obligation to sue every entity  
13 using its intellectual property and may single out a particular wrongdoer for a  
14 variety of reasons. See *Paramount Pictures Corp. v. Carol Publ’g Grp.*, 11 F. Supp.  
15 2d 329, 336 (S.D.N.Y. 1998) (the court held that a copyright holder may pursue a  
16 single infringer for reasons such as a change in corporate policy and that, “the lack  
17 of earlier litigation against other similar works is simply irrelevant.”). There is also  
18 no probative value to Lane’s testimony or compendium with respect to Defendants’  
19 fair use defense. The issue for trial regarding market harm is whether if works like  
20 the Axanar works, self-described by Defendants as professional independent Star  
21 Trek films, made by professional actors and professional technical personnel (some  
22 of whom worked on authorized Star Trek works), that were produced and intended  
23 to be produced with a budget of well over \$1 million,<sup>1</sup> were to proliferate, whether  
24 that would cause market harm to Plaintiffs. This has nothing to do with the types of  
25 “fan films” in Lane’s compendium, which are completely irrelevant to this issue.

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28 <sup>1</sup> It is actually clear that if Defendants were allowed to finish the Axanar full length film, its budget would substantially exceed \$2 million.

1 Admitting Lane’s compendium of fan films would be an extreme and  
2 unnecessary burden on the jury’s time and the resources of the Court. It would  
3 likely take days to introduce each of the dozens of films analyzed by Lane and  
4 establish what, if any, elements of *Star Trek* each film infringes, the quality of the  
5 films, the degree of professionalism with respect to each film, the production budget  
6 for each film, the profit made by the creators of each film, etc. There is simply no  
7 probative value, though significant cost, in conducting dozens of miniature trials  
8 regarding fan films that are fundamentally irrelevant to this case.

9 **III. CONCLUSION**

10 For the foregoing reasons, Plaintiffs request that testimony or documents by  
11 Lane regarding this matter be excluded from trial.

12  
13 Dated: December 16, 2016

LOEB & LOEB LLP  
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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
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16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
a Delaware corporation,

18 Plaintiffs,

19 v.

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

22 Defendants.  
23

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

**PLAINTIFFS' MOTION IN  
LIMINE NO. 6 TO EXCLUDE  
TESTIMONY AND DOCUMENTS  
REGARDING STAR TREK FAN  
FILMS**

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

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 evidence or argument at trial relating to Star Trek fan films (other than the Axanar  
8 works which now, after the litigation commenced, claim to be fan films), including  
9 whether Plaintiffs have filed suit against other creators of fan films. Any such  
10 evidence is entirely irrelevant to the case at hand and should be excluded because  
11 there is no special exemption in copyright law for fan films, any actions that  
12 Plaintiffs have or have not taken against other alleged infringers are irrelevant, and  
13 an analysis of each of these fan films would result in the conducting of a miniature  
14 trial regarding each fan film, or dozens of trials within a trial. In addition, such  
15 evidence would confuse the jury.

16 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
17 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
18 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
19 and on such further argument, evidence and authority as may be offered at the time  
20 of hearing.

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Dated: December 16, 2016

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CORPORATION and CBS STUDIOS  
INC.



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios  
4 Inc. (“CBS”) (collectively, “Plaintiffs”) anticipate that Defendants Axanar  
5 Productions, Inc. and Alec Peters (collectively, “Defendants”) will attempt to  
6 introduce evidence or argument at trial relating to Star Trek fan films, and how  
7 Plaintiffs purportedly have not filed suit against other creators of fan films.

8 Any such evidence is entirely irrelevant to the case at hand and should be  
9 excluded. The concept of “fan films” bears no relevance in copyright law.  
10 Likewise, whether Plaintiffs have taken action against other infringers of their works  
11 is legally irrelevant, and such evidence would confuse the jury and would lead to the  
12 necessity of conducting dozens of miniature trials regarding fan films that are  
13 fundamentally irrelevant to this case.

14 **II. DISCUSSION**

15 **A. Testimony and Documents Regarding Fan Films Should be**  
16 **Excluded.**

17 Plaintiffs anticipate that Defendants intend to introduce evidence of Star Trek  
18 fan films, and intend to argue that Plaintiffs did not file suit against other  
19 purportedly infringing fan films, or that the lack of such legal action is an  
20 acknowledgement that these other fan films caused no harm to Plaintiffs. Jason  
21 Decl. ¶ 3, Exs. A, B, C. As a matter of law, the claimed evidence is irrelevant and  
22 prejudicial to the jury.

23 **1. Star Trek Fan Films Are Legally Irrelevant.**

24 Star Trek fan films that are not at issue in this case are legally irrelevant for  
25 several reasons. First, no court has ever held that “fan fiction” (whether or not that  
26 label is accurate, which in this case it is not) has any special protection under the  
27 Copyright Act, or that calling something fan fiction impacts the copyright  
28 infringement analysis.

