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8 and ALEC PETERS

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11

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

14 Plaintiffs,

15 vs.

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

18 Defendants.  
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20  
21  
22

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

*Assigned to: Hon. R. Gary Klausner*

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' STATEMENT OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW AND  
ADDITIONAL MATERIAL FACTS  
IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

**FED. R. CIV. P. 56(c)**

Hearing Date: 12/19/16  
Time: 9:00 a.m.

Original Complaint Filed: 12/29/15  
First Amended Complaint Filed: 3/11/16

23  
24 **UNREDACTED VERSION OF ECF NO. 75-1 FILED UNDER SEAL PURSUANT TO**  
25 **ORDER OF THE COURT DATED NOVEMBER 28, 2016 (ECF NO. 82)**  
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27  
28

Defendants Axanar Productions, Inc., and Alec Peters (“Axanar”) respectfully submit the following Responses to Plaintiffs’ Statement of Uncontroverted Facts in Support of Plaintiffs’ Motion for Partial Summary Judgment and the Statement of Additional, Material Facts pursuant to Local Rule 56-1 in support of Defendants’ Motion for Summary Judgment.

**I. RESPONSE TO PLAINTIFF’S STATEMENT OF UNCONTROVERTED FACTS**

<b><u>“Undisputed” Fact</u></b>	<b><u>Opposing Party’s Responses</u></b>
<p>1. Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios Inc. (“CBS”) (collectively, “Plaintiffs”), own the copyrights to the Star Trek films and television series.</p> <p>Declaration of David Grossman (“Grossman Decl.”), ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures).</p> <p>Declaration of John Van Citters (“Van Citters Decl.”), ¶¶ 8, 10.</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p>
<p>2. Plaintiff CBS owns the rights to <i>The Original Series</i>, as well as to all of the subsequent Star Trek Television Series.</p> <p>Van Citters Decl., ¶ 8.</p> <p>Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p>
<p>3. Paramount owns the copyrights in the Star Trek Motion Pictures.</p> <p>Van Citters Decl. ¶ 10.</p> <p>Grossman Decl., ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures).</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters Decl.</p> <p><i>See also</i> Evidentiary Objections to Grossman Decl.</p>
<p>4. Paramount owns the copyright in the novel entitled <i>Garth of Izar</i>.</p>	<p>Undisputed</p> <p><i>See</i> Evidentiary Objections to Van Citters</p>

1	Van Citters Decl., ¶ 11.	Decl.
2	Grossman Decl., ¶ 94, Ex. WW	See also Evidentiary Objections to
3	(copyright registration for <i>Garth of Izar</i>	Grossman Decl.
4	novel), Ex. 21 ( <i>Garth of Izar</i> novel).	
5	5. CBS owns the copyright in the novel	Undisputed
6	entitled <i>Strangers from the Sky</i> .	See Evidentiary Objections to Van Citters
7	Van Citters Decl., ¶ 11.	Decl.
8	Grossman Decl., ¶ 95, Ex. XX	See also Evidentiary Objections to
9	(copyright registration for <i>Strangers</i>	Grossman Decl.
10	<i>from the Sky</i> ).	
11	6. CBS owns the copyright in the novel	Undisputed
12	entitled <i>Infinity's Prism</i> .	See Evidentiary Objections to Van Citters
13	Van Citters Decl., ¶ 11.	Decl.
14	Grossman Decl., ¶ 95, Ex. YY	See also Evidentiary Objections to
15	(copyright registration for <i>Infinity's</i>	Grossman Decl.
16	<i>Prism</i> ).	
17	7. The original Star Trek television	Undisputed
18	series (" <i>The Original Series</i> ")	See Evidentiary Objections to Van Citters
19	debuted in 1966, and ran for three	Decl.
20	seasons, until 1969.	
21	Van Citters Decl., ¶ 5.	See also Evidentiary Objections to
22	Grossman Decl., ¶ 92, Ex. 1 ( <i>The</i>	Grossman Decl.
23	<i>Original Series</i> DVDs).	
24	8. In addition to <i>The Original Series</i> ,	Undisputed
25	there have been five further Star Trek	See Evidentiary Objections to Van Citters
26	television series totaling more than	Decl.
27	700 episodes (collectively with <i>The</i>	See also Evidentiary Objections to
28	<i>Original Series</i> , the "Star Trek	Grossman Decl.
	Television Series").	
	Van Citters Decl., ¶¶ 3, 4.	
	Grossman Decl., ¶ 90, Ex. UU	
	(copyright registrations for the Star Trek	
	Television Series), ¶ 92, Exs. 1-5 (Star	
	Trek Television Series DVDs).	
	9. <i>The Original Series</i> chronicled the	Undisputed
	adventures of the U.S.S. Enterprise	See Evidentiary Objections to Van Citters
	(one of the ships of "Starfleet") and	Decl.
	its crew as they traveled through	See also Evidentiary Objections to
	space during the twenty-third	Grossman Decl.
	century, and featured numerous	
	original and copyrightable elements,	
	including but not limited to elements	
	such as the plots of the episodes,	
	mood, theme, characters, settings,	
	pace and numerous original and	
	copyrightable elements such as the	
	Starship Enterprise (Starfleet registry	

1	number NCC-1701), original and	
2	fictitious races and species, including	
3	the Vulcan and Klingon races, the	
4	United Federation of Planets (the	
5	“Federation”), and fictional weapons	
6	and technology.	
7	Van Citters Decl., ¶ 5.	
8	Grossman Decl., ¶ 92, Ex. 1 ( <i>The</i>	
9	<i>Original Series</i> DVDs).	
10	10. In “Whom Gods Destroy,” one of the	Undisputed
11	episodes of <i>The Original Series</i> ,	<i>See</i> Evidentiary Objections to Van Citters
12	James T. Kirk (played by the actor	Decl.
13	William Shatner), the Captain of the	<i>See also</i> Evidentiary Objections to
14	U.S.S. Enterprise, meets his hero,	Grossman Decl.
15	<i>Garth of Izar</i> , a former starship	
16	captain.	
17	Van Citters Decl., ¶ 6.	
18	Grossman Decl., ¶ 92, Ex. 1 ( <i>The</i>	
19	<i>Original Series</i> DVDs).	
20	11. In “Whom Gods Destroy,” Kirk and	Undisputed
21	Garth discuss Garth’s victory in the	<i>See</i> Evidentiary Objections to Van Citters
22	Battle of Axanar.	Decl.
23	Van Citters Decl., ¶ 6.	<i>See also</i> Evidentiary Objections to
24	Grossman Decl., ¶ 92, Ex. 1 ( <i>The</i>	Grossman Decl.
25	<i>Original Series</i> DVDs).	
26	12. The newest television series, <i>Star</i>	Undisputed
27	<i>Trek: Discovery</i> , will premiere in	<i>See</i> Evidentiary Objections to Van Citters
28	2017.	Decl.
	Van Citters Decl., ¶ 7.	
	13. <i>Star Trek: Discovery</i> takes place ten	Undisputed
	years before the events depicted in	<i>See</i> Evidentiary Objections to Van Citters
	<i>The Original Series</i> .	Decl.
	Van Citters Decl., ¶ 7.	
	14. Plaintiffs have licensed numerous	Undisputed
	derivative works, including books,	<i>See</i> Evidentiary Objections to Van Citters
	games and merchandise. These	Decl.
	works also include reference guides,	
	encyclopedias, documentaries,	
	behind the scenes books, dictionaries	
	and “companions” to various	
	television series.	
	Van Citters Decl., ¶¶ 12, 64-65.	
	15. Klingons are an alien race, from the	Undisputed
	planet Qo’noS, who are portrayed as	<i>See</i> Evidentiary Objections to Van Citters
	a serious and war-like species.	Decl.
	Van Citters Decl., ¶ 25.	

1	16. Klingons have distinctive visual elements including large, protruding foreheads covered by symmetrical bumps and ridges, dark hair and skin and facial hair and upward sloping eyebrows.	Undisputed
2		<i>See</i> Evidentiary Objections to Van Citters Decl.
3		
4	Van Citters Decl., ¶ 25.	
5	17. The Klingons were long-time enemies of the Federation, and engaged in a number of military battles with Starfleet.	Undisputed
6		<i>See</i> Evidentiary Objections to Van Citters Decl.
7		
8	Van Citters Decl., ¶ 25.	
9	18. Vulcans are an iconic species, owned by Plaintiffs, first appearing in the form of Mr. Spock in <i>The Original Series</i> .	Undisputed
10		<i>See</i> Evidentiary Objections to Van Citters Decl.
11	Van Citters Decl., ¶ 30.	
12	19. Vulcans are depicted with their pointed ears and upswept eyebrows, they are portrayed as stern and eschew emotions for logic and reason.	Undisputed
13		<i>See</i> Evidentiary Objections to Van Citters Decl.
14	Van Citters Decl., ¶ 29.	
15	20. Vulcan men are usually depicted with straight, dark (or gray) hair cut in a “bowl” style.	Undisputed
16		<i>See</i> Evidentiary Objections to Van Citters Decl.
17	Van Citters Decl., ¶ 29.	
18	21. Vulcans are part of the Federation, and are portrayed as an advanced technological species.	Undisputed
19		<i>See</i> Evidentiary Objections to Van Citters Decl.
20	Van Citters Decl., ¶ 29.	
21	22. Ambassador Soval was first seen in the <i>Star Trek: Enterprise</i> pilot episode “Broken Bow” in 2001, and was featured many times throughout the <i>Enterprise</i> series such as in the episode “The Expanse” from 2003.	Undisputed
22		<i>See</i> Evidentiary Objections to Van Citters Decl.
23	Van Citters Decl., ¶¶ 21, 45.	<i>See also</i> Evidentiary Objections to Grossman Decl.
24	Grossman Decl., ¶ 92, Ex. 1( <i>The Original Series</i> DVDs).	
25	23. Soval is portrayed by actor Gary Graham, who reprised his role as Ambassador Soval in Defendants’ infringing works, and even wore virtually identical makeup and costumes that he had in the <i>Enterprise</i> series, rendering the portrayal of that character all but	Disputed. Gary Graham’s makeup and hair as Soval in Defendants’ Works were different from that of the Soval who appeared in Plaintiffs’ Works. The ears, while pointed, were different from those Gary Graham wore in “Enterprise.” Gary Graham’s costume was different in <i>Prelude to Axanar</i> , the <i>Vulcan Scene</i> , and
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28		

