Cas	e 2:15-cv-09938-RGK-E Document 88-69 #:5066	Filed 11/28/16 Page 1 of 102 Page ID
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6 7 8 9	LOEB & LOEB LLP JONATHAN ZAVIN (admitted <i>pro hac</i> jzavin@loeb.com 345 Park Avenue New York, NY 10154 Telephone: 212.407.4000 Facsimile: 212.407.4990	vice)
10 11 12	Attorneys for Plaintiffs PARAMOUNT PICTURES CORPORATION and CBS STUDIOS INC.	
13	UNITED STATES	S DISTRICT COURT
14	CENTRAL DISTRI	CT OF CALIFORNIA
15		
16	PARAMOUNT PICTURES	Case No.: 2:15-cv-09938-RGK-E
17	CORPORATION, a Delaware corporation; and CBS STUDIOS INC., a Delaware corporation,	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN
18	Plaintiffs,	OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
19	V.	SUMMART SUDUMENT
20	AXANAR PRODUCTIONS, INC., a	Date: December 19, 2016 Time 9:00 a.m.
21	California corporation; ALEC PETERS, an individual, and DOES 1-20,	Dept.: 850
22	Defendants.	Discovery Cutoff: November 2, 2016
23		Pre-Trial Conference: January 9, 2017 Trial: January 31, 2017
24		
25		
26		
27		
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Plaintiffs' Paramount Pictures Corporation and CBS Studios Inc. submit this
 statement of genuine issues pursuant to Central District of California Local Rule
 56-2 in opposition to the motion for summary judgment herein filed by Defendants
 Axanar Productions, Inc. and Alec Peters.

- Facts 1 through 50 below correspond to the facts and supporting evidence
  presented in the Statement of Uncontroverted Facts filed by the moving party.
  These facts are followed by additional material facts and supporting evidence.
- 8

I.

#### UNCONTROVERTED FACTS

9 10	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
11	1. Star Trek was originally conceived by	Undisputed.
12	Gene Roddenberry, and debuted as a television	
13	show in 1966.	
14	<b>Supporting Evidence:</b> Plaintiffs' First	
15	Amended Complaint ECF No. 26 ("FAC")	
16	¶ 13; Defendants' Answer to Plaintiffs' First	
17	Amended Complaint, ECF No. 48 at 3, ¶ 13	
18	2. Plaintiffs allege that Defendants' Works	Disputed.
19	infringe 40 specific Star Trek episodes and 11	
20	movies.	This is a mischaracterization of the
21	<b>Supporting Evidence</b> : Declaration of Kelly	cited interrogatory responses,
22	N. Oki, Nov. 16, 2016 ("Oki Decl."), Ex. 1	which state: "Additionally,
23	(CBS Studios Inc.'s Amended Responses to	Defendants have infringed
24	Interrogatories, Set One, Response to	Plaintiffs' copyrighted characters,
25	Interrogatory Nos. 4-5); Oki Decl., Ex. 2	including Vulcans, Klingons,
26	(Paramount Pictures Corporation's Amended	Starfleet Captains, Garth of Izar,
27	Responses to Interrogatories, Set One,	Soval, Chang, the U.S.S.
28	Response to Interrogatory Nos. 4-5)	Enterprise, Klingon ships, and

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.   _		
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Federation ships." Oki Decl., Ex. 1
4		(CBS' Response to Interrogatories
5		Nos. 4-5.) Ex. 2, (Paramount's
6		Response to Interrogatories No. 4-
7		5). In these responses, Plaintiffs
8		also include infringement of novels
9		and Star Trek: The Role Playing
10		Game – The Four Years War and
11		Star Trek: The Role Playing Game
12		- Return to Axanar. Oki Decl., Ex.
13		1 (CBS' Response to
14		Interrogatories Nos. 4-5.) Ex. 2,
15		(Paramount's Response to
16		Interrogatories No. 4-5).
17		
18		Defendants' purported fact also
19		fails to identify Plaintiffs'
20		responses to Interrogatory No. 2,
21		regarding each Star Trek
22		Copyrighted Work infringed by
23		Prelude to Axanar and
24		Interrogatory No. 3 regarding each
25		Star Trek Copyrighted Work
26		infringed by the "Vulcan Scene."
27		See Declaration of David
28		Grossman ("Grossman Decl."),
<b>b</b> tnership onal	100302363.1 2 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

SUMMARY JUDGMENT

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	¶ 2, Exs. DDD and EEE
	(Paramount and CBS' responses to
	Interrogatories Nos. 2 and 3).
	See generally the declaration of
	John Van Citters ("Van Citters
	Decl.") for further details on
	Plaintiffs' claims of infringement.
3. Plaintiffs do not purport to own in this	Disputed.
lawsuit a copyright to the Star Trek universe,	
but rather own a limited number of copyrights	The purported fact is not supported
to certain episodes and films.	by Defendants' citation to the
Supporting Evidence: FAC, Appendix A	FAC.
¶¶ 2-6	
	Disputed that Plaintiffs own
	"limited" copyrights or that those
	copyrights are restricted to "certain
	episodes and films." In addition to
	owning copyrights in episodes and
	films, Plaintiffs own the copyrights
	in books, reference guides,
	documentaries, characters and
	numerous other elements.
	Grossman Decl., ¶ 90, Ex. UU
	(copyright registrations for the Star
	Trek Television Series), ¶ 91, Ex.
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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		VV (copyright registrations for the
		Star Trek Motion Pictures); ¶ 94,
		Ex. WW (copyright registration for
		Garth of Izar novel); ¶ 95, Ex. XX
		(copyright registration for
		Strangers from the Sky); ¶ 96, Ex.
		YY (copyright registration for
		Infinity's Prism). Van Citters Decl.
		¶¶ 3- 14, Ex. BBB (copyright
		registration for The Four Years
		War), 64-65.
4	4. Of the 51 allegedly infringed works, to	Undisputed that, pursuant to
d	late, Plaintiffs have not produced a single copy	agreement, the parties did not
o	of any of these episodes or films, though	exchange their copies of the Star
d	liscovery is now closed.	Trek Copyrighted Works.
<u>S</u>	Supporting Evidence: Oki Decl. ¶ 15	
		On June 21, 2016, Plaintiffs met
		with counsel for Defendants, Erin
		Ranahan, and the parties agreed
		that Plaintiffs did not need to
		produce the Star Trek films and
		episodes and Ms. Ranahan stated
		that Mr. Peters would not be
		producing his copies of those
		works either. Ms. Ranahan stated
		that she believed that Mr. Peters
10	00302363.1 4	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		already had all of these works.
4		The parties agreed that, if there
5		were works Peters owned that were
6		interlineated or commented on,
7		those would be provided.
8		Grossman Decl., ¶ 99.
9		
10		Defendants, therefore, never
11		requested copies of these works as
12		the parties had agreed they would
13		not be exchanging them in
14		discovery. Grossman Decl., ¶ 99.
15		
16		Furthermore, and consistent with
17		Ms. Ranahan's representation and
18		stipulation at the meet and confer,
19		Mr. Peters testified that
20		·
21		Grossman Decl., ¶ 99, Ex. A
22		(Peters tr. at 40:10-15).
23	5. Plaintiffs do not allege that Defendants'	Disputed.
24	Works use any clips or otherwise copy the	
25	plot, dialogue, timeline, or central characters of	The purported fact is not supported
26	any of Plaintiffs' Works, but instead allege	by admissible evidence.
27	infringement of such elements such as	Moreover, Defendants' purported
28	clothing, shapes, words, colors, short phrases,	fact is a mischaracterization as
,	100302363 1 5	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	the Klingon language, and works derived from	Plaintiffs have alleged that the plot,
4	nature, third parties, and the public domain.	dialogue, timeline and characters
5	Supporting Evidence: FAC ¶¶ 46-47	from Plaintiffs' works have been
6		infringed. See Declaration of John
7		Van Citters Decl., ¶¶ 57-60.
8		
9		Defendants have copied "clips"
10		from Plaintiffs by appropriating a
11		screenshot from Star Trek III to
12		create their "Vulcan Scene." Van
13		Citters Decl., ¶¶ 43, 48.
14		Grossman Decl., ¶ 43, Ex. A
15		(Peters tr. at 82:2-85:12); ¶ 44, Ex.
16		B (Burnett tr. at 106:11-17). Dkt.
17		No. 72-63, Ex. 20 (Vulcan Scene).
18		
19		Defendants also took the plot of
20		their story from the Original Series
21		episode Whom Gods Destroy, and
22		from The Four Years War
23		publication. Van Citters Decl.,
24		¶ 14, Ex. AAA (Four Years War).
25		Grossman Decl., ¶ 13, Ex. A
26		(Peters tr. at 38:22-41:17), ¶ 14,
27		Ex. C (Gossett tr. at 48:10-50:10),
28		Ex. I (April 26, 2014 email from
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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		Christian Gossett to Alec Peters).
4		
5		The characters taken by
6		Defendants are "central" to
7		Plaintiffs' works, including
8		Klingons, Vulcans, the U.S.S.
9		Enterprise, Klingon ships, along
10		with specific characters such as
11		Soval the Vulcan Ambassador,
12		Chang, the villain from Star Trek
13		VI, and Garth of Izar, who was
14		featured in the Original Series, and
15		was also the subject of a
16		standalone Star Trek novel. Van
17		Citters Decl. ¶¶ 17-38.
18	6. While Plaintiffs do have copyright	Disputed.
19	registrations to central Star Trek characters	
20	such as Spock and Captain Kirk, Defendants	Plaintiffs own the copyrights in the
21	Works' do not include those or any other	episodes that contain the characters
22	characters to which Plaintiffs own separate	such as Garth of Izar and Soval.
23	copyrights.	Grossman Decl., ¶ 90, Ex. UU
24	<b>Supporting Evidence</b> : FAC, Appendix A	(copyright registrations for the Star
25	¶¶ 2-6	Trek Television Series). Van
26		Citters Decl. ¶¶ 3-8.
27		
28		Plaintiffs are not required to have
nership nal	100302363.1 7 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		copyright registrations in
4		characters in order to own the
5		copyrights to those characters.
6		Anderson v. Stallone, 1989 U.S.
7		Dist. LEXIS 11109, Copy. L. Rep.
8		(CCH) P22665 (C.D. Cal. Apr. 25,
9		1989).
10		
11		Further, as the Ninth Circuit
12		recently held, characters depicted
13		in an audiovisual work, with
14		distinct, recognizable traits, are
15		protectable. These characters
16		include Klingons, Vulcans, Garth
17		of Izar, Ambassador Soval,
18		Klingon Commander Chang, and
19		further include recognizable,
20		distinct inanimate objects as well,
21		including the U.S.S. Enterprise,
22		Klingon battlecruisers, and Vulcan
23		ships. See DC Comics v. Towle,
24		802 F.3d 1012, 1021 (9th Cir.
25		2015).
26	7. Defendant Alec Peters, a lifelong Star	Disputed.
27	Trek fan, founded Axanar Productions along	
28	with a group of other Star Trek fans to	Peters

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	celebrate their love of Star Trek by creating	
4	original stories which take place in the so-	
5	called Star Trek universe.	
6	Supporting Evidence: ECF No. 48,	Grossman Decl., ¶ 83, Ex. A
7	Counterclaim at 18, ¶ 11; Oki Decl., Ex. 13	(Peters tr. at 182:1-2; 60:6-61:2).
8	(Deposition of Alec Peters (Oct. 19, 2016)	
9	("Peters Tr., Vol. I") at 81:5-12; 88:5-14);	Further, Axanar Productions was
10	Declaration of Alec Peters, Nov. 16, 2016,	not created to celebrate
11	("Peters Decl."), at ¶ 2	Defendants' love of Star Trek.
12		Axanar Productions is
13		
14		
15		
16		Grossman Decl., ¶ 74, Ex. A, Ex.
17		SS (financial summary).
18		
19		Axanar Productions was also
20		created
21		
22		
23		
24		
25		. Grossman Decl., ¶ 65,
26		Ex. A (Peters tr. at 234:11-25);
27		¶ 66, Ex. B (Burnett tr. at 151:2-
28		153:12), ¶ 67, Ex. PP (Axanar
		PLAINTIFFS' STATEMENT OF GENUINE

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		marketing plan).
4	8. Defendants' first endeavor was the short	Undisputed that Prelude was
5	film <i>Prelude</i> , which was to be followed by	released to the public.
6	Defendants' evolving non-commercial film	
7	project (the "Potential Fan Film") tentatively	Disputed that Defendants planned
8	titled Axanar.	to complete a "fan film" – Peters
9	<b>Supporting Evidence</b> : Peters Decl., at ¶¶ 7-9;	repeatedly stated that Axanar was
10	Peters Decl., Ex. 1	not a fan film. Grossman Decl.,
11		¶ 48, Ex. A (Peters tr. at 92:19-
12		94:1), Ex. CC (Indiegogo
13		fundraising page), ¶ 49, Ex. A
14		(Peters tr. at 99:10-101:10), Ex.
15		DD (Defendants' Indiegogo
16		fundraising page), ¶ 50, Ex. A
17		(Peters tr. at 108:6-109:12), Ex. EE
18		(Facebook post by Alec Peters),
19		¶ 51, Ex. A (Peters tr. at 109:16-
20		110:2), Ex. FF (Post on the Axanar
21		Facebook page), ¶ 53 (Peters tr. at
22		133:16-143:5; 134:10-143:5;
23		137:13-138:13; 138:21-140:2;
24		140:19-141:5; 141:16-142:22), Ex.
25		ZZ (transcript of podcasts), ¶ 55,
26		Ex. A (Peters tr. at 106:6-107:7),
27		Ex. II (tweet) ¶ 57, Ex. A (Peters
28		tr. at 349:18-24), Ex. KK (Peters
ship	100302363.1 10	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

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1		
	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		email to Doug Drexler).
4		
5		Disputed that Axanar was "non-
6		commercial."
7		
8		Peters attempted to meet with
9		Netflix to become a producer of
10		Star Trek productions, attempted to
11		trademark the word "Axanar" and
12		
13		
14		. Grossman
15		Decl., ¶ 58, Ex. A (Peters tr. at
16		442:21-449:9); Ex. LL (Facebook
17		message exchange between Terry
18		McIntosh and Alec Peters); ¶ 59,
19		Ex. E (McIntosh tr. at 20:23-
20		22:15), ¶ 60, Ex. C (Gossett tr. at
21		126:10-128:14), Ex. MM (April
22		20, 2015 email exchange between
23		Alec Peters and Christian Gossett);
24		¶ 65, Ex. A (Peters tr. at 234:11-
25		25); ¶ 66, Ex. B. (Burnett tr. at
26		151:2-153:12), ¶ 67, Ex. PP
27		(Axanar marketing plan), ¶ 68, Ex.
28		QQ (printout from
b 10030	)2363.1	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

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2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Axanarproductions.com).
4		
5		Defendants' business plan states
6		
7		
8		
9		
0		
1		
2		Grossman Decl., ¶ 67, Ex. PP
3		(Axanar marketing plan).
4		
5		Mr. Peters' collaborator and the
6		director of Axanar, Rob Burnett,
7		stated that he was creating Axana
8		in order to get more directing
9		work,
0		
1		
2		
3		. Grossman Dec
4		¶ 77, Ex. B (Burnett tr. at 217:22)
5		218:7); ¶ 78, Ex. C (Gossett tr. at
6		19:15-22:20); ¶ 79, Ex. A (Peters
7		tr. at 455:24-456:16), Ex. OO
8		(Facebook communication

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	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).
	Peters created the Axanar Works in
	large part in order to showcase his
	own "producing" abilities, in the
	hopes that he would be hired by
	CBS 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).
	Mr. Burnett, the editor of Prelude
	to Axanar, and director of the full
	length Axanar Film, also stated
	that he was creating the Axanar
	Works as a "spec commercial" in
	order to showcase his directing
	abilities in the hopes to obtain
	other jobs in Hollywood.
	Grossman Decl., ¶ 82, Ex. B
	(Burnett tr. at 31:21-36:20), Ex.

