

1 LOEB & LOEB LLP
DAVID GROSSMAN (SBN 211326)
2 dgrossman@loeb.com
JENNIFER JASON (SBN 274142)
3 jjason@loeb.com
10100 Santa Monica Blvd., Suite 2200
4 Los Angeles, CA 90067
Telephone: 310.282.2000
5 Facsimile: 310.282.2200

6 LOEB & LOEB LLP
JONATHAN ZAVIN (admitted *pro hac vice*)
7 jzavin@loeb.com
345 Park Avenue
8 New York, NY 10154
Telephone: 212.407.4000
9 Facsimile: 212.407.4990

10 Attorneys for Plaintiffs
PARAMOUNT PICTURES
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
Plaintiffs,
19
v.
20
AXANAR PRODUCTIONS, INC., a
21 California corporation; ALEC PETERS,
an individual, and DOES 1-20,
22
Defendants.
23
24
25
26
27
28

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

(DISCOVERY MATTER)

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

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

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

2 **PLEASE TAKE NOTICE** that Plaintiffs Paramount Pictures Corporation
3 and CBS Studios, Inc. (“Plaintiffs”) hereby submit this *Ex Parte* Application in
4 accordance with Local Rule 7-19 and 37-3. In this Application:

- 5
- 6 • Plaintiffs are requesting that Mr. Peters and his counsel confirm that he
7 has produced all relevant emails, documents and social media postings
8 and, thereafter, sit for a further deposition so that he can be examined
9 regarding the documents that other witnesses have produced, that Mr.
10 Peters is still in the process of producing this week, and any other
11 documents that are turned over prior to that supplemental deposition.
 - 12 • Plaintiffs request that the Court order the de-designation of a financial
13 summary prepared by Mr. Peters’ accountant that was marked as
14 “Highly Confidential” or “Attorneys’ Eyes Only” as it is not a trade
15 secret and does not otherwise contain competitively-sensitive
16 information. Defendants request that this document be deemed not
17 Confidential Information under the Court’s Protective Order.
 - 18 • Third, Plaintiffs request that the Court require Defendants to provide a
19 privilege log relating to Mr. Peters’ pre-lawsuit communications with
20 counsel.

21 Plaintiffs are concurrently filing an Application For Leave To File Document
22 Under Seal, as Defendants have designated the financial summary as “Highly
23 Confidential.”

24 There is good cause for granting *ex parte* relief. The extent of Mr. Peters’
25 failure to produce documents was recently revealed when Plaintiffs took the
26 depositions of Mr. Peters and Christian Gossett (the director of Mr. Peters’ film,
27 *Star Trek: Prelude To Axanar*). Mr. Gossett is a third party witness who was
28 deposed on October 22, 2016, and he produced thousands of pages of emails and
other documents, primarily constituting communications between himself and Mr.

1 Peters, virtually none of which were turned over by Mr. Peters. Prior to and
2 following Mr. Gossett's deposition, Plaintiffs repeatedly advised Defendants'
3 counsel that Mr. Peters appeared not to have turned over documents relating to his
4 creation of his independent Star Trek film project, including emails, social media
5 and internet postings and other materials. Mr. Peters' counsel has refused to search
6 for any additional documents and to certify that Mr. Peters has produced all
7 responsive documents. Plaintiffs would like the opportunity to depose Mr. Peters
8 regarding all of the relevant documents in this case, after he has turned over those
9 documents.

10 Plaintiffs also need to be able to depose third party witnesses regarding the
11 financial document prepared by Mr. Peters' accountant. Finally, a privilege log is
12 necessary so that Plaintiffs have the chance to challenge any documents designated
13 as privileged.

14 In accordance with Local Rule 7-19.1, on October 27, 2016, counsel for
15 Plaintiffs gave notice to Defendants' counsel of the date and substance of this ex
16 parte application. Declaration of David Grossman ("Grossman Decl."), ¶ 21.
17 Defendants' counsel stated that Defendants will oppose the Application. *Id.*

18 The contact information for Defendants' counsel is as follows: Erin R.
19 Ranahan, Winston & Strawn LLP, 333 S. Grand Avenue, 38th Floor, Los Angeles,
20 CA 90071-1543, eranahan@winston.com.

