

1 Erin R. Ranahan (SBN: 235286)
eranahan@winston.com
2 Diana Hughes Leiden (SBN: 267606)
dhleiden@winston.com
3 Kelly N. Oki (SBN: 304053)
koki@winston.com
4 WINSTON & STRAWN LLP
333 South Grand Avenue
5 Los Angeles, CA 90071
Telephone: (213) 615-1700
6 Facsimile: (213) 615-1750

7 Attorneys for Defendants,
AXANAR PRODUCTIONS, INC.,
8 and ALEC PETERS

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

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

14 Plaintiffs,

15 vs.

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

18 Defendants.
19

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

Assigned to: Hon. R. Gary Klausner

**DEFENDANTS AXANAR
PRODUCTIONS, INC., AND ALEC
PETERS' UNOPPOSED
APPLICATION TO FILE UNDER
SEAL**

Local Rule 79-5.2.2

[Filed concurrently with Sealed
Declaration of Diana Hughes Leiden and
Proposed Order]

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Local Rule 79-5.2.2(a)-(b),
3 Defendant Axanar Productions, Inc. and Alec Peters hereby request that this Court
4 enter an order permitting it to file under seal the unredacted version of its Motion for
5 Summary Judgment and Statement of Undisputed Facts, Exhibits 3 and 9-12 to the
6 Declaration of Kelly N. Oki, and Exhibit 3 to the Declaration of Alec Peters in support
7 thereof. Defendants' counsel has informed Plaintiffs' counsel of Defendants' intent to
8 file this Application. *See* Declaration of Diana Hughes Leiden filed concurrently
9 herewith (hereafter, "Leiden Decl.") ¶ 2. Counsel for Plaintiffs has indicated that
10 Plaintiffs **will not** oppose the relief sought in this Application. *Id.* Therefore, the
11 Application is unopposed.

12 **I. Factual Background**

13 On July 12, 2016, Magistrate Judge Charles Eick entered the parties' Stipulated
14 Protective Order. *See* ECF No. 53. The Stipulated Protective Order permits
15 designation as "Confidential Information" documents and information "that constitute
16 non-public, highly sensitive financial information regarding revenues, expenses and
17 profits generated in connection with the motion picture works at issue ... non-public
18 drafts of scripts, screenplays and other creative and artistic material, including
19 unreleased portions or versions of the films at issue ... documents or information
20 containing personal financial information of third parties, including for example
21 writers, producers and directors that are not a party to this litigation, as well as all
22 confidential and proprietary business or commercial information or trade secrets
23 within the meaning of Fed. R. Civ. P. 26(c) or California Civil Code § 3426.1." ECF
24 No. 53 at 1. The Stipulated Protective Order also permits the parties to designate as
25 "Highly Confidential – Attorney's Eyes Only" documents and information that consist
26 of "competitively sensitive or proprietary information [that] could cause competitive
27 harm if disclosed to an unauthorized person." *Id.* at 3.

28 Plaintiffs and Defendants have both designated certain deposition testimony and

1 documents as “Confidential” and “Highly Confidential – Attorney’s Eyes Only”
 2 pursuant to the Stipulated Protective Order. Under the Stipulated Protective Order,
 3 the parties must seek permission from the Court in order to file “Confidential” or
 4 “Highly Confidential – Attorney’s Eyes Only” documents under seal. ECF No. 53 at
 5 7. Defendants’ Motion for Summary Judgment quotes and describes documents and
 6 testimony that the parties designated as “Confidential” pursuant to the Stipulated
 7 Protective Order. Exhibits 3 and 9-12 to the Declaration of Kelly N. Oki (“Oki
 8 Decl.”) and Exhibit 3 to the Declaration of Alec Peters (“Peters Decl.”) constitute
 9 copies of all or portions of these documents and testimony, specifically:

10 Exhibit 3 to Oki Declaration	The November 2, 2016 expert report of Christian Tregillis served by Defendants (designated by Defendants as “Confidential”)
11 Exhibit 9 to Oki Declaration	12 Excerpts from the September 28, 2016 deposition of John Van Citters (designated by Plaintiffs as “Confidential”)
13 Exhibit 10 to Oki Declaration	14 Excerpts from the September 30, 2016 deposition of Dan O’Rourke (designated by Plaintiffs as “Confidential”)
15 Exhibit 11 to Oki Declaration	16 Excerpts from the November 7, 2016 deposition of Justin Lin (designated by Plaintiffs as “Confidential”)
17 Exhibit 12 to Oki Declaration	18 Excerpts from the November 9, 2016 deposition of J.J. Abrams (designated by Plaintiffs as “Confidential”)
19 Exhibit 3 to Peters Declaration	20 Draft of the script for the potential fan film at issue produced by Defendants, Bates range AX031943 – AX032066 (designated by Defendants as “Confidential”)

21
 22 Furthermore, Defendants’ Motion for Summary Judgment and Statement of
 23 Undisputed Facts refer to and quote from Exhibits 9-12 to the Oki Declaration.
 24