1 2 3 4 5 6 7 8 9 10	identical to that seen in Plaintiffs' works. Van Citters Decl., ¶¶ 21-24, 45-46.	in Plaintiffs' Works. While in <i>Prelude</i> , Gary Graham's robes were Chinese, in the <i>Vulcan Scene</i> , he wore Japanese-style robes over a business suit. These costumes were not identical to each other, much less to the one Soval wore in Plaintiffs' Works.  Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 425:11-22)  ECF No. 75-19, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> at 45:58, 2:32-45, 3:11-20, 3:49-58, 7:30-43, 9:30-43, 10:14-28)  ECF No. 75-19, Peters Decl., Ex. 2 ( <i>Vulcan Scene</i> )  <i>See also</i> Evidentiary Objections to Van Citters Decl.
11 12 13 14	24. Defendants' works incorporate Plaintiffs' character, <i>Garth of Izar</i> . Van Citters Decl., ¶¶ 17-20.	Undisputed that Garth of Izar is incorporated, but disputed that Defendants have portrayed him in the same way as Defendant, and disputed that Plaintiffs have copyright protection in Garth of Izar.  <i>See</i> Evidentiary Objections to Van Citters Decl.
15 16 17 18 19	25. <i>Garth of Izar</i> , like Captain Kirk, was a Starfleet Captain. Van Citters Decl., ¶ 18.	Disputed. Garth of Izar was a Fleet Captain, and thus closer to an Admiral, commanding many ships, than a ship captain like Kirk.  ECF Nos. 72-2, 79, Grossman Decl., Ex. 1 ( <i>Whom Gods Destroy</i> at 32:20)  <i>See also</i> Evidentiary Objections to Van Citters Decl.
20 21 22 23 24	26. In <i>The Original Series</i> , <i>Garth of Izar</i> was introduced and portrayed as a former starship captain whose exploits were "required reading" at the Starfleet Academy due to his heroic conduct during the Battle of Axanar. Van Citters Decl., ¶ 18.	Undisputed  <i>See</i> Evidentiary Objections to Van Citters Decl.
25 26 27	27. In the episode that introduced Garth (entitled "Whom Gods Destroy"), Captain Kirk finds Garth in an asylum after he had been declared criminally insane. Van Citters Decl., ¶ 18.	Undisputed  <i>See</i> Evidentiary Objections to Van Citters Decl.
28	28. This character was further developed and explored by Plaintiffs in the	Undisputed



1	2003 novel entitled " <i>Garth of Izar</i> ."	See Evidentiary Objections to Van Citters Decl.
2	Van Citters Decl., ¶ 18.	
3	29. Paramount has a licensed work called	Undisputed but immaterial, as Plaintiffs
4	Star Trek: <i>The Role Playing Game</i> .	have not alleged infringement of that work
5	Van Citters Decl., ¶ 12.	in this action.
6		ECF No. 75-3, Oki Decl., Ex. 1 (CBS
7		Studios Inc.'s Amended Responses to
8		Interrogatories, Set One, Response to
9		Interrogatory Nos. 4-9)
10		ECF No. 75-4, Oki Decl., Ex. 2
11		(Paramount Pictures Corporations
12		Amended Responses to Interrogatories, Set
13		One, Response to Interrogatory Nos. 4-9)
14		ECF No. 26, FAC, Appendix A ¶¶ 2-6
15		See Evidentiary Objections to Van Citters
16		Decl.
17	30. <i>Garth of Izar</i> 's military battles	Undisputed
18	against the Klingon Empire,	See Evidentiary Objections to Van Citters
19	including the Battle of Axanar, were	Decl.
20	explored by Paramount's licensee,	
21	FASA, in <i>Star Trek: The Role</i>	
22	<i>Playing Game</i> .	
23	Van Citters Decl., ¶ 19.	
24	31. The <i>Four Years War</i> supplement is a	Undisputed, but immaterial, as Plaintiffs
25	guide that was used in connection	have not alleged infringement of that work
26	with <i>Star Trek: The Role Playing</i>	in this action..
27	<i>Game</i> .	ECF No. 75-3, Oki Decl., Ex. 1 (CBS
28	Van Citters Decl., ¶ 13.	Studios Inc.'s Amended Responses to
		Interrogatories, Set One, Response to
		Interrogatory Nos. 4-9)
		ECF No. 75-4, Oki Decl., Ex. 2
		(Paramount Pictures Corporations
		Amended Responses to Interrogatories, Set
		One, Response to Interrogatory Nos. 4-9)
		ECF No. 26, FAC, Appendix A ¶¶ 2-6
		See Evidentiary Objections to Van Citters
		Decl.
	32. The <i>Four Years War</i> supplement also	Disputed. The Battle of Axanar is

1	describes the Battle of Axanar (a	discussed on only two pages of <i>The Four</i>
2	related mission guide for the role-	<i>Years War</i> supplement. The Battle of
3	playing game was called “Return to	Axanar discussed in <i>The Four Years War</i>
4	Axanar”), and the military campaigns	supplement is entirely different than the
5	of Federation Fleet Captain <i>Garth of</i>	battle portrayed in <i>Prelude to Axanar</i> . <i>The</i>
6	<i>Izar</i> .	<i>Four Years War</i> supplement does not
7	Van Citters Decl., ¶¶ 13, 14, Ex. AAA	describe the military campaigns of Garth
8	( <i>The Four Years War</i> supplement).	of Izar. Garth of Izar is only mentioned
9		twice in the supplement: once in a
10		discussion of the Battle of Axanar, and in a
11		one-sentence summary of the Battle of
12		Axanar in a timeline.
13		ECF No. 72-60, Van Citters Decl., ¶¶ 13,
14		14, Ex. AAA ( <i>The Four Years War</i>
15		supplement at pp. 16, 35).
16		<i>See also</i> Evidentiary Objections to Van
17		Citters Decl.
18	33. The copyright in <i>The Four Years</i>	Undisputed
19	<i>War</i> is owned by Paramount.	<i>See</i> Evidentiary Objections to Van Citters
20	Van Citters Decl., ¶ 14, Ex. AAA ( <i>The</i>	Decl.
21	<i>Four Years War</i> supplement), Ex. BBB	
22	(copyright registration for <i>The Four</i>	
23	<i>Years War</i> ).	
24	34. <i>The Four Years War</i> was used as	Undisputed that Defendants had a copy of
25	source material by Defendants in	the <i>Four Years War</i> , but disputed that it
26	order to create their Axanar Works.	was used as source material besides in a <i>de</i>
27	Grossman Decl., ¶ 13, Ex. A (Peters tr.	<i>minimus</i> way. Grossman Decl., ¶ 13, Ex. A
28	at 38:22-41:17); ¶ 14, Ex. C (Gossett tr.	(Peters tr. at 40:19-41:17)
29	at 48:10-50:10), Ex. I (April 26, 2014	<i>See</i> Evidentiary Objections to Van Citters
30	email from Christian Gossett to Alec	Decl.
31	Peters).	<i>See also</i> Evidentiary Objections to
32		Grossman Decl.
33	35. Defendants admitted that they used	Disputed. Defendants had a copy of the
34	<i>The Four Years War</i> to create the	<i>Four Years War</i> , but did not use to create
35	Axanar Works.	Axanar Works besides in a <i>de minimus</i>
36	Van Citters Decl., ¶ 14, Ex. AAA ( <i>Four</i>	way with respect to the name of a planet.
37	<i>Years War</i> ).	Grossman Decl., ¶ 13, Ex. A (Peters tr. at
38	Grossman Decl., ¶ 13, Ex. A (Peters tr.	40:19-41:17);
39	at 38:22-41:17), ¶ 14, Ex. C (Gossett tr.	Grossman Decl., ¶ 13, Ex. A (Peters Tr.
40	at 48:10-50:5), Ex. I (April 26, 2014	Vol. I at 41:8-17)
41	email from Christian Gossett to Alec	<i>See also</i> Evidentiary Objections to Van
42	Peters).	Citters Decl.
43		<i>See also</i> Evidentiary Objections to
44		Grossman Decl.
45	36. <i>Star Trek: Prelude to Axanar</i> , is a	Undisputed
46	twenty-one minute film.	<i>See</i> Evidentiary Objections to Grossman
47	Grossman Decl., ¶ 18, Ex. A (Peters tr.	Decl.



1	at 34:10-12).	
2	37. <i>Star Trek: Prelude to Axanar</i> was funded on Kickstarter.	Undisputed
3	Grossman Decl., ¶ 18, Ex. A (Peters tr. at 34:5-9).	See Evidentiary Objections to Grossman Decl.
4		
5	38. Kickstarter is a crowdsourcing website where parties can raise money to fund their projects.	Undisputed
6	Grossman Decl., ¶ 18, Ex. A (Peters tr. at 69:14-70:6).	See Evidentiary Objections to Grossman Decl.
7		
8	39. In exchange for donations on <i>Prelude to Axanar</i> , Defendants provided donors with perks that included various branded merchandise.	Disputed. The merchandise did not include any Star Trek marks and was “Axanar” branded, not Star Trek branded.
9		Peters Decl., ¶ 11
10	Grossman Decl., ¶ 69, Ex. D (Kingsbury tr. at 114:16-25).	See also Evidentiary Objections to Grossman Decl.
11		
12	40. <i>Prelude to Axanar</i> was released on YouTube in August of 2014.	Undisputed
13	Grossman Decl., ¶ 19, Ex. L (YouTube page).	See Evidentiary Objections to Grossman Decl.
14	41. Defendant Peters wrote the <i>Prelude to Axanar</i> screenplay.	Disputed. Defendant Alec Peters collaborated with Christian Gossett in writing the screenplay for <i>Prelude to Axanar</i> .
15	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 57:1-58:25).	Peters Decl., ¶ 2
16		ECF No. 75-19, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
17		See also Evidentiary Objections to Grossman Decl.
18		
19		
20	42. <i>Star Trek: Prelude to Axanar</i> features Plaintiffs’ character, <i>Garth of Izar</i> , and describes his military exploits during the war between the Federation and the Klingon Empire.	Undisputed
21		See Evidentiary Objections to Van Citters Decl.
22		See also Evidentiary Objections to Grossman Decl.
23	Van Citters Decl. ¶¶ 15, 17, Exhibit 19 ( <i>Prelude to Axanar</i> ).	
24	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 36:20-37:25; 46:18-48:1); ¶ 24, Ex. B (Burnett tr. at 191:17-192:25).	
25		
26	43. <i>Prelude to Axanar</i> features the Federation.	Undisputed
27		See Evidentiary Objections to Van Citters Decl.
28	Van Citters Decl., ¶¶ 15, 37, 38 Exhibit 19 ( <i>Prelude to Axanar</i> ).	See also Evidentiary Objections to