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		RR (Robert Meyer Burnett online
4		posting).
5		
6		Peters intended
7		
8		
9		
10		Grossman Decl., ¶ 65, Ex. A
11		(Peters tr. at 234:11-25); ¶ 66, Ex.
12		B (Burnett tr. at 151:2-153:12),
13		¶ 67, Ex. PP (Axanar marketing
14		plan).
15	9. Both <i>Prelude</i> and the Potential Fan Film	Disputed.
16	were intended to tell the original story of Garth	
17	of Izar, an obscure character who made his	Garth of Izar is not an obscure
18	lone television appearance in a 1969 episode	character. Garth of Izar was the
19	from Star Trek: The Original Series titled	central character in an episode of
20	Whom Gods Destroy.	The Original Series, he was further
21	<b>Supporting Evidence</b> : ECF No. 48,	discussed in The Four Years War
22	Counterclaim at 19 ¶¶ 15-16; Oki Decl., Ex. 14	publication as a heroic captain who
23	(CBS Studios Inc.'s Responses to Requests for	helped the Federation in the Four
24	Admission, Set One, Response to Request for	Years War and the Battle of
25	Admission Nos. 21-22); Oki Decl., Ex. 15	Axanar, and he is the titular subject
26	(Paramount Pictures Corporation's Responses	of an entire standalone Star Trek
27	to Requests for Admission, Set One, Response	novel. Van Citters Decl., ¶¶ 6, 11,
28	to Request for Admission Nos. 21-22); Oki	13, 14, Ex. AAA (The Four Years

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition	
3	Decl., Ex. 12 (Deposition of J.J. Abrams, Nov.	War supplement), 17-19.	
4	9, 2016, ("Abrams Tr.") at 14:22-15:3;); Oki	Grossman Decl., ¶ 92, Ex. 1(The	
5	Decl., Ex. 11 (Deposition of Justin Yipin Lin,	Original Series DVDs), ¶ 94, Ex.	
6	Nov. 7, 2016, ("Lin Tr.") at 16:10-22); Peters	WW (copyright registration for	
7	Decl., Ex. 1	Garth of Izar novel). Dkt. No. 72-	
8		63, Ex. 21 (Garth of Izar novel).	
9			
10		Disputed to the extent Defendants	
11		assert that <i>Prelude</i> and Axanar tell	
12		a story based solely on Garth of	
13		Izar. Instead, those works describe	
14		and depict the history of The Four	
15		Years War, which was also the	
16		subject of The Four Years War	
17		publication. Van Citters Decl.,	
18		¶¶ 17-19.	
19			
20		Exhibit 14 to the Oki declaration is	
21		not CBS' responses to Requests for	
22		Admission Nos. 21-22. Rather,	
23		Exhibit 14 is Paramount's	
24		responses to Requests for	
25		Admission Nos. 72-76.	
26			
27		Exhibit 15 to the Oki declaration is	
28		not Paramount's responses to	
<b>b</b> rtnership ional	100302363.1 15 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Requests for Admission Nos. 21-
4		22. Rather, Exhibit 15 is CBS'
5		responses to Requests for
6		Admission Nos. 51-55.
7		
8		Paramount and CBS' responses to
9		Requests for Admission Nos. 21-
10		22, which are not in evidence,
11		simply state that Garth of Izar is
12		the subject of a television show
13		and a novel, but not a motion
14		picture.
15		
16		The testimony of Mssrs. Lin and
17		Abrams do not support the stated
18		fact, and their testimony does not
19		constitute an evidentiary admission
20		on the part of Plaintiffs as they are
21		not Plaintiffs' employees.
22	10. <i>Prelude</i> portrays (and the Potential Fan	Disputed.
23	Film would portray) Garth of Izar in a new	
24	way not seen in any of Plaintiffs' Works-	Prelude speaks for itself. It does
25	specifically, as a war veteran with	not portray Garth of Izar "as a war
26	psychological issues resulting from his	veteran with psychological issues
27	traumatic experiences during the Four Years	resulting" from traumatic
28	War between the United Federation of Planets	experiences fighting the Klingons.
	16	PLAINTIFFS' STATEMENT OF GENUINE

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3	and the Klingon Empire.	
4	Supporting Evidence: Oki Decl., Ex. 13	Instead, Prelude portrays Garth as
5	(Peters Tr., Vol. I at 87:13-88:1); Oki Decl.,	a brilliant military strategist and
6	Ex. 5 (Burnett Tr. at 192:2-15); Peters Decl., at	hero. Further, Defendants have not
7	¶¶ 6-7; Peters Decl., Ex. 1	cited to any pre-lawsuit evidence
8		supporting this characterization or
9		description of their work.
10	11. Star Trek, which promotes the ideals of	Disputed.
11	tolerance, unity, inclusion, and peace, aired	
12	during the Vietnam War, before it was socially	Lacks foundation and irrelevant.
13	accepted to publicly examine issues such as	The cited authority (Defendants'
14	Post-Traumatic Stress Disorder.	Counterclaim) does not support the
15	<b>Supporting Evidence</b> : ECF No. 48,	stated fact and is not admissible
16	Counterclaim at 15, ¶ 6	evidence.
17	12. Defendants' Works (made up of (i) an	Disputed.
18	original twenty-minute "mockumentary" that	
19	has been available for free on YouTube since	The Axanar Works speak for
20	2014), (ii) a three-minute scene (the "Vulcan	themselves. They say nothing
21	Scene"), Defendants' Potential Fan Film, and	about the "horrors and
22	their creation of scripts for that project) are	consequences of war."
23	both social commentary and satire, in that they	
24	focus on and intend to expose the true horrors	Defendants never claimed that the
25	and consequences of war in ways the	Axanar Works were a social
26	Plaintiffs' Works did not.	commentary or satire prior to this
27	Supporting Evidence: Oki Decl., Ex. 13	lawsuit – and they are not.
28	(Peters Tr., Vol. I at 87:13-88:1); Oki Decl.,	
		DI AINTIEES' STATEMENT OF CENIUNE

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

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1		
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3	Ex. 5 (Burnett Tr. at 192:2-15); Peters Decl.,	
4	¶ 7	
5	13. <i>Prelude</i> takes place in a time period	Disputed.
6	previously unexplored by the Plaintiffs'	
7	Works, and features an original plot and is shot	Prelude does not take place in a
8	in a narrative "mockumentary" style, featuring	time frame that was previously
9	direct-to-camera interviews with characters, a	unexplored, but rather two decades
10	style never before used by either Plaintiffs or	before The Original Series.
11	in any other Star Trek fan fiction.	Grossman Decl., ¶ 16, Ex. A
12	Supporting Evidence: ECF No. 48,	(Peters tr. at 143:13-145:7), ¶ 17,
13	Counterclaim at 24-25, ¶¶ 30-31; Oki Decl.,	Ex. B (Burnett tr. at 202:12-203:4);
14	Ex. 13 (Peters Tr., Vol. I at 85:7-23); Oki	Van Citters Decl., ¶¶ 7, 39.
15	Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-	
16	203:4); Peters Decl., Ex. 1	Prelude does not feature an
17		original plot. The plot is taken
18		from The Four Years War and
19		"Whom Gods Destroy" of The
20		Original Series. Grossman Decl.,
21		¶ 13, Ex. A (Peters tr. at 38:22-
22		41:17); ¶ 14, Ex. C (Gossett tr. at
23		48:10-50:10), Ex. I (April 26, 2014
24		email from Christian Gossett to
25		Alec Peters). Van Citters Decl.,
26		¶¶ 5-6, 13, 14, 19, 57.
27		
28		<i>Prelude</i> is not an "interview" show
<b>b</b> rtnership sional	100302363.1 18 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		– it is a film that uses interspersed
4		fictional interviews along with
5		scripted, filmed dialogue and
6		action sequences.
7	14. Defendants' Works are low budget,	Disputed.
8	intended to be distributed for free online,	
9	appeal to a relatively small audience of	Defendants raised
10	"Trekkies," and have made no profit.	
11	Supporting Evidence: Oki Decl., Ex. 13	Grossman Decl., ¶ 73, Ex. A
12	(Peters Tr., Vol. I at 224:21-225:4)	(Peters tr. at 70:24-71:4).
13		Further,
14		
15		
16		. Grossman Decl.,
17		¶ 73, Ex. A (Peters tr. at 192:3-
18		193:21). This is not low budget,
19		and is comparable to the cost of an
20		hour long Star Trek television
21		program produced by CBS. Van
22		Citters Decl., ¶ 66.
23		
24		Peters wanted to create Star Trek
25		content for Netflix. Grossman
26		Decl., ¶ 58, Ex. A (Peters tr. at
27		442:21-449:9); Ex. LL (Facebook
28		message exchange between Terry
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 <b>19</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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1 2	Moving Party's Alleged Uncontroverted Facts		<b>Response to Opposition</b>
3			McIntosh and Alec Peters), ¶ 60,
4			Ex. C (Gossett tr. at 126:10-
5			128:14), Ex. MM (April 20, 2015
6			email exchange between Alec
7			Peters and Christian Gossett).
8			
9			Peters attempted to trademark the
10			word "Axanar" and
11			
12			·
13			Grossman Decl., ¶ 58, Ex. A
14			(Peters tr. at 442:21-449:9); Ex. LL
15			(Facebook message exchange
16			between Terry McIntosh and Alec
17			Peters); ¶ 59, Ex. E (McIntosh tr.
18			at 20:23-22:15), ¶ 60, Ex. C
19			(Gossett tr. at 126:10-128:14), Ex.
20			MM (April 20, 2015 email
21			exchange between Alec Peters and
22			Christian Gossett); ¶ 65, Ex. A
23			(Peters tr. at 234:11-25); ¶ 66, Ex.
24			B. (Burnett tr. at 151:2-153:12),
25			¶ 67, Ex. PP (Axanar marketing
26			plan), ¶ 68, Ex. QQ (printout from
27			Axanarproductions.com).
28			
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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Defendants' business plan states
4		
5		
6		
7		
8		
9		
10		Grossman Decl., ¶ 67, Ex. PP
11		(Axanar marketing plan).
12		
13		Peters' collaborator and the
14		director of Axanar, Rob Burnett,
15		stated that he was creating Axanar
16		in order to get more directing
17		work,
18		
19		
20		
21		. Grossman Dec.,
22		¶ 77, Ex. B (Burnett tr. at 217:22-
23		218:7); ¶ 78, Ex. C (Gossett tr. at
24		19:15-22:20); ¶ 79, Ex. A (Peters
25		tr. at 455:24-456:16), Ex. OO
26		(Facebook communication
27		between Alec Peters and Terry
28		McIntosh); ¶ 81, Ex. B (Burnett tr.
<b>eb</b> artnership sional s	100302363.1 202828-10048	21 PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
	at 32:6-33:1), ¶ 82 (Burnett tr. at
	31:21-36:20); Ex. RR (Robert
	Meyer Burnett online posting).
	Peters created the Axanar Works in
	large part in order to showcase his
	own "producing" abilities, in the
	hopes that he would be hired by
	CBS Grossma
	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).
	Mr. Burnett, the editor of Prelude
	to Axanar, and director of the full
	length Axanar Film, also stated
	that he was creating the Axanar
	Works as a "spec commercial" in
	order to showcase his directing
	abilities in the hopes to obtain
	other jobs in Hollywood.
	Grossman Decl., ¶ 82, Ex. B
	(Burnett tr. at 31:21-36:20), Ex.
	RR (Robert Meyer Burnett online
	posting).

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition	
3			
4		Peters	
5			
6			
7			
8		Grossman Decl., ¶ 65, Ex. A	
9		(Peters tr. at 234:11-25); ¶ 66, Ex.	
10		B (Burnett tr. at 151:2-153:12),	
11		¶ 67, Ex. PP (Axanar marketing	
12		plan).	
13			
14		Defendants	
15			
16		. Grossman Decl., ¶ 64, Ex.	
17		B (Burnett tr. at 142:14-148:8);	
18		¶ 67, Ex. PP (Axanar marketing	
19		plan); Ex. QQ (printout from	
20		Axanarproductions.com).	
21	15. In August of 2014, Defendants released	Undisputed.	
22	Prelude for free on YouTube.com.		
23	<b>Supporting Evidence</b> : ECF No. 48,		
24	Counterclaim, ¶ 16; Oki Decl., Ex. 13 (Peters		
25	Tr., Vol. I at 57:1-11, 85:7-23); Oki Decl., Ex.		
26	5 (Burnett Tr. at 22:8-23:8; 202:12-203:4);		
27	Peters Decl., ¶ 7		
28	16. In March of 2014, Defendants launched	Undisputed.	
		PLAINTIFFS' STATEMENT OF GENUINE	

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

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1		1
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	a Kickstarter campaign to raise money for the	
4	Potential Fan Film.	
5	Supporting Evidence: Oki Decl., Ex. 13	
6	(Peters Tr., Vol. I at 239:20-23, 241:10-13);	
7	Peters Decl., ¶ 9	
8	17. Aside from the <i>Vulcan Scene</i> (released	Disputed.
9	for free on YouTube.com in July 2015), which	
10	may or may not ultimately become part of the	Earlier this year, Peters stated that,
11	Potential Fan Film, no scenes from the	in addition to the Axanar Script,
12	Potential Fan Film have been filmed.	and the filmed Vulcan Scene, one
13	<b>Supporting Evidence</b> : Peters Decl., ¶ 9; Oki	third of the visual effects for the
14	Decl., Ex. 5 (Burnett Tr. at 174:3-10); Oki	full length Axanar film had been
15	Decl., Ex. 6 (Hunt Tr. at 56:12-25)	completed in a special effects
16		"reel." Grossman Decl., ¶ 98.
17		Defendants did not turn over this
18		special effects reel. Grossman
19		Decl., ¶98.
20	18. Of the six total characters portrayed in	Disputed.
21	Prelude, four were developed entirely by	
22	Defendants.	These characters were not
23	Supporting Evidence: Peters Decl., ¶ 8	"developed entirely by
24		Defendants." The referenced
25		characters are Vulcans, Klingons
26		and Starfleet Officers. They are
27		depicted with costumes, makeup,
28		hair and even logos and insignias
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 24 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	that are copied from Plaintiffs'
	characters. Van Citters Decl., ¶¶ 5
	25-32.
19. As the <i>Vulcan Scene</i> and the Potential	Disputed.
Fan Film are both intended to build off of the	
Prelude storyline, they also are set in the same	The timeframe of the Axanar
unique timeframe.	Works is not unique. It is twenty
Supporting Evidence: Oki Decl., Ex. 13	years before The Original Series
(Peters Tr., Vol. I at 43:9-14); Oki Decl., Ex. 6	(which is several hundred years in
(Hunt Tr. at 44:18-25); Oki Decl., Ex. 5	the future) and it is a timeframe
(Burnett Tr. At 104:11-105:17); Peters Decl.,	that was explored and discussed in
Ex. 2	The Four Years War publication,
	which was used by Defendants to
	create the Axanar Works.
	Van Citters Decl., ¶¶ 13-15, 19, 39
	60.
	Grossman Decl., ¶ 16, Ex. A
	(Peters tr. at 143:13-145:7), ¶ 35,
	Ex. V (blueprints for the
	soundstage at Paramount Studios
	that was used for Star Trek); ¶ 36,
	Ex. A (145:12-147:10), Ex. W
	(blueprints), ¶ 32, Ex. C (Gossett
	tr. at 47:22-48:6); ¶ 15, Ex. A
	(Peters tr. at 371:13-372:9), Ex. J
	(Mr. Gossett email exchange with
100302363.1 25 202828-10048	PLAINTIFFS' STATEMENT OF GENUIN ISSUES IN OPPOSITION TO MOTION FO SUMMARY JUDGMEN