21 Dated: October 27, 2016

LOEB & LOEB LLP
JONATHAN ZAVIN
DAVID GROSSMAN
JENNIFER JASON

22
23
24 By: /s/ Jennifer Jason

Jennifer Jason
Attorneys for Plaintiffs
PARAMOUNT PICTURES
CORPORATION and CBS STUDIOS
INC.

25
26
27
28

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

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. STATEMENT OF FACTS.....	3
A. Plaintiffs’ Discovery Requests.....	3
B. Deposition of Christian Gossett.....	7
III. ARGUMENT	9
A. Mr. Peters Should Be Required To Certify That All Relevant Documents Have Been Produced And Should Appear For A Second Deposition.	9
B. Mr. Peters’ Summary Of Funds Expended Should Not Be Designated Attorneys’ Eyes Only.....	12
C. Defendants Should Be Ordered To Provide A Privilege Log.....	13
IV. CONCLUSION	13

TABLE OF AUTHORITIES

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

Page(s)

Cases

All Star Seed v. Nationwide Agribusiness Ins. Co.,
2013 U.S. Dist. LEXIS 64587 (S.D. Cal. May 3, 2013) 10

Couch v. Wan,
2012 U.S. Dist. LEXIS 137216 (E.D. Cal. Sept. 21, 2012) 10

Enron Broadband Servs., L.P. v. Travelers Cas. & Sur. Co. of Am.
(In re Enron Corp.),
349 B.R. 115 (Bankr. S.D.N.Y. 2006) 10

Foreclosure Mgmt. Co. v. Asset Mgmt. Holdings, LLC,
2008 U.S. Dist. LEXIS 75489 (D. Kan. Aug. 21, 2008)..... 10

HM Elecs., Inc. v. R.F. Techs., Inc.,
No. 12cv2884-BAS-MDD, 2015 U.S. Dist. LEXIS 104100
(S.D. Cal. Aug. 7, 2015) 13

Syncora Guar., Inc. v. EMC Mortg. Corp.,
2013 U.S. Dist. LEXIS 41770 (N.D. Cal. Mar. 25, 2013) 11

Other Authorities

Fed. R. Civ. P. 26(b)(2)(C) 10

Fed. R. Civ. P. 26(b)(5)(A) 13

Fed. R. Civ. P. 30(a)(2) 9

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs filed this suit for copyright infringement against Defendants Axanar
4 Productions, Inc. and the owner of that entity, Alec Peters. Mr. Peters created an
5 unlicensed Star Trek film called *Star Trek: Prelude to Axanar* and, at the time this
6 lawsuit was filed, Mr. Peters was producing a second work, a full-length feature film
7 entitled *Star Trek: Axanar* (these two works are collectively referred to as the
8 “Axanar Works”).

9 By this Application, Plaintiffs are seeking relief from the Court, based on
10 recently disclosed information obtained in discovery.

11 First, Defendant Alec Peters failed to produce hundreds, if not thousands, of
12 emails relating to his involvement in the creation of the two unlicensed Star Trek
13 works. On Saturday, October 22, 2016, Christian Gossett, the director of *Star Trek:*
14 *Prelude to Axanar* was deposed. Mr. Gossett produced thousands of pages of
15 documents, which included hundreds of emails between himself and Mr. Peters.
16 These emails were not produced by Mr. Peters, who hardly produced any emails
17 between himself and his creative collaborators. After uncovering these documents,
18 Plaintiffs asked Mr. Peters’ counsel to agree to present Mr. Peters for a further
19 deposition. Mr. Peters’ counsel refused, but at the same time, stated that she had
20 located over a hundred additional emails from Mr. Peters that had not been
21 produced, and would be turning those documents over this week. In addition,
22 Robert Meyer Burnett (represented by Defendants’ counsel), the director of *Star*
23 *Trek: Axanar*, and a key member of the Axanar Productions crew, was deposed
24 earlier this month and testified that he did not turn over any of his emails with Mr.
25 Peters and did not search for or produce any of his text messages with Mr. Peters.
26 Moreover, neither Mr. Peters nor Mr. Burnett searched for or produced any of their
27 internet and social media postings relating to the Axanar Works. Counsel for Mr.
28

1 Peters and Mr. Burnett has justified their failure to produce these documents on the
2 basis that these postings (to the extent they still exist) are “publicly available.”