1	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20 , ¶ 24, Ex. B (Burnett tr. at 107:6-15); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to Axanar</i> ).	Grossman Decl.
2		
3		
4	44. <i>Prelude to Axanar</i> features Klingons.	Disputed. <i>Prelude to Axanar</i> features only one Klingon, Kharn.
5	Van Citters Decl., ¶¶ 15, 25-28, Exhibit 19 ( <i>Prelude to Axanar</i> ).	Peters Decl., ¶ 9
6	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to Axanar</i> ).	ECF No. 75-19, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
7		See also Evidentiary Objections to Van Citters Decl.
8		See also Evidentiary Objections to Grossman Decl.
9		
10	45. <i>Prelude to Axanar</i> features Vulcans.	Disputed. <i>Prelude to Axanar</i> features only one Vulcan, Soval
11	Van Citters Decl. ¶¶ 15, 29-32, Exhibit 19 ( <i>Prelude to Axanar</i> ).	Peters Decl., ¶ 8
12		ECF No. 75-19, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
13	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20).	See also Evidentiary Objections to Van Citters Decl.
14		See also Evidentiary Objections to Grossman Decl.
15		
16		
17	46. <i>Prelude to Axanar</i> features Starfleet.	Disputed. “Starfleet” is a generic term used in science fiction generally, and in Star Trek itself, to indicate space ships from different races.
18	Van Citters Decl. ¶¶ 15, 33-34, Exhibit 19 ( <i>Prelude to Axanar</i> ).	Peters Decl., ¶ 7
19	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20).	ECF Nos. 72-2, 79, Grossman Decl., Ex. 1 ( <i>Errand of Mercy</i> at 42:28)
20		See also Evidentiary Objections to Van Citters Decl.
21		See also Evidentiary Objections to Grossman Decl.
22		
23		
24	47. <i>Prelude to Axanar</i> features Starfleet officers and commanders, including <i>Garth of Izar</i> .	Undisputed
25		See Evidentiary Objections to Van Citters Decl.
26	Van Citters Decl. ¶¶ 15, 17-18, Exhibit 19 ( <i>Prelude to Axanar</i> ).	See also Evidentiary Objections to Grossman Decl.
27		
28	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 36:20-37:16; 414:2-415:19), ¶¶ 33, Ex. S (July 8, 2014 email from Alec	

1	Peters to Christian Gossett and Rocio Everett).	
2	48. <i>Prelude to Axanar</i> features the character Soval.	Undisputed
3	Van Citters Decl. ¶¶ 15, 21-24, Exhibit 19 ( <i>Prelude to Axanar</i> ).	See Evidentiary Objections to Van Citters Decl.
4	49. <i>Prelude to Axanar</i> features Klingon battlecruisers.	Disputed. <i>Prelude to Axanar</i> features different Klingon battlecruisers from those seen in Plaintiffs' Works. The battlecruisers featured in <i>Prelude to Axanar</i> are original designs created by Axanar VFX coordinator Tobias Richter.
5	Van Citters Decl. ¶¶ 15, 35-36, Exhibit 19 ( <i>Prelude to Axanar</i> ).	Peters Decl., ¶ 10
6		See also Evidentiary Objections to Van Citters Decl.
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8		
9		
10	50. Defendants have created substantially similar representations of Klingons, and in doing so have copied the makeup, hair, costumes, weaponry and accessories worn by those species.	Disputed. The representation of Kharn, the only Klingon featured in <i>Prelude to Axanar</i> , is not substantially similar to the Klingons seen in Plaintiffs' Works. Klingons did not even have a consistent appearance across Plaintiffs' Works, appearing as little more than actors wearing brown makeup to darken their skin in <i>Star Trek: The Original Series</i> , and appearing as characters with large head ridges, and big, dog-like teeth in later television episodes and motion pictures.
11	Van Citters Decl. ¶¶ 15, 25-28, Exhibit 19 ( <i>Prelude to Axanar</i> ).	Peters Decl., ¶ 9
12	Grossman Decl., ¶¶ 30, 31 Ex. B (Burnett tr. at 202:21-203:25; 215:4-216:9); ¶ 26, Ex. A (Peters tr. at 82:6-85:12), ¶ 45 (Peters tr. at 44:21-55:20); ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 3 for use of Bat'leth and page 30 for use of Mek'leth).	Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 360:12-361:11)
13		ECF No. 75-19, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
14		See also Evidentiary Objections to Van Citters Decl.
15		See also Evidentiary Objections to Grossman Decl.
16		
17	51. Defendants have created substantially similar representations of Vulcans, and in doing so have copied the makeup, hair, costumes, and accessories worn by those species.	Disputed. The one Vulcan appearing in Defendants' Works is substantially different: his hair, age, and costume are different from any Vulcan seen in Plaintiffs' Works.
18	Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12); Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20).	Peters Decl., ¶ 8
19		Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 360:12-361:11)
20		ECF No. 75-19, Peters Decl., Ex. 1
21		
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1		(Prelude to Axanar)
2		See also Evidentiary Objections to Van
3		Citters Decl.
4		See also Evidentiary Objections to
5	52. [REDACTED]	Grossman Decl.
6		Disputed.
7		Peters Decl., ¶¶ 8-9
8	Grossman Decl., ¶ 26, Ex. A (Peters tr.	Grossman Decl., ¶ 13, Ex. A (Peters Tr.,
9	at 82:6-85:12); ¶ 23, Ex. A (Peters tr. at	Vol. II at 360:12-361:11)
10	44:21-55:20).	ECF No. 75-19, Peters Decl., Ex. 1
11		(Prelude to Axanar)
12		See also Evidentiary Objections to
13	53. [REDACTED]	Grossman Decl.
14		Undisputed
15	Grossman Decl., ¶ 25, Ex. A (Peters tr.	See Evidentiary Objections to Grossman
16	at 319:8-323:10), Ex. O (March 17, 2014	Decl.
17	email from Alec Peters to Christian	
18	Gossett and Hamilton Cox).	
19	54. Mr. Peters stated “I am the keeper of	Undisputed
20	the faith with fans. They love that	See Evidentiary Objections to Grossman
21	about us. Our faithfulness to the	Decl.
22	universe.”	
23	Grossman Decl., ¶ 34, Ex. A (Peters tr.	
24	at 471:25-475:1), Ex. U (March 7, 2015	
25	email from Alec Peters to Christian	
26	Gossett).	
27	55. [REDACTED]	Undisputed
28		See Evidentiary Objections to Grossman
	Grossman Decl., ¶ 34, Ex. A (Peters tr.	Decl.
	at 420:13-421:19; 471:25-475:1), Ex. T	
	(July 15, 2014 email from Christian	
	Gossett to Alec Peters); Ex. U (March 7,	
	2015 email from Alec Peters to Christian	
	Gossett); ¶ 27, Ex. A (Peters tr. at 347:4-	
	348:10), Ex. P (email exchange between	
	Mr. Peters and Mr. Gossett); ¶ 47, Ex. A	
	(Peters tr. at 456:24-458:18), Ex. BB	
	(Peters email exchange), ¶ 28, Ex.	
	A (Peters tr. at 376:16-377:11), ¶ 38, Ex.	
	A (Peters tr. at 377:17-378:13), Ex. Y	

1	(email exchange), ¶ 37, Ex. A (Peters tr. at 373:10-375:16), Ex. X (Peters email exchange).	
2		
3	56. The director of <i>Prelude to Axanar</i> testified that <i>Prelude to Axanar</i> is an infringing work.	Disputed. Calls for a legal conclusion, fails to consider fair use, and is based on a fundamental misunderstanding of copyright law, as he also testified that more original elements make it more infringing, which is incorrect. Also, Mr. Gossett has a personal vendetta against Mr. Peters and is no longer associated with Axanar, so his credibility on these issues at the very least creates yet another factual dispute.
4	Grossman Decl., ¶ 21, Ex. C (Gossett tr. at 185:25-186:8).	
5		Ranahan Decl., ¶ 5, Ex. E (Gossett Tr. at 124:7-14, 139:5-140:18, 187:25-188:7)
6		Peters Decl., ¶¶ 22-23
7		See also Evidentiary Objections to Grossman Decl.
8		
9		
10		
11		
12	57. Prior to the filing of this lawsuit, Axanar, Defendants drafted a final shooting script.	Disputed. Defendants still do not have a “final shooting script” for the unmade Potential Fan Film.
13		
14	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), Ex. AA (script).	Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. I at 77:5-9)
15		ECF. No. 75-8, Oki Decl., Ex. 6 (Hunt Tr. at 49:10-50:24)
16		See also Evidentiary Objections to Grossman Decl.
17		
18	58. In 2015, Defendants released one scene from the full-length film, which they call the “Vulcan Scene.”	Undisputed
19		See Evidentiary Objections to Van Citters Decl.
20	Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene).	See also Evidentiary Objections to Grossman Decl.
21		
22	Grossman Decl., ¶ 43, Ex. A (Peters tr. at 79:11-17).	
23	59. The Vulcan Scene features Vulcans.	Undisputed
24	Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶ 47.	See Evidentiary Objections to Van Citters Decl.
25	Grossman Decl., ¶ 43, Ex. A (Peters tr. at 425:11-426:3; 77:5-9); Ex. AA (script at pages 21-23).	See also Evidentiary Objections to Grossman Decl.
26		
27	60. The Vulcan Scene features the character Soval.	Undisputed
28	Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶¶ 45-46.	See Evidentiary Objections to Van Citters Decl.



1	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), Ex. AA (script at pages 21-23).	<i>See also</i> Evidentiary Objections to Grossman Decl.
2		
3	61. The Vulcan Scene features the planet Vulcan.	Undisputed
4	Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶¶ 48, 49.	<i>See</i> Evidentiary Objections to Van Citters Decl.
5		<i>See also</i> Evidentiary Objections to Grossman Decl.
6	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), Ex. AA (script at pages 21-23); ¶ 44, Ex. N (Burnett tr. at 103:13-18).	
7		
8	62. The shot of planet Vulcan in the Vulcan Scene was copied from <i>Star Trek III: The Search for Spock</i> .	Disputed. The shot of planet Vulcan in the <i>Vulcan Scene</i> was not copied from <i>Star Trek III: The Search for Spock</i> .
9		
10	Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶ 48.	Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. I at 84:9-11)
11		<i>See also</i> Evidentiary Objections to Van Citters Decl.
12	Grossman Decl., ¶ 43, Ex. A (Peters tr. at 82:2-85:12); ¶ 44, Ex. B (Burnett tr. at 106:11-17).	<i>See also</i> Evidentiary Objections to Grossman Decl.
13		
14	63. The Vulcan Scene features Vulcan ships.	Undisputed
15	Van Citters Decl., ¶ 43, Exhibit 20 (Vulcan Scene); ¶ 50.	<i>See</i> Evidentiary Objections to Van Citters Decl.
16		<i>See also</i> Evidentiary Objections to Grossman Decl.
17	Grossman Decl., ¶ 43 Ex. A (Peters tr. at 82:2-85:12).	
18	64. Defendant Alec Peters himself announced, on August 15, 2015, that he had completed the “fully revised and locked script” which he referred to as “the best Star Trek movie script ever!”	Disputed. A “locked” script simply means that writers do not add sets, scenes or characters before shooting begins. Mr. Peters did not refer to it as “the best Star Trek movie script ever!” He was expressly restating a comment by someone else.
19		
20		
21		
22	Grossman Decl., ¶ 40, Ex. Z (Facebook post).	ECF No. 75-19, Peters Decl., ¶ 13
23		ECF Nos. 75-22, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 <i>Axanar</i> Script)
24		<i>See also</i> Evidentiary Objections to Grossman Decl.
25		
26	65. [REDACTED] Axanar Script features [REDACTED]	Undisputed
27		<i>See</i> Evidentiary Objections to Grossman Decl.
28	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 8), ¶ 22, Ex. C (Gossett tr. at 112:14-113:8).	