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Mr. Peters) ¶ 17, Ex. B (Burnett tr.
4		at 202:12-203:4). Van Citters
5		Decl., ¶¶ 13, 14, Ex. AAA (The
6		Four Years War supplement), Ex.
7		BBB (copyright registration for
8		The Four Years War). Grossman
9		Decl., ¶ 13, Ex. A (Peters tr. at
10		38:22-41:17); ¶ 14, Ex. C (Gossett
11		tr. at 48:10-50:10), Ex. I (April 26,
12		2014 email from Christian Gossett
13		to Alec Peters). Dkt. No. 72-63,
14		Ex. 19 (Prelude to Axanar).
15	20. The three minute <i>Vulcan Scene</i> features	Disputed.
16	two characters, one of which is completely	
17	original, as well as Defendants' own dialogue.	Defendants' Vulcan characters are
18	Supporting Evidence: Oki Decl., Ex. 13	not "original." Vulcans are a
19	(Peters Tr., Vol. I at 43:9-14, 85:7-23); Peters	fictional species created by
20	Decl., ¶ 10; Oki Decl., Ex. 5 (Burnett Tr. at	Plaintiffs and portrayed in the Star
21	22:8-23:8, 202:12-203:4); Oki Decl., Ex. 6	Trek Copyrighted Works. The
22	(Hunt Tr. At 44:18-25); Peters Decl., Ex. 2	Vulcans in Defendants' Vulcan
23		Scene are depicted wearing Vulcan
24		robes, on the planet Vulcan, with
25		Vulcan architecture in the
26		background. Van Citters Decl.
27		¶¶ 43-53.
28	21. As a war mockumentary, <i>Prelude</i> was	Disputed.
,	100302363.1 26	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3	largely inspired by works such as	
4	"M*A*S*H," "Band of Brothers," "Babylon	Prelude speaks for itself and does
5	5," "The Pacific" and "The Civil War."	not include any characters or
6	Supporting Evidence: Oki Decl., Ex. 5	copyrighted elements from the
7	(Burnett Tr. at 22:15-23:18); Oki Decl., Ex. 6	cited works. Further, Plaintiffs
8	(Hunt Tr. at 51:8-16); Oki Decl., Ex. 13 (Peters	specifically asked for Defendants'
9	Tr., Vol. I at 57:19-58:4); Peters Decl., Ex. 1	source documents used to create
10		the Axanar Works (other than the
11		Star Trek films and television
12		episodes which the parties agreed
13		did not need to be exchanged) and
14		Defendants did not turn over any
15		of these claimed sources.
16		Grossman Decl., ¶ 99.
17		
18		Defendants advertised Prelude as
19		an independent Star Trek film, not
20		as a war movie. Grossman Decl.,
21		¶ 54, Ex. A (Peters tr. at 97:14-
22		98:22), Ex. HH (screenshot from
23		Defendants' Kickstarter
24		fundraising page).
25		Grossman Decl., ¶ 34, Ex. A
26		(Peters tr. at 471:25-474:20), Ex. U
27		(March 7, 2015 email from Alec
28		Peters to Christian Gossett).
e <b>b</b> Irtnership Sional	100302363.1 27 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Grossman Decl., ¶ 29, Ex. C
4		(Gossett tr. at 36:11-37:8), Ex. R
5		(March 24, 2013 email from Sean
6		Tourangeau to Christian Gossett
7		and Alec Peters).
8		Grossman Decl., ¶ 38, Ex. C
9		(Gossett tr. at 92:14-93:13), Ex. Y
10		(April 13, 2014 email exchange
11		between Alec Peters, Tobias
12		Richter, and Christian Gossett).
13		Grossman Decl., ¶ 10, Ex. C
14		(Gossett tr. at 30:7-31:13, Ex. F
15		(January 4, 2011 email from Alec
16		Peters to Christian Gossett), Ex. A
17		(Peters tr. at 332:15-334:4).
18		Grossman Decl., ¶ 12, Ex. C
19		(Gossett tr. at 32:7-34:16), Ex. H
20		(November 13, 2013 email
21		exchange between Alec Peters and
22		Christian Gossett), Ex. A (Peters tr.
23		at 359:18-361:11).
24	22. Mr. Peters modeled his performance of	Disputed and irrelevant.
25	Garth of Izar after the veterans depicted in	
26	"Band of Brothers," the HBO war	Prelude speaks for itself. Mr.
27	documentary mini-series.	Peters was not portraying anyone
28	<b>Supporting Evidence</b> : Peters Decl., ¶ 7	from an HBO series, he portrayed
,	100302363.1 28	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		Plaintiffs' character, Garth of Izar.
4	23. The Potential Fan Film was also	Disputed.
5	intended to borrow from war film sources,	
6	including "The Longest Day," "Patton," and	Axanar was not a "fan film" and,
7	"The Hunt for Red October."	prior to the filing of this lawsuit,
8	Supporting Evidence: Oki Decl., Ex. 5	Mr. Peters repeatedly rejected the
9	(Burnett Tr. at 22:15-23:18); Peters Decl., ¶ 9	implication, often explicitly, that
10		he was involved in a "fan film."
11		Grossman Decl., ¶ 48, Ex. A
12		(Peters tr. at 92:19-94:1), Ex. CC
13		(Indiegogo fundraising page), ¶ 49,
14		Ex. A (Peters tr. at 99:10-101:10),
15		Ex. DD (Defendants' Indiegogo
16		fundraising page), ¶ 50, Ex. A
17		(Peters tr. at 108:6-109:12), Ex. EE
18		(Facebook post by Alec Peters),
19		¶ 51, Ex. A (Peters tr. at 109:16-
20		110:2), Ex. FF (Post on the Axanar
21		Facebook page), ¶ 53 (Peters tr. at
22		133:16-143:5; 134:10-143:5;
23		137:13-138:13; 138:21-140:2;
24		140:19-141:5; 141:16-142:22), Ex.
25		ZZ (transcript of podcasts), ¶ 55,
26		Ex. A (Peters tr. at 106:6-107:7),
27		Ex. II (tweet) ¶ 57, Ex. A (Peters
28		tr. at 349:18-24), Ex. KK (Peters
<b>b</b> tnership	100302363.1 29	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		email to Doug Drexler).
4		
5		The Axanar Script is not similar to
6		any of these war films and there is
7		no evidence to support this
8		purported fact. The Axanar Script,
9		
10		
11		
12		Grossman Decl., ¶ 41, Ex. A
13		(Peters tr. at 77:5-9), ¶ 42, Ex. AA
14		(Axanar Script at pages 8, 21),
15		¶ 22, Ex. C (Gossett tr. at 112:14-
16		113:8), ¶ 45, Ex. A (Peters tr. at
17		44:21-55:20; 362:9-363:13); ¶ 46,
18		Ex. B (Burnett tr. at 194:9-195:16;
19		195:18-23). Van Citters Decl.,
20		¶¶ 15-62.
21	24. While the Potential Fan Film is	Disputed.
22	unfinished, and its scripts still in flux, the most	
23	recent draft script featured 50 original	The Axanar Works are not a "fan
24	characters (of a total 57 characters).	film" and Peters denied, prior to
25	Supporting Evidence: Peters Decl., ¶ 15	this lawsuit, that the Axanar Works
26		were properly characterized as
27		such. Grossman Decl., ¶ 48, Ex. A
28		(Peters tr. at 92:19-94:1), Ex. CC
<b>)</b> tnership onal	100302363.1 <b>30</b>	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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4		
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		(Indiegogo fundraising page), ¶ 49,
4		Ex. A (Peters tr. at 99:10-101:10),
5		Ex. DD (Defendants' Indiegogo
6		fundraising page), ¶ 50, Ex. A
7		(Peters tr. at 108:6-109:12), Ex. EE
8		(Facebook post by Alec Peters),
9		¶ 51, Ex. A (Peters tr. at 109:16-
10		110:2), Ex. FF (Post on the Axanar
11		Facebook page), ¶ 53 (Peters tr. at
12		133:16-143:5; 134:10-143:5;
13		137:13-138:13; 138:21-140:2;
14		140:19-141:5; 141:16-142:22), Ex.
15		ZZ (transcript of podcasts), ¶ 55,
16		Ex. A (Peters tr. at 106:6-107:7),
17		Ex. II (tweet) ¶ 57, Ex. A (Peters
18		tr. at 349:18-24), Ex. KK (Peters
19		email to Doug Drexler).
20		
21		The Axanar Script
22		
23		. Grossman Decl., ¶ 41, Ex.
24		A (Peters tr. at 77:5-9), ¶ 42, Ex.
25		AA (script).
26		
27		Irrelevant to the extent Defendants
28		claim to have altered the Axanar
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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Script after the filing of suit.
4		
5		Disputed that the Axanar Script
6		contains "original" characters. The
7		referenced characters are Klingons,
8		Vulcans, and Starfleet officers and
9		personnel. Van Citters Decl., ¶ 59.
10	25. At the Motion to Dismiss stage of these	Disputed.
11	proceedings, this Court relied on the truth of	
12	Plaintiffs' allegation that as of August 2015,	The Court noted that the particular
13	there was a "fully revised and locked" script	cited allegation was supported by
14	for the Potential Fan Film.	specific facts, including Mr.
15	<b>Supporting Evidence</b> : FAC ¶ 36; ECF No. 54	Peters' own public posting that he
16	(Order re Defendants' Motion to Dismiss) at 5,	had created a "fully revised and
17	7	locked script." Grossman Decl.,
18		¶ 40, Ex. Z.
19	26. As has been shown through discovery,	Disputed.
20	Defendants used "locked script" as a term of	
21	art meaning that no new sets, scenes or	Peters testified that
22	characters will be added to a script, and is used	
23	to aid in budgeting purposes.	
24	<b>Supporting Evidence</b> : Oki Decl., Ex. 6 (Hunt	
25	Tr. at 47:19-48:6); Peters Decl., ¶ 13, Peters	
26	Decl., Ex. 3	. Grossman Decl.,
27		¶ 41, Ex. A (Peters tr. at 77:5-9),
28		¶ 42, Ex. AA (script).
) porskip	100302363.1 32	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		
4	27. Many scripts have been created since the	Disputed.
5	unfinished August 2015 script, all using	
6	varying degrees of the Star Trek Universe.	It is irrelevant whether Peters
7	Supporting Evidence: Peters Decl., ¶ 13,	modified the script after the
8	Peters Decl., Ex. 3	lawsuit.
9	28. Defendants are not currently committed	Disputed.
10	to using any of the existing scripts in the	
11	Potential Fan Film, and have not decided what	Defendants' post-lawsuit revisions
12	format, length and substance the Potential Fan	and "considerations" are irrelevant.
13	Film will take, though are considering whether	
14	to make more mockumentary style works.	
15	Supporting Evidence: Oki Decl., Ex. 13	
16	(Peters Tr., Vol. I at 74:10-23); Peters Decl.,	
17	¶¶ 13-14; Oki Decl., Ex. 6 (Hunt Tr. at 49:18-	
18	50:5); Oki Decl., Ex. 5 (Burnett Tr. at 88:7-18,	
19	97:11-98:7)	
20	29.	Disputed, to the extent that
21		Plaintiffs' Star Trek Copyrighted
22		Works are distributed in other
23		markets as well, such as cable
24		distribution, print, etc. Further,
25		Plaintiffs object to the statements
26	Supporting Evidence: Oki Decl., Ex. 3	of Mr. Tregillis as hearsay. There
27	(Report of Christian Tregillis) at ¶¶ 7-12, 34-	is no declaration from Mr.
28	35; ECF No. 72-63	Tregillis.
		DI AINTIEES' STATEMENT OF CENIUNE

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

# Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 35 of 102 Page ID #:5100

1	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		
4		Further, Plaintiffs timely
5		subpoenaed Mr. Tregillis for
6		deposition, <u>prior</u> to the filing of
7		Defendants' Motion for Summary
8		Judgment. Defendants' counsel
9		refused to make Mr. Tregillis
10		available for deposition on the
11		grounds that the "fact discovery"
12		deadline had passed (prior to the
13		service of any expert reports) and
14		stated that she was not making any
15		of Defendants' experts available
16		for deposition. Thereafter,
17		Defendants submitted the Tregillis
18		report as an exhibit to Ms. Oki's
19		declaration, and yet still refused to
20		make him available for deposition
21		on the subpoenaed date, or at any
22		time prior to the deadline to file
23		this Opposition.
24		
25		His testimony, if not excluded as
26		hearsay, should be excluded for
27		failure to make him available
28		pursuant to a timely-served
hip 1003023		4 PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

## Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 36 of 102 Page ID #:5101

4		1
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		subpoena.
4	30. Defendants' Works are not intended to	Disputed.
5	be commercialized, and Defendants have no	
6	ambitions of competing against Plaintiffs'	Peters stated: "But Axanar is not
7	Works in movie theaters, on television, over	just an independent Star Trek film;
8	premium streaming services, or to otherwise	it is the beginning of a whole new
9	sell their Works for profit.	way that fans can get the content
10	Supporting Evidence: Oki Decl., Ex. 13	they want, by funding it
11	(Peters Tr., Vol. I at 225:5-6); Oki Decl., Ex. 4	themselves. Why dump hundreds
12	(Report of Henry Jenkins) at 4	or thousands of dollars a year on
13		400 cable channels, when what you
14		really want is a few good sci-fi
15		shows?" Grossman Decl., ¶ 49, Ex.
16		A (Peters tr. at 99:10-100:15), Ex.
17		DD (Axanar Indiegogo fundraising
18		page).
19		
20		Plaintiffs' Star Trek Copyrighted
21		Works are distributed via cable.
22		Van Citters Decl., ¶ 11.
23		
24		Peters attempted to meet with
25		Netflix to become a producer of
26		Star Trek productions, attempted to
27		trademark the word "Axanar"
28		
	100302363.1 35	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 37 of 102 Page ID #:5102

1	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		
4		. Grossman
5		Decl., ¶ 58, Ex. A (Peters tr. at
6		442:21-449:9); Ex. LL (Facebook
7		message exchange between Terry
8		McIntosh and Alec Peters); ¶ 59,
9		Ex. E (McIntosh tr. at 20:23-
10		22:15), ¶ 60, Ex. C (Gossett tr. at
11		126:10-128:14), Ex. MM (April
12		20, 2015 email exchange between
13		Alec Peters and Christian Gossett);
14		¶ 65, Ex. A (Peters tr. at 234:11-
15		25); ¶ 66, Ex. B. (Burnett tr. at
16		151:2-153:12), ¶ 67, Ex. PP
17		(Axanar marketing plan), ¶ 68, Ex.
18		QQ (printout from
19		Axanarproductions.com).
20		
21		Defendants' business plan states
22		
23		
24		
25		
26		
27		
28		Grossman Decl., ¶ 67, Ex. PP
artnership	00302363.1 3 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 38 of 102 Page ID #:5103

2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		(Axanar marketing plan).
4		
5		Peters' collaborator and the
6		director of Axanar, Rob Burnett,
7		stated that he was creating Axanar
8		in order to get more directing
9		work,
0		
1		
2		
3		. Grossman Dec.
4		¶ 77, Ex. B (Burnett tr. at 217:22-
5		218:7); ¶ 78, Ex. C (Gossett tr. at
6		19:15-22:20); ¶ 79, Ex. A (Peters
7		tr. at 455:24-456:16), Ex. OO
8		(Facebook communication
9		between Alec Peters and Terry
0		McIntosh); ¶ 81, Ex. B (Burnett tr
1		at 32:6-33:1), ¶ 82 (Burnett tr. at
2		31:21-36:20); Ex. RR (Robert
3		Meyer Burnett online posting).
4		
5		Peters created the Axanar Works
6		large part in order to showcase his
7		own "producing" abilities, in the
8		hopes that he would be hired by
100302363		PLAINTIFFS' STATEMENT OF GENUIN 7 ISSUES IN OPPOSITION TO MOTION FO SUMMARY JUDGMEN

## Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 39 of 102 Page ID #:5104

1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		CBS Grossman
4		Decl., ¶ 79, Ex. A (Peters tr. at
5		455:24-456:16); ¶ 77, Ex. B
6		(Burnett tr. at 217:22-218:7); ¶ 78,
7		Ex. C (Gossett tr. at 19:15-22:20).
8		
9		Mr. Burnett, the editor of Prelude
10		to Axanar, and director of the full
11		length Axanar Film, also stated
12		that he was creating the Axanar
13		Works as a "spec commercial" in
14		order to showcase his directing
15		abilities in the hopes to obtain
16		other jobs in Hollywood.
17		Grossman Decl., ¶ 82, Ex. B
18		(Burnett tr. at 31:21-36:20), Ex.
19		RR (Robert Meyer Burnett online
20		posting).
21		
22		Peters
23		
24		
25		· · · · · · · · · · · · · · · · · · ·
26		Grossman Decl., ¶ 65, Ex. A
27		(Peters tr. at 234:11-25); ¶ 66, Ex.
28		B (Burnett tr. at 151:2-153:12),
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 <b>38</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 40 of 102 Page ID #:5105

1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		¶ 67, Ex. PP (Axanar marketing
4		plan).
5		
6		Defendants
7		
8		. Grossman Decl., ¶ 64, Ex.
9		B (Burnett tr. at 142:14-148:8);
10		¶ 67, Ex. PP (Axanar marketing
11		plan); Ex. QQ (printout from
12		Axanarproductions.com).
13	31. Plaintiffs' most recent feature film, <i>Star</i>	Objection, irrelevant and hearsay.
14	<i>Trek Beyond</i> , had a production budget of \$185	Plaintiffs object to the statements
15	million and has grossed over \$350 million	of Mr. Tregillis as hearsay. There
16	worldwide since its July 22, 2016 release.	is no declaration from Mr.
17	Supporting Evidence: Oki Decl., Ex. 3	Tregillis.
18	(Report of Christian Tregillis) at ¶ 10	
19		Further, Plaintiffs subpoenaed Mr.
20		Tregillis for deposition, prior to the
21		filing of Defendants' Motion for
22		Summary Judgment. Defendants'
23		counsel refused to make Mr.
24		Tregillis available for deposition
25		on the grounds that the "fact
26		discovery" deadline had passed
27		(prior to the service of any expert
28		reports) and stated that she was not
<b>b</b> tnership ional	100302363.1 <b>39</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 41 of 102 Page ID #:5106