25 Defendants apply to file under seal the unredacted Motion for Summary
 26

1 Judgment, unredacted Statement of Undisputed Facts, and the foregoing documents
2 pursuant to the Stipulated Protective Order and Local Rule 79-5.2.2. Due to the
3 sensitive nature of this information, good cause exists to approve Defendants'
4 application to file Exhibit 3 to the Oki Declaration and Exhibit 3 to the Peters
5 Declaration under seal pursuant to Local Rule 79-5.2.2(a), and, pursuant to Local Rule
6 79-5.2.2(b)(i), Plaintiffs shall demonstrate such good cause for Exhibits 9-12 to the
7 Oki Declaration. Defendants will file a redacted version of these documents, the
8 Motion for Summary Judgment, and the Statement of Undisputed Facts that refer to
9 and quote these Exhibits 9-12 to the Oki Declaration. Pursuant to Local Rule 79-
10 5.2.2(b), Counsel for Defendants conferred with counsel for Plaintiffs whether
11 Exhibits 9-12 could be redacted rather than filed under seal in their entirety. Plaintiffs
12 requested that Defendants seal the documents in their entirety. Leiden Decl. ¶ 3.

13 **II. Good Cause Exists to File the Unredacted Motion for Summary Judgment**
14 **and Supporting Documents Under Seal**

15 The decision to seal records is left to the discretion of the District Court.
16 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner*
17 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). There are “compelling reasons” to
18 seal the exhibits described herein. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
19 1172, 1180 (9th Cir. 2006). The “compelling reasons” standard is met where public
20 disclosure of the “court files might [] become a vehicle for improper purposes,’ such
21 as the use of records to gratify private spite, promote public scandal, circulate libelous
22 statements, or release trade secrets.”) *In re Electronic Arts Inc.*, 298 F. App’x. 568,
23 569 (9th Cir. 2008) (quoting *Nixon* and *Kamakana*, *supra*) (internal quotations
24 omitted); *Bauer Bros. LLC v. Nike, Inc.*, No. 09CV500-WQH-BGS, 2012 WL
25 1899838, at *2 (S.D. Cal. May 24, 2012).

26 Exhibit 3 to the Peters Declaration is the most recent, non-public version of the
27 script for Defendants’ potential feature-length fan film. Leiden Decl. ¶ 5; *see also*
28 Declaration of Alec Peters in Support of Defendants’ Motion for Summary Judgment

1 (“Peters Decl.”) ¶ 12. Defendants have always treated the script as confidential
2 material. *Id.* The script (like all of the other draft scripts produced by Defendants)
3 was designated as Confidential under the Stipulated Protective Order. Leiden Decl. ¶
4 5. Requiring the script to be publicly filed would prejudice Defendants enormously as
5 it is a work in progress that continues to be revised. *Id.* Unfinished creative works
6 like the script are documents that are “traditionally kept secret” and therefore there is
7 no presumption of public access that need be rebutted (and in any event there is no
8 overriding need for the public to view a script for a film that has not yet been made).
9 *Kamakana*, 447 F.3d at 1180. Furthermore, the script is precisely the type of
10 confidential information contemplated by the Stipulated Protective Order and that is
11 routinely designated as such. ECF No. 53 at 1; *Corbello v. Devito*, No. 2:08-cv-
12 00867-RCJ-PAL, 2010 WL 4974540, at *1-2 (D. Nev. Dec. 1, 2010) (permitting
13 plaintiff to file “undated *Jersey Boys* scripts” under seal that had been designated
14 confidential by the defendants). Because the script, in its entirety, constitutes
15 confidential information, it cannot be suitably redacted to eliminate the production of
16 such confidential information. Leiden Decl. ¶ 5.

17 Exhibit 3 to the Oki Declaration is the report by Defendants’ damages expert,
18 Christian Tregillis. Mr. Tregillis cites, quotes, and relies upon testimony from
19 Plaintiffs’ witnesses that Plaintiffs designated “Confidential” as well as a financial
20 document that Defendants designated “Confidential.” Leiden Decl. ¶ 4. The financial
21 document cited constitutes the type of sensitive information that deserves protection.
22 *FDIC v. Tarkanian*, 2012 WL 1327856, at *2 (S.D. Cal. Apr. 17, 2012); *Coloplast A/S*
23 *v. Generic Med. Devices*, 2012 WL 3629037, at *1 (W.D. Wash. Aug. 22, 2012)
24 (documents sealed to protect “confidential sensitive business and/or financial
25 information”); *see also IMAX Corp. v. Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th
26 Cir. 1998) (noting that confidential and proprietary business information is “to be filed
27 under seal.”). Defendants submit a proposed redacted version of the report herewith,
28 with the redactions limited to the material described above.

1 Pursuant to Local Rule 79-5.2.2(b)(1), Plaintiffs shall file a declaration
2 establishing that all or part of Exhibits 9-12 are sealable.

3 For the foregoing reasons, good cause exists for filing the unredacted Motion
4 for Summary Judgment, Statement of Undisputed Facts, Exhibits 3 and 9-12 to the
5 Oki Declaration, and Exhibit 3 to the Peters Declaration under seal. Accordingly,
6 Defendants hereby respectfully request that the Court grant this Application.

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Dated: November 16, 2016

WINSTON & STRAWN LLP

By: /s/ Diana Hughes Leiden
Erin R. Ranahan
Diana Hughes Leiden
Kelly N. Oki
Attorneys for Defendants,
AXANAR PRODUCTIONS, INC.
and ALEC PETERS