1	66. [REDACTED] features [REDACTED]	Undisputed
2	[REDACTED]	See Evidentiary Objections to Grossman
3	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21).	Decl.
4	67. [REDACTED] features [REDACTED]	Undisputed
5	[REDACTED]	See Evidentiary Objections to Grossman
6	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 8), ¶ 45, Ex. A (Peters tr. at 362:9-363:13); ¶ 46, Ex. B (Burnett tr. at 195:18-23).	Decl.
7		
8	68. Klingon Commander Chang was the villain featured in <i>Star Trek VI: The Undiscovered Country</i> .	Undisputed
9		See Evidentiary Objections to Grossman
10	Grossman Decl., ¶ 45, Ex. A (Peters tr. at 4)	Decl.
11	69. [REDACTED]	Disputed. Of the 57 characters that appear in the most recent script of the unmade Potential Fan Film, there are only seven characters that have appeared previously in Plaintiffs' Works. All seven of those characters played minor roles.
12	[REDACTED]	ECF Nos. 72-30, 79, Grossman Decl., Ex. AA (Nov. 26, 2015 <i>Axanar</i> Script)
13	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9, ¶ 42, Ex. AA (Axanar Script), ¶ 46, Ex. B (Burnett tr. at 194:9-195:16).	Peters Decl., ¶ 29
14		ECF No. 75-19, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
15		See also Evidentiary Objections to Grossman Decl.
16		
17		
18		
19		
20	70. The Axana [REDACTED]	Undisputed
21	[REDACTED]	See Evidentiary Objections to Grossman
22	Grossman Decl., ¶ 45, Ex. A (Peters tr. at 362:9-363:13); ¶ 93, Ex. 11 ( <i>Star Trek VI: Undiscovered</i> )	Decl.
23		
24	71. [REDACTED]	Undisputed
25	[REDACTED]	See Evidentiary Objections to Van Citters
26	[REDACTED]	Decl.
27	[REDACTED]	See also Evidentiary Objections to Grossman Decl.
28	Van Citters Decl., ¶ 15, Ex. 19 ( <i>Prelude to Axanar</i> ).	

Grossman Decl., ¶ 42, Ex. AA (Axanar Script).

72. Defendants also took characters, sequence, themes, mood, dialogue, and settings from the Star Trek Copyrighted Works.

Van Citters Decl., ¶¶ 15-62.

Disputed. Defendants did not “take” characters, sequence, themes, moods, or dialogue from Plaintiffs’ Works. None of the settings in *Prelude to Axanar* is the same as any setting used in Plaintiffs’ Works. As for the *Vulcan Scene*, Defendants used only one setting that was similar to one that had appeared in Plaintiffs’ Works.

ECF Nos. 72-30, 79, Grossman Decl., Ex. AA (Nov. 26, 2015 *Axanar* Script)

Peters Decl., ¶ 6

ECF No. 75-19, Peters Decl., Ex. 1 (*Prelude to Axanar*)

See also Evidentiary Objections to Van Citters Decl.

73. Defendants expressly set out to create an authentic and “independent Star Trek film” that would be true to

Undisputed

See Evidentiary Objections to Grossman Decl.

Grossman Decl., ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants’ Kickstarter fundraising page); ¶ 34, Ex. A (Peters tr. at 471:25-474:20), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett); ¶ 29, Ex. C (Gossett tr. at 36:11-37:8), Ex. R (March 24, 2013 email from Sean Tourangeau to Christian Gossett and Alec Peters); ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13, 2014 email exchange between Alec Peters, Tobias Richter, and Christian Gossett); ¶ 10, Ex. C (Gossett tr. at 30:7-31:13, Ex. F (January 4, 2011 email from Alec Peters to Christian Gossett), Ex. A (Peters tr. at 332:15-334:4); ¶ 12, Ex. C (Gossett tr. at 32:7-34:16), Ex. H (November 13, 2013 email exchange between Alec Peters and Christian Gossett), Ex. A (Peters tr. at 359:18-361:11).

74. Defendants have set the Axanar Works in 2241.03 to 2245.1, which is twenty-one years before *The Original Series* episode “Where No Man Has Gone Before.”

Undisputed

See Evidentiary Objections to Van Citters Decl.

1 Van Citters Decl., ¶ 15, Ex. 19 (*Prelude*  
2 *to Axanar*); ¶ 39.

3 75. Defendants set out to create a motion  
4 picture “prequel” to *The Original*  
5 *Series*.

6 Grossman Decl., ¶ 16, Ex. A (Peters tr. at  
7 143:13-145:7); ¶ 35, Ex. V (blueprints  
8 for the soundstage at Paramount Studios  
9 that was used for Star Trek); ¶ 36, Ex. A  
10 (145:12- 147:10), Ex. W (blueprints  
11 from the set of *The Next Generation*), ¶  
12 32, Ex. C (Gossett tr. at 47:22-48:6); ¶  
13 15, Ex. A (Peters tr. at 371:13-372:9),  
14 Ex. J (Mr. Gossett email exchange with  
15 Mr. Peters) ¶ 17, Ex. B (Burnett tr. at  
16 202:12-203:4).

17 76. The element of stardates was first  
18 used in the second pilot of *The*  
19 *Original Series* “Where No Man Has  
20 Gone Before” in 1966 (Reg. No. PA-  
21 58-303), and was subsequently used  
22 in *The Next Generation*, *Deep Space*  
23 *Nine*, *Voyager*, and every Star Trek  
24 Motion Picture.

25 Van Citters Decl., ¶ 39.

26 77. Defendant Peters conceded that [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

29 Grossman Decl., ¶ 26, Ex. A (Peters tr.  
30 at 82:6-85:12).

31 78. The sequence of events of  
32 Defendants’ works is taken from the  
33 Star Trek Copyrighted Works – the  
34 events depicted and discussed therein  
35 take place in and around the Battle of  
36 Axanar, as described both in *The*  
37 *Original Series* and in greater detail  
38 in *The Four Years War*.

39 Van Citters Decl., ¶ 60.

40 79. Defendants’ works take place in the  
41 same settings as the Star Trek  
42 Copyrighted Works as they are set in  
43 alien star systems created by

Undisputed

See Evidentiary Objections to Grossman  
Decl.

Disputed. Defendants’ system of stardates  
is merely the year followed by a decimal  
point and a number to indicate the month.  
Defendants do not know how Stardates  
were measured in Plaintiffs’ Works, as  
Plaintiffs have never provided a formula.

Peters Decl., ¶ 7

ECF No. 75-19, Peters Decl., Ex. 1  
(*Prelude to Axanar*)

See also Evidentiary Objections to Van  
Citters Decl.

Undisputed

See Evidentiary Objections to Grossman  
Decl.

Disputed that the sequence of events is  
taken from the Star Trek Copyrighted  
Works, as the sequence of events and  
timing is original.

Van Citters Decl., ¶ 15, Ex. 19 (*Prelude to*  
*Axanar*); ¶ 39.

See Evidentiary Objections to Van Citters  
Decl.

Undisputed that the works are set in the  
same universe, but disputed to the extent  
the time frame, aesthetics and other  
elements are the same



1	Plaintiffs, on spaceships belonging to the United Federation of Planets, on Klingon battlecruisers fighting for the Klingon Empire, and on planets such as Qo'noS, Vulcan and Axanar.	Van Citters Decl., ¶ 15, Ex. 19 ( <i>Prelude to Axanar</i> ); ¶ 39.
2		
3		See Evidentiary Objections to Van Citters Decl.
4	Van Citters Decl., ¶ 62.	
5	80. Defendants' works use the protected characters embodied by the U.S.S. Enterprise and Klingon starships.	Disputed that any used by Defendants is "protected" which calls for a legal conclusion
6		
7	Van Citters Decl., ¶ 59.	See Evidentiary Objections to Van Citters Decl.
8	81. Defendants appropriated the mood and theme from the Star Trek Copyrighted Works, attempting to recreate the drama between the Federation and the Klingon Empire in a military space drama.	Disputed. The mood and themes of <i>Prelude to Axanar</i> and <i>Axanar</i> have never been seen in Plaintiffs' Works.
9		
10		Peters Decl., ¶ 6
11	Van Citters Decl., ¶¶ 55, 56.	ECF No. 75-19 Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
12		See also Evidentiary Objections to Van Citters Decl.
13	82. The second Star Trek motion picture, <i>The Wrath of Khan</i> , was a derivative work that expanded upon one of the episodes of <i>The Original Series</i> which featured a villain named Khan.	Undisputed
14		See Evidentiary Objections to Van Citters Decl.
15		
16	Van Citters Decl., ¶ 20	
17	83. [REDACTED]	Undisputed that Defendants have raised over a million dollars from Axanar donors
18	Grossman Decl., ¶ 73, Ex. A (Peters tr. at 70:24-71:4).	See Evidentiary Objections to Grossman Decl.
19	84. [REDACTED]	Undisputed that Defendants have spent over a million dollars from Axanar donors to create <i>Prelude</i> and <i>Axanar</i>
20		
21	Grossman Decl., ¶ 73, Ex. A (Peters tr. at 190:19-191:24).	See Evidentiary Objections to Grossman Decl.
22	85. [REDACTED]	[REDACTED]
23		
24	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 189:2-23), Ex. SS (financial summary at AX031122-AX031129).	Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571- AX035736)
25		Peters Decl., ¶¶ 14-15
26		See also Evidentiary Objections to Grossman Decl.
27	86. [REDACTED] dants [REDACTED]	Undisputed
28		
	Grossman Decl., ¶ 61, Ex. B (Burnett	See Evidentiary Objections to Grossman Decl.

tr.at 61:24-62:11); ¶ 74, Ex. A (Peters tr. at 122:21-25), Ex. SS (financial summary at AX030960, AX030959, AX031046, AX

87.

Undisputed

Grossman Decl., ¶ 61, Ex. B (Burnett tr.at 62:12-18; 93:23-25; 140:21-141:3); ¶ 70 (Kingsbury tr. at 39:22-41:9); ¶ 74, Ex. SS (financial summary at AX030958-AX0

*See* Evidentiary Objections to Grossman Decl.

88.

Grossman Decl., ¶ 74, Ex. A (Peters tr. at 65:7-18; 193:22-194:18), Ex. SS (financial summary at AX031058-AX031059).

Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 487:21-488:8)

*See also* Evidentiary Objections to Grossman Decl.

Grossman Decl., ¶ 63, Ex. A (Peters tr. at 353:8-13; 487:21-488:8; 225:12-227:20), Ex. NN (lease).

Grossman Decl., ¶ 62, Ex. C (Gossett tr. at 35:11-36:7).

89.

Grossman Decl., ¶ 74, Ex. A (Peters tr. at 209:15-212:22), Ex. SS (financial summary at AX031019-AX031033).

Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571- AX035736)

Peters Decl., ¶ 15

*See also* Evidentiary Objections to Grossman

90.

Grossman Decl., ¶ 74, Ex. A (Peters tr. at 195:21-198:1; 213:5-10), Ex. SS (financial summary at AX031051-AX031055).

Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571- AX035736)

Peters Decl., at ¶ 15

*See also* Evidentiary Objections to Grossman Decl.

1	91. Defendants [REDACTED]	[REDACTED]
2	[REDACTED]	Peters Decl., ¶ 2, Ex. 2 (Second Financial
3	[REDACTED]	Summary, AX035571- AX035736)
4	[REDACTED]	Peters Decl., ¶ 15
5	Grossman Decl., ¶ 74, Ex. A (Peters tr.	See also Evidentiary Objections to
6	at 201:6-204:7), Ex. SS (financial	Grossman Decl.
7	summary at AX030967-AX030981).	
8	92. Ms. Kingsbury was Mr. Peters'	Undisputed
9	girlfriend in 2014.	See Evidentiary Objections to Grossman
10	Grossman Decl., ¶ 72, Ex. D (Kingsbury	Decl.
11	tr. at 15:21-24; 18:7-11; 141:4-15); ¶ 71,	
12	Ex. A (Peters tr. at 1	
13	93. [REDACTED]	[REDACTED]
14	[REDACTED]	Peters Decl., ¶ 2, Ex. 2 (Second Financial
15	Grossman Decl., ¶ 74, Ex. A (Peters tr.	Summary, AX035571- AX035736)
16	at 204:11-16, 205:3-16), Ex. SS	Peters Decl., ¶ 15
17	(financial summary at AX030985-	See also Evidentiary Objections to
18	AX030986).	Grossman D
19	94. [REDACTED]	[REDACTED]
20	[REDACTED]	Peters Decl., ¶ 2, Ex. 2 (Second Financial
21	Grossman Decl., ¶ 74, Ex. A (Peters tr.	Summary, AX035571- AX035736)
22	at 203:25-204:1); Ex. SS (financial	Peters Decl., ¶ 15
23	summary at AX030981-AX030983).	See also Evidentiary Objections to
24		Grossman
25	95. [REDACTED]	[REDACTED]
26	[REDACTED]	Peters Decl., ¶ 2, Ex. 2 (Second Financial
27	Grossman Decl., ¶ 74, Ex. A (Peters tr.	Summary, AX035571- AX035736)
28	at 217:6-15), Ex. SS (financial summary	Peters Decl., ¶ 15
	at AX030986-AX030987).	See also Evidentiary Objections to
		Grossman D
	96. [REDACTED]	[REDACTED]
	[REDACTED]	Peters Decl., ¶ 2, Ex. 2 (Second Financial
	Grossman Decl., ¶ 74, Ex. A (Peters tr.	Summary, AX035571- AX035736)
	at 205:14-16), Ex. SS (financial	Peters Decl., ¶ 15
	summary at AX030967-AX030987).	See also Evidentiary Objections to



1		Grossman D
2	97. Defendants [REDACTED]	[REDACTED]
3		
4	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 205:20-207:9), Ex. SS (financial summary at AX031098-AX031110).	See also Evidentiary Objections to Grossman
5		
6	98. [REDACTED]	[REDACTED]
7	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 207:10-12), Ex. SS (financial summary at AX031098).	Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571- AX035736)
8		Peters Decl., ¶ 15
9		See also Evidentiary Objections to Grossman D
10		
11	99. [REDACTED]	[REDACTED]
12		
13	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 208:2-16), Ex. SS (financial summary at AX031009-AX031010).	Peters Decl., ¶ 2, Ex. 2 (Second Financial Summary, AX035571- AX035736)
14		Peters Decl., ¶ 15
15		See also Evidentiary Objections to Grossman Decl.
16	100. In raising money for the Axanar Works, Mr. Peters stated, “Axanar is the first fully- professional, independent Star Trek film. While some may call it a ‘fan film’ as we are not licensed by CBS, Axanar has professionals working in front and behind the camera, with a fully- professional crew--many of whom have worked on Star Trek itself--who ensure Axanar will be the quality of Star Trek that all fans want to see.”	Undisputed
17		See Evidentiary Objections to Grossman Decl.
18		
19		
20		
21		
22		
23	Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1); Ex. CC (Indiegogo site).	
24	101. Defendants [REDACTED]	Undisputed
25		See Evidentiary Objections to Grossman Decl.
26		
27		
28	Grossman Decl., ¶ 39, Ex. B (Burnett tr. at 55:4-14, 58:10-22, 59:11-22).	
	102. Peters repeatedly referenced the	Undisputed

Axanar Works as a professional production.

See Evidentiary Objections to Grossman Decl.

Grossman Decl., ¶ 52, Ex. A (Peters tr. at 91:11-92:7), Ex. GG (statement made by Alec Peters in an interview), ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants' Kickstarter fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Defendants' Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5, 134:10-143:5, 135:11-136:2, 137:13-19-138:13, 138:21-140:2, 140:19-141:3, 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 1, Ex. A (Peters tr. at 170:22-171:3), Ex. G (printout from Axanarproductions.com), ¶ 56, Ex. A (Peters tr. at 124:8-127:15), Ex. JJ (press kit).

103. Peters repeatedly stated that his production was not to be called a "fan film."

Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-101:10), Ex. DD (Defendants' Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5, 134:10-143:5, 137:13-19-138:13, 138:21-140:2, 140:19-141:5, 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK (Peters email to Doug Drexler).

Disputed. There were many instances in which Defendants did call their works "fan films." The distinction between "fan films" and "professional" films was made only to distinguish the quality of Defendants' Works.

Peters Decl., ¶ 26, Ex. 6 (Press Release)

Peters Decl., ¶ 26, Ex. 12 (Emails between Alec Peters and Morgen Schneider, AX030370-AX030372)

Peters Decl., ¶ 27, Ex. 13 (Axanar Facebook Post, AX035850)

Peters Decl., ¶ 27, Ex. 14 (Axanar Tweet, AX035927)

Peters Decl., ¶ 26, Ex. 11 (Star Trek Fan Film Flyer, PL0000106)

Peters Decl., ¶ 26, Ex. 9 (Axanar Blog Post, PL0005718-PL0005720)

Peters Decl., ¶ 26, Ex. 10 (Axanar Blog Post, PL0005973-PL0005989)

Peters Decl., ¶ 26, Ex. 8 (Axanar Facebook Post, PL0008222)

1		Peters Decl., ¶ 28, Ex. 16 (Email from Marian Cordry to Holly Amos and John Van Citters, PL0008689)
2		Peters Decl., ¶ 26, Ex. 7 (Axanar Facebook Post, PL0011822)
3		Peters Decl., ¶ 28, Ex. 15 (Emails among Bill Burke, John Van Citters, and Leslie Ryan, PL0012814- PL0012816)
4		Peters Decl., ¶ 26, Ex. 5 (Email from Marian Cordry to John Van Citters, PL0013502- PL0013503)
5		Peters Decl., ¶ 26, Ex. 4 (Peters Facebook Post, PL0013517)
6		Peters Decl., ¶ 13, Ex. 1 (Axanar Annual Report, Revised, 2015, PL0013763- PL0013785)
7		Peters Decl., ¶ 26, Ex. 3 (Emails between Alec Peters and Mallory Levitt, PL0013787-PL0013788)
8		Ranahan Decl., ¶ 5, Ex. E (Gossett Tr. at 175:17-18)
9		<i>See also</i> Evidentiary Objections to Grossman Decl.
10	104. Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to	Disputed [REDACTED]
11	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]
13	Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23- 22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex. QQ (printout from Axanarproductions.com).	Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 447:5 - 448:25)
14		Peters Decl., ¶ 17
15		<i>See also</i> Evidentiary Objections to Grossman Decl.
16	105. Mr. Peters' collaborator and the director stated [REDACTED]	Undisputed
17		<i>See</i> Evidentiary Objections to Grossman

1	[REDACTED]	Decl.
2	[REDACTED]	
3	[REDACTED]	
4	Grossman Decl., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-36:20); Ex. RR (Robert Meyer Burnett online posting).	
9	106. Mr. P [REDACTED] nar	Disputed. Though Defendants hoped that their Works would lead to other work, Defendants made their Works because they love Star Trek.
11	Grossman Decl., ¶ 79, Ex. A (Peters tr. at 455:24-456:16); ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20).	Peters Decl., ¶ 16
13		See also Evidentiary Objections to Grossman Decl.
14	107. Mr. Burnett, the editor of <i>Prelude to Axanar</i> , and director of the full length Axanar Film, also stated [REDACTED]	Undisputed
15	[REDACTED]	See Evidentiary Objections to Grossman Decl.
16	[REDACTED]	
17	[REDACTED]	
18	Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex. RR (Robert Meyer Burnett online po	
19	108 [REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]
21	[REDACTED]	[REDACTED]
22	Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12), Ex. PP (Axanar marketing plan).	Peters Decl., ¶ 19
23		See also Evidentiary Objections to Grossman
24		
25	109 [REDACTED]	[REDACTED]
26	[REDACTED]	[REDACTED]
27	[REDACTED]	Peters Decl., ¶¶ 11-15
28	Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); Ex. PP (Axanar marketing plan); Ex. QQ (printout from	See also Evidentiary Objections to Grossman Decl.

Axanarproductions.com).

110. Peters stated: “But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?”

Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page).

111. The continued production and distribution of the Axanar Works would cause irreparable harm to the market for Star Trek Copyrighted Works because Star Trek fans will view the Axanar Works (and donate for the production of future works) instead of paying to view the Star Trek Copyrighted Works.

Van Citters Decl., ¶ 63.

Disputed. This statement is taken out of context. This statement was made to address how fans watch science fiction shows the enjoy, not how to stop fans from watching Plaintiffs’ Works.

*See also* Evidentiary Objections to Grossman Decl.

Disputed. Neither Plaintiffs nor Defendants know of any fans who have stated that they would decline to watch Plaintiffs’ Works because they watched Defendants’ Works.

Peters Decl., ¶ 31

ECF No. 75-16, Oki Decl., Ex. 14 (Paramount Pictures Corporation’s Responses to Requests for Admission, Set Two, Response to Request for Admission Nos. 72-73)

ECF No. 75-17, Oki Decl., Ex. 15 (CBS Studios Inc.’s Responses to Requests for Admission, Set Two, Response to Request for Admission Nos. 72-73)

ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report, ¶¶ 58-62)

ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 94:8-95:7, 119:19-124:18)

ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10, O’Rourke Tr. at 60:22-61:5; 63:8-16

*See also* Evidentiary Objections to Van Citters Decl.

112. Peters was in charge of Axanar Productions’ conduct and was responsible for the infringing conduct of Axanar Productions.

Grossman Decl., ¶ 86, Ex. C (Gossett tr. at 38:6-16; 161:14-23; 162:9-163:14); ¶ 84, Ex. A (Peters tr. at 55:21-58:9; 78:9-80:10), ¶ 87, Ex. E (McIntosh tr. at 52:12-20).

Undisputed

*See* Evidentiary Objections to Grossman Decl.



1	113. Peters is the president of Axanar Productions.	Undisputed
2	Grossman Decl., ¶ 83, Ex. A (Peters tr. at 182:1-2).	See Evidentiary Objections to Grossman Decl.
3		
4	114. Peters was responsible for many of the creative decisions on the Axanar Works.	Undisputed
5	Grossman Decl., ¶ 85, Ex. B (Burnett tr. at 201:19-202:11); ¶ 86, Ex. C (Gossett tr. at 38:6-16; 161:14-23; 162:9-163:14).	See Evidentiary Objections to Grossman Decl.
6		
7	115. Peters supervised and controlled Axanar Productions.	Undisputed
8	Grossman Decl., ¶ 83, Ex. A (Peters tr. at 60:6-61:2), ¶ 87, Ex. E (McIntosh tr. at 52:12-20).	See Evidentiary Objections to Grossman Decl.
9		
10	116. [REDACTED]	Undisputed
11	[REDACTED]	See Evidentiary Objections to Grossman Decl.
12		
13	Grossman Decl., ¶ 88, Ex. A (Peters tr. at 9:21-23; 21:18-25).	
14	117. In the years prior to Peters' creation of the Axanar Works, Peters sent several emails to CBS to report third parties whom Peters believed were using Plaintiffs' intellectual property without authorization.	Undisputed
15		See Evidentiary Objections to Grossman Decl.
16		
17	Grossman Decl., ¶ 89, Ex. TT (Peters emails to CBS).	
18		



## II. STATEMENT OF ADDITIONAL MATERIAL FACTS


<u>Fact No.</u>	<u>Material Facts</u>	<u>Supporting Evidence</u>
51	<i>Prelude to Axanar</i> was inspired by numerous different sources.	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18)  ECF No. 75-7, Oki Decl., Ex. 6 (Hunt Tr. at 51:8-16)  ECF No. 75-7, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:19-58:4)  ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )  ECF No. 75-19, Peters Decl., ¶ 9
52	<i>The Vulcan Scene</i> was inspired by numerous different sources.	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18)  ECF No. 75-7, Oki Decl., Ex. 6 (Hunt Tr. at 51:8-16)  ECF No. 75-7, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:19-58:4)  ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )  ECF No. 75-19, Peters Decl., ¶ 9
53	The <i>Axanar</i> scripts were inspired by numerous different sources.	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18)  ECF No. 75-7, Oki Decl., Ex. 6 (Hunt Tr. at 51:8-16)  ECF No. 75-7, Oki Decl., Ex.

1		13 (Peters Tr., Vol. I at 57:19-58:4)
2		
3		ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
4		
5		ECF No. 75-19, Peters Decl., ¶ 9
6		
7	54	Plaintiffs conceded that they failed entirely to meet and confer pursuant to Local Rule 7-3 with respect to seeking injunctive relief.
8		Ranahan Decl., ¶ 7, Ex. G (Correspondence with Plaintiffs' Counsel)
9	55	The Court denied Plaintiffs' Ex parte application with respect to the adequacy of Defendants' document collection.
10		ECF No. 68, Order Denying Plaintiffs' Ex Parte Application ("Except as expressly stated herein, [Plaintiffs' Ex Parte Application] is denied. The Discovery Cut-Off Date is November 2, 2016. See Minute Order, filed May 9, 2016. Notwithstanding the issues Plaintiffs have raised regarding the adequacy of Defendants' document productions...the Court will not require at this late date the effective recommencement of document searches, reviews, and productions.").
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21	56	Plaintiffs have not named the supplement to <i>Star Trek: The Role Playing Game</i> , titled, "The Four Years War" as an allegedly infringed work.
22		ECF No. 75-3, Oki Decl., Ex. 1 (CBS Studios Inc.'s Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9)
23		
24		
25		ECF No. 75-4, Oki Decl., Ex. 2 (Paramount Pictures Corporations Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9)
26		
27		
28		

1			ECF No. 26, FAC, Appendix A
2			¶¶ 2-6
3	57	The U.S.S. Enterprise makes a cameo appearance in Defendants' Works.	Ranahan Decl., ¶ 4, Ex. D (Burnett Tr. at 24:25-25:10)
4			ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> at 17:24)
5			ECF Nos. 75-5, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 <i>Axanar</i> Script, pp. 57, 72, 109, 112, 119, 120)
6			ECF Nos. 72-30, 79, Grossman Decl., Ex. AA (Nov. 26, 2015 <i>Axanar</i> Script, pp. 52, 65, 98, 99, 110, 111)
7	58	<i>Prelude to Axanar</i> features an original plot never before used in Plaintiffs' Works.	ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31
8			ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)
9			ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4)
10			ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
11	59	<i>The Vulcan Scene</i> features an original plot never before used in Plaintiffs' Works.	ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31
12			ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)
13			ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4)
14			ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )

1		Ex. 1 ( <i>Prelude to Axanar</i> )
2	60	The <i>Axanar</i> scripts feature an original plot never before used in Plaintiffs' Works.
3		ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31
4		ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)
5		ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4)
6		ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
7		
8		
9		
10	61	<i>Prelude to Axanar</i> features 4 original characters.
11		ECF No. 75-19, Peters Decl., ¶ 8
12		ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
13	62	<i>The Vulcan Scene</i> features 1 original character.
14		ECF No. 75-19, Peters Decl., ¶ 10
15		ECF No. 75-21, Peters Decl., Ex. 2 ( <i>Vulcan Scene</i> )
16		
17	63	The <i>Axanar</i> scripts feature 50 original characters.
18		ECF No. 75-19, Peters Decl., ¶ 15
19	64	<i>Prelude to Axanar</i> features an original "mockumentary" style never before used by Plaintiffs.
20		ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31
21		ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23)
22		ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4)
23		ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
24		
25		
26	65	<i>The Vulcan Scene</i> features an original "mockumentary" style never before used by Plaintiffs.
27		ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31
28		ECF No. 75-15, Oki Decl., Ex.

1		13 (Peters Tr., Vol. I at 85:7-23)
2		ECF No. 75-7, Oki Decl., Ex. 5
3		(Burnett Tr. at 22:8-23:8;
4		202:12-203:4)
5		ECF No. 75-21, Peters Decl.,
6		Ex. 2, <i>Vulcan Scene</i>
7	66	ECF No. 48, Counterclaim at
8	The <i>Axanar</i> scripts feature an original	24-25, ¶¶ 30-31
9	“mockumentary” style never before used	ECF No. 75-15, Oki Decl., Ex.
10	by Plaintiffs.	13 (Peters Tr., Vol. I at 85:7-23)
11		ECF No. 75-7, Oki Decl., Ex. 5
12		(Burnett Tr. at 22:8-23:8;
13		202:12-203:4)
14		ECF No. 75-20, Peters Decl.,
15	67	Ex. 1 ( <i>Prelude to Axanar</i> )
16	<i>Prelude</i> portrays Garth of Izar in a new	ECF No. 75-15, Oki Decl., Ex.
17	way not seen in any of Plaintiffs’ Works—	13 (Peters Tr., Vol. I at 87:13-
18	specifically, as a war veteran with	88:1)
19	psychological issues resulting from his	ECF No. 75-7, Oki Decl., Ex. 5
20	traumatic experiences during the Four	(Burnett Tr. at 192:2-15)
21	Years War between the United Federation	ECF No. 75-19, Peters Decl., ¶¶
22	of Planets and the Klingon Empire.	6-7
23	68	ECF No. 75-20, Peters Decl.,
24		Ex. 1 ( <i>Prelude to Axanar</i> )
25		ECF No. 75-15, Oki Decl., Ex.
26		13 (Peters Tr., Vol. I at 87:13-
27		88:1)
28		ECF No. 75-7, Oki Decl., Ex. 5
		(Burnett Tr. at 192:2-15)
		ECF No. 75-19, Peters Decl., ¶¶
		6-7

		ECF No. 75-20, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
69	Mr. Peters modeled his performance of Garth of Izar after the veterans depicted in “Band of Brothers,” the HBO war documentary mini-series.	ECF No. 75-19, Peters Decl., ¶ 7
70	Many scripts have been created since the unfinished August 2015 script, all using varying degrees of the Star Trek Universe.	ECF No. 75-19, Peters Decl., ¶ 13 ECF Nos. 75-22, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 <i>Axanar</i> Script)
71		Hunt decl., ¶ 2
72	Defendants are not currently committed to using any of the existing scripts in the Potential Fan Film, and have not decided what format, length and substance the Potential Fan Film will take, though are considering whether to make more mockumentary style works.	ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 74:10-23) ECF No. 75-19, Peters Decl., ¶¶ 13-14 ECF No. 75-8, Oki Decl., Ex. 6 (Hunt Tr. at 49:18-50:5) ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 88:7-18, 97:11-98:7)
73	Defendants’ Works are both social commentary and satire, in that they focus on and intend to expose the true horrors and consequences of war in ways the Plaintiffs’ Works did not.	ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1) ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 192:2-15) ECF No. 75-19, Peters Decl., ¶ 7
74	A mockumentary is defined by Wikipedia as a “parody.”	(“Mockumentary” <i>Wikipedia</i> Page) Ranahan Decl. ¶ 8. Ex. H.
75	<i>Prelude</i> was distributed for free online.	ECF No. 48, Counterclaim, ¶ 16



1		ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:1-11, 85:7-23)
2		ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4)
3		ECF No. 75-19, Peters Decl., ¶ 7
4	76	<i>The Vulcan Scene</i> was distributed for free online.
5		ECF No. 75-19, Peters Decl., ¶ 9
6		ECF No. 75-7, Oki Decl., Ex. 5 (Burnett Tr. at 174:3-10)
7		ECF No. 75-8, Oki Decl., Ex. 6 (Hunt Tr. at 56:12-25)
8	77	Plaintiffs attempt to present evidence on substantial similarity through a fact witness, John Van Citters.
9		Plaintiffs' Expert Witness Disclosure, Nov. 2, 2016
10	78	John Van Citters was never designated to testify about substantial similarity until after the close of discovery.
11		Plaintiffs' Rule 26 Initial Disclosures, May 2, 2016
12		Plaintiffs' Expert Witness Disclosure, Nov. 2, 2016
13	79	Plaintiffs' counsel objected to questions about the Complaint during John Van Citters's fact deposition.
14		Ranahan Decl., ¶ 3, Ex. C (Van Citters Tr. at 17:24-19:4, 21:21-24:13, 53:11-54:5, 73:2-74:16; 78:14-80:12)
15	80	After John Von Citters's deposition was completed and discovery closed, Plaintiffs attempted to designate Mr. Van Citters as an expert, though the so-called "expert" designation contained no report at all or any of the other requirements of an expert report under Rule 26, and was served after the expert disclosure deadline.
16		Plaintiffs' Rule 26 Initial Disclosures, May 2, 2016
17		Plaintiffs' Expert Witness Disclosure, Nov. 2, 2016
18		(Defendants' Evidentiary Objections to the Declaration of John Van Citters in Support of Plaintiffs' Motion for Partial

		Summary Judgment)
81	By Plaintiffs’ own admission, the only references to a character named Garth of Izar in the entire Star Trek oeuvre is one lone appearance in the Original Series, the subject of a minor licensed novel, and a reference in one of a large number of supplements to a role-playing game from the 1980s, which is not at issue in this action.	ECF No. 72, Plaintiffs’ Motion for Partial Summary Judgment, pp. 8-9
82	Plaintiffs have sought federal copyright protection for characters central to the Star Trek universe.	ECF No. 26, FAC, Appendix A ¶¶ 2-6
83	Plaintiffs have sought copyright protection for Captain Kirk.	ECF No. 26, FAC, Appendix A ¶¶ 2-6
84	Plaintiffs have sought copyright protection for Spock.	ECF No. 26, FAC, Appendix A ¶¶ 2-6
85	Plaintiffs have not sought federal copyright protection for the character Garth of Izar.	
86	Plaintiffs have not sought federal copyright protection for the character Ambassador Soval.	
87	The director of the latest Star Trek movie, Justin Lin, has been a Star Trek fan since childhood.	ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 12:3-15)
88	The director of the latest Star Trek movie, Justin Lin, had never heard of Garth of Izar.	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)  ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 16:10-22)
89	J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Spock a character that is central to Star Trek.	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)
90	J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Bones a character that is central to Star Trek.	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)
91	J.J. Abrams, the producer and/or director	ECF Nos. 75-14, 77-7, Oki

1		of recent Star Trek films, in his deposition stated that he would consider Uhura a character that is central to Star Trek.	Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)
2			
3	92	J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Zulu a character that is central to Star Trek.	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)
4			
5			
6	93	J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Chekov a character that is central to Star Trek.	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)
7			
8			
9	94	J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Scotty a character that is central to Star Trek.	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)
10			
11	95	J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would not consider Garth of Izar a central character.	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 14:22-15:3)
12			
13			
14	96	In his deposition testimony, 30(b)(6) designee for CBS [REDACTED]	Ranahan Decl., ¶ 3, Ex. C (Van Citters Tr. at 124:24-125:16)
15			
16			
17	97	In his deposition testimony, 30(b)(6) designee for Paramount, [REDACTED]	Ranahan Decl., ¶ 6, Ex. F (O'Rourke Tr. at 106:14-21)
18			
19			
20	98	The only concrete references to a character named Ambassador Soval in the entire Star Trek oeuvre is a 2001 pilot episode of the television series Enterprise and a few other brief appearances.	ECF No. 72, Plaintiffs' Motion for Partial Summary Judgment, pp. 8-9
21			
22			
23	99	Defendants did not profit from the creation of <i>Prelude to Axanar</i> .	ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)
24			
25	100	Defendants did not profit from the creation of <i>The Vulcan Scene</i> .	ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)
26			
27	101	Defendants did not profit from the creation of the <i>Axanar</i> scripts.	ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)
28			

1	102	There is no evidence that the free YouTube.com presentations of <i>Prelude</i> compete with, substitute for, or have any impact whatsoever on Plaintiffs' multimillion dollar international entertainment enterprise.	ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 119:19-124:18)
2			ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)
3	103	There is no evidence that the unfinished Potential Fan Film script, or any of the prior drafts of the script, competes with, acts as a substitute for, or has any impact whatsoever on Plaintiffs' Star Trek franchise.	ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report at ¶¶ 10-12)
4			ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 42:7-11)
5			ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 119:19-124:18)
6			ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)
7	104	There is no evidence that the unfinished Potential Fan Film script, or any of the prior drafts of the script, competes with, acts as a substitute for, or has any impact whatsoever on Plaintiffs' Star Trek franchise.	ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report at ¶¶ 10-12)
8			ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 42:7-11)
9			ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 119:19-124:18)
10			ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)
11	105	Defendants have not earned any income or profit from any use of their studio.	Peters Decl., ¶¶ 11-15
12	106	Defendants' Works are not intended to be commercialized, and Defendants have no	ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 225:5-6)

1		ambitions of competing against Plaintiffs' Works in movie theaters, on television, over premium streaming services, or to otherwise sell their Works for profit.	ECF Nos. 75-6, Oki Decl., Ex. 4 (Jenkins Report) at 4
2	107	Defendants' Works are low budget, intended to be distributed for free online, appeal to a relatively small audience of "Trekkies," and have made no profit.	ECF No. 75-15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)
3	108	Gene Roddenberry encouraged the creation of fan fiction.	ECF No. 48, Counterclaim at 15-17, ¶ 7
4			ECF No. 49, Answer to Counterclaim at 1-2, ¶ 7
5	109	Mr. Roddenberry was honored that fans were passionate enough about Star Trek that they were inspired to create their own fan works to celebrate it.	ECF No. 48, Counterclaim at 15-17, ¶ 7
6			ECF No. 49, Answer to Counterclaim at 1-2, ¶ 7
7	110	In the 1976 book Star Trek: The New Voyages, Mr. Roddenberry stated in the Foreword that he "realized that there is no more profound way in which people could express what Star Trek has meant to them than by creating their own very personal Star Trek [fan fiction]."	ECF No. 48, Counterclaim at 15-17, ¶ 7
8			ECF No. 49, Answer to Counterclaim at 1-2, ¶ 7
9	111	Since Mr. Roddenberry's statement, a substantial number of films have been created by fans without any complaint by Plaintiffs, some using characters from Plaintiffs' Works and exact replicas of Star Trek movie sets.	ECF No. 75-26, Lane Decl., Ex. 1 (Executive Summary at 26)
10			ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins Report at 3)
11	112	For over 50 years, Plaintiffs have tolerated, and even encouraged a community of fandom and fan fiction surrounding Star Trek.	ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins Report at 3)
12			ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 40:18-41:18)
13			ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report at ¶¶ 24, 63)



1		ECF Nos. 75-11, 77-4, Oki
2		Decl., Ex. 9 (Van Citters Tr. at
3		62:1-25, 137:5-21)
4		ECF No. 75-10, Oki Decl., Ex.
5		8 (Kalodner Tr. at 33:22-42:17)
6		ECF No. 75-9, Oki Decl., Ex. 7
7		(Burke Tr. at 40:5-45:7)
8		ECF No. 75-18, Oki Decl, Ex.
9		16 (StarTrek.com Article)
10	113	ECF No. 75-19, Peters Decl, ¶
11	Mr. Peters understood from his volunteer	11
12	relationship with Plaintiff CBS and his	
13	extensive communications seeking	
14	guidance on his projects, that as long as	
15	Defendants' Works stayed "non-	
16	commercial"—which he believed they had	
17	because he was not charging anyone to	
18	view them—Plaintiffs would tolerate	
19	Defendants' Works like the rest of the fan	
20	fiction celebrating their love for Star Trek.	
21	114	ECF No. 75-6, Oki Decl., Ex. 4
22	Plaintiffs have enjoyed promotional value	(Jenkins Report at 3)
23	as a result of the works of fan fiction.	ECF Nos. 75-13, 77-6, Oki
24		Decl., Ex. 11 (Lin Tr. at 40:18-
25		41:18)
26		ECF Nos. 75-5, 77-3, Oki Decl.,
27		Ex. 3 (Tregillis Report, ¶¶ 24,
28		63)
		ECF Nos. 75-11, 77-4, Oki
		Decl., Ex. 9 (Van Citters Tr. at
		62:1-25, 137:5-21)
		ECF No. 75-10, Oki Decl., Ex.
		8 (Kalodner Tr. at 33:22-42:17)

1		ECF No. 75-9, Oki Decl., Ex. 7 (Burke Tr. at 40:5-45:7)
2		
3		ECF No. 75-18, Oki Decl, Ex. 16 (StarTrek.com Article)
4	115	Defendants continued to promote and consume all of Plaintiffs' official works, and Defendants' Works and other fan films increased the buzz and purchase of official merchandise.
5		ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins Report at 3)
6		ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 40:18- 41:18)
7		ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3 (Tregillis Report at ¶¶ 24, 63)
8		ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at 62:1-25, 137:5-21)
9		ECF No. 75-10, Oki Decl., Ex. 8 (Kalodner Tr. at 33:22-42:17)
10		ECF No. 75-9, Oki Decl., Ex. 7 (Burke Tr. at 40:5-45:7)
11		ECF No. 75-18, Oki Decl, Ex. 16 (StarTrek.com Article)
12		ECF No. 75-29, Watkins Decl., Ex. 1 (Facebook Post)
13		ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr., Ex. 310 (Tweets))
14	116	Plaintiffs' have not asked Defendants to remove either <i>Prelude</i> or the <i>Vulcan Scene</i> from its website.
15		ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10 (O'Rourke Tr. at 99:15-100:2)
16		ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr. at
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1		160:13-15)
2	117	ECF Nos. 75-11, 77-4, Oki
3		Decl., Ex. 9 (Van Citters Tr. at
4		52:14-18, 54:9-23, 119:19-
5		124:18)
6		ECF Nos. 75-12, 77-5, Oki
7		Decl., Ex. 10 (O'Rourke Tr. at
8		60:22-61:5; 63:8-16)
9	118	Peters Decl., ¶ 20
10		
11	119	Defendants went to great lengths to make
12		sure their works fell within the tolerated
13		realm of fan fiction as Defendants
14		understood it at the time.
15		
16		There has been no agreed to definition of
17		what a "fan film" is in this case.
18		
19		Ranahan Decl., ¶ 2, Ex. A (CBS
20		Studios Inc.'s Responses to
21		Requests for Production, Set
22		One, Response to Request Nos.
23		14, 17, 18, 24, 25)
24		
25		Ranahan Decl., ¶ 2, Ex. A
26		(Paramount Pictures
27		Corporations Responses to
28		Requests for Production, Set
		One, Response to Request Nos.
		14, 17, 18, 24, 25)
		Joint Stipulation Regarding
		Defendants' Motion to Compel
		Discovery from Plaintiffs,
		Response to Request Nos. 14,
		17, 18, 24, 25
		Defendants' Supplemental
		Memorandum in Support of
		Defendants' Motion to Compel
		Discovery, p. 4
	120	ECF Nos. 75-14, 77-7, Oki
		Decl., Ex. 12 (Abrams Tr. at
		34:13-21, Ex. 312 (Fan Film
		Guidelines))
	121	ECF Nos. 75-14, 77-7, Oki

1		this lawsuit was initiated.	Decl., Ex. 12 (Abrams Tr. at 34:13-21, Ex. 312 (Fan Film Guidelines))
2			
3	122	Plaintiffs attempted to define the term “fan film” as an amateur pursuit without a professional look in the fan film guidelines released after this lawsuit was initiated.	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12 (Abrams Tr. at 34:13-21, Ex. 312 (Fan Film Guidelines))
4			
5			
6	123	Plaintiffs complain extensively about the use of the phrase “Star Trek,” though that use is not at issue in this case, as it is not a trademark action.	ECF No. 26, FAC
7			
8			
9	124	The Court has previously characterized Plaintiffs’ references to allegedly infringing elements as attempted demonstrations of similarity rather than individual claims to copyright protection.	ECF No. 43, Order on Defendant’s Motion to Dismiss, p. 4, ¶ 4
10			
11			
12	125	The simple costumes Plaintiffs have identified in Defendants’ Works (e.g., “gold shirt” and “cowl neck”) are not independently protectable.	ECF No. 26, FAC ¶ 46 at 17-19
13			ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 3
14			
15	126	Plaintiffs assert that “Defendants have copied and adopted dialogue” from the Star Trek Works but have not identified any specific dialogue that Defendants allegedly copied.	ECF No. 31, Plaintiffs’ Opposition to Defendants’ Motion to Dismiss, pp. 14-15
16			ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 3
17			
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19			
20	127	Dialogue like “beaming up” is only protected by copyright if it is connected to other protectable elements like characters.	ECF No. 31, Plaintiffs’ Opposition to Defendants’ Motion to Dismiss, p. 14
21			ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 4
22			
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25	128	Elements from the public domain are not copyrightable.	ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 4
26			
27	129	Elements from nature are not copyrightable.	ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 4
28			

1	130	Transporters and warp drive, which existed in science fiction long before the creation of Star Trek, are not uniquely implemented in the Plaintiffs' Works.	ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4
2	131	The Federation logo in Star Trek is adapted from the United Nations flag.	ECF No. 26, FAC ¶ 46, p. 27
3			ECF No. 29, Defendants' Motion to Dismiss, p. 8
4			ECF No. 30, Defendants' Request for Judicial Notice, Ex. K (Flag of the United Federation of Planets, as compared to the Flag of the United Nations)
5			ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4
6	132	The triangular medals on Star Trek uniforms have been used by military, religious, and other organizations throughout history.	ECF No. 26, FAC ¶ 46, p. 18
7			ECF No. 29, Defendants' Motion to Dismiss, p. 8
8			ECF No. 30, Defendants' Request for Judicial Notice, Ex. G (William T.R. Marvin, <i>The Medals of the Masonic Fraternity: Described and Illustrated</i> )
9			ECF No. 33, Defendants' Reply in Support of Motion to Dismiss, p. 4
10	133	Nausicaa is the name of a planet in Star Trek and is also a character in Homer's <i>Odyssey</i> .	ECF No. 26, FAC ¶ 46, p. 20
11			ECF No. 29, Defendants' Motion to Dismiss, p. 8
12			ECF No. 30, Defendants'



1		Request for Judicial Notice, Ex. H (Homer, <i>The Odyssey of Homer</i> )
2		
3	134	Rigel is the name of a planet in Star Trek and is also the name of a first-magnitude star in the constellation Orion.
4		ECF No. 26, FAC ¶ 46, p. 20
5		ECF No. 29, Defendants' Motion to Dismiss, p. 8
6		ECF No. 30, Defendants' Request for Judicial Notice, Ex. I ("Rigel," <i>Merriam Webster Dictionary</i> )
7		
8		
9	135	Terra is the name of a planet in Star Trek and is also the Latin word for "Land."
10		ECF No. 26, FAC ¶ 46, p. 20
11		ECF No. 29, Defendants' Motion to Dismiss, p. 8
12		ECF No. 30, Defendants' Request for Judicial Notice, Ex. J ("Terra," <i>Merriam Webster Dictionary</i> )
13		
14		
15	136	Transporters have existed in science fiction since 1877.
16		ECF No. 26, FAC ¶ 46, p. 31
17		ECF No. 29, Defendants' Motion to Dismiss, p. 8
18		ECF No. 30, Defendants' Request for Judicial Notice, Ex. L ("Teleportation," <i>Merriam Webster Dictionary</i> )
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20		
21	137	Warp drive has existed in science fiction since as early as 1945.
22		ECF No. 26, FAC ¶ 46, p. 31
23		ECF No. 29, Defendants' Motion to Dismiss, p. 8
24		ECF No. 30, Defendants' Request for Judicial Notice, Ex. M (Sten Odenwald, "Who Invented Faster Than Light Travel?")
25		
26		
27		
28	138	Federation is the general word to describe
		ECF No. 26, FAC ¶ 46, p. 32

1		“a country formed by separate states that	ECF No. 29, Defendants’
2		have given certain powers to a central	Motion to Dismiss, pp. 8-9
3		government while keeping control over	
4		local matters” commonly used in science	ECF No. 30, Defendants’
5		fiction and is inspired by the United	Request for Judicial Notice, Ex.
6		Nations.	N (“Federation,” <i>Merriam</i>
7	139	Phasers are known as Heat-Ray weapons,	<i>Webster Dictionary</i> )
8		which have existed in science fiction since	ECF No. 26, FAC ¶ 46, p. 32
9		H.G. Wells’ <i>War of the Worlds</i> in 1898.	ECF No. 29, Defendants’
10			Motion to Dismiss, p. 9
11			
12			ECF No. 30, Defendants’
13	140	“Bridge” is a naval term for a ship’s	Request for Judicial Notice, Ex.
14		command center whose first usage predates	O (“H.G. Wells, <i>War of the</i>
15		the 12th century.	<i>Worlds</i> )
16			ECF No. 26, FAC at ¶ 66(b)
17			ECF No. 29, Defendants’
18			Motion to Dismiss, pp. 8-9
19	141	Species with “pointy ears” have appeared	ECF No. 30, Defendants’
20		in many fictional fantasy works depicting	Request for Judicial Notice, Ex.
21		imaginary humanoid species predating Star	D (Nosferatu)
22		Trek, including vampires, elves, fairies,	
23		and werewolves.	ECF No. 30, Defendants’
24			Request for Judicial Notice, Ex.
25			E (“Elf,” <i>Merriam Webster</i>
26	142	In Roman mythology, Vulcan is the god of	<i>Dictionary</i> )
27		fire and metalworking. The first known	ECF No. 29, Defendants’
28		use of “Vulcan” was in 1513.	Motion to Dismiss, p. 8
			ECF No. 30, Defendants’

1		Request for Judicial Notice, Ex. F (“Vulcan,” <i>Merriam Webster Dictionary</i> )
2		
3	143	“Pointy ears” are not original to Vulcans.
4		ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 4
5	144	The Klingon language, like all languages, is a “system” used to generate expressions of various creative ideas.
6		ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 5
7	145	A particular expression of language may be copyrightable, but the language itself is not.
8		ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 5
9	146	Fans of Star Trek regularly use Klingon to express their own creative ideas.
10		ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 5
11	147	Plaintiffs claim that Defendants have infringed Plaintiffs’ works by using starships, spacedocks, beaming up, transporters, warp drive, phasers, stardates, Starfleet, triangular medals on uniforms, and a federation of planets.
12		ECF No. 26, FAC ¶ 46 at 19, 22, 25-26, 32
13		
14		
15	148	Starships, spacedocks, beaming up, transporters, warp drive, phasers, stardates, Starfleet, triangular medals on uniforms, and federations of planets are staples of the science fiction genre.
16		ECF No. 33, Defendants’ Reply in Support of Motion to Dismiss, p. 6
17		
18		
19	149	Copyright protection is available for characters that are especially distinctive.
20		ECF No. 31, Plaintiffs’ Opposition to Defendants’ Motion to Dismiss, p. 19
21	150	Director Christian Gosset was inspired by <i>Saving Private Ryan</i> when he envisioned the Klingon Wars as portrayed by <i>Prelude to Axanar</i> .
22		ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)
23		
24	151	<i>Prelude to Axanar</i> is a History Channel-style special.
25		ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)
26	152	<i>Prelude to Axanar</i> was promoted as showing Star Trek in a way that had never been seen before.
27		ECF No. 26, FAC p. 7, ¶ 29
28		ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)

		ECF Nos. 72-37, Grossman Decl., Ex. HH (Kickstarter Fundraising Page)
153	The Four Years War was never depicted in any Star Trek television episode.	ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)
154	The Four Years War was never depicted in any Star Trek feature film.	ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)
155	Alec Peters was convinced to write a screenplay for obscure Star Trek character Garth of Izar by fan film legend James Cawley after Cawley invited Peters to portray Garth of Izar in 2010.	ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)
156	The M*A*S*H episode that inspired Alec Peters in his creation of <i>Prelude to Axanar</i> , titled, “The Interview,” was shot like newsreel footage that gave an intimate look at the characters feelings on the war.	ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)
157	The interweaving of interviews with veterans of World War II in <i>Band of Brothers</i> inspired Alec Peters in his creation of <i>Prelude to Axanar</i> .	ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)
158	<i>Prelude to Axanar</i> is dedicated to the vision of Gene Roddenberry.	ECF Nos. 72-17, 79, Grossman Decl., Ex. N ( <i>Prelude to Axanar</i> Promotional Material)

Dated: November 28, 2016

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