1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		making any of Defendants' experts
4		available for deposition.
5		Thereafter, Defendants submitted
6		the Tregillis report as an exhibit to
7		Ms. Oki's declaration, and yet still
8		refused to make him available for
9		deposition on the subpoenaed date,
10		or at any time prior to the deadline
11		to file this Opposition. Grossman
12		Decl., ¶ 100, Ex. JJJ (email
13		exchange with counsel for
14		Defendants).
15		
16		His testimony, if not excluded as
17		hearsay, should be excluded for
18		failure to make him available
19		pursuant to a timely-served
20		subpoena.
21	32. Plaintiffs' Works are budgeted and	Disputed and irrelevant.
22	produced for appeal to the general public	
23	worldwide, offering the type of production,	Plaintiffs object to statements of
24	special effects, talent, and other qualities that	Mr. Tregillis as hearsay. There is
25	result in extensive profits.	no declaration from Mr. Tregillis.
26	Supporting Evidence: Oki Decl., Ex. 3	
27	(Report of Christian Tregillis) at ¶ 10	Further, Plaintiffs timely
28		subpoenaed Mr. Tregillis for
		PLAINTIFFS' STATEMENT OF GENUINE

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 42 of 102 Page ID #:5107

1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		deposition, prior to the filing of
4		Defendants' Motion for Summary
5		Judgment. Defendants' counsel
6		refused to make Mr. Tregillis
7		available for deposition on the
8		grounds that the "fact discovery"
9		deadline had passed (prior to the
10		service of any expert reports) and
11		stated that she was not making any
12		of Defendants' experts available
13		for deposition. Thereafter,
14		Defendants submitted the Tregillis
15		report as an exhibit to Ms. Oki's
16		declaration, and yet still refused to
17		make him available for deposition
18		on the subpoenaed date, or at any
19		time prior to the deadline to file
20		this Opposition. Grossman Decl.,
21		¶ 100, Ex. JJJ (email exchange
22		with counsel for Defendants).
23		His testimony, if not excluded as
24		hearsay, should be excluded for
25		failure to make him available
26		pursuant to a timely-served
27		subpoena. Further, there is no
28		evidence that the assertion is true
<b>eb</b> artnership sional	100302363.1 41 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

## Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 43 of 102 Page ID #:5108

1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		of all of Plaintiffs works, or that all
4		of Plaintiffs' works are similar in
5		this regard. Specifically, the one
6		hour episodes of the last Star Trek
7		television series were budgeted at
8		approximately \$2.2 million to \$2.4
9		million, the same range as
10		Axanar's budget, particularly if
11		Peters was to raise more funds to
12		complete Axanar. Van Citters
13		Decl., ¶ 66.
14	33.	Undisputed that Plaintiffs did not
15		serve a takedown notice. Instead,
16		Plaintiffs filed this lawsuit, and
17	Supporting Evidence: Oki Decl., Ex. 10	requested the court to enjoin the
18	(Deposition of Dan O'Rourke, Sept. 30, 2016	distribution of the Axanar Works.
19	("O'Rourke Tr.") at 99:15-100:2); Oki Decl.,	
20	Ex. 9 (Deposition of John Van Citters, Sept.	
21	28, 2016 ("Van Citters Tr.") at 160:13-15	
22	34.	Disputed.
23		
24		This is a mischaracterization of
25		Plaintiffs' interrogatory responses
26	Supporting Evidence: Oki Decl., Ex. 14	and deposition testimony which
27	(CBS Studios Inc.'s Responses to Requests for	extensively discuss the harm to
28	Admission, Set Two, Response to Request for	Plaintiffs from the unchecked
nership	100302363.1 42	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 44 of 102 Page ID #:5109

1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3	Admission Nos. 72-73); Oki Decl., Ex. 15	creation of unauthorized derivative
4	(Paramount Pictures Corporation's Responses	works.
5	to Requests for Admission, Set Two, Response	
6	to Request for Admission Nos. 72-73); Oki	
7	Decl., Ex. 1 (CBS Studios Inc.'s Amended	
8	Responses to Interrogatories, Set One,	
9	Response to Interrogatory Nos. 4-9); Oki	
10	Decl., Ex. 2 (Paramount Pictures Corporations	
11	Amended Responses to Interrogatories, Set	
12	One, Response to Interrogatory Nos. 4-9); Oki	
13	Decl., Ex. 3 (Report of Christian Tregillis) at	
14	¶ 58-62; Oki Decl., Ex. 9 (Van Citters Tr. at	
15	94:8-95:7, 119:19-124:18); Oki Decl., Ex. 10	
16	(O'Rourke Tr. at 60:22-61:5; 63:8-16)	
17	35.	Disputed.
18		
19		Plaintiffs did concern themselves
20	Supporting Evidence: Oki Decl., Ex. 9 (Van	with <i>Prelude</i> , and considered it an
21	Citters Tr. at 52:14-18, 54:9-23, 119:19-	infringing work. Grossman Decl.,
22	124:18); Oki Decl., Ex. 10 (O'Rourke Tr. at	¶ 97, Ex. CCC (Van Citters and
23	60:22-61:5; 63:8-16)	O'Rourke testimony).
24	36.	Disputed.
25		
26		There is no admissible evidence to
27		support the stated fact.
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 43 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 45 of 102 Page ID #:5110

1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	<b>Supporting Evidence</b> : Declaration of	The unsworn statements by
4	Jonathan Lane, Nov. 15, 2016 ("Lane Decl."),	Jonathan Lane, Henry Jenkins, and
5	Ex. 1; Oki Decl., Ex. 4 (Report of Henry	Christian Tregillis are hearsay, as
6	Jenkins) at 2; Declaration of Reece Watkins,	is Exhibit 1 to the Watkins
7	Nov. 15, 2016 ("Watkins Decl."), Ex. 1; Oki	declaration. There are no
8	Decl., Ex. 3 (Report of Christian Tregillis)	declaration from Mr. Tregillis or
9	¶ 63; Oki Decl., Ex. 9 (Van Citters Tr. at	Mr. Jenkins.
10	137:5-21); Oki Decl., Ex. 8 (Deposition of	
11	Elizabeth Kalodner ("Kalodner Tr."), Oct. 13,	The cited testimony from John Van
12	2016 at 33:22-42:17); Oki Decl., Ex. 7	Citters, Elizabeth Kalodner, and
13	(Deposition of Bill Burke, Nov. 3, 2016	Bill Burke does not provide that
14	("Burke Tr.") at 40:5-45:7; Oki Decl., Ex. 16	there is increased and continued
15		enthusiasm for Plaintiffs' works
16		due to the Axanar Works.
17		
18		Exhibit 16 is simply an article
19		about the licensed tour of a replica
20		of the set from The Original
21		Series.
22		
23		Further, Plaintiffs timely
24		subpoenaed Mr. Jenkins for
25		deposition, prior to the filing of
26		Defendants' Motion for Summary
27		Judgment. Defendants' counsel
28		refused to make Mr. Jenkins
) inership	100302363.1 44	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY HIDGMENT

#### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 46 of 102 Page ID #:5111

1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		available for deposition on the
4		grounds that the "fact discovery"
5		deadline had passed (prior to the
6		service of any expert reports) and
7		stated that she was not making any
8		of Defendants' experts available
9		for deposition. Thereafter,
10		Defendants submitted the Jenkins
11		report as an exhibit to Ms. Oki's
12		declaration, and yet still refused to
13		make him available for deposition
14		on the subpoenaed date, or at any
15		time prior to the deadline to file
16		this Opposition. Grossman Decl.,
17		¶ 100, Ex. JJJ (email exchange
18		with counsel for Defendants).
19		His testimony, if not excluded as
20		hearsay, should be excluded for
21		failure to make him available
22		pursuant to a timely-served
23		subpoena.
24	37. Star Trek fans have produced and	Disputed.
25	disseminated fan fiction for over 50 years,	
26	without complaint, and rather with	This is inaccurate and irrelevant.
27	encouragement from Plaintiffs.	
28	Supporting Evidence: Oki Decl., Ex. 3	The unsworn statements of
	1000000001	PLAINTIFFS' STATEMENT OF GENUINE

#### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 47 of 102 Page ID #:5112

1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	(Report of Christian Tregillis) at ¶¶ 10-12;	Christian Tregillis and Jonathan
4	Lane Decl., Ex. 1 at 1	Lane are hearsay.
5		
6		Plaintiffs have filed suit in the past
7		against infringers of their Star Trek
8		works. See, e.g. Paramount
9		Pictures Corp. v. Carol Publ'g
10		Group, 11 F. Supp. 2d 329
11		(S.D.N.Y. 1998).
12		
13		Moreover, whether or not Plaintiffs
14		have filed suit before is irrelevant.
15		See id. at 337 (Court rejected
16		defenses of abandonment and
17		estoppel asserted by a defendant
18		who created a work that infringed
19		on the Star Trek copyrights,
20		holding: "Defendants instead
21		allege that Paramount's failure to
22		commence litigation against other
23		potentially infringing books estops
24		them from bringing this action.
25		Extending the doctrine of estoppel
26		so that a defendant may rely on a
27		plaintiff's conduct toward another
28		party is both unsupported by law
e <b>b</b> artnership sional	100302363.1 46	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

# Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 48 of 102 Page ID #:5113

2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		and pernicious as a matter of
4		policy.").
5		
6		There is no sworn declaration from
7		Mr. Tregillis and, although
8		Plaintiffs timely subpoenaed Mr.
9		Tregillis for deposition, prior to the
0		filing of Defendants' Motion for
1		Summary Judgment, Defendants'
2		counsel refused to make Mr.
3		Tregillis available for deposition
4		on the grounds that the "fact
5		discovery" deadline had passed
6		(prior to the service of any expert
7		reports) and stated that she was no
8		making any of Defendants' exper-
9		available for deposition.
0		Thereafter, Defendants submitted
1		the Tregillis report as an exhibit to
2		Ms. Oki's declaration, and yet still
3		refused to make him available for
4		deposition on the subpoenaed date
5		or at any time prior to the deadline
6		to file this Opposition. Grossman
7		Decl., ¶ 100, Ex. JJJ (email
8		exchange with counsel for

# Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 49 of 102 Page ID #:5114

Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	Defendants).
	His testimony, if not excluded as
	hearsay, should be excluded for
	failure to make him available
	pursuant to a timely-served
	subpoena.
38. Plaintiffs have benefitted from the	Disputed.
unpaid and often unacknowledged labor of	
fans, who have helped to maintain engagement	The statements of Henry Jenkins
in the Plaintiffs' Works during leaner years in	are hearsay and lack foundation.
Plaintiffs' cycle of production.	
Supporting Evidence: Oki Decl., Ex. 4	Further, Plaintiffs timely
(Report of Henry Jenkins) at 8	subpoenaed Mr. Jenkins for
	deposition, <u>prior</u> to the filing of
	Defendants' Motion for Summary
	Judgment. Defendants' counsel
	refused to make Mr. Jenkins
	available for deposition on the
	grounds that the "fact discovery"
	deadline had passed (prior to the
	service of any expert reports) and
	stated that she was not making any
	of Defendants' experts available
	for deposition. Thereafter,
	Defendants submitted the Jenkins
100302363.1 <b>48</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUIN ISSUES IN OPPOSITION TO MOTION FO SUMMARY JUDGMEN

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 50 of 102 Page ID #:5115

1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		report as an exhibit to Ms. Oki's
4		declaration, and yet still refused to
5		make him available for deposition
6		on the subpoenaed date, or at any
7		time prior to the deadline to file
8		this Opposition. Grossman Decl.,
9		¶ 100, Ex. JJJ (email exchange
10		with counsel for Defendants).
11		His testimony, if not excluded as
12		hearsay, should be excluded for
13		failure to make him available
14		pursuant to a timely-served
15		subpoena.
16	39. <i>Prelude</i> had a production budget of	Disputed.
17	\$125,000.00, and was posted on YouTube.com	
18	to be viewed for free, with no profit to	The Axanar Works are commercial
19	Defendants.	works for profit.
20	Supporting Evidence: Peters Decl., ¶ 7	
21		Peters attempted to meet with
22		Netflix to become a producer of
23		Star Trek productions, attempted to
24		trademark the word "Axanar" and
25		
26		
27		. Grossman
28		Decl., ¶ 58, Ex. A (Peters tr. at
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 <b>49</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 51 of 102 Page ID #:5116

1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		442:21-449:9); Ex. LL (Facebook
4		message exchange between Terry
5		McIntosh and Alec Peters); ¶ 59,
6		Ex. E (McIntosh tr. at 20:23-
7		22:15), ¶ 60, Ex. C (Gossett tr. at
8		126:10-128:14), Ex. MM (April
9		20, 2015 email exchange between
10		Alec Peters and Christian Gossett);
11		¶ 65, Ex. A (Peters tr. at 234:11-
12		25); ¶ 66, Ex. B. (Burnett tr. at
13		151:2-153:12), ¶ 67, Ex. PP
14		(Axanar marketing plan), ¶ 68, Ex.
15		QQ (printout from
16		Axanarproductions.com).
17		
18		Defendants' business plan states
19		
20		
21		
22		
23		
24		
25		Grossman Decl., ¶ 67, Ex. PP
26		(Axanar marketing plan).
27		
28		Peters' collaborator and the
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 50 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

# Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 52 of 102 Page ID #:5117

2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		director of Axanar, Rob Burnett,
1		stated that he was creating Axanar
5		in order to get more directing
5		work,
7		
3		
)		
)		. Grossman Dec.,
		¶ 77, Ex. B (Burnett tr. at 217:22-
2		218:7); ¶ 78, Ex. C (Gossett tr. at
3		19:15-22:20); ¶ 79, Ex. A (Peters
1		tr. at 455:24-456:16), Ex. OO
5		(Facebook communication
5		between Alec Peters and Terry
7		McIntosh); ¶ 81, Ex. B (Burnett tr.
3		at 32:6-33:1), ¶ 82 (Burnett tr. at
		31:21-36:20); Ex. RR (Robert
)		Meyer Burnett online posting).
2		Peters created the Axanar Works in
3		large part in order to showcase his
۱II		own "producing" abilities, in the
5		hopes that he would be hired by
5		CBS Grossman
7		Decl., ¶ 79, Ex. A (Peters tr. at
3		455:24-456:16); ¶ 77, Ex. B
1003023		PLAINTIFFS' STATEMENT OF GENUINE 1 ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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Moving Party's Alleged	Response to Opposition
Uncontroverted Facts	(Durnott tr. of 217:22 219:7): © 75
	(Burnett tr. at 217:22-218:7); ¶ 78
	Ex. C (Gossett tr. at 19:15-22:20)
	Mr. Burnett, the editor of Prelude
	to Axanar, and director of the full
	length Axanar Film, also stated
	that he was creating the Axanar
	Works as a "spec commercial" in
	order to showcase his directing
	abilities in the hopes to obtain
	other jobs in Hollywood.
	Grossman Decl., ¶ 82, Ex. B
	(Burnett tr. at 31:21-36:20), Ex.
	RR (Robert Meyer Burnett online
	posting).
	Peters
	Grossman Decl., ¶ 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).
100302363.1 52 202828-10048	PLAINTIFFS' STATEMENT OF GENUI ISSUES IN OPPOSITION TO MOTION FO SUMMARY JUDGME

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 54 of 102 Page ID #:5119

Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	Defendants
	. Grossman Decl., ¶ 64, Ex.
	B (Burnett tr. at 142:14-148:8);
	¶ 67, Ex. PP (Axanar marketing
	plan); Ex. QQ (printout from
	Axanarproductions.com).
40.	Disputed.
	Peters stated: "But Axanar is not
	just an independent Star Trek film;
	it is the beginning of a whole new
Supporting Evidence: Oki Decl., Ex. 9 (Van	way that fans can get the content
Citters Tr. at 119:19-124:18); Oki Decl., Ex.	they want, by funding it
10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)	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).
	Plaintiffs' Star Trek Copyrighted
	Works are distributed via cable.
	Van Citters Decl., ¶ 11.
100302363.1 53 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

# Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 55 of 102 Page ID #:5120

1	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		
4		Peters attempted to meet with
5		Netflix to become a producer of
6		Star Trek productions, attempted to
7		trademark the word "Axanar" and
8		
9		
10		. Grossman
11		Decl., ¶ 58, Ex. A (Peters tr. at
12		442:21-449:9); Ex. LL (Facebook
13		message exchange between Terry
14		McIntosh and Alec Peters); ¶ 59,
15		Ex. E (McIntosh tr. at 20:23-
16		22:15), ¶ 60, Ex. C (Gossett tr. at
17		126:10-128:14), Ex. MM (April
18		20, 2015 email exchange between
19		Alec Peters and Christian Gossett);
20		¶ 65, Ex. A (Peters tr. at 234:11-
21		25); ¶ 66, Ex. B. (Burnett tr. at
22		151:2-153:12), ¶ 67, Ex. PP
23		(Axanar marketing plan), ¶ 68, Ex.
24		QQ (printout from
25		Axanarproductions.com).
26		
27		Defendants' business plan states
28		
nership nal 202828-		4 PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

# Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 56 of 102 Page ID #:5121

1	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		
4		
5		
6		
7		
8		Grossman Decl., ¶ 67, Ex. PP
9		(Axanar marketing plan).
10		
11		Mr. Peters' collaborator and the
12		director of Axanar, Rob Burnett,
13		stated that he was creating Axanar
14		in order to get more directing
15		work,
16		
17		
18		
19		. Grossman Dec.,
20		¶ 77, Ex. B (Burnett tr. at 217:22-
21		218:7); ¶ 78, Ex. C (Gossett tr. at
22		19:15-22:20); ¶ 79, Ex. A (Peters
23		tr. at 455:24-456:16), Ex. OO
24		(Facebook communication
25		between Alec Peters and Terry
26		McIntosh); ¶ 81, Ex. B (Burnett tr.
27		at 32:6-33:1), ¶ 82 (Burnett tr. at
28		31:21-36:20); Ex. RR (Robert
b 100302 tnership onal 202828	2363.1 <b>5</b> 8-10048	5 PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

#### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 57 of 102 Page ID #:5122

2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Meyer Burnett online posting).
1		Mr. Determente d'ille Arrenen
5		Mr. Peters created the Axanar
5		Works in large part in order to
7		showcase his own "producing"
3		abilities, in the hopes that he would
)		be hired by CBS
)		Grossman Decl., ¶ 79, Ex.
		A (Peters tr. at 455:24-456:16);
2		¶ 77, Ex. B (Burnett tr. at 217:22-
3		218:7); ¶ 78, Ex. C (Gossett tr. at
1		19:15-22:20).
5		
5		Mr. Burnett, the editor of Prelude
7		to Axanar, and director of the full
3		length Axanar Film, also stated
)		that he was creating the Axanar
)		Works as a "spec commercial" in
		order to showcase his directing
2		abilities in the hopes to obtain
3		other jobs in Hollywood.
1		Grossman Decl., ¶ 82, Ex. B
5		(Burnett tr. at 31:21-36:20), Ex.
5		RR (Robert Meyer Burnett online
7		posting).
3		

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		Mr. Peters
4		
5		
6		
7		. Grossman Decl., ¶ 65, Ex.
8		A (Peters tr. at 234:11-25); ¶ 66,
9		Ex. B (Burnett tr. at 151:2-153:12),
10		¶ 67, Ex. PP (Axanar marketing
11		plan).
12		
13		Defendants
14		
15		. Grossman Decl., ¶ 64, Ex.
16		B (Burnett tr. at 142:14-148:8);
17		¶ 67, Ex. PP (Axanar marketing
18		plan); Ex. QQ (printout from
19		Axanarproductions.com).
20		Grossman Decl., ¶ 97, Ex. CCC
21		(Van Citters and O'Rourke
22		testimony).
23		
24	41.	Disputed.
25		
26		The report of Christian Tregillis
27		lacks foundation and is hearsay.
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 57 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

#### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 59 of 102 Page ID #:5124

1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition	
3	Supporting Evidence: Oki Decl., Ex. 3	The testimony cited does not	
4	(Report of Christian Tregillis) at ¶¶ 10-12; Oki	support the purported "fact."	
5	Decl., Ex. 12 (Abrams Tr. at 42:7-11); Oki		
6	Decl., Ex. 9 (Van Citters Tr. at 119:19-	Peters stated: "But Axanar is not	
7	124:18); Oki Decl., Ex. 10 (O'Rourke Tr. at	just an independent Star Trek film;	
8	60:22-61:5; 63:8-16)	it is the beginning of a whole new	
9		way that fans can get the content	
10		they want, by funding it	
11		themselves. Why dump hundreds	
12		or thousands of dollars a year on	
13		400 cable channels, when what you	
14		really want is a few good sci-fi	
15		shows?" Grossman Decl., ¶ 49, Ex.	
16		A (Peters tr. at 99:10-100:15), Ex.	
17		DD (Axanar Indiegogo fundraising	
18		page).	
19			
20		Plaintiffs' Star Trek Copyrighted	
21		Works are distributed via cable.	
22		Van Citters Decl., ¶ 11.	
23			
24		Peters attempted to meet with	
25		Netflix to become a producer of	
26		Star Trek productions, attempted to	
27		trademark the word "Axanar" and	
28			
<b>b</b> rtnership ional	100302363.1 <b>58</b>	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY HIDGMENT	

# Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 60 of 102 Page ID #:5125

1 2	Moving Party's Alleged Uncontroverted Facts		Response to Opposition
3			
4			. Grossman
5			Decl., ¶ 58, Ex. A (Peters tr. at
6			442:21-449:9); Ex. LL (Facebook
7			message exchange between Terry
8			McIntosh and Alec Peters); ¶ 59,
9			Ex. E (McIntosh tr. at 20:23-
10			22:15), ¶ 60, Ex. C (Gossett tr. at
11			126:10-128:14), Ex. MM (April
12			20, 2015 email exchange between
13			Alec Peters and Christian Gossett);
14			¶ 65, Ex. A (Peters tr. at 234:11-
15			25); ¶ 66, Ex. B. (Burnett tr. at
16			151:2-153:12), ¶ 67, Ex. PP
17			(Axanar marketing plan), ¶ 68, Ex.
18			QQ (printout from
19			Axanarproductions.com).
20			
21			Defendants' business plan states
22			
23			
24			
25			
26			
27			
28			Grossman Decl., ¶ 67, Ex. PP
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 202828-10048	59	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 61 of 102 Page ID #:5126

1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		(Axanar marketing plan).
4		
5		Mr. Peters' collaborator and the
6		director of Axanar, Rob Burnett,
7		stated that he was creating Axanar
8		in order to get more directing
9		work,
10		
11		
12		
13		. Grossman Dec.,
14		¶ 77, Ex. B (Burnett tr. at 217:22-
15		218:7); ¶ 78, Ex. C (Gossett tr. at
16		19:15-22:20); ¶ 79, Ex. A (Peters
17		tr. at 455:24-456:16), Ex. OO
18		(Facebook communication
19		between Alec Peters and Terry
20		McIntosh); ¶ 81, Ex. B (Burnett tr.
21		at 32:6-33:1), ¶ 82 (Burnett tr. at
22		31:21-36:20); Ex. RR (Robert
23		Meyer Burnett online posting).
24		
25		Mr. Peters created the Axanar
26		Works in large part in order to
27		showcase his own "producing"
28		abilities, in the hopes that he would
e <b>b</b> Irtnership	100302363.1	60 PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 62 of 102 Page ID #:5127

1 2	Moving Party's Alleged Uncontroverted Facts		<b>Response to Opposition</b>
3			be hired by CBS
4			Grossman Decl., ¶ 79, Ex.
5			A (Peters tr. at 455:24-456:16);
6			¶ 77, Ex. B (Burnett tr. at 217:22-
7			218:7); ¶ 78, Ex. C (Gossett tr. at
8			19:15-22:20).
9			
10			Mr. Burnett, the editor of Prelude
11			to Axanar, and director of the full
12			length Axanar Film, also stated
13			that he was creating the Axanar
14			Works as a "spec commercial" in
15			order to showcase his directing
16			abilities in the hopes to obtain
17			other jobs in Hollywood.
18			Grossman Decl., ¶ 82, Ex. B
19			(Burnett tr. at 31:21-36:20), Ex.
20			RR (Robert Meyer Burnett online
21			posting).
22			
23			Peters
24			
25			
26			·
27			Grossman Decl., ¶ 65, Ex. A
28			(Peters tr. at 234:11-25); ¶ 66, Ex.
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 202828-10048	61	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 63 of 102 Page ID #:5128

1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		B (Burnett tr. at 151:2-153:12),
4		¶ 67, Ex. PP (Axanar marketing
5		plan).
6		
7		Defendants
8		
9		. Grossman Decl., ¶ 64, Ex.
10		B (Burnett tr. at 142:14-148:8);
11		¶ 67, Ex. PP (Axanar marketing
12		plan); Ex. QQ (printout from
13		Axanarproductions.com).
14		
15		Grossman Decl., ¶ 97, Ex. CCC
16		(Van Citters and O'Rourke
17		testimony).
18	42.	Disputed.
19		
20	·	This is not a fact; it is argument.
21	<b>Supporting Evidence</b> : Oki Decl., Ex. 9 (Van	
22	Citters Tr. at 119:19-124:18); Oki Decl., Ex.	Defendants' work is not, and was
23	10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)	not intended to be, a "fan film."
24		Grossman Decl., ¶ 48, Ex. A
25		(Peters tr. at 92:19-94:1), Ex. CC
26		(Indiegogo fundraising page), ¶ 49,
27		Ex. A (Peters tr. at 99:10-101:10),
28		Ex. DD (Defendants' Indiegogo
Loeb & Loeb A Linited Liability Partnership Including Professional Corporations	100302363.1 62 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

# Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 64 of 102 Page ID #:5129

1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		fundraising page), ¶ 50, Ex. A
4		(Peters tr. at 108:6-109:12), Ex. EE
5		(Facebook post by Alec Peters),
6		¶ 51, Ex. A (Peters tr. at 109:16-
7		110:2), Ex. FF (Post on the Axanar
8		Facebook page), ¶ 53 (Peters tr. at
9		133:16-143:5; 134:10-143:5;
10		137:13-138:13; 138:21-140:2;
11		140:19-141:5; 141:16-142:22), Ex.
12		ZZ (transcript of podcasts), ¶ 55,
13		Ex. A (Peters tr. at 106:6-107:7),
14		Ex. II (tweet) ¶ 57, Ex. A (Peters
15		tr. at 349:18-24), Ex. KK (Peters
16		email to Doug Drexler).
17		
18		The evidence does not support
19		Defendants' purported "fact," and
20		the commercial nature of
21		Defendants' work, and the
22		potential harm to Plaintiffs, are
23		discussed at length in the Van
24		Citters and O'Rourke depositions
25		and Plaintiffs' interrogatory
26		responses. Oki Decl., Exs. 1-2;
27		Grossman Decl., ¶ 97, Ex. CCC
28		(Van Citters and O'Rourke
e <b>b</b> rtnership sional	100302363.1 63	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY HIDGMENT

#### Case 2:15-cv-09938-RGK-E Document 88-69 Filed 11/28/16 Page 65 of 102 Page ID #:5130

1	Γ	Γ
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		testimony).
4	43. There were approximately 12 more	Disputed.
5	scripts prepared after the August 2015	
6	Facebook post proclaiming a "fully revised and	It is irrelevant whether Defendants
7	locked" script, including new scripts that were	worked on their script since the
8	prepared after this litigation commenced.	lawsuit was filed. Further,
9	<b>Supporting Evidence</b> : Peters Decl., ¶ 13;	Defendants testified
10	Peters Decl., Ex. 3	
11		
12		. Grossman Decl., ¶ 41, Ex.
13		A (Peters tr. at 77:5-9), ¶ 42, Ex.
14		AA (script).
15	44. Though Defendants halted plans for any	Disputed.
16	filming and temporarily stopped working on	
17	the project altogether after Plaintiffs filed suit,	It is irrelevant whether Defendants
18	Defendants resumed drafting scripts when it	worked on their script since the
19	was publicly announced that this lawsuit was	lawsuit was filed.
20	"going away."	
21	Supporting Evidence: Oki Decl., Ex. 5	
22	(Burnett Tr. at 174:3-10); Oki Decl., Ex. 6	
23	(Hunt Tr. at 56:12-25); Oki Decl., Ex. 12	
24	(Abrams Tr. at 20:23-21:13)	
25	45. In March 2016, Justin Lin, the director	Undisputed.
26	of the most recent Star Trek motion picture,	
27	Star Trek Beyond, publicly commented on this	
28	case, stating: "[t]his is getting ridiculous! I	
		PLAINTIEES' STATEMENT OF GENLINE

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	support the fans. Trek belongs to all of us."	
4	Supporting Evidence: Oki Decl., Ex. 11 (Lin	
5	Tr. at 17:11-23); ECF No. 48, Counterclaim	
6	¶¶ 21-22	
7	46. In May 2015, J.J. Abrams, who directed	Undisputed.
8	and/or produced the three most recent Star	
9	Trek movies, publicly stated that he and Justin	
10	Lin "realized this [case] was not an appropriate	
11	way to deal with the fans."	
12	Supporting Evidence: Oki Decl., Ex. 12	
13	(Abrams Tr. at 20:23-21:13); ECF No. 48,	
14	Counterclaim ¶¶ 21-22	
15	47. In May 2015, J.J. Abrams stated that	Undisputed.
16	"fans should be celebrating [Star Trek]. Fans	
17	of Star Trek are part of this world. So [Justin]	
18	went to the studio and pushed them to stop this	
19	lawsuit and now, within the next few weeks, it	
20	will be announced this is going away, and that	
21	fans would be able to continue working on	
22	their project."	
23	Supporting Evidence: Oki Decl., Ex. 12	
24	(Abrams Tr. at 20:23-21:13); ECF No. 48,	
25	Counterclaim ¶¶ 21-22	
26	48. In the 1976 book Star Trek: <i>The New</i>	Disputed and irrelevant.
27	Voyages, Mr. Roddenberry stated in the	
28	Foreword that he "realized that there is no	The purported fact is not supported
	65	PLAINTIFFS' STATEMENT OF GENUINE

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	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
s    n	nore profound way in which people could	by the cited authority as the
e	express what Star Trek has meant to them than	Counterclaim and the Answer are
b	by creating their own very personal Star Trek	not evidence. Further, in 1976 the
[	[fan fiction]."	only "fan films" that existed were a
<u>S</u>	Supporting Evidence: ECF No. 48,	few homemade 8 mm movies, with
0	Counterclaim at 15-17, ¶ 7; ECF No. 49,	no means of widespread
I	Answer to Counterclaim at 1-2, ¶ 7	distribution such as YouTube.
4	49. Since Mr. Roddenberry's statement, a	Disputed. Irrelevant.
s	substantial number of films have been created	
b	by fans without any complaint by Plaintiffs,	The statements of Mr. Lane and
s	some using characters from the Star Trek	Mr. Jenkins are unsworn hearsay.
V	Works and exact replicas of Star Trek movie	
s	sets.	Further, Plaintiffs timely
<u>s</u>	Supporting Evidence: Lane Decl., Ex. 1 at	subpoenaed Mr. Jenkins for
2	26; Oki Decl., Ex. 4 (Report of Henry Jenkins)	deposition, <u>prior</u> to the filing of
		Defendants' Motion for Summary
		Judgment. Defendants' counsel
		refused to make Mr. Jenkins
		available for deposition on the
		grounds that the "fact discovery"
		deadline had passed (prior to the
		service of any expert reports) and
		stated that she was not making any
		of Defendants' experts available
		for deposition. Thereafter,
		Defendants submitted the Jenkins
	00302363.1 <b>66</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		report as an exhibit to Ms. Oki's
4		declaration, and yet still refused to
5		make him available for deposition
6		on the subpoenaed date, or at any
7		time prior to the deadline to file
8		this Opposition. Grossman Decl.,
9		¶ 100, Ex. JJJ (email exchange
10		with counsel for Defendants).
11		His testimony, if not excluded as
12		hearsay, should be excluded for
13		failure to make him available
14		pursuant to a timely-served
15		subpoena.
16	50. For over 50 years, Plaintiffs have	Disputed.
17	tolerated, and even encouraged a community	
18	of fandom and fan fiction surrounding Star	This is inaccurate and irrelevant
19	Trek.	and the statements of Mr. Jenkins
20	Supporting Evidence: Oki Decl., Ex. 4	and Mr. Tregillis lack foundation
21	(Report of Henry Jenkins) at 3; Oki Decl., Ex.	and constitute hearsay.
22	11 (Lin Tr. at 40:18-41:18); Oki Decl., Ex. 3	
23	(Report of Christian Tregillis) ¶¶ 24, 63; Oki	Plaintiffs have filed suit in the past
24	Decl., Ex. 9 (Van Citters Tr. at 62:1-25, 137:5-	against infringers of their Star Trek
25	21); Oki Decl., Ex. 8 (Kalodner Tr. at 33:22-	works. See, e.g. Paramount
26	42:17), Oki Decl., Ex. 7 (Burke Tr. at 40:5-	Pictures Corp. v. Carol Publ'g
27	45:7); Oki Decl., Ex. 16	Group, 11 F. Supp. 2d 329
28		(S.D.N.Y. 1998).