1 Second while Defendants have claimed that Plaintiffs have not sued other  
2 “fan film” creators, this too is legally irrelevant. This precise issue, with respect to  
3 the Star Trek copyrighted works and Plaintiff Paramount, was directly addressed in  
4 an earlier copyright infringement lawsuit. *See Paramount Pictures Corp. v Carol*  
5 *Publ’g Grp.*, 11 F. Supp. 2d 329, 336 (S.D.N.Y. 1998) (“Defendants also argue that  
6 Plaintiff’s lack of legal action against other allegedly infringing [sic] indicates that  
7 *The Joy of Trek* will not damage a potential market. This argument is without merit.  
8 It is possible that Paramount believed that the other books did not infringe on the  
9 Star Trek Properties. It is also possible that Paramount simply has had a change in  
10 corporate policy, determining that the market is now ripe for this type of derivative  
11 product. Regardless, the lack of earlier litigation against other similar works is  
12 simply irrelevant. A self-avowed substitute for other Paramount licensed products  
13 adversely impacts the market for derivative works.”). *See also Capitol Records, Inc.*  
14 *v. Naxos of Am., Inc.*, 372 F.3d 471, 484 (2d Cir. 2004) (“[F]ailure to pursue third-  
15 party infringers has regularly been rejected as a defense to copyright infringement or  
16 as an indication of abandonment.”) (citing *Paramount Pictures Corp.*, 11 F. Supp.2d  
17 at 337). Plaintiffs’ decisions as to which infringing parties to sue has no bearing on  
18 the determination of whether Defendants engaged in copyright infringement.

19 Third, the analysis of Star Trek fan films would be an extreme and  
20 unnecessary burden on the jury’s time and the resources of the Court. It would  
21 likely to take days to introduce the Star Trek fan films and to establish what, if any,  
22 elements of Star Trek each film infringes, the quality of the films, the degree of  
23 professionalism with respect to each film, the production budget for each film, and  
24 the profit made by the creators of each film. The court in *Paramount Pictures Corp.*  
25 *v. Carol Publishing Group* explained:

26           Allowing such a defense would compel courts to examine all the other  
27           allegedly infringing works on which defendant’s reliance was based in  
28           order to ascertain whether these works were in fact infringing, thereby  
                  creating a number of smaller infringement hearings within a single  
                  copyright action. Moreover, there is no legal duty to instigate legal

1 proceedings. Perhaps it is the case, as Defendants intimated, that  
2 Paramount has chosen to eschew litigation with larger publishing  
3 houses, and instead bring suit against a relatively small firm. It matters  
not. Provided it does not violate any other provision of law, Paramount  
is free to instigate legal action against whomever it wishes.

4 11 F. Supp. 2d at 337. There is simply no probative value, though significant cost, in  
5 conducting dozens of miniature trials regarding fan films that are fundamentally  
6 irrelevant to this case.

## 7 2. Defendants' Fan Film Defense is Prejudicial.

8 References to fan films have no probative value because they are not relevant.  
9 Even if they did, any probative value is substantially outweighed by the danger of  
10 unfair prejudice to Plaintiffs and the risk of confusing the jury. Fed. R. Evid. 403;  
11 *Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.*, 982 F.2d 363, 368 (9th Cir.  
12 1992) (noting broad discretion to exclude unfairly prejudicial evidence).

13 Allowing Defendants to introduce references to other supposed "fan films"  
14 could lead the jury to be confused that whether a work is a "fan film" is relevant to  
15 whether it is infringing. Furthermore, without the aforesaid mini-trials that would  
16 examine each of these fan films, the jury could be confused into thinking that the  
17 Axanar works were the same as these amateur, low quality, low budget fan films.  
18 To the contrary, prior to the commencement of this litigation, Defendants proudly  
19 proclaimed that the Axanar films were not fan films, but rather the first professional  
20 independent Star Trek films, with a budget of more than \$1 million. Additionally,  
21 references to fan films may lead the jury to believe that somehow Plaintiffs' actions  
22 towards other fan films have a bearing on the case, when, as a matter of law, they do  
23 not.

## 24 III. CONCLUSION

25 For the foregoing reasons, Plaintiffs request that testimony and documents  
26 regarding Star Trek fan films be excluded from trial.  
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CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
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19 Plaintiffs,

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an individual, and DOES 1-20,  
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23 Defendants.  
24

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

**PLAINTIFFS' MOTION IN  
LIMINE NO. 7 TO EXCLUDE  
TESTIMONY AND DOCUMENTS  
DISCUSSING PETERS'  
UNRELATED WORK  
REGARDING STAR TREK  
PROPS**

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

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 testimony and documents regarding defendant Alec Peters’ unrelated work for CBS  
8 on Star Trek props prior to this litigation, because it is not relevant to this case.

9 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
10 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
11 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
12 and on such further argument, evidence and authority as may be offered at the time  
13 of hearing.

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Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

By: /s/ Jennifer Jason  
Jennifer Jason  
Attorneys for Plaintiffs  
PARAMOUNT PICTURES  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) filed this lawsuit on December 29, 2015, based on works created by Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) that infringe Plaintiffs’ copyrighted Star Trek works. A number of years prior to this litigation, Peters worked with CBS to catalog and auction used original Star Trek props. Plaintiffs anticipate that Defendants will seek to introduce evidence and argument relating to such work. Such evidence and testimony are not relevant to the case because Plaintiffs have not filed suit regarding such work, nor is there anything with respect to such work, done years before the creation of the infringing Axanar works, that is related to or relevant to the claims in this action, and as such they should be excluded at trial.

**II. DISCUSSION**

**A. Documents and Testimony Regarding Peters’ Unrelated Work Regarding Star Trek Props are Irrelevant and Should be Excluded.**

Federal Rule of Evidence 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir. 2007)(citation omitted).

Years before either the creation of the infringing Axanar works, or the filing of this lawsuit, defendant Alec Peters (“Peters”) worked for a limited time with CBS Studios Inc. (“CBS”) to assist in cataloguing and/or selling at auction certain Star Trek props. Declaration of Jennifer Jason (“Jason Decl.”), ¶¶ 4-5, Exs. A, B. Such work had nothing to do with this case, and Plaintiffs have not filed suit regarding such work.

1 The admission of any such testimony and documents would be prejudicial  
 2 because they are an obvious attempt to link Peters with CBS, to fool the jury into  
 3 thinking he was authorized in some way to create the infringing Axanar works,  
 4 when in reality, Peters’ work with CBS was performed years before the Axanar  
 5 works, and had nothing to do with Star trek films. Jason Decl., ¶¶ 4-5, Exs. A, B.  
 6 Such testimony would be highly confusing to the jury, and not probative of any of  
 7 the issues in this case. *United States v. Hitt*, 981 F.2d 422, 423-35 (9th Cir.  
 8 1992)(“Where the evidence is of very slight (if any) probative value, it’s an abuse of  
 9 discretion to admit it if there’s even a modest likelihood of unfair prejudice or a  
 10 small risk of misleading the jury.”).

11 Accordingly, the Court should exclude any evidence and argument relating to  
 12 Peters’ work on Star Trek props.

13 **III. CONCLUSION**

14 For the foregoing reasons, Plaintiffs request that testimony and documents  
 15 discussing Peters’ unrelated work regarding Star Trek props be excluded from trial.

17 Dated: December 16, 2016

LOEB & LOEB LLP  
 JONATHAN ZAVIN  
 DAVID GROSSMAN  
 JENNIFER JASON

20 By: /s/ Jennifer Jason  
 Jennifer Jason  
 Attorneys for Plaintiffs  
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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
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16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
a Delaware corporation,  
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19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a  
California corporation; ALEC PETERS,  
an individual, and DOES 1-20,  
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23 Defendants.  
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Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' MOTION IN  
LIMINE NO. 8 TO EXCLUDE  
ALL TESTIMONY, DOCUMENTS  
OR OTHER EVIDENCE MADE  
OR CREATED AFTER THE  
FILING OF THE ORIGINAL  
COMPLAINT IN THIS  
LITIGATION**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 all testimony and documents regarding events after the filing of the original  
8 complaint in this litigation, including but not limited to, any reaction to this  
9 litigation by fans or others, any comments on the litigation, any fan reaction to  
10 guidelines, any statements by third parties such as J.J. Abrams or Justin Lin  
11 regarding the litigation or fan films, any post-litigation scripts, and any financial  
12 information prepared by Defendants after that date.

13 All testimony and documents relating to events after the filing of the  
14 complaint in this action on December 29, 2015 have no bearing on Plaintiffs’ claims  
15 for copyright infringement, including any reactions by fans or others to this  
16 litigation or any fan reactions to guidelines. Moreover, as explained in Plaintiffs’  
17 concurrently-filed motions in limine, there are other post-litigation events that are  
18 entirely irrelevant to Plaintiffs’ claims, including Defendants’ altered financial  
19 statement that was created after this litigation, versions of scripts prepared after this  
20 litigation, and testimony by J.J. Abrams and Justin Lin about their views of this  
21 lawsuit.

22 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
23 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
24 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
25 and on such further argument, evidence and authority as may be offered at the time  
26 of hearing.

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Dated: December 16, 2016

LOEB & LOEB LLP  
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DAVID GROSSMAN  
JENNIFER JASON

By: /s/ Jennifer Jason  
Jennifer Jason  
Attorneys for Plaintiffs  
PARAMOUNT PICTURES  
CORPORATION and CBS STUDIOS  
INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively,  
4 “Plaintiffs”) filed this lawsuit on December 29, 2015, based on works created by  
5 Defendants Axanar Productions Inc. and Alec Peters (collectively, “Defendants”)  
6 that infringe or will infringe Plaintiffs’ copyrighted Star Trek works. Plaintiffs  
7 anticipate that Defendants will seek to introduce into evidence testimony and  
8 documents regarding events that occurred after the filing of the original complaint in  
9 this litigation, including but not limited to, reactions to this litigation by fans or  
10 others, comments on the litigation itself, fan reaction to post-lawsuit fan film  
11 guidelines, and statements by third parties regarding the litigation or fan films.  
12 Such documents and testimony are not relevant to the case and, as such, they should  
13 be excluded at trial.

14 **II. DISCUSSION**

15 **A. Events After the Filing of the Lawsuit are Irrelevant and Should be**  
16 **Excluded.**

17 Federal Rule of Evidence 401 defines “relevant evidence” as “evidence  
18 having any tendency to make the existence of any fact that is of consequence to the  
19 determination of the action more probable or less probable than it would be without  
20 the evidence.” *See United States v. Curtin*, 489 F.3d 935, 948 (9th Cir.  
21 2007)(citation omitted). Evidence that is not within the scope of the complaint are  
22 irrelevant to the claims. *United States v. Calles*, 482 F.2d 1155, 1161 (5th Cir.  
23 1973)(trial court properly excluded evidence regarding the defendant’s expenditures  
24 and income for a certain year that was outside of the scope of the complaint because  
25 it was irrelevant to the claims). In addition, evidence that does not relate to the  
26 defendant’s offered defense is also properly excluded as irrelevant. *United States v.*  
27 *Bennett*, 539 F.2d 45, 52-53 (10th Cir. 1976) (trial court properly excluded evidence  
28

1 regarding defendant's state of mind when that evidence would not have related to  
2 the defendant's defense)

3 This case was filed on December 29, 2015. Declaration of Jennifer Jason  
4 ("Jason Decl."), ¶ 3. Events that took place after this litigation was filed are not  
5 relevant to the issues in this case, including but not limited to any reaction to this  
6 litigation by fans or others, any comments on the litigation, any fan reaction to fan  
7 film guidelines, etc. *Id.*, ¶ 4, Exs. A, B. Plaintiffs filed suit regarding actions taken  
8 by Defendants from December 29, 2015 and earlier, and Defendants' planned  
9 creation of a film based on a script created before the filing of the lawsuit. *See*  
10 *Curtin*, 489 F.3d at 943; Jason Decl., ¶ 3. Comments on, or reactions to, the  
11 litigation itself are not relevant to the issues, and can only have a prejudicial effect.  
12 As Plaintiffs have explained in their concurrently-filed motions in limine, there are  
13 specific post-litigation events that are entirely irrelevant to Plaintiffs' claims,  
14 including Defendants' altered financial statement, Defendants' revised script, and  
15 testimony by J.J. Abrams and Justin Lin regarding their statements about this  
16 litigation. *See* Plaintiffs' Motions in Limine Nos. 1, 2, and 3.

17 In addition to the specific items dealt with in Motions in Limine Nos. 1, 2 and  
18 3, the Court should exclude any evidence and argument relating to events after the  
19 filing of the original complaint in this litigation, including but not limited to, any  
20 reaction to this litigation by fans or others, any comments on the litigation, any fan  
21 reaction to fan film guidelines, and any statements by third parties regarding the  
22 litigation or fan films. Nothing in this post-litigation purported evidence is related  
23 to or relevant to any of the claims or defenses in this action, and can only serve to  
24 try to prejudice the jury.

### 25 **III. CONCLUSION**

26 For the foregoing reasons, Plaintiffs request (in addition to the requests made  
27 in Motions in Limine Nos. 1, 2 and 3), that all testimony, documents or other  
28 evidence made or created after the filing of the original complaint in this litigation,

1 including but not limited to, any reaction to this litigation by fans or others, any  
2 comments on the litigation, any fan reaction to fan film guidelines, and any  
3 statements by third parties regarding the litigation or fan films be excluded from the  
4 trial.

5  
6 Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

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9 By: /s/ Jennifer Jason  
10 Jennifer Jason  
11 Attorneys for Plaintiffs  
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INC.  
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13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
a Delaware corporation,  
18

19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a  
California corporation; ALEC PETERS,  
an individual, and DOES 1-20,  
22

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

**PLAINTIFFS' MOTION IN  
LIMINE NO. 9 TO EXCLUDE  
THE TESTIMONY OF  
CHRISTIAN TREGILLIS**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 the testimony of Christian Tregillis.

8 This motion is brought on the grounds that, as stated more fully in the  
9 accompanying Memorandum of Points and Authorities, the claimed expert is not  
10 qualified to render the opinions given, the testimony of this claimed expert is not  
11 reliable and will unfairly prejudice Plaintiffs.

12 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
13 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
14 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
15 and on such further argument, evidence and authority as may be offered at the time  
16 of hearing.

17 Dated: December 16, 2016

18 LOEB & LOEB LLP  
19 JONATHAN ZAVIN  
20 DAVID GROSSMAN  
21 JENNIFER JASON

22 By: /s/ Jennifer Jason  
23 Jennifer Jason  
24 Attorneys for Plaintiffs  
25 PARAMOUNT PICTURES  
26 CORPORATION and CBS STUDIOS  
27 INC.  
28



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively,  
4 “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters  
5 (collectively, “Defendants”) will seek to introduce the testimony of purported expert  
6 Christian Tregillis (“Tregillis”) on damages. In support of Defendants’ Motion for  
7 Summary Judgment, Tregillis submitted a report (the “Report”) that opines on four  
8 subjects:

9 (1) Fan films generally benefit commercial film studios;

10 (2) *Prelude to Axanar* benefited Plaintiffs in the same manner;

11 (3) Tregillis does not know of any information regarding funds donated to  
12 Defendants being diverted from Plaintiffs; and

13 (4) Tregillis is unaware of any profits Defendants have earned from  
14 *Prelude to Axanar* or Defendants’ other Axanar projects.

15 Tregillis is not qualified to render an opinion on the first two of these  
16 subjects, and his opinions on the latter two subjects are completely unsupported by  
17 any data.

18 Tregillis’ opinions are also irrelevant to the topics to which he intended to  
19 limit his testimony and will be unduly prejudicial for the jury and add needless  
20 confusion and time to the trial.

21 **II. The Standards Applicable to Plaintiffs’ Claimed Expert.**

22 Federal Rule of Evidence 702 (“Rule 702”) permits a qualified witness to  
23 “testify in the form of an opinion or otherwise if: (a) the expert’s scientific,  
24 technical, or other specialized knowledge will help the trier of fact to understand the  
25 evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts  
26 or data; (c) the testimony is the product of reliable principles and methods; and (d)  
27 the expert has reliably applied the principles and methods to the facts of the case.”  
28

1           Additionally, the Court “must ensure that any and all scientific testimony or  
2 evidence admitted is not only relevant, but reliable.” *Daubert v. Merrell Dow*  
3 *Pharm., Inc.*, 509 U.S. 579, 589 (1993). “In its role as gatekeeper, the district court  
4 determines the relevance and reliability of expert testimony and its subsequent  
5 admission or exclusion.” *Barabin v. AstenJohnson, Inc.*, 700 F.3d 428, 431 (9th Cir.  
6 2012), *on reh’g en banc sub nom. Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d  
7 457 (9th Cir. 2014). “[T]his basic gatekeeping obligation applies [not] only to  
8 ‘scientific’ testimony [but] all expert testimony.” *Kumho Tire Co. v. Carmichael*,  
9 526 U.S. 137, 147 (1999). Here, Mr. Tregillis’ proposed testimony fails to satisfy  
10 any of the requirements for admission under Rule 702, *Daubert*, or its progeny.

11           **A. Tregillis Does Not Have Specialized Knowledge in the Areas of His**  
12 **Testimony, Nor is His Testimony Based on Data.**

13           Tregillis is an accountant hired by Defendants to analyze potential damages  
14 assuming liability under at least one of the causes of action in Plaintiffs’ amended  
15 complaint. Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3, Ex. B, at 1. However,  
16 the majority of Tregillis’ report is dedicated to matters outside of this purpose and,  
17 similarly, beyond Tregillis’ expertise. The first ten pages of the Report simply notes  
18 that the Plaintiffs’ *Star Trek* franchise has had tremendous success over the past fifty  
19 years. *Id.* at 2-10. Although Plaintiffs readily acknowledge this fact, and the value  
20 of the *Star Trek* brand, it is unclear why Defendants think that Tregillis has any  
21 special knowledge on the subject. Tregillis does not claim to have studied the *Star*  
22 *Trek* films and television series, or that he is an expert in the film or television  
23 business, or even that he is a fan of Plaintiffs’ products.

24           The Report then launches into an examination of the American film industry  
25 and Tregillis’ opinion on how film studios are changing their marketing strategies to  
26 incorporate social media outreach. *Id.* at 15-26. However, Tregillis does not have  
27 any special knowledge of film industry marketing strategies such that could satisfy  
28 the requirements of Rule 702. Tregillis does not list any experience in marketing

1 films or television series on his resume, or explain how his training as an accountant  
2 is relevant to the subject. *Id.* at 34. Instead, Tregillis appears to have relied on a  
3 number of publicly available websites for information on the film industry, and  
4 simply aggregated the findings of his internet search in the Report. *Id.* at 31.

5 Tregillis does not guarantee the expertise or accuracy of his sources (all of which are  
6 hearsay), nor does he explain who authored articles for websites such as *BuzzFeed*  
7 and *The Huffington Post*. *Id.* Nor does he provide contact information for those  
8 sources so that the Court, or Plaintiffs, can investigate further. Furthermore, several  
9 of the websites listed as Sources of the Report are no longer accessible for review by  
10 Plaintiffs (e.g., [http://www.huffingtonpost.com/david-m-kirby/the-role-of-social-  
11 media-\\_b\\_10571026.htm](http://www.huffingtonpost.com/david-m-kirby/the-role-of-social-media-_b_10571026.htm)).

12 The Report then attempts to apply Tregillis' online findings to *Prelude to*  
13 *Axanar*, concluding, without reliable evidence, that Defendants' works are free  
14 advertising for Plaintiffs. *Id.* at 28. First, Tregillis incorrectly assumes that *Prelude*  
15 *to Axanar* is a "fan film" despite Defendants' repeated insistence that it is not a "fan  
16 film" but rather an "independent professional production." Jason Decl., ¶¶ 4-10,  
17 Exs. A-I. Further, as noted above, Tregillis' general conclusion that a "fan film"  
18 such as *Prelude to Axanar* benefits the infringed Star Trek works is unsupported by  
19 Tregillis' specialized knowledge or data, and any related testimony. In fact,  
20 Tregillis' "opinion" on whether *Prelude to Axanar* harmed or benefited Plaintiffs is  
21 merely argument and supposition based on his "review" of selected websites and  
22 news articles. This is not "expert opinion," it is merely Defendants' counsel's  
23 closing argument disguised as an "expert report," where the "expert" has no  
24 expertise in the area of marketing of films, and the aggregation of selected hearsay  
25 news reports could have been done by any clever college student. Likewise, given  
26 that Tregillis has no expertise in the field of marketing or distribution of films, he  
27 would have no way to evaluate these hearsay reports, or whether any expert in  
28 marketing has ever relied on them. *Weber v. Shelley*, 347 F.3d 1101, 1105 (9th Cir.

1 2003) (finding that district court did not abuse discretion when it excluded from  
2 expert testimony references to news articles and other sources if experts did not  
3 normally rely upon those sources). This report and testimony on the subject of the  
4 harm or benefit to Plaintiffs caused by *Prelude to Axanar* should be excluded under  
5 Rule 702.<sup>1</sup>

6 Although Tregillis’ experience might have qualified him to give an opinion  
7 regarding the latter two topics in the Report, his testimony on those subjects is  
8 unsupported by data as required under Rule 702. In the Report, Tregillis does not  
9 conclude that no money destined for Plaintiffs’ products was given to Defendants  
10 instead. Citing a lack of data, he only states that he is not aware of any information  
11 that money was diverted. Jason Decl., Ex. B, at 29. While Tregillis does speculate  
12 that, according to his understanding of film industry marketing, which is that of a  
13 layman, it would not make sense, this conclusion is admitted to have no factual basis  
14 and, therefore, has no value under Rule 702.

15 Similarly, the Report states that Tregillis is not aware of any profits earned by  
16 Defendants through *Prelude to Axanar*, or Defendants other Axanar projects. *Id.* at  
17 29. However, the only material examined by Tregillis was Defendants’ doctored  
18 financial records, created for the purpose of this litigation (*see* Plaintiffs’ Motion in  
19 Limine No. 1), [REDACTED]

20 [REDACTED]  
21 [REDACTED]

22 [REDACTED]. *Id.* Tregillis notes that he has no information to  
23 indicate that [REDACTED]

24 [REDACTED]

25

26 <sup>1</sup> Tregillis does not opine at all on the harm or benefit of the creation of a full  
27 length “professional” feature film based on the Axanar Script, and his opinion on  
28 harm or benefit, such as it is, is limited to *Prelude to Axanar*.

1 [REDACTED]. *Id.* Further, Tregillis does not indicate how [REDACTED]  
 2 [REDACTED]. *Id.* Tregillis does not even cite to an  
 3 internet search on the topic, apparently relying on his innate knowledge of film-  
 4 industry pay scales. Further, Tregillis doesn't even pretend to know or opine on  
 5 what the market rate is, if any, paid to producers of "fan films," which Tregillis  
 6 (although not Peters prior to this lawsuit) claims Axanar was. Rather, [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]. Nor is Tregillis aware, or at  
 9 least he certainly does not mention, [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED], his opinion regarding profits by  
 15 Defendants is not supported by data and does not meet the standard set by Rule 702.  
 16 It should be excluded.

**B. Tregillis' Testimony is Irrelevant and Unduly Prejudicial.**

17  
 18 Federal Rule of Evidence 401 defines "relevant evidence" as "evidence  
 19 having any tendency to make the existence of any fact that is of consequence to the  
 20 determination of the action more probable or less probable than it would be without  
 21 the evidence." See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir.  
 22 2007)(citation omitted).

23 According to the Report, Tregillis' testimony assumes Defendants' liability  
 24 and is concerned solely with potential damages. Notwithstanding this limitation, the  
 25 majority of the Report discusses issues relevant only to liability. The existence of  
 26 the *Star Trek* franchise, and numerous fan films, which may not be similar to  
 27 *Prelude to Axanar*, does not impact Plaintiffs' damages from Defendants'  
 28 infringement. Nor does Tregillis' inquiry into whether *Prelude to Axanar* (or

1 Defendants' other Axanar projects) is free advertising for Plaintiffs, which claim  
2 Tregillis bases solely on some internet searches. These topics are clearly directed  
3 towards the elements of Defendants' fair use defense and outside the stated scope of  
4 Tregillis' testimony. Any testimony on these topics is irrelevant by definition,  
5 unduly prejudicial to Plaintiffs, and should be excluded.

6 **III. CONCLUSION**

7 For the foregoing reasons, Plaintiffs request that the testimony of Tregillis be  
8 excluded from trial.

9

10 Dated: December 16, 2016

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

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By: /s/ Jennifer Jason  
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12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
a Delaware corporation,

18 Plaintiffs,

19 v.

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

22 Defendants.  
23

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

**PLAINTIFFS' MOTION IN  
LIMINE NO. 10 TO EXCLUDE  
TESTIMONY OF HENRY  
JENKINS**

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

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon  
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary  
4 Klausner, United States District Judge, Central District of California, located at 255  
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures  
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude  
7 the testimony of Professor Henry Jenkins.

8 This motion is brought on the grounds that, as stated more fully in the  
9 accompanying Memorandum of Points and Authorities, the testimony of this  
10 claimed expert is not reliable and will unfairly prejudice Plaintiffs.

11 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’  
12 counsel. This Motion is based on this Notice, the accompanying Memorandum of  
13 Points and Authorities, the Declaration of Jennifer Jason, all records in this action  
14 and on such further argument, evidence and authority as may be offered at the time  
15 of hearing.

16 Dated: December 16, 2016

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively,  
4 “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters  
5 (collectively, “Defendants”) will seek to introduce the testimony of purported expert  
6 Professor Henry Jenkins (“Prof. Jenkins”). In support of Defendants’ Motion for  
7 Summary Judgment, Prof. Jenkins submitted an untitled report that opines on two  
8 subjects:

- 9 (1) The impact of fan-produced films on Plaintiffs; and  
10 (2) Whether *Prelude to Axanar* is “transformative.”

11 Prof. Jenkins’ conclusions with respect to the impact of fan-produced films on  
12 Plaintiffs are not supported by any data or methodology, and are irrelevant since  
13 prior to this litigation, Defendants denied that the Axanar works were fan films, and  
14 instead repeatedly claimed that they were the first independent professional Star  
15 Trek films. Further, Prof. Jenkins lacks competence or expertise to opine on what  
16 constitutes transformative work, as that term is used in connection with the first  
17 factor of the fair use test, as demonstrated by the fact that what he defines as a  
18 “transformative” work is actually a derivative work.

19 Prof. Jenkins’ opinions will be unduly prejudicial for the jury, and will add  
20 needless confusion and time to the trial.

21 **II. The Standards Applicable to Plaintiffs’ Claimed Expert.**

22 Federal Rule of Evidence 702 (“Rule 702”) permits a qualified witness to  
23 “testify in the form of an opinion or otherwise if: (a) the expert’s scientific,  
24 technical, or other specialized knowledge will help the trier of fact to understand the  
25 evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts  
26 or data; (c) the testimony is the product of reliable principles and methods; and (d)  
27 the expert has reliably applied the principles and methods to the facts of the case.”  
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1           Additionally, the Court “must ensure that any and all scientific testimony or  
2 evidence admitted is not only relevant, but reliable.” *Daubert v. Merrell Dow*  
3 *Pharm., Inc.*, 509 U.S. 579, 589 (1993). “In its role as gatekeeper, the district court  
4 determines the relevance and reliability of expert testimony and its subsequent  
5 admission or exclusion.” *Barabin v. AstenJohnson, Inc.*, 700 F.3d 428, 431 (9th Cir.  
6 2012), *on reh’g en banc sub nom. Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d  
7 457 (9th Cir. 2014). “[T]his basic gatekeeping obligation applies [not] only to  
8 ‘scientific’ testimony [but] all expert testimony.” *Kumho Tire Co. v. Carmichael*,  
9 526 U.S. 137, 147 (1999). Here, Prof. Jenkins’ proposed testimony fails to satisfy  
10 the requirements for admission under Rule 702, *Daubert*, or its progeny.

11           **A. Prof. Jenkins’ Testimony Regarding the Benefit of Fan Fiction in**  
12 **General, and Axanar in Particular is not Based on Data nor Reliable.**

13           In his report, Prof. Jenkins hypothesizes that fan-produced films, and other  
14 content, create value for commercial producers of copyrighted material, including  
15 that of Plaintiffs. Declaration of Jennifer Jason (“Jason Decl.”) ¶ 6, Ex. B. He notes  
16 that “[a]n equilibrium [has] emerged in recent years, where legal actions had  
17 decreased and producers of all kinds of cult media had come to accept the value fan  
18 culture generates ... as creating value more than doing damage.” *Id.* at 4. However,  
19 Prof. Jenkins does not indicate what data he relied on to support his assumptions.

20           Apart from a vague reference to “research” on page four of his report, Prof.  
21 Jenkins cites no basis for his opinion that fan-produced films aid Plaintiffs. He has  
22 not been employed by Plaintiffs, he has not reviewed Plaintiffs’ financial records,  
23 nor has he done so for any other commercial producer of materials subject to fan  
24 appropriation. His opinions on the value of fan-produced films to Plaintiffs are, at  
25 best, wishful thinking from a fan of the medium. Nor does Prof. Jenkins distinguish  
26 between the effect on the market of amateur low-budget fan films, and Defendants’  
27 works, which Defendants claim are not fan films at all, but rather the first  
28 professional independent Star Trek films, with professional actors (some of whom

1 appeared in the authorized Star Trek works) and professional technicians, made with  
 2 million dollar plus budgets, and which Defendants further claim to be made to the  
 3 same standards as the authorized Star Trek works. Jason Decl., ¶¶ 8-13, Exs. D-J. It  
 4 would be non-probative and prejudicial to allow Prof. Jenkins to opine on the effect,  
 5 or non-effect of a class of works so different than the Axanar works.

6 **B. Prof. Jenkins Lacks the Required Expertise to Opine on the**  
 7 **Transformativeness of *Prelude to Axanar*.**

8 Prof. Jenkins' opinion on the transformativeness of *Prelude to Axanar* is not  
 9 based on any specialized knowledge, and is outside his area of expertise.

10 Transformativeness is a legal standard and Prof. Jenkins does not claim to have any  
 11 special legal training. Indeed, when discussing transformativeness in connection  
 12 with fan films in general, and *Prelude to Axanar* specifically, Prof. Jenkins is  
 13 promoting a political agenda as to what he would like copyright law to be, rather  
 14 than analyzing such films or *Prelude to Axanar* under existing copyright law.<sup>1</sup>

15 Prof. Jenkins uses two examples of ways in which *Prelude to Axanar* differs  
 16 from *Star Trek* produced by Plaintiffs. First, he claims that *Prelude to Axanar*  
 17 uniquely focuses on the human cost of war and the concept of sacrifice, with one  
 18 battle being described as a "bloodbath." Jason Decl., ¶ 6, Ex. B at 9. His testimony  
 19 is not based on any particular expertise, nor is it accurate - *Prelude to Axanar* speaks  
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21  
 22 <sup>1</sup> Prof. Jenkins appears to have consulted with an outside attorney on the  
 23 subject and simply reframed her opinions as his own. On September 27, 2016, Prof.  
 24 Jenkins published a blog post with excerpts from a conversation he had with  
 25 Georgetown Law Professor Rebecca Tushnet, "who has extensively studied the  
 26 legal implications of fan culture." Jason Decl., ¶ 5, Ex. A. It is clear from these  
 27 excerpts that Prof. Jenkins' independent knowledge of what constitutes  
 28 transformative use is non-existent and that his expert report is merely an facsimile of  
 Professor Tushnet's remarks. Notably, Prof. Jenkins did not include his interview  
 with Professor Tushnet in his list of sources, which is a violation of Federal Rule of  
 Civil Procedure 26(a)(2)(B)(i) ("if the witness is one retained or specially employed  
 to provide expert testimony in the case... [t]he report must contain... a complete  
 statement of all opinions the witness will express and the basis and reasons for  
 them"). Plaintiffs uncovered this source independently during a review of Prof.  
 Jenkins' recent blog postings.

1 for itself and is not a commentary on the “human costs of war” or the “concept of  
2 sacrifice” any more than any other fictional story of intergalactic conflict.

3 Prof. Jenkins’ second distinction is even more absurd. He remarks that seeing  
4 a female starship captain in *Prelude to Axanar* contrasts with the “promise of female  
5 equality that *Star Trek* producers have often failed to deliver upon.” Prof. Jenkins is  
6 apparently unaware that Plaintiffs produced a **seven-season television series**  
7 starring Kate Mulgrew in the lead role as the female captain of the titular starship  
8 *Voyager*. Jason Decl. ¶ 3, Ex. 4. Thus, not only are Prof. Jenkins’ opinions lacking  
9 in any scientific or technical basis, they are uninformed and incorrect.

10 Furthermore, the legal standard Prof. Jenkins purports to apply for  
11 transformative use is incorrect. Instead of applying the standard for a transformative  
12 work under the fair use standard, Prof. Jenkins describes the standard for a  
13 derivative work, which would be protected by copyright. *See* 17 U.S.C. § 106(2)  
14 (copyright owner has rights to derivative works). Prof. Jenkins does not distinguish  
15 between a work with a new character or purpose, the standard under the fair use  
16 standard (*see Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)) or a work  
17 which simply builds on pre-existing material for the same purpose, which is an  
18 infringing derivative work. In this case, *Prelude to Axanar* simply uses the  
19 copyrighted material to create another Star Trek film for the purpose of  
20 entertainment, the exact character and purpose of the copyrighted Star Trek works.  
21 Under the definition used by Prof. Jenkins in his Report, Defendants could have  
22 produced *Star Trek: The Next Generation* (Plaintiffs’ Star Trek television series)  
23 without fear of copyright infringement. Prof. Jenkins is unqualified to opine on  
24 transformativeness as regards to fair use—the standard he uses is clearly erroneous,  
25 based on a lack of specialized knowledge, and would mislead the jury. Therefore,  
26 Prof. Jenkins’ opinions on transformativeness should be excluded from trial.<sup>2</sup>

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28 <sup>2</sup> Just like how Defendants failed to show their other expert (Mr. Tregillis) the  
actual financial statement for Axanar prepared prior to the litigation, and instead

1           **C. Prof. Jenkins' Opinions on Fan Films is Legally Irrelevant.**

2           In his report, Prof. Jenkins spends substantial time discussing "fan films"  
3 other than those made by Defendants. Prof. Jenkins is especially concerned with a  
4 sub-genre he refers to as "fan vids," which are a type of music video made by re-  
5 cutting copyrighted material and setting it to music. No court has ever held that "fan  
6 films" (whether or not that label is accurate, which in this case it is not) has any  
7 impact on the copyright infringement analysis. Furthermore, fan produced materials  
8 other than narrative films like *Prelude to Axanar* have no relevance to this case.

9           Also, Plaintiffs' interactions with "fan film" creators other than Defendants  
10 are legally irrelevant. This precise issue, with respect to the Star Trek copyrighted  
11 works and Plaintiff Paramount, was addressed in an earlier copyright infringement  
12 lawsuit. *See Paramount Pictures Corp. v. Carol Publ'g Grp.*, 11 F. Supp. 2d 329,  
13 336 (S.D.N.Y. 1998) ("Defendants also argue that Plaintiff's lack of legal action  
14 against other allegedly infringing [sic] indicates that *The Joy of Trek* will not  
15 damage a potential market. This argument is without merit. It is possible that  
16 Paramount believed that the other books did not infringe on the Star Trek Properties.  
17 It is also possible that Paramount simply has had a change in corporate policy,  
18 determining that the market is now ripe for this type of derivative product.  
19 Regardless, the lack of earlier litigation against other similar works is simply  
20 irrelevant. A self-avowed substitute for other Paramount licensed products  
21 adversely impacts the market for derivative works.").

22           The court in *Paramount Pictures Corp. v. Carol Publishing Group* further  
23 explained:

24           Allowing such a defense would compel courts to examine all the other  
25 allegedly infringing works on which defendant's reliance was based in

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26 only showed him the doctored one prepared for the purpose of the litigation.  
27 Defendants similarly failed to show Prof. Jenkins a key document in the litigation.  
28 Defendants inexplicably did not show Prof. Jenkins the script that Mr. Peters testified [REDACTED] As a result, Prof. Jenkins has no opinion as to whether a motion picture based on that script would be harmful to the Plaintiffs, and no opinion on whether such a film would be "transformative."

1 order to ascertain whether these works were in fact infringing, thereby  
2 creating a number of smaller infringement hearings within a single  
3 copyright action. Moreover, there is no legal duty to instigate legal  
4 proceedings. Perhaps it is the case, as Defendants intimated, that  
5 Paramount has chosen to eschew litigation with larger publishing  
6 houses, and instead bring suit against a relatively small firm. It matters  
7 not. Provided it does not violate any other provision of law, Paramount  
8 is free to instigate legal action against whomever it wishes.

9 *Paramount Pictures Corp.*, 11 F. Supp. 2d at 337.

10 As a court has held in this exact context, Plaintiffs' decisions as to which  
11 infringing parties to sue has no bearing on the determination of whether Defendants  
12 engaged in copyright infringement, and Prof. Jenkins' opinions related to that topic  
13 should be excluded. *See also Capitol Records, Inc. v. Naxos of Am., Inc.*, 372 F.3d  
14 471, 484 (2d Cir. 2004) (“[F]ailure to pursue third-party infringers has regularly  
15 been rejected as a defense to copyright infringement or as an indication of  
16 abandonment.”) (citing *Paramount Pictures Corp.*, 11 F. Supp. 2d at 337).

17 **D. Prof. Jenkins' Testimony is an Improper Legal Conclusion.**

18 Federal Rule of Evidence 704 (“Rule 704”) allows that, “[a]n opinion is not  
19 objectionable just because it embraces an ultimate issue.” However, a witness is not  
20 permitted to provide a legal opinion. *United States v. Duncan*, 42 F.3d 97, 101 (2d  
21 Cir. 1994); *Pelletier v. Main St. Textiles, LP*, 470 F.3d 48, 55 (1st Cir. 2006)(trial  
22 court properly excluded expert testimony that constituted an opinion about the  
23 applicability of the law).

24 In his report, Prof. Jenkins repeatedly opines that Defendants' Axanar works  
25 are “transformative,” stating, for example, that “I see *Prelude to Axanar* as a  
26 transformative work.” Jason Decl., Ex. B at 9. In places, his report reaches even  
27 more explicit legal conclusions, noting that “[s]uch practices evoke *Star Trek*  
28 **without infringing it,**” and that Defendants “[do] not deserve to be singled out for  
legal sanction.” *Id.* at 8 (emphasis added). Statements like these, which litter Prof.  
Jenkins' report, are impermissible legal conclusions and render Prof. Jenkins' entire  
testimony inadmissible.

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request that the entire testimony of Prof.  
3 Jenkins be excluded from trial.

4  
5 Dated: December 16, 2016

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