3 Plaintiffs are requesting that Mr. Peters and his counsel confirm that he has
4 produced all relevant emails, documents and social media postings and, thereafter,
5 sit for a further deposition so that he can be examined regarding the documents that
6 Mr. Gossett produced, that Mr. Peters is still in the process of producing this week,
7 and any other documents that are turned over prior to that supplemental deposition.¹

8 Second, the only document Mr. Peters has turned over relating to the
9 expenditure of the \$1.4 million he raised from Star Trek fans to create *Star Trek:*
10 *Axanar* is a financial summary prepared by his accountant. Mr. Peters has marked
11 that document as “Highly Confidential” – restricting its use in this lawsuit to
12 counsel for the parties. This document shows the amounts and dates on which Mr.
13 Peters paid himself and his colleagues, and paid for his personal expenses with
14 funds from Star Trek fans. There is no competitively-sensitive reason for this
15 document to be marked as “Attorneys-Eyes Only” or “Highly Confidential,” and
16 Mr. Peters has not been able to offer an explanation as to why it had been so
17 designated. On October 3, 2016, shortly after this document was produced,
18 Plaintiffs sent a meet and confer letter to Defendants’ counsel asking that this
19 document be de-designated. Defendants’ counsel did not respond. At the
20 deposition of Alec Peters last week, Plaintiffs’ counsel again requested that this
21 document be de-designated and, this week, Plaintiffs’ counsel continued to meet and
22 confer requesting the de-designation of this document. Plaintiffs request that the
23 Court order the de-designation of this document, as it is not a trade secret and does

24 _____
25 ¹ After repeated requests from Plaintiffs, Defendants’ counsel only stated that
26 Mr. Peters was still in the process of producing documents, did not say what those
27 documents were, did not provide any explanation for Mr. Peters’ failure to produce
28 the hundreds of emails between Mr. Gossett and himself (or between Mr. Peters and
his other collaborators on the Axanar project), and eventually stated that Mr. Peters
would only be made available for two hours, and only with respect to the documents
that have been produced, but would not engage in the requested search for Mr.
Peters’ documents that were not produced.

1 not otherwise contain competitively-sensitive information. The only basis offered
2 by Defendants’ counsel for the failure to de-designate this document is that is that
3 the material in that document may embarrass Mr. Peters by showing the ways in
4 which he spent funds that were raised from Star Trek fans. This is not a proper basis
5 for designating a document as Highly Confidential and Plaintiffs request that the
6 Court order this document de-designated.

7 Third, Defendants’ counsel refused to produce a privilege log on behalf of
8 Mr. Peters. When this issue was raised, Defendants’ counsel stated that “we are not
9 withholding anything from before the lawsuit was filed as privileged.” However,
10 the documents that Mr. Gossett produced (which Mr. Peters did not produce) show
11 that Mr. Peters had counsel in connection with his work on the Axanar project, and
12 asked that counsel to create legal documents and agreements relating to Axanar.
13 Moreover, Mr. Peters himself has confirmed that he engaged counsel to assist him
14 with his Axanar project. Defendants’ prior representations regarding Mr. Peters’
15 lack of any communications with counsel were not accurate. Plaintiffs request that
16 the Court require Defendants to provide, in addition to the documents that were not
17 produced, a privilege log relating to Mr. Peters’ pre-lawsuit communications with
18 counsel.

19 **II. STATEMENT OF FACTS**

20 **A. Plaintiffs’ Discovery Requests.**

21 On April 26, 2016, Plaintiffs served requests for production on Defendants,
22 which sought, among other things, communications relating to the Axanar Works
23 and communications between Peters and other parties who worked on the Axanar
24 Works. Grossman Decl., ¶ 2.

25 On or about September 7, 2016, Defendants made their first production.
26 Defendants’ document production contained very few emails relating to the creation
27 and production of the Axanar works. Grossman Decl., ¶ 3. Instead, many of the
28 documents produced were non-substantive, and involved communications with

1 donors regarding the logistics of their donations. *Id.* Very few emails related to the
2 creative decisions that were made relating to the Axanar Works, the funds that were
3 spent in connection with the Axanar Works, or the source materials that were being
4 used in order to create Defendants’ “independent Star Trek film.” *Id.*

5 In that production was a summary document that Defendants designated
6 “Highly Confidential.”² Grossman Decl., ¶ 4. This document is a ledger showing
7 how Mr. Peters spent the funds solicited from donors (on the crowd-funding
8 websites Indiegogo and Kickstarter) for his full-length feature film production, *Star*
9 *Trek: Axanar*. *Id.*

10 In August, Plaintiffs noticed the depositions of Robert Meyer Burnett (the
11 director of *Star Trek: Axanar*), Diana Kingsbury (Alec Peters’ former girlfriend and
12 a member of the Axanar production team) and Bill Hunt (the co-writer of *Star Trek:*
13 *Axanar*). Grossman Decl., ¶ 6. At Defendants’ request, these depositions were re-
14 scheduled to mid-October. *Id.* Alec Peters’ deposition was scheduled for October
15 19, 2016 and Christian Gossett, a third party, and the director of the twenty-minute
16 film, *Star Trek: Prelude to Axanar*, was scheduled for Saturday October 22, 2016
17 (due to his work schedule). *Id.*, ¶ 7.

18 On October 3, 2016, Plaintiffs’ counsel delivered a letter to Defendants’
19 counsel asking for various documents and emails that were missing from
20 Defendants’ production. Grossman Decl., Ex. B. This letter noted the scarcity of
21 relevant emails in Defendants’ September 2016 document production, and requested
22 that all responsive emails, documents and social media/internet postings be
23 produced. Below are excerpts from the October 3, 2016 letter on these issues:

24 Request No. 17 seeks all COMMUNICATIONS with third
25 parties RELATING TO the AXANAR WORKS. Request
26 No. 18 seeks all COMMUNICATIONS, both public and
private, RELATING TO the AXANAR WORKS.

27 ² Plaintiffs are concurrently filing an Application For Leave To File
28 Document Under Seal as Defendants have designated the financial summary
document as Highly Confidential.

1 Plaintiffs are certain that Defendants have not produced all
2 of these communications, because at the very least
3 Defendants have not produced Peters' communications
4 with CBS. In fact, Defendants have produced under 200
5 emails about the Axanar production that are not from or to
6 donors.

7 Request No. 22 seeks all COMMUNICATIONS with
8 Robert Meyer Burnett RELATING TO the AXANAR
9 WORKS. Defendants have produced only about ten emails
10 that include Robert Meyer Burnett. Please confirm that
11 there are no other emails.

12 Request No. 23 seeks all COMMUNICATIONS with
13 Diana Kingsbury RELATING TO the AXANAR
14 WORKS. Defendants have produced communications
15 between Ms. Kingsbury and donors, but Defendants have
16 not produced any communications between Mr. Peters and
17 Ms. Kingsbury. Please confirm that there are no emails in
18 existence that you have not produced.

19 Request No. 24 seeks all COMMUNICATIONS with
20 Terry McIntosh RELATING TO the AXANAR WORKS.
21 Request No. 25 seeks all COMMUNICATIONS with
22 Alexander Bornstein RELATING TO the AXANAR
23 WORKS. Request No. 26 seeks all
24 COMMUNICATIONS with Bing Bailey RELATING TO
25 the AXANAR WORKS. Request No. 27 seeks all
26 COMMUNICATIONS with Bill Hunt RELATING TO the
27 AXANAR WORKS. Request No. 28 seeks all
28 COMMUNICATIONS with Michael Spatola RELATING
TO the AXANAR WORKS. Request No. 29 seeks all
COMMUNICATIONS with Frank Serafine RELATING
TO the AXANAR WORKS. Request No. 30 seeks all
COMMUNICATIONS with Adam Howard RELATING
TO the AXANAR WORKS. Defendants have produced
almost no email communications with these individuals.
Please confirm that Defendants have produced all
responsive documents.

Request No. 31 seeks all DOCUMENTS RELATED TO
any postings YOU have made on social media, message
boards, or any other website RELATED TO this
ACTION, the AXANAR WORKS, the STAR TREK
COPYRIGHTED WORKS, or PLAINTIFFS. Defendants
have not produced these documents, despite their large
social media presence. Please let me know when they will
be produced.

Plaintiffs' letter also asked that Mr. Peters' ledger, showing how he spent the
funds for *Star Trek: Axanar*, be de-designated.

28

1 Finally, Defendants produced a document bates labeled
2 AX030915-AX031129 that they designated “Highly
3 Confidential,” and therefore for Attorney’s Eyes Only. A
4 document relating to the expenditures of donor funds on
5 the Axanar Works and other items is not highly
6 confidential. There is no sensitive business information in
7 this document, and no risk that this document could be
8 exposed to potential “competitors.” Please re-designate
9 this document as not being “Highly Confidential,” or
10 please explain the basis for the designation.

11 Defendants did not respond to Plaintiffs’ October 3, 2016 letter. Grossman
12 Decl., ¶ 8.

13 On October 19, Plaintiffs took the deposition of Peters. Mr. Peters testified
14 that he did not search for or produce any of his text messages or any of his social
15 media or internet postings. Grossman Decl., ¶ 10. Mr. Peters also said that he did
16 not delete any substantive emails. *Id.* After the deposition of Mr. Peters, counsel
17 for Plaintiffs again met and conferred with Defendants’ counsel and noted that it
18 was clear that Mr. Peters had not produced his documents, including the emails
19 relating to the production of the Axanar Works, even though Mr. Peters had
20 produced other email communications from that same time period. *Id.*, ¶ 11.

21 Counsel also met and conferred and requested, again, that Mr. Peters de-
22 designate the ledger showing the expenditures he made from his crowd-funding
23 campaigns.³ Grossman Decl., ¶ 12. Notably, for Mr. Peters’ first crowdfunding
24 campaign, relating to the twenty-minute film, *Star Trek: Prelude to Axanar*, Mr.
25 Peters distributed an “annual report” to donors in which he disclosed the
26 expenditures relating to the approximately \$100,000 that was raised for that film.
27 Grossman Decl., ¶ 13, Ex. D. This document, however, was not provided in this

28 ³ There were three crowd-funding campaigns relating to the Axanar Works. The first campaign was on Kickstarter, and raised approximately \$100,000 for the production of the twenty-minute film, *Prelude to Axanar*. After *Prelude to Axanar* was completed, two additional crowdfunding campaigns were completed (one on Kickstarter and another on Indiegogo), in order to raise funds for Mr. Peters’ full-length *Star Trek* film, entitled *Star Trek: Axanar*. Approximately \$1.4 million was publicly raised in connection with these two subsequent crowdfunding efforts.

1 litigation by Mr. Peters. *Id.* Plaintiffs, instead, obtained it and *produced it to*
2 *Defendants.* *Id.* at Ex. D. In this report relating to the funds spent by Mr. Peters on
3 *Star Trek: Prelude to Axanar*, Mr. Peters stated that “The Axanar Annual Report is
4 the financial review document of Axanar Productions. One thing we at Axanar
5 pride ourselves on is being the most transparent and accountable crowd-funded film
6 out there.” *Id.*

7 However, in response to counsel’s request that Mr. Peters de-designate the
8 ledger showing the funds expended on Mr. Peters’ follow-on project, *Star Trek:*
9 *Axanar*, his counsel declined to do so, stating that the public disclosure of the ways
10 in which Mr. Peters spent funds from Star Trek fans could cause embarrassment for
11 Mr. Peters. Grossman Decl., ¶ 20, Ex. G.

12 **B. Deposition of Christian Gossett.**

13 Christian Gossett was the director of *Star Trek: Prelude to Axanar*.
14 Grossman Decl., ¶ 14. Although he was subpoenaed in August, due to his work
15 schedule, he was not available for deposition during work hours and his deposition
16 was taken on Saturday October 22, 2016. *Id.* The day prior to his deposition, Mr.
17 Gossett produced thousands of pages of documents, including hundreds of emails
18 between himself and Mr. Peters (as well as other source documents showing the
19 material that was used to create the Axanar Works). *Id.*

20 The majority of these documents were communications between Mr. Gossett
21 and Alec Peters. Grossman Decl., ¶ 14. Virtually none of these documents were
22 produced by Mr. Peters. *Id.*

23 On October 24, counsel for Plaintiffs again raised these issues with counsel
24 for Defendants. Grossman Decl., ¶ 16, Ex. F. Plaintiffs asked for another
25 deposition of Peters and also stated:

26 Finally, as you know, Rob Burnett testified that he did not
27 produce emails or text messages relating to the creation of
28

1 the Axanar Works or this lawsuit. On Saturday, we
2 deposed Christian Gossett, the director of *Prelude To*
3 *Axanar*, which was co-written and produced by your client
4 Alec Peters...Mr. Gossett's production shows that
5 virtually none of the communications that Mr. Peters had
6 with the director of *Prelude to Axanar* were turned over
7 prior to Mr. Peters' deposition. Also, as we explained last
8 week, there were many communications between CBS and
9 Alec Peters that were produced by CBS, but were not
10 produced by Alec Peters.

11 Defendants' counsel responded by pointing out *one* email between Mr. Peters
12 and CBS that he had produced. Grossman Decl., ¶ 17, Ex. F.⁴ Defendants' counsel,
13 however, failed to explain the lack of production of Mr. Peters' communications
14 with Mr. Gossett, and refused to produce Mr. Peters for a further deposition. *Id.*

15 However, Defendants' counsel also stated that she had located over one
16 hundred unproduced emails from Mr. Peters, that those documents would be
17 produced this week, but that Mr. Peters would not agree to sit for a further
18 deposition regarding these productions. Grossman Decl., ¶ 17, Ex. F.

19 After continued demands from Plaintiffs, Defendants' counsel eventually
20 stated that Mr. Peters had located even more documents, and would be producing
21 them (of unknown content) but that he would not agree to be deposed for any more
22 than two hours, and only with respect to the limited documents that were located
23 after his October 19 deposition. Grossman Decl., ¶ 19, Ex. G. Mr. Peters' counsel
24 did not agree to produce Mr. Peters' text messages, social media postings, nor did
25 counsel agree to certify that Mr. Peters' emails had been searched for all responsive
26 documents. *Id.* Given that CBS has produced many communications with Mr.

27
28 ⁴ There are several communications between Mr. Peters and CBS that were
not produced by Mr. Peters. *See* Grossman Decl., ¶ 9, Ex. C.

1 Peters that he did not produce himself, that Mr. Gossett has produced voluminous
2 correspondence regarding the Axanar project that Mr. Peters did not produce
3 himself, and Mr. Burnett has not produced any documents or communications
4 relating to his involvement with the Axanar project, Plaintiffs believe that the Court
5 should order that Mr. Burnett and Mr. Peters certify that all responsive documents
6 (including emails, social media and internet postings and text messages) have been
7 produced, and produce Mr. Peters, without restriction, for a further deposition once
8 those documents have been turned over.

9 **III. ARGUMENT**

10 **A. Mr. Peters Should Be Required To Certify That All Relevant** 11 **Documents Have Been Produced And Should Appear For A** 12 **Second Deposition.**

13 It is undisputed that Mr. Peters has not produced emails relating to the
14 production of the Axanar Works. In addition to Mr. Gossett's emails with Mr.
15 Peters (that were produced this week by Mr. Gossett), Mr. Peters is in the process of
16 turning over additional emails relating to the Axanar Works that had not been
17 previously produced. Moreover, both Mr. Peters and Mr. Burnett testified that they
18 did not produce their online postings relating to Axanar. Mr. Peters' failure to
19 produce documents is further evidenced by the fact that he engaged in numerous
20 communications with CBS that were only produced by CBS, and not by Mr. Peters.
21 Mr. Peters' counsel should certify that counsel has performed a search of Mr.
22 Peters' emails and that all relevant documents have been produced and Mr. Peters
23 should be ordered to appear for a further deposition, without limitation, after further
24 documents are produced, or a certification is provided that a search of his emails has
25 been completed.

26 Federal Rules of Civil Procedure Rule 30(a)(2) provides that "[a] party must
27 obtain leave of court, and the court *must grant leave* to the extent consistent with
28 Rule 26(b)(2): (A) if the parties have not stipulated to the deposition and:...(ii) the

1 deponent has already been deposed in the case.” (emphasis added) The court shall
2 grant a motion seeking leave to re-depose a party, as long as the following do not
3 apply:

4 (i) the discovery [second deposition] sought is unreasonably cumulative
5 or duplicative, or can be obtained from some other source that is more
convenient, less burdensome, or less expensive;

6 (ii) the party seeking discovery has had ample opportunity to obtain the
7 information by discovery in the action; or

8 (iii) the burden or expense of the proposed discovery outweighs its
9 likely benefit, considering the needs of the case, the amount in
10 controversy, the parties’ resources, the importance of the issues at stake
11 in the action, and the importance of the discovery in resolving the
12 issues.

13 *Couch v. Wan*, 2012 U.S. Dist. LEXIS 137216 (E.D. Cal. Sept. 21, 2012)
14 (quoting Fed. R. Civ. P. 26(b)(2)(C)) (brackets in original).

15 ““The decision to permit a second deposition is left to the discretion of the
16 trial court, and the court should balance the burdens of the various parties in
17 exercising this discretion.’ [citations omitted].” *Enron Broadband Servs., L.P. v.*
18 *Travelers Cas. & Sur. Co. of Am. (In re Enron Corp.)*, 349 B.R. 115, 128-129
19 (Bankr. S.D.N.Y. 2006). “The purpose of this rule is to ‘guard against redundant or
20 disproportionate discovery;’ however, the court ‘must be careful not to deprive a
21 party of discovery that is reasonably necessary to afford a fair opportunity to
22 develop and prepare the case.’ Thus, the principles outlined in Rule 26(b)(2)(C)
23 involve balancing the benefit of the proposed discovery with its likely burdens.”
24 *Foreclosure Mgmt. Co. v. Asset Mgmt. Holdings, LLC*, 2008 U.S. Dist. LEXIS
25 75489 (D. Kan. Aug. 21, 2008) (citing Fed. R. Civ. P. 26 advisory committee’s note
26 to 1983 amendments).

27 A deposition of a previously-deposed witness is appropriate when the re-
28 deposition has been necessitated by the opposing party’s previous refusal to produce
relevant documents or answer certain questions. *See All Star Seed v. Nationwide*
Agribusiness Ins. Co., 2013 U.S. Dist. LEXIS 64587 (S.D. Cal. May 3, 2013) (Court

1 found that plaintiff had demonstrated sufficient evidence to support re-opening two
2 depositions when “Plaintiff did not have the opportunity to question the witnesses
3 about the documents produced in February 2013, solely due to Defendant’s failure
4 to produce them.”); *Syncora Guar., Inc. v. EMC Mortg. Corp.*, 2013 U.S. Dist.
5 LEXIS 41770 (N.D. Cal. Mar. 25, 2013) (second deposition ordered over objection
6 by opposing party that “Syncora chose to depose Ms. Gibin knowing that it had
7 requested the production of these documents, but without waiting for their
8 production”).

9 For the following reasons, the discovery sought in the second session of
10 Peters’ deposition is not unreasonably cumulative or duplicative, cannot be obtained
11 from some other source that is more convenient, less burdensome, or less expensive,
12 and Plaintiffs have not had ample opportunity to obtain the information thus far.
13 Furthermore, it is solely because of the refusals of Defendants (and the third parties
14 over which they maintain control) to produce documents and information in
15 response to Plaintiffs’ discovery requests that this second deposition has been
16 necessitated:

- 17 • There are a significant amount of emails that Defendants have
18 inexplicably failed to produce in this case, and that Plaintiffs were
19 therefore unable to use for their deposition of Mr. Peters.
- 20 • The director of *Prelude to Axanar*, Christian Gossett, turned over
21 thousands of pages of documents, most of which were communications
22 with Mr. Peters. Grossman Decl., ¶ 15, Ex. E. Yet, Defendants have
23 given no explanation as to why they did not produce these documents
24 prior to Mr. Peters’ deposition, or at all. Notably, Mr. Peters produced
25 emails from that same email account, from the same time period, and
26 he also testified that he did not delete substantive emails with Mr.
27 Gossett.

28

- 1 • Since Mr. Peters' deposition, Defendants have said that they are
2 producing additional emails from Mr. Peters, although they have not
3 described the content of those documents. Grossman Decl., ¶ 19, Ex.
4 G. Plaintiffs have, obviously, not had the opportunity to depose Peters
5 regarding these documents.

6 Accordingly, Plaintiffs respectfully request that the Court direct Mr. Peters to
7 appear for a subsequent deposition.

8 **B. Mr. Peters' Summary Of Funds Expended Should Not Be**
9 **Designated Attorneys' Eyes Only.**

10 Mr. Peters had not provided any legitimate basis to support the designation of
11 the expenditures made on the *Star Trek: Axanar* film as "Highly Confidential" or
12 "Attorneys' Eyes Only." That Mr. Peters does not want to reveal the amounts that
13 he paid to himself and his colleagues, or the amounts he spent on personal expenses,
14 is not a sufficient basis for restricting access to that information.

15 There are two remaining depositions in this matter, and Plaintiffs will be
16 prejudiced if they are not able to provide this financial summary to actual and
17 potential witnesses, as this document evidences the nature of Mr. Peters' Star Trek
18 production, which he has (in this lawsuit) mischaracterized as a "fan film" and a
19 non-commercial enterprise.

20 Mr. Peters previously disclosed, in a published report, the expenditures made
21 on his first Star Trek film project, *Prelude to Axanar*. And in that financial
22 disclosure document (which Mr. Peters inexplicably did not turn over in this
23 lawsuit), Mr. Peters explained that: "[o]ne thing we at Axanar pride ourselves on is
24 being the most transparent and accountable crowd-funded film out there." Grossman
25 Decl., Ex. D.

26 Mr. Peters has not articulated any basis for the current designation of the
27 financial summary for the subsequent crowdfunding project, *Star Trek: Axanar*, and
28 Plaintiffs request that the Court order that document to be de-designated.

1 **C. Defendants Should Be Ordered To Provide A Privilege Log.**

2 Defendants' counsel previously refused to produce a privilege log for Mr.
3 Peters (and his company) on the grounds that "we are not withholding anything
4 from before the lawsuit was filed as privileged." Grossman Decl., ¶ 5, Ex. A. This
5 statement was made on September 26, 2016. *Id.* On October 19, 2016, Mr. Peters
6 confirmed that he had, in fact, engaged and paid counsel prior to the inception of the
7 litigation. Indeed, Mr. Peters hired production counsel for his Star Trek film project
8 and, on October 22, 2016, Mr. Gossett testified regarding documents that he
9 produced (and Mr. Peters did not produce) showing that Mr. Peters had engaged
10 counsel, and instructed his counsel to prepare agreements relating to the films, and
11 other legal documents. *Id.*, ¶ 15, Ex. E.

12 After Defendants' counsel's statement that no privilege communications
13 existed prior to the filing of this lawsuit was proven incorrect, Plaintiffs requested
14 that a privilege log be provided. Grossman Decl., Ex. F. Defendants' counsel
15 refused to do so. *Id.*, Ex. G.

16 "Counsel must ...prepare and provide to opposing counsel a privilege log if
17 documents are withheld as privileged." *HM Elecs., Inc. v. R.F. Techs., Inc.*, No.
18 12cv2884-BAS-MDD, 2015 U.S. Dist. LEXIS 104100, at *65 (S.D. Cal. Aug. 7,
19 2015); Fed. R. Civ. P. 26(b)(5)(A).

20 Plaintiffs request that the Court order Mr. Peters and Axanar Productions to
21 provide a privilege log, along with the other documents that have been withheld, and
22 prior to the date set for his continued deposition.

23 **IV. CONCLUSION**

24 Plaintiffs respectfully request that the Court (a) order Mr. Peters to appear for
25 deposition; (b) order that Mr. Peters de-designate the financial summary for his *Star*
26 *Trek: Axanar* project; and (c) provide a privilege log.

27

28

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

Dated: October 27, 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.