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1	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		
4		Moreover, whether or not Plaintiffs
5		have filed suit before is irrelevant.
6		See id. at 337 (Court rejected
7		defenses of abandonment and
8		estoppel asserted by a defendant
9		who created a work that infringed
10		on the Star Trek copyrights,
11		holding: "Defendants instead
12		allege that Paramount's failure to
13		commence litigation against other
14		potentially infringing books estops
15		them from bringing this action.
16		Extending the doctrine of estoppel
17		so that a defendant may rely on a
18		plaintiff's conduct toward another
19		party is both unsupported by law
20		and pernicious as a matter of
21		policy.").
22		
23		Further, Plaintiffs timely
24		subpoenaed Mr. Tregillis and Mr.
25		Jenkins for depositions, prior to the
26		filing of Defendants' Motion for
27		Summary Judgment. Defendants'
28		counsel refused to make these
ship 100302363.		PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY HIDGMENT

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		1
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		designated experts available for
4		deposition, on the grounds that the
5		"fact discovery" deadline had
6		passed (prior to the service of any
7		expert reports) and stated that she
8		was not making any of
9		Defendants' experts available for
10		deposition. Thereafter, Defendants
11		submitted these reports as exhibits
12		to Ms. Oki's declaration, and yet
13		still refused to make them
14		available for deposition on the
15		subpoenaed date, or at any time
16		prior to the deadline to file this
17		Opposition. Grossman Decl.,
18		¶ 100, Ex. JJJ (email exchange
19		with counsel for Defendants).
20		
21		The testimony of Tregillis and
22		Jenkins, if not excluded as hearsay,
23		should be excluded for failure to
24		make them available pursuant to a
25		timely-served subpoena.
26		
27	Plaintiffs also submit the following addition	onal, uncontroverted material facts
28	and supporting evidence.	

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1		
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	51. Plaintiffs Paramount Pictures	Declaration of David Grossman
4	Corporation ("Paramount") and CBS Studios	("Grossman Decl."), ¶ 90, Ex. UU
5	Inc. ("CBS") (collectively, "Plaintiffs"), own	(copyright registrations for the Star
6	the copyrights to the Star Trek films and	Trek Television Series), ¶ 91, Ex.
7	television series.	VV (copyright registrations for the
8		Star Trek Motion Pictures).
9		Declaration of John Van Citters
10		("Van Citters Decl."), ¶¶ 8, 10.
11	52. Plaintiff CBS owns the rights to <i>The</i>	Van Citters Decl., ¶ 8.
12	Original Series, as well as to all of the	Grossman Decl., ¶ 90, Ex. UU
13	subsequent Star Trek Television Series.	(copyright registrations for the Star
14		Trek Television Series).
15	53. Paramount owns the copyrights in the	Van Citters Decl. ¶ 10.
16	Star Trek Motion Pictures.	Grossman Decl., ¶ 91, Ex. VV
17		(copyright registrations for the Star
18		Trek Motion Pictures).
19	54. Paramount owns the copyright in the	Van Citters Decl., ¶ 11.
20	novel entitled Garth of Izar.	Grossman Decl., ¶ 94, Ex. WW
21		(copyright registration for Garth of
22		<i>Izar</i> novel). Dkt. No. 72-63, Ex. 21
23		(Garth of Izar novel).
24	55. CBS owns the copyright in the novel	Van Citters Decl., ¶ 11.
25	entitled Strangers from the Sky.	Grossman Decl., ¶ 95, Ex. XX
26		(copyright registration for
27		Strangers from the Sky).
28		
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1		
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	56. CBS owns the copyright in the novel	Van Citters Decl., ¶ 11.
4	entitled Infinity's Prism.	Grossman Decl., ¶ 96, Ex. YY
5		(copyright registration for Infinity's
6		Prism).
7	57. The original Star Trek television series	Van Citters Decl., ¶ 5.
8	("The Original Series") debuted in 1966, and	
9	ran for three seasons, until 1969.	Grossman Decl., ¶ 92, Ex. 1 (The
10		Original Series DVDs).
11	58. In addition to <i>The Original Series</i> , there	Van Citters Decl., ¶¶ 3, 4.
12	have been five further Star Trek television	
13	series totaling more than 700 episodes	Grossman Decl., ¶ 90, Ex. UU
14	(collectively with The Original Series, the	(copyright registrations for the Star
15	"Star Trek Television Series").	Trek Television Series), ¶ 92, Exs.
16		1-5 (Star Trek Television Series
17		DVDs).
18	59. <i>The Original Series</i> chronicled the	Van Citters Decl., ¶ 5.
19	adventures of the U.S.S. Enterprise (one of the	
20	ships of "Starfleet") and its crew as they	Grossman Decl., ¶ 92, Ex. 1 (The
21	traveled through space during the twenty-third	Original Series DVDs).
22	century, and featured numerous original and	
23	copyrightable elements, including but not	
24	limited to elements such as the plots of the	
25	episodes, mood, theme, characters, settings,	
26	pace and numerous original and copyrightable	
27	elements such as the Starship Enterprise	
28		

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		-
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	(Starfleet registry number NCC-1701),	
4	original and fictitious races and species,	
5	including the Vulcan and Klingon races, the	
6	United Federation of Planets (the	
7	"Federation"), and fictional weapons and	
8	technology.	
9	60. In "Whom Gods Destroy," one of the	Van Citters Decl., ¶ 6.
10	episodes of The Original Series, James T. Kirk	
11	(played by the actor William Shatner), the	Grossman Decl., ¶ 92, Ex. 1(The
12	Captain of the U.S.S. Enterprise, meets his	Original Series DVDs).
13	hero, Garth of Izar, a former starship captain.	
14	61. In "Whom Gods Destroy," Kirk and	Van Citters Decl., ¶ 6.
15	Garth discuss Garth's victory in the Battle of	
16	Axanar.	Grossman Decl., ¶ 92, Ex. 1(The
17		Original Series DVDs).
18	62. The newest television series, <i>Star Trek:</i>	Van Citters Decl., ¶ 7.
19	Discovery, will premiere in 2017.	
20	63. <i>Star Trek: Discovery</i> takes place ten	Van Citters Decl., ¶ 7.
21	years before the events depicted in The	
22	Original Series.	
23	64. Plaintiffs have licensed numerous	Van Citters Decl., ¶¶ 12, 64-65.
24	derivative works, including books, games and	
25	merchandise. These works also include	
26	reference guides, encyclopedias,	
27	documentaries, behind the scenes books,	
28		

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3	dictionaries and "companions" to various	
4	television series.	
5	65. Klingons are an alien race, from the	Van Citters Decl., ¶ 25.
6	planet Qo'noS, who are portrayed as a serious	
7	and war-like species.	
8	66. Klingons have distinctive visual	Van Citters Decl., ¶ 25.
9	elements including large, protruding foreheads	
10	covered by symmetrical bumps and ridges,	
11	dark hair and skin and facial hair and upward	
12	sloping eyebrows.	
13	67. The Klingons were long-time enemies	Van Citters Decl., ¶ 25.
14	of the Federation, and engaged in a number of	
15	military battles with Starfleet.	
16	68. Vulcans are an iconic species, owned by	Van Citters Decl., ¶ 30.
17	Plaintiffs, first appearing in the form of Mr.	
18	Spock in The Original Series.	
19	69. Vulcans are depicted with their pointed	Van Citters Decl., ¶ 29.
20	ears and upswept eyebrows, they are portrayed	
21	as stern and eschew emotions for logic and	
22	reason.	
23	70. Vulcan men are usually depicted with	Van Citters Decl., ¶ 29.
24	straight, dark (or gray) hair cut in a "bowl"	
25	style.	
26	71. Vulcans are part of the Federation, and	Van Citters Decl., ¶ 29.
27	are portrayed as an advanced technological	
28		
11		

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1		
2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	species.	
4	72. Ambassador Soval was first seen in the	Van Citters Decl., ¶¶ 21, 45.
5	Star Trek: Enterprise pilot episode "Broken	Grossman Decl., ¶ 92, Ex. 5 (The
6	Bow" in 2001, and was featured many times	Enterprise DVDs).
7	throughout the Enterprise series such as in the	
8	episode "The Expanse" from 2003.	
9	73. Soval is portrayed by actor Gary	Van Citters Decl., ¶¶ 21-24, 45-46.
10	Graham, who reprised his role as Ambassador	
11	Soval in Defendants' infringing works, and	
12	even wore virtually identical makeup and	
13	costumes that he had in the Enterprise series,	
14	rendering the portrayal of that character all but	
15	identical to that seen in Plaintiffs' works.	
16	74. Defendants' works incorporate	Van Citters Decl., ¶¶17-20.
17	Plaintiffs' character, Garth of Izar.	
18	75. Garth of Izar, like Captain Kirk, was a	Van Citters Decl., ¶ 18.
19	Starfleet Captain.	
20	76. In <i>The Original Series</i> , Garth of Izar	Van Citters Decl., ¶ 18.
21	was introduced and portrayed as a former	
22	starship captain whose exploits were "required	
23	reading" at the Starfleet Academy due to his	
24	heroic conduct during the Battle of Axanar.	
25	77. In the episode that introduced Garth	Van Citters Decl., ¶ 18.
26	(entitled "Whom Gods Destroy"), Captain	
27	Kirk finds Garth in an asylum after he had	
28		

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1		
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	been declared criminally insane.	
4	78. This character was further developed	Van Citters Decl., ¶ 18.
5	and explored by Plaintiffs in the 2003 novel	
6	entitled "Garth of Izar."	
7	79. Paramount has a licensed work called	Van Citters Decl., ¶ 12.
8	Star Trek: The Role Playing Game.	
9	80. Garth of Izar's military battles against	Van Citters Decl., ¶ 19.
10	the Klingon Empire, including the Battle of	
11	Axanar, were explored by Paramount's	
12	licensee, FASA, in Star Trek: The Role	
13	Playing Game.	
14	81. The Four Years War supplement is a	Van Citters Decl., ¶ 13.
15	guide that was used in connection with Star	
16	Trek: The Role Playing Game.	
17	82. The Four Years War supplement also	Van Citters Decl., ¶¶ 13, 14, Ex.
18	describes the Battle of Axanar (a related	AAA (The Four Years War
19	mission guide for the role-playing game was	supplement).
20	called "Return to Axanar"), and the military	
21	campaigns of Federation Fleet Captain Garth	
22	of Izar.	
23	83. The copyright in <i>The Four Years War</i> is	Van Citters Decl., ¶ 14, Ex. AAA
24	owned by Paramount.	(The Four Years War supplement),
25		Ex. BBB (copyright registration for
26		The Four Years War).
27	84. The Four Years War was used as source	Grossman Decl., ¶ 13, Ex. A
28		

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1		
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	material by Defendants in order to create their	(Peters tr. at 38:22-41:17); ¶ 14,
4	Axanar Works.	Ex. C (Gossett tr. at 48:10-50:10),
5		Ex. I (April 26, 2014 email from
6		Christian Gossett to Alec Peters).
7	85. Defendants admitted that they used <i>The</i>	Van Citters Decl., ¶ 14, Ex. AAA
8	Four Years War to create the Axanar Works.	(Four Years War).
9		
10		Grossman Decl., ¶ 13, Ex. A
11		(Peters tr. at 38:22-41:17), ¶ 14,
12		Ex. C (Gossett tr. at 48:10-50:10),
13		Ex. I (April 26, 2014 email from
14		Christian Gossett to Alec Peters).
15	86. Star Trek: Prelude to Axanar, is a	Grossman Decl., ¶ 18, Ex. A
16	twenty-one minute film.	(Peters tr. at 34:10-12).
17	87. Star Trek: Prelude to Axanar was	Grossman Decl., ¶ 18, Ex. A
18	funded on Kickstarter.	(Peters tr. at 34:5-9).
19	88. Kickstarter is a crowdsourcing website	Grossman Decl., ¶ 18, Ex. A
20	where parties can raise money to fund their	(Peters tr. at 69:14-70:6).
21	projects.	
22	89. In exchange for donations on <i>Prelude to</i>	Grossman Decl., ¶ 69, Ex. D
23	Axanar, Defendants provided donors with	(Kingsbury tr. at 114:16-24).
24	perks that included various branded	
25	merchandise.	
26	90. Prelude to Axanar was released on	Grossman Decl., ¶ 19, Ex. L
27	YouTube in August of 2014.	(YouTube page).
28		

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1		
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3	91. Defendant Peters wrote the <i>Prelude to</i>	Grossman Decl., ¶ 23, Ex. A
4	Axanar screenplay.	(Peters tr. at 57:1-58:25).
5	92. Star Trek: Prelude to Axanar features	Van Citters Decl. ¶¶ 15, 17. Dkt.
6	Plaintiffs' character, Garth of Izar, and	No. 72-63, Ex. 19 (Prelude to
7	describes his military exploits during the war	Axanar).
8	between the Federation and the Klingon	
9	Empire.	Grossman Decl., ¶ 23, Ex. A
10		(Peters tr. at 36:20-37:25; 46:18-
11		48:1); ¶ 24, Ex. B (Burnett tr. at
12		191:17-192:25).
13	93. <i>Prelude to Axanar</i> features the	Van Citters Decl., ¶¶ 15, 37, 38.
14	Federation.	Dkt. No. 72-63, Ex. 19 (Prelude to
15		Axanar).
16		Grossman Decl., ¶ 20, Ex. M
17		(illustrated script for Prelude),
18		¶ 23, Ex. A (Peters tr. at 44:21-
19		55:20, ¶ 24, Ex. B (Burnett tr. at
20		107:6-15); ¶ 22, Ex. C (Gossett tr.
21		at 67:5-70:23), Ex. N (brochure for
22		Prelude to Axanar).
23	94. <i>Prelude to Axanar</i> features Klingons.	Van Citters Decl., ¶¶ 15, 25-28.
24		Dkt. No. 72-63, Ex. 19 (Prelude to
25		Axanar).
26		
27		Grossman Decl., ¶ 20, Ex. M
28		
<b>)</b> tnership onal	100302363.1 <b>77</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		(illustrated script for Prelude),
4		¶ 23, Ex. A (Peters tr. at 44:21-
5		55:20); ¶ 22, Ex. C (Gossett tr. at
6		67:5-70:23), Ex. N (brochure for
7		Prelude to Axanar).
8 9	5. <i>Prelude to Axanar</i> features Vulcans.	Van Citters Decl. ¶¶ 15, 29-32.
9		Dkt. No. 72-63, Ex. 19 (Prelude to
10		Axanar).
11		
12		Grossman Decl., ¶ 20, Ex. M
13		(illustrated script for Prelude),
14		¶ 23, Ex. A (Peters tr. at 44:21-
15		55:20).
16 9	6. <i>Prelude to Axanar</i> features Starfleet.	Van Citters Decl. ¶¶ 15, 33-34.
17		Dkt. No. 72-63, Ex. 19 (Prelude to
18		Axanar).
19		
20		Grossman Decl., ¶ 20, Ex. M
21		(illustrated script for Prelude),
22		¶ 23, Ex. A (Peters tr. at 44:21-
23		55:20).
24 9	7. <i>Prelude to Axanar</i> features Starfleet	Van Citters Decl. ¶¶ 15, 17-18.
25 o	fficers and commanders, including Garth of	Dkt. No. 72-63, Ex. 19 (Prelude to
26 🛛 Iz	zar.	Axanar).
27		
28		
hip	0302363.1 78	PLAINTIFFS' STATEMENT OF GENUIN ISSUES IN OPPOSITION TO MOTION FO SUMMARY HUDGMEN

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		-
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		Grossman Decl., ¶ 20, Ex. M
4		(illustrated script for Prelude),
5		¶ 23, Ex. A (Peters tr. at 36:20-
6		37:16; 414:2-415:19), ¶ 33, Ex. S
7		(July 8, 2014 email from Alec
8		Peters to Christian Gossett and
9		Rocio Everett).
10	98. <i>Prelude to Axanar</i> features the character	Van Citters Decl. ¶¶ 15, 21-24.
11	Soval.	Dkt. No. 72-63, Ex. 19 (Prelude to
12		Axanar).
13		
14		Grossman Decl., ¶ 20, Ex. M
15		(illustrated script for <i>Prelude</i> ).
16	99. <i>Prelude to Axanar</i> features Klingon	Van Citters Decl. ¶¶ 15, 35-36.
17	battlecruisers.	Dkt. No. 72-63, Ex. 19 (Prelude to
18		Axanar).
19		
20		Grossman Decl., ¶ 20, Ex. M
21		(illustrated script for <i>Prelude</i> ).
22	100. Defendants have created substantially	Van Citters Decl., ¶¶ 15, 25-28.
23	similar representations of Klingons, and in	Dkt. No. 72-63, Ex. 19 (Prelude to
24	doing so have copied the makeup, hair,	Axanar).
25	costumes, weaponry and accessories worn by	
26	those species.	Grossman Decl., ¶ 20, Ex. M
27		(illustrated script for Prelude),
28		
		PLAINTIFFS' STATEMENT OF GENUINE

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		¶¶ 30, 31 Ex. B (Burnett tr. at
4		202:21-203:25; 215:4-216:9); ¶ 26,
5		Ex. A (Peters tr. at 82:6-85:12),
6		¶ 45 (Peters tr. at 44:21-55:20);
7		¶ 41, Ex. A (Peters tr. at 77:5-9),
8		¶ 42, Ex. AA (Axanar Script at
9		page 3 for use of Bat'leth and page
10		30 for use of Mek'leth).
11	101. Defendants have created substantially	Van Citters Decl., ¶¶ 15, 29-32.
12	similar representations of Vulcans, and in	Dkt. No. 72-63, Ex. 19 (Prelude to
13	doing so have copied the makeup, hair,	Axanar).
14	costumes, and accessories worn by those	
15	species.	Grossman Decl., ¶ 20, Ex. M
16		(illustrated script for <i>Prelude</i> ),¶ 26,
17		Ex. A (Peters tr. at 82:6-85:12);
18		Grossman Decl., ¶ 23, Ex. A
19		(Peters tr. at 44:21-55:20).
20	102. Mr. Peters also admitted that	Grossman Decl., ¶ 26, Ex. A
21		(Peters tr. at 82:6-85:12); ¶ 23, Ex.
22		A (Peters tr. at 44:21-55:20).
23		
24	103. Mr. Peters admitted that	Grossman Decl., ¶ 25, Ex. A
25		(Peters tr. at 319:8-323:10), Ex. O
26		(March 17, 2014 email from Alec
27		Peters to Christian Gossett and
28		
ship	100302363.1 80	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Hamilton Cox).
4	104. Mr. Peters stated "I am the keeper of the	Grossman Decl., ¶ 34, Ex. A
5	faith with fans. They love that about us. Our	(Peters tr. at 471:25-475:1), Ex. U
6	faithfulness to the universe."	(March 7, 2015 email from Alec
7		Peters to Christian Gossett).
8	105. Mr. Peters testified that	Grossman Decl., ¶ 34, Ex. A
9		(Peters tr. at 420:13-421:19;
10		471:25-475:1), Ex. T (July 15,
11		2014 email from Christian Gossett
12		to Alec Peters); Ex. U (March 7,
13		2015 email from Alec Peters to
14		Christian Gossett); ¶ 27, Ex. A
15		(Peters tr. at 347:4-348:10), Ex. P
16		(email exchange between Mr.
17		Peters and Mr. Gossett); ¶ 47, Ex.
18		A (Peters tr. at 456:24-458:18), Ex.
19		BB (Peters email exchange), ¶ 28,
20		Ex. A (Peters tr. at 376:16-377:11),
21		¶ 38, Ex. A (Peters tr. at 377:17-
22		378:13), Ex. Y (email exchange),
23		¶ 37, Ex. A (Peters tr. at 373:10-
24		375:16), Ex. X (Peters email
25		exchange).
26	106. The director of <i>Prelude to Axanar</i>	Grossman Decl., ¶ 21, Ex. C
27	testified that Prelude to Axanar is an	(Gossett tr. at 185:25-186:8).
28		

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1		
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	infringing work.	
4	107. Prior to the filing of this lawsuit,	Grossman Decl., ¶ 41, Ex. A
5	Axanar, Defendants drafted a final shooting	(Peters tr. at 77:5-9), ¶ 42, Ex. AA
6	script. Peters testified that	(script).
7		
8		
9	108. In 2015, Defendants released one scene	Dkt. No. 72-63, Ex. 20 (Vulcan
10	from the full-length film, which they call the	Scene).
11	"Vulcan Scene."	
12		Grossman Decl., ¶ 43, Ex. A
13		(Peters tr. at 79:11-17).
14	109. The Vulcan Scene features Vulcans.	Van Citters Decl., ¶¶ 43, 47.
15		Dkt. No. 72-63, Ex. 20 (Vulcan
16		Scene).
17		
18		Grossman Decl., ¶ 43, Ex. A
19		(Peters tr. at 425:11-426:3; 77:5-9);
20		¶ 42, Ex. AA (script at pages 21-
21		23).
22	110. The Vulcan Scene features the character	Van Citters Decl., ¶¶ 43, 45-46.
23	Soval.	Dkt. No. 72-63, Ex. 20 (Vulcan
24		Scene).
25 25		
26		Grossman Decl., ¶ 41, Ex. A
27		(Peters tr. at 77:5-9), ¶ 42, Ex. AA
28 <sup>hership</sup>	100302363.1 <b>82</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		(script at pages 21-23).
4	111. The Vulcan Scene features the planet	Van Citters Decl., ¶¶ 43, 48, 49.
5	Vulcan.	Dkt. No. 72-63, Ex. 20 (Vulcan
6		Scene).
7		
8		Grossman Decl., ¶ 41, Ex. A
9		(Peters tr. at 77:5-9), ¶ 42, Ex. AA
10		(script at pages 21-23); ¶ 44, Ex. N
11		(Burnett tr. at 103:13-18).
12	112. The shot of planet Vulcan in the Vulcan	Van Citters Decl., ¶¶ 43, 48.
13	Scene was copied from Star Trek III: The	Dkt. No. 72-63, Ex. 20 (Vulcan
14	Search for Spock.	Scene).
15		
16		Grossman Decl., ¶ 43, Ex. A
17		(Peters tr. at 82:2-85:12); ¶ 44, Ex.
18		B (Burnett tr. at 106:11-17).
19	113. The Vulcan Scene features Vulcan	Van Citters Decl., ¶¶ 43, 50.
20	ships.	Dkt. No. 72-63, Ex. 20 (Vulcan
21		Scene).
22		
23		Grossman Decl., ¶ 43 Ex. A (Peters
24		tr. at 82:2-85:12).
25	114. Defendant Alec Peters himself	Grossman Decl., ¶ 40, Ex. Z
26	announced, on August 15, 2015, that he had	(Facebook post).
27	completed the "fully revised and locked script"	
28		

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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). Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21). Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (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-
(Peters tr. at 77:5-9), $\P$ 42, Ex. AA (Axanar Script at page 8), $\P$ 22, Ex C (Gossett tr. at 112:14-113:8). Grossman Decl., $\P$ 41, Ex. A (Peters tr. at 77:5-9), $\P$ 42, Ex. AA (Axanar Script at page 21). Grossman Decl., $\P$ 41, Ex. A (Peters tr. at 77:5-9), $\P$ 42, Ex. AA (Peters tr. at 77:5-9), $\P$ 42, Ex. AA (Axanar Script at page 8), $\P$ 45, Ex A (Peters tr. at 362:9-363:13);
(Peters tr. at 77:5-9), $\P$ 42, Ex. AA (Axanar Script at page 8), $\P$ 22, Ex. C (Gossett tr. at 112:14-113:8). Grossman Decl., $\P$ 41, Ex. A (Peters tr. at 77:5-9), $\P$ 42, Ex. AA (Axanar Script at page 21). Grossman Decl., $\P$ 41, Ex. A (Peters tr. at 77:5-9), $\P$ 42, Ex. AA (Peters tr. at 77:5-9), $\P$ 42, Ex. AA (Axanar Script at page 8), $\P$ 45, Ex. A (Peters tr. at 362:9-363:13);
(Axanar Script at page 8), ¶ 22, Ex C (Gossett tr. at 112:14-113:8). Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21). 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);
C (Gossett tr. at 112:14-113:8). Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21). 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);
Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21). 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);
(Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21). 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);
(Axanar Script at page 21). 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);
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);
(Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 8), ¶ 45, Ex A (Peters tr. at 362:9-363:13);
(Axanar Script at page 8), ¶ 45, Ex A (Peters tr. at 362:9-363:13);
A (Peters tr. at 362:9-363:13);
¶ 46, Ex. B (Burnett tr. at 195:18-
23).
Grossman Decl., ¶ 45, Ex. A
(Peters tr. at 44:21-55:20; 362:9-
363:13).
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).
Grossman Decl., ¶ 45, Ex. A
(Peters tr. at 362:9-363:13); ¶ 93,
Ex. 11 (Star Trek VI:

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1		
1	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		Undiscovered Country DVD)
4	121. The Axanar Script	Dkt. No. 72-63, Ex. 19 (Prelude to
5		Axanar).
6		
7		Grossman Decl., ¶ 42, Ex. AA
8		(Axanar Script).
9		
10	122. Defendants also took characters,	Van Citters Decl., ¶¶ 15-62.
11	sequence, themes, mood, dialogue, and	
12 13	settings from the Star Trek Copyrighted Works.	
13		Van Cittors Dacl ¶ 58
14	123. The Axanar Script	Van Citters Decl., ¶ 58. Grossman Decl., ¶ 42, Ex. AA
15		(Axanar Script).
17		(Tixului belipt).
18	124. Defendants expressly set out to create an	Grossman Decl., ¶ 54, Ex. A
19	authentic and "independent Star Trek film"	(Peters tr. at 97:14-98:22), Ex. HH
20	that stayed true to Star Trek canon	(screenshot from Defendants'
21		Kickstarter fundraising page).
22		
23		Grossman Decl., ¶ 34, Ex. A
24		(Peters tr. at 471:25-474:20), Ex. U
25		(March 7, 2015 email from Alec
26		Peters to Christian Gossett).
27		
28		
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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		Grossman Decl., ¶ 29, Ex. C
4		(Gossett tr. at 36:11-37:8), Ex. R
5		(March 24, 2013 email from Sean
6		Tourangeau to Christian Gossett
7		and Alec Peters).
8		
9		Grossman Decl., ¶ 38, Ex. C
10		(Gossett tr. at 92:14-93:13), Ex. Y
11		(April 13, 2014 email exchange
12		between Alec Peters, Tobias
13		Richter, and Christian Gossett).
14		
15		Grossman Decl., ¶ 10, Ex. C
16		(Gossett tr. at 30:7-31:13, Ex. F
17		(January 4, 2011 email from Alec
18		Peters to Christian Gossett), Ex. A
19		(Peters tr. at 332:15-334:4).
20		
21		Grossman Decl., ¶ 12, Ex. C
22		(Gossett tr. at 32:7-34:16), Ex. H
23		(November 13, 2013 email
24		exchange between Alec Peters and
25		Christian Gossett), Ex. A (Peters tr.
26		at 359:18-361:11).
27	125. Defendants have set the Axanar Works	Van Citters Decl., ¶¶ 15, 39. Dkt.
28	in 2241.03 to 2245.1, which is twenty-one	No. 72-63, Ex. 19 (Prelude to
		DI AINTIEES' STATEMENT OF CENHINE

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1	[	1
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	years before The Original Series episode	Axanar).
4	"Where No Man Has Gone Before."	
5	126. Defendants set out to create a motion	Grossman Decl., ¶ 16, Ex. A
6	picture "prequel" to The Original Series.	(Peters tr. at 143:13-145:7), ¶ 35,
7		Ex. V (blueprints for the
8		soundstage at Paramount Studios
9		that was used for Star Trek); ¶ 36,
10		Ex. A (145:12-147:10), Ex. W
11		(blueprints), ¶ 32, Ex. C (Gossett
12		tr. at 47:22-48:6); ¶ 15, Ex. A
13		(Peters tr. at 371:13-372:9), Ex. J
14		(Mr. Gossett email exchange with
15		Mr. Peters) ¶ 17, Ex. B (Burnett tr.
16		at 202:12-203:4).
17	127. The element of stardates was first used	Van Citters Decl., ¶ 39.
18	in the second pilot of The Original Series	
19	"Where No Man Has Gone Before" in 1966	
20	(Reg. No. PA-58-303), and was subsequently	
21	used in The Next Generation, Deep Space	
22	Nine, Voyager, and every Star Trek Motion	
23	Picture.	
24	128. Defendant Peters conceded that	Grossman Decl., ¶ 26, Ex. A
25		(Peters tr. at 82:6-85:12).
26		
27		
28		
ership nal	100302363.1 <b>87</b> 202828-10048	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

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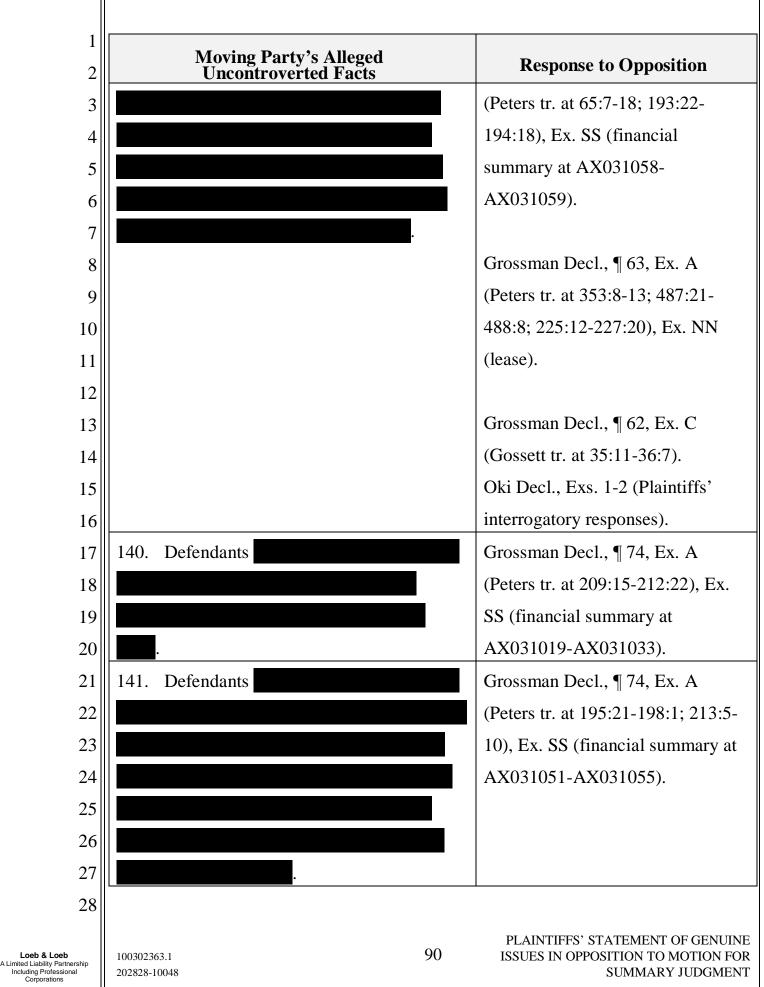
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1		
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		
4	129. The sequence of events of Defendants'	Van Citters Decl., ¶ 60.
5	works is taken from the Star Trek Copyrighted	
6	Works – the events depicted and discussed	
7	therein take place in and around the Battle of	
8	Axanar, as described both in The Original	
9	Series and in greater detail in The Four Years	
10	War.	
11	130. Defendants' works take place in the	Van Citters Decl., ¶ 62.
12	same settings as the Star Trek Copyrighted	
13	Works as they are set in alien star systems	
14	created by Plaintiffs, on spaceships belonging	
15	to the United Federation of Planets, on	
16	Klingon battlecruisers fighting for the Klingon	
17	Empire, and on planets such as Qo'noS,	
18	Vulcan and Axanar.	
19	131. Defendants' works use the protected	Van Citters Decl., ¶¶ 5, 33-36, 59,
20	characters embodied by the U.S.S. Enterprise	62.
21	and Klingon starships.	
22	132. Defendants appropriated the mood and	Van Citters Decl., ¶¶ 55, 56.
23	theme from the Star Trek Copyrighted Works,	
24	attempting to recreate the drama between the	
25	Federation and the Klingon Empire in a	
26	military space drama.	
27	133. The second Star Trek motion picture,	Van Citters Decl., ¶ 20.
28		

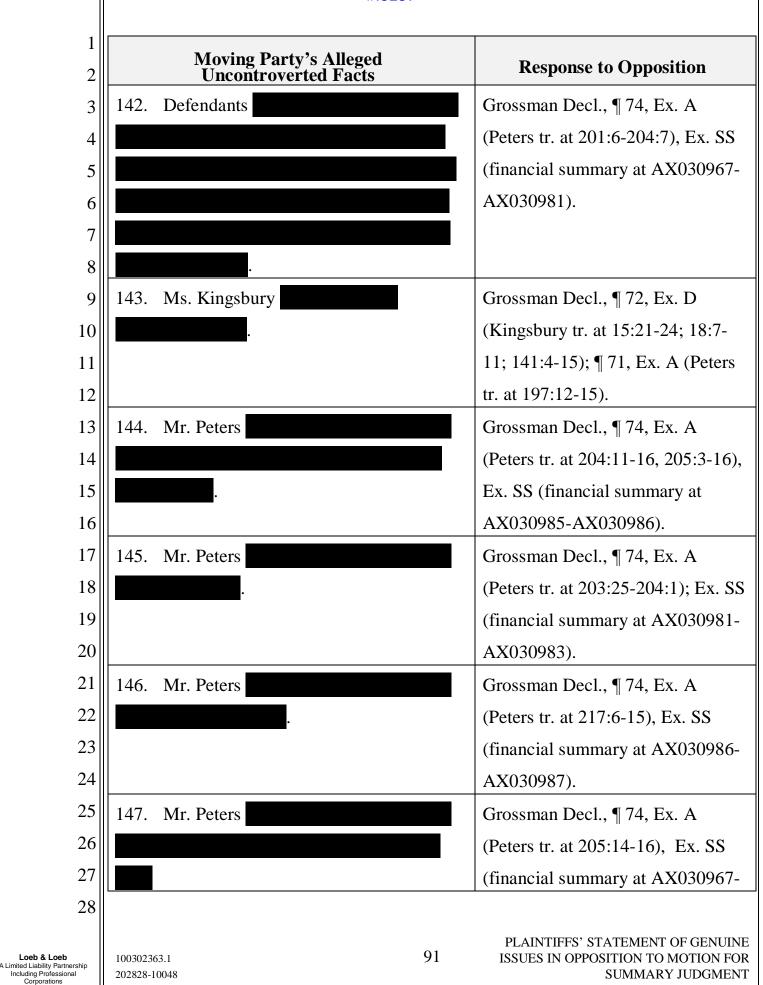
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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
The Wrath of Khan, was a derivative work that	
expanded upon one of the episodes of The	
Original Series which featured a villain named	
Khan.	
134. Defendants raised	Grossman Decl., ¶ 73, Ex. A
•	(Peters tr. at 70:24-71:4).
135. Defendants spent	Grossman Decl., ¶ 73, Ex. A
•	(Peters tr. at 190:19-191:24).
136. Mr. Peters	Grossman Decl., ¶ 74, Ex. A
	(Peters tr. at 189:2-23), Ex. SS
	(financial summary at AX031122
	AX031129).
137. Defendants	Grossman Decl., ¶ 61, Ex. B
	(Burnett tr. at 61:24-62:11); ¶ 74,
	Ex. A (Peters tr. at 122:21-25), E
	SS (financial summary at
	AX030960, AX030959,
	AX031046, AX031128).
138. Defendants	Grossman Decl., ¶ 61, Ex. B
	(Burnett tr. at 62:12-18; 93:23-2
	140:21-141:3); ¶ 70 (Kingsbury t
	at 39:22-41:9); ¶ 74, Ex. SS
	(financial summary at AX030958
	AX030964).
139. Defendants	Grossman Decl., ¶ 74, Ex. A

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1		1
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		AX030987).
4	148. Defendants	Grossman Decl., ¶ 74, Ex. A
5		(Peters tr. at 205:20-207:9), Ex. SS
6		(financial summary at AX031098-
7		AX031110).
8	149. Mr. Peters	Grossman Decl., ¶ 74, Ex. A
9		(Peters tr. at 207:10-12), Ex. SS
10		(financial summary at AX031098).
11	150. Mr. Peters	Grossman Decl., ¶ 74, Ex. A
12		(Peters tr. at 208:2-16), Ex. SS
13		(financial summary at AX031009-
14		AX031010).
15	151. In raising money for the Axanar Works,	Grossman Decl., ¶ 48, Ex. A
16	Mr. Peters stated, "Axanar is the first fully-	(Peters tr. at 92:19-94:1); Ex. CC
17	professional, independent Star Trek	(Indiegogo site).
18	film. While some may call it a 'fan film' as	
19	we are not licensed by CBS, Axanar has	
20	professionals working in front and behind the	
21	camera, with a fully-professional crewmany	
22	of whom have worked on Star Trek itselfwho	
23	ensure Axanar will be the quality of Star Trek	
24	that all fans want to see."	
25	152. On the Kickstarter page for Axanar, Mr.	Grossman Decl., ¶ 54, Ex HHH.
26	Peters also stated, "Axanar is the independent	
27	Star Trek film which proves that a feature-	
28		

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1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3	quality Star Trek film can be made on a small	
4	budgetAxanar takes place 21 years before	
5	the events of "Where no Man Has Gone	
6	Before". It tells the story of Garth of Izar, the	
7	legendary Starfleet captain who is Captain	
8	Kirk's hero and the role model for a generation	
9	of Starfleet officers. Garth charted more	
10	planets than any other Captain and was the	
11	hero of the Battle of Axanar. His exploits are	
12	required reading at Starfleet Academy. This is	
13	the story of Garth and his crew during the Four	
14	Years War, the war with the Klingon Empire	
15	that almost tore the Federation apart" The	
16	Kickstarter page also states "This is Star	
17	Trek."	
18	153. Defendants	Grossman Decl., ¶ 39, Ex. B
19		(Burnett tr. at 55:4-14, 58:10-
20		22,59:11-22), ¶ 28, Ex. Q (April
21		2014 email), Ex. A (Peters tr. at
22		376:16-377:11), Ex. C (Gossett tr.
23		at 50:14-52:21).
24		
25	154. Peters repeatedly referenced the Axanar	Grossman Decl., ¶ 52, Ex. A
26	Works as a professional production.	(Peters tr. at 91:11-92:7), Ex. GG
27		(statement made by Alec Peters in
28		an interview), ¶ 48, Ex. A (Peters
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1		
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition
3		tr. at 92:19-94:1), Ex. CC
4		(Indiegogo fundraising page), ¶ 54,
5		Ex. A (Peters tr. at 97:14-98:22),
6		Ex. HH (screenshot from
7		Defendants' Kickstarter
8		fundraising page), ¶ 49, Ex. A
9		(Peters tr. at 99:10-100:15), Ex.
10		DD (Defendants' Indiegogo
11		fundraising page), ¶ 50, Ex. A
12		(Peters tr. at 108:6-109:12), Ex. EE
13		(Facebook post by Alec Peters),
14		¶ 51, Ex. A (Peters tr. at 109:16-
15		110:2), Ex. FF (Post on the Axanar
16		Facebook page), ¶ 53 (Peters tr. at
17		133:16-143:5; 134:10-143:5;
18		135:11-136:2; 137:13-138:13;
19		138:21-140:2; 140:19-141:3;
20		141:16-142:22), Ex. ZZ (transcript
21		of podcasts), ¶ 11, Ex. A (Peters tr.
22		at 170:22-171:3), Ex. G (printout
23		from Axanarproductions.com),
24		¶ 56, Ex. A Peters tr. at 124:8-
25		127:15), Ex. JJ (press kit).
26 155	5. Peters repeatedly stated that his	Grossman Decl., ¶ 48, Ex. A
27 pro	duction was not to be called a "fan film."	(Peters tr. at 92:19-94:1), Ex. CC
28		(Indiegogo fundraising page), ¶ 49,
		PLAINTIFFS' STATEMENT OF GENUINE

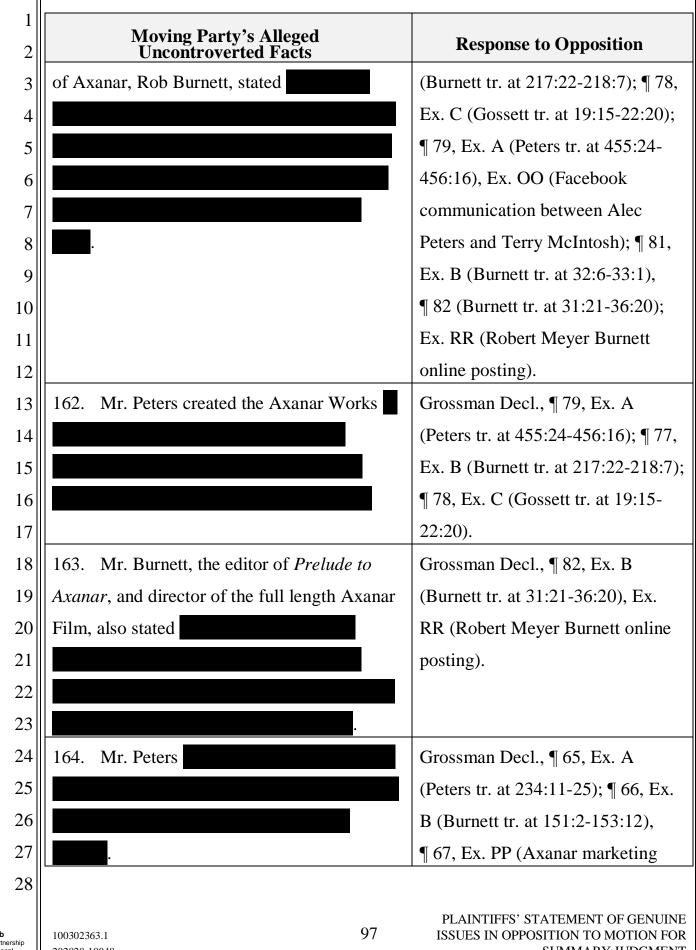
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		1
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		Ex. A (Peters tr. at 99:10-101:10),
4		Ex. DD (Defendants' Indiegogo
5		fundraising page), ¶ 50, Ex. A
6		(Peters tr. at 108:6-109:12), Ex. EE
7		(Facebook post by Alec Peters),
8		¶ 51, Ex. A (Peters tr. at 109:16-
9		110:2), Ex. FF (Post on the Axanar
10		Facebook page), ¶ 53 (Peters tr. at
11		133:16-143:5; 134:10-143:5;
12		137:13-138:13; 138:21-140:2;
13		140:19-141:5; 141:16-142:22), Ex.
14		ZZ (transcript of podcasts), ¶ 55,
15		Ex. A (Peters tr. at 106:6-107:7),
16		Ex. II (tweet) ¶ 57, Ex. A (Peters
17		tr. at 349:18-24), Ex. KK (Peters
18		email to Doug Drexler).
19	156. Peters stated on Reddit, "This is no fan	Grossman Decl., ¶ 52, Ex. III, Ex.
20	film, this is a professional production and	A (Peters tr. at 114:6-116:19).
21	something the Axanar Team knows how to	
22	do."	
23	157. Peters stated in a podcast, "[Prelude] is	Grossman Decl., ¶ 53, Ex. ZZ
24	not a fan film. They are going to see a fully	(transcript of podcasts), Ex. A
25	professional production that's going to change	(Peters tr. at 137:13-19).
26	the way people view Star Trek."	
27	158. Peters stated in a podcast, "these are	Grossman Decl., ¶ 53, Ex. ZZ
28		

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4		
1 2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3	positions you find on professional productions.	(transcript of podcasts), Ex. A
4	And we pride ourselves on being that, and not	(Peters tr. at 142:10-14).
5	being a fan film."	
6	159. Peters attempted to meet with Netflix to	Grossman Decl., ¶ 58, Ex. A
7	become a producer of Star Trek productions,	(Peters tr. at 442:21-449:9); Ex. LL
8	attempted to trademark the word "Axanar" and	(Facebook message exchange
9		between Terry McIntosh and Alec
10		Peters); ¶ 59, Ex. E (McIntosh tr.
11		at 20:23-22:15), ¶ 60, Ex. C
12		(Gossett tr. at 126:10-128:14), Ex.
13		MM (April 20, 2015 email
14		exchange between Alec Peters and
15		Christian Gossett); ¶ 65, Ex. A
16		(Peters tr. at 234:11-25); ¶ 66, Ex.
17		B. (Burnett tr. at 151:2-153:12),
18		¶ 67, Ex. PP (Axanar marketing
19		plan), ¶ 68, Ex. QQ (printout from
20		Axanarproductions.com).
21	160. Defendants' business plan states	Grossman Decl., ¶ 67, Ex. PP
22		(Axanar marketing plan).
23		
24		
25		
26		
27	161. Mr. Peters' collaborator and the director	Grossman Dec., ¶ 77, Ex. B
28		
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2	Moving Party's Alleged Uncontroverted Facts	<b>Response to Opposition</b>
3		plan).
4	165. In a post on Axanarproductions.com,	Grossman Decl., ¶ 67, Ex. QQ
5	Defendants stated: "The Axanar team is happy	(printout from
6	to announce that we have signed a lease on	Axanarproductions.com).
7	16,000sf warehouse in Valencia, CA. The	
8	new home of Axanar Productions will be	
9	called 'Ares Studios'We intend to turn this	
10	warehouse and office space into a fully	
11	functional sound stage. This will allow us to	
12	not only make 'Axanar' but other Star Trek	
13	projects after Axanar and other Sci-Fi projects.	
14	166. Defendants	Grossman Decl., ¶ 64, Ex. B
15	·	(Burnett tr. at 142:14-148:8); ¶ 67,
16		Ex. PP (Axanar marketing plan);
17		Ex. QQ (printout from
18		Axanarproductions.com).
19	167. Peters stated: "But Axanar is not just an	Grossman Decl., ¶ 49, Ex. A
20	independent Star Trek film; it is the beginning	(Peters tr. at 99:10-100:15), Ex.
21	of a whole new way that fans can get the	DD (Axanar Indiegogo fundraising
22	content they want, by funding it themselves.	page).
23	Why dump hundreds or thousands of dollars a	
24	year on 400 cable channels, when what you	
25	really want is a few good sci-fi shows?"	
26	168. The Star Trek Copyrighted Works are	Van Citters Decl., ¶ 11.
27	distributed via cable, among other channels of	
11 -		

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1					
1 2	Moving Party's Alleged Uncontroverted Facts	Response to Opposition			
3	distribution.				
4	169. Mr. Peters stated in a press kit, "Axanar	Grossman Decl., ¶ 56, Ex. JJ (press			
5	is a ground-breaking independent film that	kit), Ex. A (Peters tr. at 124:8-			
6	proves the idea that a studio doesn't need	127:15).			
7	millions of dollars to produce a sci-fi feature				
8	with big-budget production values.").				
9	170. The continued production and	Van Citters Decl., ¶ 63.			
10	distribution of the Axanar Works would cause				
11	irreparable harm to the market for Star Trek				
12	Copyrighted Works because Star Trek fans				
13	will view the Axanar Works (and donate for				
14	the production of future works) instead of				
15	paying to view the Star Trek Copyrighted				
16	Works.				
17	171. Peters was in charge of Axanar	Grossman Decl., ¶ 86, Ex. C			
18	Productions' conduct and was responsible for	(Gossett tr. at 38:6-16; 161:14-23;			
19	the infringing conduct of Axanar Productions.	162:9-163:14); ¶ 84, Ex. A (Peters			
20		tr. at 55:21-58:9; 78:9-80:10), Ex.			
21		B (Burnett tr. at 94:16-95:4), Ex.			
22		FFF (email exchange), ¶87, Ex. E			
23		(McIntosh tr. at 52:12-20).			
24	172. Peters is the president of Axanar	Grossman Decl., ¶ 83, Ex. A			
25	Productions.	(Peters tr. at 182:1-2).			
26	173. Peters was responsible for many of the	Grossman Decl., ¶ 84, Ex. B			
27	creative decisions on the Axanar Works.	(Burnett tr. at 94:16-95:4), Ex. FFF			
28					

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	(email exchange), ¶ 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).
174. Peters supervised and controlled Axanar	Grossman Decl., ¶ 83, Ex. A
Productions.	(Peters tr. at 60:6-61:2), ¶ 87, Ex. I
	(McIntosh tr. at 52:12-20), ¶ 84,
	Ex. B (Burnett tr. at 94:16-95:4),
	Ex. FFF (email exchange).
175. Peters	Grossman Decl., ¶ 88, Ex. A
	(Peters tr. at 9:21-23; 21:18-25).
176. In the years prior to Peters' creation of	Grossman Decl., ¶ 89, Ex. TT
the Axanar Works, Peters sent several emails	(Peters emails to CBS).
to CBS to report third parties whom Peters	
believed were using Plaintiffs' intellectual	
property without authorization.	
177. Defendants	Grossman Decl., ¶ 23, Ex. A
	(Peters tr. at 57:1-58:25).
178. Peters even ensured that	Grossman Decl., ¶ 34, Ex. GGG i
	a true and correct copy of an (June
	29, 2014 email exchange), Ex. A
	(Peters tr. at 384:8 -388:2).
179. The average cost to make an episode in	Van Citters Decl., ¶ 66.
	1
100302363.1 100	PLAINTIFFS' STATEMENT OF GENUIN ISSUES IN OPPOSITION TO MOTION FO

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1 2	Moving Party's Alleged Uncontroverted Facts		<b>Response to Opposition</b>
3	the final season of Star Trek Enterprise		
4	(Plaintiffs' most recent Star Trek Televisi	on	
5	Series) was between \$2.2 million and \$2.4	4	
6	million.		
7	180. Neither J.J. Abrams nor Justin Lin		Grossman Decl., ¶ 101, Ex. KKK
8	, and Mr. Abrams		(Abrams tr. at 15:17-21; 39:19-
9			40:12), Ex. LLL (Lin tr. at 13:22-
10	. Also, Mr. Abrams		25).
11			
12			
13			
14			
15	Dated: November 28, 2016 LC		LOEB LLP
16	JO	NATH	AN ZAVIN GROSSMAN
17			ER JASON
18	By	··/s/ D	avid Grossman
19	By: <u>/s/ David Grossman</u> David Grossman Attorneys for Plaintiffs		
20		PARA CORI	neys for Plaintiffs AMOUNT PICTURES PORATION and CBS STUDIOS
21	21 INC.		
22			
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28			
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	100302363.1 1 202828-10048	101	PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT