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Defendants Axanar Productions, Inc., and Alec Peters ("Axanar") respectfully submit this Reply to Plaintiffs Paramount Pictures Corporation and CBS Studios, Inc.'s Statement of Genuine Issues in Opposition to the Axanar Defendants' Motion for Summary Judgment.

I. <u>UNCONTROVERTED FACTS</u>

Fact No.	Moving Party's Alleged Uncontroverted Facts	Plaintiffs' Response in Opposition	Moving Party's Reply to Opposition
1.	Star Trek was originally conceived by Gene Roddenberry, and debuted as a television show in 1966.	Undisputed.	This fact is established.
	Supporting Evidence:		
	Plaintiffs' First Amended Complaint ECF No. 26 ("FAC") ¶ 13; Defendants' Answer to Plaintiffs' First Amended Complaint, ECF No. 48 at 3, ¶ 13		
2.	Plaintiffs allege that Defendants' Works infringe 40 specific Star	Disputed. This is a	Disputed in a manner that is immaterial to
	infringe 40 specific Star Trek episodes and 11 movies. Supporting Evidence: Declaration of Kelly N. Oki, Nov. 16, 2016 ("Oki Decl."), Ex. 1 (CBS Studios Inc.'s Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-5); Oki Decl., Ex. 2 (Paramount Pictures Corporation's Amended Responses to Interrogatories, Set One, Response to Interrogatories, Set One, Response to Interrogatory Nos. 4-5)	Ihis is a mischaracterization of the cited interrogatory responses, which state: "Additionally, Defendants have infringed Plaintiffs' copyrighted characters, including Vulcans, Klingons, Starfleet Captains, Garth of Izar, Soval, Chang, the U.S.S. Enterprise, Klingon ships, and Federation ships." Oki Decl., Ex. 1 (CBS' Response to Interrogatories Nos. 4-5.) Ex. 2, (Paramount's Response to Interrogatories No. 4-5). In these responses, Plaintiffs also include	Plaintiffs did not allege that the Star Trek: The Role Playing Game – The Four Years War and Star Trek: The Role Playing Game – Return to Axanar was at issue in their FAC, and have not explained what supposed plot or story Defendants have copied from these works. See also, Evidentiary Objections to Van Citters Decl., filed concurrently herewith

1			infringement of novels and Star Trek: The Role	
2			Playing Game – The	
3			Four Years War and Star Trek: The Role	
4			Playing Game – Return to Axanar. Oki Decl.,	
5			Ex. 1 (CBS' Response to Interrogatories Nos.	
6			4-5.) Ex. 2, (Paramount's Response	
7			to Interrogatories No. 4-5).	
8			Defendants' purported	
9			fact also fails to identify Plaintiffs' responses to Interrogatory No. 2,	
10			regarding each Star Trek Copyrighted Work	
11			infringed by Prelude to Axanar and	
12			Interrogatory No. 3 regarding each Star	
13			Trek Copyrighted Work infringed by the	
14			"Vulcan Scene." See Declaration of David	
15			Grossman ("Grossman Decl."), ¶ 2, Exs. DDD	
16			and EEE (Paramount and CBS' responses to	
17			Interrogatories Nos. 2 and 3).	
18			See generally the	
19			declaration of John Van Citters ("Van Citters	
20 21			Decl.") for further details on Plaintiffs'	
21	3.	Plaintiffs do not purport	claims of infringement. Disputed.	Disputed in a manner
23		to own in this lawsuit a copyright to the Star	The purported fact is	that is immaterial to motion.
23		Trek universe, but rather own a limited number of	not supported by Defendants' citation to the FAC.	Plaintiffs do not
25		copyrights to certain episodes and films.		present any evidence to support their
26		Supporting Evidence :	Disputed that Plaintiffs own "limited"	suggestion that their copyrights are not limited to the works in
27		FAC, Appendix A ¶¶ 2-6	copyrights or that those copyrights are restricted to "certain episodes and	their copyright registrations, or that
28			films." In addition to owning copyrights in	they own a copyright to the "Star Trek
			episodes and films,	universe."
	I		2	

1			Plaintiffs own the	
2			copyrights in books,	See also, Evidentiary
			reference guides, documentaries,	Objections to Van Citters Decl., filed
3			characters and	concurrently herewith
4			numerous other elements. Grossman	
5			Decl., ¶ 90, Ex. UU	
3			(copyright registrations for the Star Trek	
6			Television Series), ¶ 91,	
7			Ex. VV (copyright registrations for the Star	
0			Trek Motion Pictures);	
8			¶ 94, Ex. WW (copyright registration	
9			for Garth of Izar novel);	
10			¶ 95, Ex. XX (copyright registration for	
			Strangers from the	
11			Sky);¶96, Ex. YY (copyright registration	
12			for Infinity's Prism).	
13			Van Citters Decl. ¶¶ 3- 14, Ex. BBB (copyright	
			registration for The	
14			Four Years War), 64- 65.	
15	1	Of the 51 ellegedly		The fact is established
15	4.	Of the 51 allegedly	Undisputed that,	
	4.	infringed works, to date,	pursuant to agreement,	that Plaintiffs did not
16	4.	infringed works, to date, Plaintiffs have not produced a single copy	pursuant to agreement, the parties did not exchange their copies of	that Plaintiffs did not produce a single copy of any of these
16 17	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes	pursuant to agreement, the parties did not exchange their copies of the Star Trek	that Plaintiffs did not produce a single copy of any of these episodes or films,
16	4.	infringed works, to date, Plaintiffs have not produced a single copy	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works.	that Plaintiffs did not produce a single copy of any of these
16 17	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed.	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. On June 21, 2016,	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed.
16 17 18 19	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. On June 21, 2016, Plaintiffs met with counsel for Defendants,	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened
16 17 18 19 20	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed.	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. On June 21, 2016, Plaintiffs met with counsel for Defendants, Erin Ranahan, and the	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery
16 17 18 19	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. On June 21, 2016, Plaintiffs met with counsel for Defendants, Erin Ranahan, and the parties agreed that Plaintiffs did not need	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all
16 17 18 19 20	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants
16 17 18 19 20 21 22	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all source material when access was not disputed, not in
16 17 18 19 20 21 22 23	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all source material when access was not
16 17 18 19 20 21 22	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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.	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all source material when access was not disputed, not in connection with Plaintiffs producing the works they claimed
16 17 18 19 20 21 22 23	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all source material when access was not disputed, not in connection with Plaintiffs producing the works they claimed were substantially similar to Defendants'
16 17 18 19 20 21 22 23 24 25	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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 already had all of these	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all source material when access was not disputed, not in connection with Plaintiffs producing the works they claimed were substantially similar to Defendants' Works. There was
16 17 18 19 20 21 22 23 24 25 26	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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 already had all of these works. The parties agreed that, if there	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all source material when access was not disputed, not in connection with Plaintiffs producing the works they claimed were substantially similar to Defendants' Works. There was never an oral or written agreement whereby
16 17 18 19 20 21 22 23 24 25	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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 already had all of these works. The parties agreed that, if there were works Peters	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all source material when access was not disputed, not in connection with Plaintiffs producing the works they claimed were substantially similar to Defendants' Works. There was never an oral or written agreement whereby Defendants agreed that
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16 17 18 19 20 21 22 23 24 25 26 27	4.	infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed. Supporting Evidence:	pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works. 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 already had all of these works. The parties agreed that, if there were works Peters owned that were	that Plaintiffs did not produce a single copy of any of these episodes or films, though discovery is now closed. The discovery conversation happened in the context of whether Defendants needed to produce all source material when access was not disputed, not in connection with Plaintiffs producing the works they claimed were substantially similar to Defendants' Works. There was never an oral or written agreement whereby Defendants agreed that Plaintiffs need not

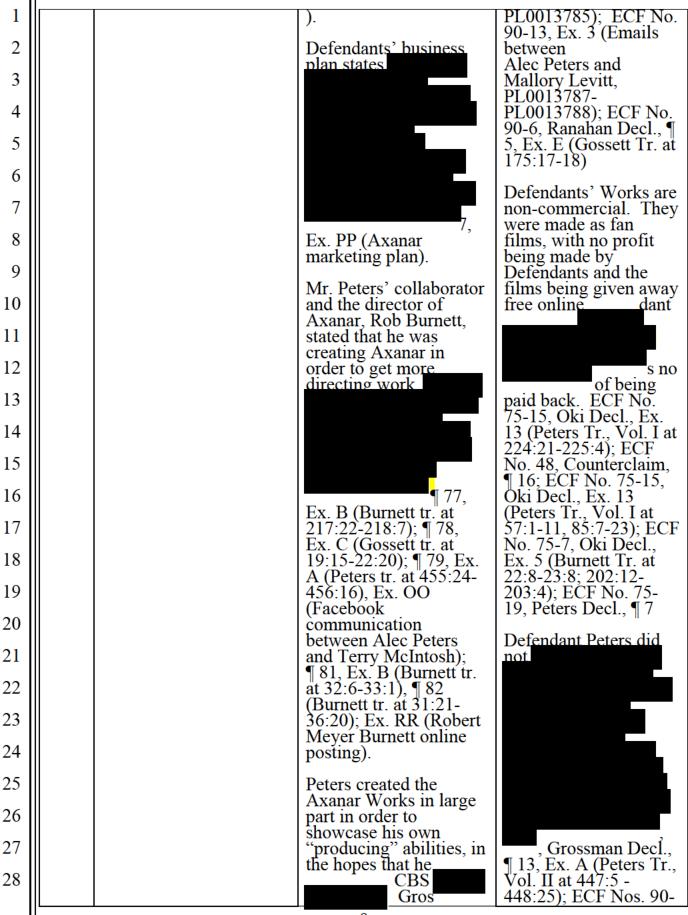
1			would be provided. Grossman Decl., ¶ 99.	in this case. Ranahan Decl. at ¶ 2.
2 3 4			Defendants, therefore, never requested copies of these works as the parties had agreed they would not be	See also, Evidentiary Objections to Grossman Decl., filed concurrently herewith
5 6			exchanging them in discovery. Grossman Decl., ¶ 99.	
7			Furthermore, and	
8			consistent with Ms. Ranahan's representation and	
9			stipulation at the meet and confer, Mers	
10				
11			an Decl., ¶ 99,	
12			Ex. A (Peters tr. at 40:10-15).	
13	5.	Plaintiffs do not allege that Defendants' Works	Disputed.	Undisputed, as Plaintiffs have not
14 15		use any clips or otherwise copy the plot,	The purported fact is not supported by admissible evidence.	presented any admissible evidence to
16		dialogue, timeline, or central characters of any of Plaintiffs' Works, but	Moreover, Defendants' purported fact is a	show that there is any clip, plot, dialogue or central characters from
17		instead allege infringement of such	mischaracterization as Plaintiffs have alleged	any of Plaintiffs' Works that have
18		elements such as clothing, shapes, words,	that the plot, dialogue, timeline and characters	appeared in any of Defendants' Works.
19		colors, short phrases, the Klingon language, and	from Plaintiffs' works have been infringed.	Defendants did not use
20		works derived from nature, third parties, and the public domain.	See Declaration of John Van Citters Decl., ¶¶ 57-60.	a "clip" or screenshot from <i>Star Trek III</i> , or any other clip or
21		Supporting Evidence:	Defendants have copied	screenshot from any other Star Trek work in
22		FAC ¶¶ 46-47	"clips" from Plaintiffs	Prelude or the Vulcan Scene, and had and
23		TAC 40-47	by appropriating a screenshot from <i>Star Trek III</i> to create their	have no intention of doing so in the longer
24			"Vulcan Scene." Van Citters Decl., ¶¶ 43, 48.	Axanar project. The scene was newly
25			Grossman Decl., ¶ 43, Ex. A (Peters tr. at	created and created entirely via visual
26			82:2-85:12); ¶ 44, Ex. B (Burnett tr. at 106:11-	effects that took inspiration from a
27			17). Dkt. No. 72-63, Ex. 20 (Vulcan Scene).	scene in <i>Star Trek III</i> . ECF No. 72-63, Ex. 20
28			Defendants also took	(Vulcan Scene).
			4	

1			the plot of their story	The plot of
2			from <i>the Original</i> Series episode Whom	Defendants' Works was not taken from any
3			Gods Destroy, and from The Four Years War	Star Trek copyrighted work and in fact bears
			publication. Van	no similarity to <i>Whom</i>
4			Citters Decl., ¶ 14, Ex. AAA (<i>Four Years</i>	Gods Destroy, or The Four Years War
5			War). Grossman Decl., ¶ 13, Ex. A (Peters tr. at	publication. Defendants merely use
6			38:22-41:17), ¶ 14, Ex.	a single character and a
7			C (Gossett tr. at 48:10-50:10), Ex. I (April 26,	mentioned battle as a jumping off point.
8			2014 émail from Christian Gossett to	Peters Supp. Decl., ¶ 4; ECF No. 75-20, Peters
			Alec Peters).	Decl., Ex. 1 (<i>Prelude</i>
9			The characters taken by	to Axanar); ECF Nos. 75-22, 77-8, 77-9,
10			Defendants are "central" to Plaintiffs'	Peters Decl., Ex. 3 (July 1, 2016 Axanar
11			works, including	Script)
12			Klingons, Vulcans, the U.S.S. Enterprise,	No copyrighted
13			Klingon ships, along with specific characters	characters were used in Defendants' Works.
14			such as Soval the	ECF No. 75-20, Peters
			Vulcan Ambassador, Chang, the villain from	Decl., Ex. 1 (<i>Prelude to Axanar</i>); ECF Nos.
15			Star Trek VI, and Garth of Izar, who was	75-22, 77-8, 77-9, Peters Decl., Ex. 3
16			featured in <i>the Original</i>	(July 1, 2016 <i>Axanar</i>
17			Series, and was also the subject of a standalone	Script)
18			Star Trek novel. Van Citters Decl. ¶¶ 17-38.	Li-A-Ping Decl., ¶ 7, Exs. 7-9
19				See also, Evidentiary
				Objections to Van
20				Citters Decl., filed concurrently herewith
21	6.	While Plaintiffs do have copyright registrations to	Disputed.	Plaintiffs do no dispute the stated fact.
22		central Star Trek	Plaintiffs own the	
23		characters such as Spock and Captain Kirk,	copyrights in the episodes that contain	See also, Evidentiary Objections to Van
24		Defendants Works' do not include those or any	the characters such as Garth of Izar and Soval.	Citters Decl., filed concurrently herewith
		other characters to which	Grossman Decl., ¶ 90,	concurrently nerewith
25		Plaintiffs own separate copyrights.	Ex. UU (copyright registrations for the Star	
26		Supporting Evidence :	Trek Television Series). Van Citters Decl. ¶¶ 3-	
27			8.	
28		FAC, Appendix A ¶¶ 2-6	Plaintiffs are not	
			required to have	

1			copyright registrations in characters in order to	
2			own the copyrights to those characters.	
3			Anderson v. Stallone, 1989 U.S. Dist. LEXIS	
5			11109, Copy. L. Rep. (CCH) P22665 (C.D. Cal. Apr. 25, 1989).	
6			Further, as the Ninth	
7			Circuit recently held, characters depicted in	
8			an audiovisual work, with distinct,	
9			recognizable traits, are protectable. These	
10			characters include Klingons, Vulcans,	
11			Garth of Izar, Ambassador Soval,	
12			Klingon Commander Chang, and further	
13			include recognizable, distinct inanimate objects as well,	
14			including the U.S.S. Enterprise, Klingon	
15			battlecruisers, and Vulcan ships. See DC	
16			Comics v. Towle, 802 F.3d 1012, 1021 (9th	
17	7	Defendant Alec Peters, a	Cir. 2015). Disputed.	The fact that Alec
18	7.	lifelong Star Trek fan, founded Axanar	Disputed.	Peters is a lifelong Star Trek fan is established.
19		Productions along with a group of other Star Trek		Plaintiffs' remaining mischaracterizations
20		fans to celebrate their love of Star Trek by		are immaterial to the resolution of the
21		creating original stories which take place in the	ecl., ¶ 83,	motion.
22		so-called Star Trek universe.	Ex. A (Peters tr. at 182:1-2; 60:6-61:2).	Though Defendants hoped that their Works
23		Supporting Evidence:	Further, Axanar	would lead to other work, Defendants
24		ECF No. 48,	Productions was not created to celebrate	made their Works because they love Star
25		Counterclaim at 18, ¶ 11; Oki Decl., Ex. 13	Defendants' love of Star Trek. Axanar	Trek. ECF Nos. 90-10, 94-3, Peters Decl., ¶ 16
26		(Deposition of Alec Peters (Oct. 19, 2016)	Productions is	Defendants' Works
27		("Peters Tr., Vol. I") at 81:5-12; 88:5-14);		were created by Defendants solely
28		Declaration of Alec Peters, Nov. 16, 2016,		because of their love of Star Trek. It is not a
	1			

1		("Peters Decl."), at ¶ 2	Grossman Decl., ¶ 74, Ex. A, Ex. SS (financial	for-profit venture and
2			summary).	
3			Axanar Prod as	
4				
5				
6				
7			5.	
8			Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B	
9			(Burnett tr. at 151:2- 153:12), ¶ 67, Ex. PP	
10			(Axanar marketing plan).	lar or profit has
11			piui).	been made. ECF No. 75-15, Oki Decl., Ex.
12				13 (Peters Tr., Vol. I at 224:21-225:4); ECF
13				Nos. 90-10, 94-3, Peters Decl., ¶¶ 11-15;
14				ECF Nos. 90-12, 94-5, Peters Decl., Ex. 2
15				(Second Financial Summary, AX035571-
16				AX035736)
17				See also, Evidentiary Objections to Van
18				Citters Decl., filed concurrently herewith
19	8.	Defendants' first	Undisputed that Prelude	Plaintiffs do not
20		endeavor was the short film <i>Prelude</i> , which was	was released to the public.	dispute the stated fact.
21		to be followed by Defendants' evolving	Disputed that	Disputed only in a way that is immaterial to
22		non-commercial film project (the "Potential	Defendants planned to complete a "fan film" –	Motion. Though not material to Defendants'
23		Fan Film") tentatively titled Axanar.	Peters repeatedly stated that Axanar was not a	Motion, there were many instances in
24		Supporting Evidence:	fan film. Grossman Decl., ¶ 48, Ex. A	which Defendants did call their works "fan
25		Peters Decl., at ¶¶ 7-9;	(Peters tr. at 92:19- 94:1), Ex. CC	films." The distinction between "fan films"
26		Peters Decl., Ex. 1	(Indiegogo fundraising page), ¶ 49, Ex. A	and "professional" films was made only to
27			101:10), Ex. DD	distinguish the quality of Defendants' Works.
28			(Defendants' Indiegogo fundraising page), ¶ 50,	ECF No. 90-16, Peters Decl., Ex. 6 (Press
			Ex. A (Peters tr. at	Release); ECF Nos.

1		108:6-109:12), Ex. EE	90-22, 94-7 Peters
2		(Facebook post by Alec Peters), ¶ 51, Ex. A	Decl., Ex. 12 (Emails between
		(Peters tr. at 109:16-	Alec Peters and
3		110:2), Ex. FF (Post on the Axanar Facebook	Morgen Schneider, AX030370-
4		page), ¶ 53 (Peters tr. at	AX030372); ECF No.
5		133:16-143:5; 134:10- 143:5; 137:13-138:13;	90-23, Ex. 13 (Axanar Facebook Post,
		138:21-140:2; 140:19-	AX035850); ECF No.
6		141:5; 141:16-142:22),	90-24, Ex. 14 (Axanar Tweet,
7		Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A	AX035927); ECF No.
8		(Peters tr. at 106:6-	90-21, Ex. 11 (Star Trek Fan
		107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at	Film Flyer,
9		349:18-24), Ex. KK	PL0000106); ECF No.
10		(Peters email to Doug Drexler).	90-19, Ex. 9 (Axanar Blog
11		Disputed that Avanar	Post, PL0005718-
11		Disputed that Axanar was "non-commercial."	PL0005720); ECF No. 90-20, Ex. 10 (Axanar
12			Blog
13		Peters attempted to meet with Netflix to	Post, PL0005973- PL0005989); ECF No.
14		become a producer of	90-18, Ex. 8 (Axanar
		Star Trek productions, attempted to trademark	Facebook Post, PL0008222);
15		nd	ECF Nos. 90-26, 94-9,
16			Ex. 16 (Email from Marian Cordry to
17			Holly Amos and John
		58,	Van Citters, PL0008689); ECF No.
18		Ex. A (Peters tr. at	90-17, Ex. 7 (Axanar
19		442:21-449:9); Ex. LL (Facebook message	Facebook Post, PL0011822);
20		exchange between Terry McIntosh and	ECF Nos. 90-25, 94-8
		Alec Peters); ¶ 59, Ex.	Ex. 15 (Emails among Bill Burke, John Van
21		E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex.	Citters, and Leslie Ryan, PL0012814-
22		C (Gossett tr. at 126:10-	PL0012816); ECF No.
23		128:14), Ex. MM (April 20, 2015 email	90-15, Ex. 5 (Email from
		exchange between Alec	Marian Cordry to John
24		Peters and Christian Gossett); ¶ 65, Ex. A	Van Citters, PL0013502-
25		(Peters tr. at 234:11-	PL0013503); ECF No.
26		25); ¶ 66, Ex. B. (Burnett tr. at 151:2-	90-14, Ex. 4 (Peters Facebook
		153:12), ¶ 67, Ex. PP	Post, PL0013517);
27		(Axanar marketing plan), ¶ 68, Ex. QQ	ECF Nos. 90-11, 94-4, Ex. 1 (Axanar Annual
28		(printout from	Report, Revised, 2015,
		Axanarproductions.com 8	PL0013763-
	·	•	



1	Decl., ¶ 79, Ex. A (Peters tr. at 455:24-	10, 94-3, Peters Decl., ¶ 17
2	456:16); ¶ 77, Ex. B (Burnett tr. at 217:22-	Defendants never
3	218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-	attempted to
4	22:20).	
5	Mr. Burnett, the editor of Prelude to Axanar,	
6	and director of the full length Axanar Film,	1,
7	also stated that he was creating the Axanar	Grossman Decl., ¶ 13, Ex. A (Peters Tr.,
8	Works as a "spec commercial" in order to	Vol. II at 447:5 - 448:25); ECF Nos. 90-
9	showcase his directing abilities in the hopes to	10, 94-3, Peters Decl., ¶ 17
10 11	obtain other jobs in Hollywood. Grossman	Tharagraph
12	DecI., ¶ 82, Ex. B (Burnett tr. at 31:21- 36:20), Ex. RR (Robert	Th aragraph
13	Meyer Burnett online posting).	
14	Peters intended	
15		
16		$\P 2$,
17		Ex. 1 (Peters tr., Vol. I at 236:14-241-13)
18	65, Ex. A (Peters tr. at 234:11-	Some members of the
19	25); ¶ 66, Ex. B (Burnett tr. at 151:2-	Axanar team, as with any production, would
20	153:12), ¶ 67, Ex. PP (Axanar marketing	hope that the work would be good enough
21	plan).	to use to help promote their careers in the
22		future. Li-A-Ping Decl., ¶ 2, Ex. 1(Peters tr. at 81:5-15); ECF
23		Nos. 88-2, 91-1,
24		Grossman Decl., ¶ 13, Ex. A (Peters tr. at 387:13-20)
25		307.13-20)
26		
27		
28		
	10	

1				
1				Peters Decl., ¶
2	9.	Both <i>Prelude</i> and the	Disputed.	Undisputed that Garth
3 4		Potential Fan Film were intended to tell the original story of Garth of	Garth of Izar is not an obscure character. Garth of Izar was the	of Izar's only appearance throughout hundreds of episodes
5		Izar, an obscure character who made his lone television	central character in an episode of <i>The Original</i>	and twelve movies is in one episode from 1969.
		appearance in a 1969	Series, he was further	Garth of Izar is so
6 7		episode from Star Trek: The Original Series titled <i>Whom Gods</i>	discussed in <i>The Four Years War</i> publication	Abrams nor Justin Linknew who he was. The
8		Destroy.	as a heroic captain who helped the Federation in the Four Years War and	two directors of the last three Star Trek films,
9		Supporting Evidence :	the Battle of Axanar,	and two huge Star Trek
10		ECF No. 48, Counterclaim at 19	and he is the titular subject of an entire standalone Star Trek	fans, had no clue who he was. ECF Nos. 75- 14, 77-7, Oki Decl.,
11		¶¶ 15-16; Oki Decl., Ex. 14 (CBS Studios Inc.'s	novel. Van Citters Decl., ¶¶ 6, 11, 13, 14,	Ex. 12 (Abrams Tr. At 14:22-15:3); ECF Nos.
12		Responses to Requests for Admission, Set One,	Ex. AAA (<i>The Four Years</i> War supplement),	75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at
13		Response to Request for Admission Nos. 21-22);	17- 19. Grossman Decl., ¶ 92, Ex. 1(The Original	16:10-22)
14		Oki Decl., Ex. 15 (Paramount Pictures	Series DVDs), ¶ 94, Ex. WW (copyright	Garth was a guest character in one
15		Corporation's Responses to Requests for	registration for Garth of Izar novel). Dkt. No.	episode of The Original Series, Whom
16		Admission, Set One, Response to Request for	72-63, Ex. 21 (Garth of Izar novel).	Gods Destroy. ECF Nos. 88-1, 91-21,
17		Admission Nos. 21-22); Oki Decl., Ex. 12	Disputed to the extent	Grossman Decl., ¶ 92, Ex. 1 (The Original
18		(Deposition of J.J. Abrams, Nov. 9, 2016,	Defendants assert that Prelude and Axanar tell	Series DVDs)
19		("Abrams Tr.") at 14:22- 15:3;); Oki Decl., Ex. 11	a story based solely on Garth of Izar. Instead,	Garth of Izar is mentioned only twice
20		(Deposition of Justin Yipin Lin, Nov. 7, 2016,	those works describe and depict the history of	in <i>The Four Years War</i> publication. ECF No.
21		("Lin Tr.") at 16:10-22); Peters Decl., Ex. 1	The Four Years War, which was also the	88-71, Van Citters Decl., Ex. AAA (<i>The</i>
22			subject of <i>The Four Years War</i> publication.	Four Years War supplement), 17- 19.
23			Van Citters Decl., ¶¶ 17-19.	No novel about The
24			Exhibit 14 to the Oki	Four Years War has ever been published.
25			declaration is not CBS' responses to Requests	The only elements of
26			for Admission Nos. 21-22. Rather, Exhibit 14 is	The Four Years War that were used in
27			Paramount's responses to Requests for	Defendants' Works were the title and the
28			Admission Nos. 72-76.	name of a planet (used in <i>Prelude</i>). No other
			Exhibit 15 to the Oki	elements were used

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1 2 3			declaration is not Paramount's responses to Requests for Admission Nos. 21-22.	from these works. ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude</i> to Axanar); ECF Nos.
4			Rather, Exhibit 15 is CBS' responses to Requests for Admission Nos. 51-55.	75-22, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 Axanar Script)
5			Paramount and CBS'	See also, Evidentiary
6			responses to Requests for Admission Nos. 21-	Objections to Van
7			22, which are not in	Citters Decl., filed concurrently herewith;
8			evidence, simply state that Garth of Izar is the	See also, Evidentiary Objections to Gressman Dool filed
9			subject of a television show and a novel, but not a motion picture.	Grossman Decl., filed concurrently herewith
10			The testimony of Mssrs.	
11			Lin and Abrams do not support the stated fact,	
12			and their testimony does not constitute an	
13			evidentiary admission on the part of Plaintiffs	
14			as they are not Plaintiffs' employees.	
				D' (1'
15	10.	Prelude portrays (and the Potential Fan Film	Disputed.	Disputed in a way that is immaterial to the
15 16	10.	the Potential Fan Film would portray) Garth of	Prelude speaks for	is immaterial to the Motion. Defendants do
	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs'	Prelude speaks for itself. It does not portray Garth of Izar	is immaterial to the Motion. Defendants do not refute that Defendants presented
16	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues	is immaterial to the Motion. Defendants do not refute that
16 17	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much
16 17 18	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons.	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light.
16 17 18 19	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons. Instead, Prelude portrays Garth as a	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light. The fact that Defendants' Works
16 17 18 19 20	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets and the Klingon Empire.	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons. Instead, Prelude portrays Garth as a brilliant military strategist and hero.	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light. The fact that Defendants' Works used the veterans of WWII portrayed in
16 17 18 19 20 21	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets and the Klingon Empire. Supporting Evidence:	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons. Instead, Prelude portrays Garth as a brilliant military strategist and hero. Further, Defendants have not cited to any	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light. The fact that Defendants' Works used the veterans of WWII portrayed in "Band of Brothers" as the basis for Garth of
16 17 18 19 20 21 22	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets and the Klingon Empire. Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons. Instead, Prelude portrays Garth as a brilliant military strategist and hero. Further, Defendants have not cited to any pre-lawsuit evidence supporting this	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light. The fact that Defendants' Works used the veterans of WWII portrayed in "Band of Brothers" as the basis for Garth of Izar's character in Prelude and that many
16 17 18 19 20 21 22 23	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets and the Klingon Empire. Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1); Oki Decl., Ex. 5 (Burnett Tr. at 192:2-	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons. Instead, Prelude portrays Garth as a brilliant military strategist and hero. Further, Defendants have not cited to any pre-lawsuit evidence supporting this characterization or description of their	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light. The fact that Defendants' Works used the veterans of WWII portrayed in "Band of Brothers" as the basis for Garth of Izar's character in Prelude and that many fans picked up on this shows that he is a very
16 17 18 19 20 21 22 23 24	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets and the Klingon Empire. Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1); Oki Decl., Ex. 5	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons. Instead, Prelude portrays Garth as a brilliant military strategist and hero. Further, Defendants have not cited to any pre-lawsuit evidence supporting this characterization or	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light. The fact that Defendants' Works used the veterans of WWII portrayed in "Band of Brothers" as the basis for Garth of Izar's character in Prelude and that many fans picked up on this shows that he is a very different character. Defendants' Works are
16 17 18 19 20 21 22 23 24 25	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets and the Klingon Empire. Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1); Oki Decl., Ex. 5 (Burnett Tr. at 192:2-15); Peters Decl., at	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons. Instead, Prelude portrays Garth as a brilliant military strategist and hero. Further, Defendants have not cited to any pre-lawsuit evidence supporting this characterization or description of their	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light. The fact that Defendants' Works used the veterans of WWII portrayed in "Band of Brothers" as the basis for Garth of Izar's character in Prelude and that many fans picked up on this shows that he is a very different character. Defendants' Works are set 23 years before his appearance in "Whom
16 17 18 19 20 21 22 23 24 25 26	10.	the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs' Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets and the Klingon Empire. Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1); Oki Decl., Ex. 5 (Burnett Tr. at 192:2-15); Peters Decl., at	Prelude speaks for itself. It does not portray Garth of Izar "as a war veteran with psychological issues resulting" from traumatic experiences fighting the Klingons. Instead, Prelude portrays Garth as a brilliant military strategist and hero. Further, Defendants have not cited to any pre-lawsuit evidence supporting this characterization or description of their	is immaterial to the Motion. Defendants do not refute that Defendants presented Garth of Izar in a new way never seen before. Prelude very much does portray Garth in a very different light. The fact that Defendants' Works used the veterans of WWII portrayed in "Band of Brothers" as the basis for Garth of Izar's character in Prelude and that many fans picked up on this shows that he is a very different character. Defendants' Works are set 23 years before his

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1	brilliant military strategist and hero,
2	unlike the insane inmate of a mental
3	asylum he is portrayed as in Whom Gods
4	Destroy.
5	ECF No. 75-15, Oki
6	Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-
7	88:1); ECF No. 75-7, Oki Decl., Ex. 5
8	(Burnett Tr. at 192:2- 15); ECF No. 75-19,
9	Peters Decl., ¶¶ 6-7; ECF No. 75-20, Peters
10	Decl., Ex. 1 (<i>Prelude</i> to Axanar); ECF Nos.
11	88-1, 91-21, Grossman Decl., ¶ 92, Ex. 1 (The
12	Original Series DVDs); ECF No. 48,
13	Counterclaim at 15, ¶ 6
14	As explained in
	Plaintiffs' reply, pre- lawsuit evidence or
15	explanation by the defendant is irrelevant
16	to the issue of transformativeness. It
17	is irrelevant that Defendants may not
18	have explicitly claimed fair use as "parody" or
19	"satire" before Plaintiffs brought suit.
20	"What is critical in assessing
21	transformativeness is how the work in
22	question appears to the
23	reasonable observer, not simply what an
24	artist might say about a particular
25	piece." Cariou, 714 F.3d at 707
26	("defendant's testimony that he
27	"doesn't really have a message" did not
28	preclude a finding of fair use). And in any
	event, here Defendants

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$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$				made clear in their promotional materials, crowdfunding
3				campaigns, and through the works
4				themselves, that they were presenting Star Trek in a manner that
5				had never been seen before. Defendants'
6				Response to Plaintiffs' Statements of Fact in
7				Opposition to Plaintiffs' Motion for
8				Summary Judgment, p.
9	4.4			8.
10	11.	Star Trek, which promotes the ideals of	Disputed.	Defendants do not present any evidence to
11		tolerance, unity, inclusion, and peace,	Lacks foundation and irrelevant.	refute this claim, and in any event, it is not
12		aired during the Vietnam War, before it was	The cited authority (Defendants'	necessary for the Court to grant Defendants'
13		socially accepted to publicly examine issues	Counterclaim) does not support the stated fact	Motion or find Defendants' Works
14		such as Post-Traumatic Stress Disorder.	and is not admissible evidence.	transformative.
15		Supporting Evidence :		
16		ECF No. 48,		
17	12.	Counterclaim at 15, ¶ 6 Defendants' Works	Disputed.	Undisputed that
18		(made up of (i) an original twenty-minute	The Axanar Works	Defendants' Works show the "horrors and
19		"mockumentary" that has been available for	speak for themselves. They say nothing about	consequences of war" from the very
20		free on YouTube since 2014), (ii) a three-	the "horrors and consequences of war."	beginning of <i>Prelude</i> to Axanar when they
21		minute scene (the "Vulcan Scene"),	Defendants never	show a city being destroyed, to the very
22		Defendants' Potential Fan Film, and their	claimed that the Axanar Works were a social	same type of scene, Kharn and Chang
23		creation of scripts for that project) are both	commentary or satire prior to this lawsuit –	surveying a destroyed civilian section of a
24		social commentary and satire, in that they focus	and they are not.	city, in the <i>Axanar</i> script. ECF No. 75-20,
25		on and intend to expose the true horrors and		Peters Decl., Ex. 1 (Prelude to Axanar);
26		consequences of war in ways the Plaintiffs'		ECF Nos. 75-22, 77-8, 77-9, Peters Decl., Ex.
27		Works did not.		3 (July 1, 2016 <i>Axanar</i> Script, pp. 1-2); ECF
28		Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-		Nos. 88-1, 91-21, Grossman Decl., ¶ 92, Ex. 1 (The Original

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1		88:1); Oki Decl., Ex. 5 (Burnett Tr. at 192:2-		Series DVDs)
2		15); Peters Decl., ¶ 7		As explained in Plaintiffs' reply, pre-
3				lawsuit evidence or
4				explanation by the defendant is irrelevant
				to the issue of
5				transformativeness. It is irrelevant that
6				Defendants may not
7				have explicitly claimed fair use as "parody" or
				fair use as "parody" or "satire" before
8				Plaintiffs brought suit. "What is critical in
9				assessing
10				transformativeness is how the work in
				question appears to the
11				reasonable observer,
12				not simply what an artist might say about a
13				particular piece." <i>Cariou</i> , 714
				F.3d at 707
14				("defendant's
15				testimony that he "doesn't really have a
16				message'" did not
10				preclude a finding of fair use). And in any
17				event, here Defendants
18				made clear in their promotional materials,
10				crowdfunding
19				campaigns, and through the works
20				themselves, that they
21				were presenting Star Trek in a manner that
				had never been seen
22				before. Defendants' Response to Plaintiffs'
23				Statements of Fact in
24				Opposition to Plaintiffs' Motion for Summary Judgment, p.
25				8.
26				
27	13.	Prelude takes place in a	Disputed.	Undisputed that a time
		time period previously unexplored by the	_	frame "two decades"
28		Plaintiffs' Works, and	Prelude does not take place in a time frame	before <i>The Original</i> Series is a time that has
			15	

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1 that was previously not been previously features an original plot and is shot in a narrative unexplored, but rather explored. "mockumentary" style, 2 two decades before *The* featuring direct-to-Original Series. Undisputed that Grossman Decl., ¶ 16, thetime period of Defendants' Works has 3 camera interviews with Ex. A (Peters tr. at characters, a style never 143:13-145:7), ¶ 17, Ex. B (Burnett tr. at 202:12-4 before used by either never been covered in Plaintiffs or in any other Star Trek television 203:4); Van Citters Decl., ¶¶ 7, 39. 5 Star Trek fan fiction. episodes or film. **Supporting Evidence:** 6 The plot of *Prelude* is entirely new and the Prelude does not 7 ECF No. 48, feature an original plot. statements by Plaintiffs Counterclaim at 24-25, The plot is taken from suggest they do not 8 ¶¶ 30-31; Oki Decl., Ex. The Four Years War understand what a 13 (Peters Tr., Vol. I at 85:7-23); Oki Decl., Ex. "plot" is. There is no and "Whom Gods Destroy" of The similarity between the plot of *Prelude to* 9 Original Series. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4); Peters Decl., Ex. 1 Grossman Decl., ¶ 13, 10 Axanar and The Four Years War publication Ex. A (Peters tr. at 11 38:22-41:17); ¶ 14, Ex. other than the use of the title and a planet C (Gossett tr. at 48:10-12 50:10), Ex. I (April 26, name. And there is no 2014 émail from similarity between 13 Christian Gossett to Prelude to Axanar and Whom Gods Destroy Alec Peters). Van Citters Decl., ¶¶ 5-6, 13, 14, 19, 57. 14 outside of the character of Garth. 15 *Prelude* is not an Prelude to Axanar is a "interview" show – it is 16 mockumentary, a faux a film that uses documentary, meant to 17 interspersed fictional show fictional events in the Star Trek interviews along with 18 scripted, filmed universe. It is shot dialogue and action using interviews 19 sequences. intercut with visual effects scenes just like 20 a History Channel documentary or the 21 classic The World at War, which was an 22 inspiration. 23 It is undisputed that *Prelude* features 24 characters providing commentary on a prior 25 battle in an interview format. 26 ECF No. 48, 27 Counterclaim at 24-25, ¶¶ 30-31; ECF No. 75-15, Oki Decl., Ex. 13 28 (Peters Tr., Vol. I at

1 2				85:7-23); ECF No. 75- 7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-
3				23:8; 202:12-203:4); ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude</i>
4				to Axanar); ECF No. 90-9, Ranahan Decl. ¶
5				8, Ex. H ("Mockumentary"
6				Wikipedia Page)
7				See also, Evidentiary Objections to Van
8				Citters Decl., filed concurrently herewith;
9				See also, Evidentiary Objections to
10				Grossman Decl., filed concurrently herewith
11	14.	Defendants' Works are low budget, intended to	Disputed.	Disputed in a way that is immaterial to the
12		be distributed for free online, appeal to a		Motion, as the budget of Defendants' Works
13		relatively small audience of "Trekkies," and have	73,	is relatively low budget when compared to
14		made no profit.	Ex. A (Peters tr. at 70:24-7]	Plaintiffs' Works and under industry
15		Supporting Evidence:		guidelines.
16 17		Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)		The actual amount of money raised by
18		223.4)	ecl., Ex. A (Peters tr. at	ECF
19			192:3-193:21). This is	Peters Decl., Ex. 2
20			not low budget, and is comparable to the cost of an hour long Star	(Second Financial Summary, AX035571- AX035736)
21			Trek television program produced by CBS. Van	Any budget below
22			Citters Decl., ¶ 66.	\$2,500,000 is considered low budget
23			Peters wanted to create Star Trek content for	by industry guidelines. Li-A-Ping Decl., ¶ 8,
24			Netflix. Grossman Decl., ¶ 58, Ex. A	Ex. 10 (Internet post concerning minimum
25			(Peters tr. at 442:21- 449:9); Ex. LL	rates for filmmakers)
26			(Facebook message exchange between	An hour long Star Trek: Enterprise
27			Terry McIntosh and Alec Peters), ¶ 60, Ex.	episode cost \$5 million. Li-A-Ping
28			C (Gossett tr. at 126:10- 128:14), Ex. MM (April	Decl., ¶ 6, Exs. 5-6 (Media discussing the
			20, 2015 email	cost per episode of Star

1	exchange between Alec Peters and Christian	Trek series)
2	Gossett).	The new Star Trek TV
3	Peters attempted to	show reportedly has a \$6-7 million per
4	trademark	episode budget. Li-A- Ping Decl., ¶ 6, Exs. 5-
5		6 (Media discussing the cost per episode of
		Star Trek series)
6	Ex. A	
7	(Peters tr. at 442:21- 449:9); Ex. LL	
8	(Facebook message exchange between	
9	Terry McIntosh and Alec Peters); ¶ 59, Ex.	
10	E (McIntosh tr. at	
11	20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-	
12	128:14), Ex. MM (April 20, 2015 email	
13	exchange between Alec Peters and Christian	
14	Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-	Ex. A (Peters Tr., Vol. II at 447:5 -
15	25); ¶ 66, Ex. B. (Burnett tr. at 151:2-	448:25); ECF Nos. 90- 10, 94-3, Peters Decl.,
16	153:12), ¶ 67, Ex. PP (Axanar marketing	¶ 17
17	plan), ¶ 68, Ex. QQ (printout from	Defendant
18	Axanarproductions.com	
	Defendants' hysiness	
19	Defendants' business plan states	
20		1,
21		Grossman Decl., ¶ 13, Ex. A (Peters Tr.,
22		Vol. II at 447:5 - 448:25); ECF Nos. 90-
23		10, 94-3, Peters Decl., ¶ 17
24	7	The quote in this
25	Ex. PP (Axanar marketing plan).	paragraph is not from a "business plan" but
26	Peters' collaborator and	from
27	the director of Axanar,	
28	Rob Burnett, stated that he was creating Axanar	
	 in order to get more	

1		directing work	¶ 2
2			Ex. 1 (Peters tr., Vol. I at 236:14-241-13)
3 4			Prelude to Axanar and Axanar were created
5		Ex. B (Burnett tr. at	for a love of Star Trek. However, The Axanar
6		217:22-218:7); ¶ 78, Ex. C (Gossett tr. at_	team, as with any production, would
7		19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-	hope that the work would be good enough
8		456:16), Ex. OO (Facebook	to use to help promote their careers in the
9		between Alec Peters	future. This was not the reason Defendants
10		and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82	pursued Axanar, but an ancillary benefit. Li-A-Ping Decl., ¶ 2,
11		(Burnett tr. at 31:21- 36:20); Ex. RR (Robert	Ex. 1(Peters tr. at 81:5- 15); ECF Nos. 88-2,
12		Meyer Burnett online posting).	91-1, Grossman Decl., ¶ 13, Ex. A (Peters tr.
13		Peters created the	at 387:13-20)
14		Axanar Works in large part in order to	
15		showcase his own "producing" abilities, in	
16 17		the hopes that he wo	
18		Grossm , Ex. A (Peters tr. at 455:24-	.,
19		456:16); ¶ 77, Ex. B (Burnett tr. at 217:22-	
20		218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-	
21		22:20).	Peters Decl., ¶¶ 11-15
22		Mr. Burnett, the editor of Prelude to Axanar,	See also, Evidentiary
23		and director of the full length Axanar Film,	Objections to Grossman Decl., filed
24		also stated that he was creating the Axanar	concurrently herewith
25		Works as a "spec commercial" in order to	
26		abilities in the hopes to	
27		obtain other jobs in Hollywood. Grossman	
28		Decl., ¶ 82, Ex. B (Burnett tr. at 31:21- 36:20), Ex. RR (Robert	
	LL	30.20j, DA. KK (KOUCH	

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1 2			Meyer Burnett online posting).	
3			Peters	
4				
5				
6			65, Ex. A	
7			(Peters tr. at 234:11- 25); ¶ 66, Ex. B (Burnett tr. at 151:2-	
8			153:12), ¶ 67, Ex. PP (Axanar marketing plan).	
10			promy.	
11				
12			64, Ex. B (Burnett tr. at 142:14-	
13			148:8); ¶ 67, Ex. PP (Axanar marketing	
14			plan); Ex. QQ (printout from	
15			Axanarproductions.com).	
16 17	15.	In August of 2014, Defendants released Prelude for free on YouTube.com.	Undisputed.	This fact is established.
18 19		Supporting Evidence:		
20		ECF No. 48,		
21		Counterclaim, ¶ 16; Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:1-11, 85:7- 23); Oki Decl., Ex. 5 (Burnett Tr. at 22:8- 23:8; 202:12-203:4); Peters Decl., ¶ 7		
22		23); Oki Decl., Ex. 5 (Burnett Tr. at 22:8-		
23	16	23:8; 202:12-203:4); Peters Decl., ¶ 7	Hadisanda d	The Francisco of the last of
24	16.	In March of 2014, Defendants launched a Kickstarter campaign to	Undisputed.	This fact is established.
2526		raise money for the Potential Fan Film.		
27		Supporting Evidence:		
28		Oki Decl., Ex. 13 (Peters Tr., Vol. I at 239:20-23, 241:10-13); Peters Decl.,		
			20	

1		¶9		
2	17.	Aside from the <i>Vulcan Scene</i> (released for free	Disputed.	Disputed in a manner that is immaterial to
		on YouTube.com in July	Earlier this year, Peters	motion.
3		2015), which may or may not ultimately	stated that, in addition to the Axanar Script,	See also, Evidentiary
4		become part of the	and the filmed Vulcan	Objections to
5		Potential Fan Film, no scenes from the Potential	Scene, one third of the visual effects for the	Grossman Decl., filed concurrently herewith
6		Fan Film have been filmed.	full length Axanar film had been completed in a	-
7			special effects "reel."	
		Supporting Evidence :	Grossman Decl., ¶ 98. Defendants did not turn	
8		Peters Decl., ¶ 9; Oki Decl., Ex. 5 (Burnett Tr.	over this special effects reel. Grossman Decl.,	
9		at 174:3-10); Oki Decl.,	¶98.	
10		Ex. 6 (Hunt Tr. at 56:12- 25)		
11	18.	Of the six total characters portrayed in	Disputed.	Disputed in a way that is immaterial to the
		<i>Prelude</i> , four were	These characters were	Motion. Besides being
12		developed entirely by Defendants.	not "developed entirely by Defendants." The	inspired by the species, Defendants' characters
13		Supporting Evidence :	réferenced characters are Vulcans, Klingons	were vastly original. One is a Klingon who
14			and Starfleet Officers.	has minor similarities
15		Peters Decl., ¶ 8	They are depicted with costumes, makeup, hair	to Klingons seen in Star Trek. The other
16			and even logos and insignias that are copied	characters created are entirely new, human
			from Plaintiffs'	characters in new
17			characters. Van Citters Decl., ¶¶ 5, 25-32.	costumes. ECF Nos. 90-10, 94-3, Peters
18				Decl., ¶ 9; ÉCF Nos. 88-2, 91-1, Grossman
19				Decl., ¶ 13, Ex. A
20				Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 360:12-361:11); ECF
21				No. 75-19, Peters Decl., Ex. 1 (<i>Prelude</i>
22				to Axanar); ECF No.
				75-19, Peters Decl., ¶¶ 8, 10, 15
23				See also, Evidentiary
24				Objections to Van
25				Citters Decl., filed concurrently herewith;
26				See also, Evidentiary Objections to
27				Grossman Decl., filed
	19.	As the <i>Vulcan Scene</i> and	Disputed.	Concurrently herewith Undisputed that the
28		the Potential Fan Film are both intended to	The timeframe of the	time frame of Defendants' Works,
		me oom monded to	21	Dorongumo Works,

1		build off of the <i>Prelude</i>	Axanar Works is not	"twenty years before
2		storyline, they also are set in the same unique	unique. It is twenty years before <i>The</i>	the <i>Original Series</i> " has never been
		timeframe.	Original Series (which	explored in Star Trek
3		Supporting Evidence:	is several hundred years	television or film. The
4		Supporting Evidence :	in the future) and it is a timeframe that was	Four Years War publication lists dates
_		Oki Decl., Ex. 13 (Peters	explored and discussed	much later than
5		Tr., Vol. I at 43:9-14); Oki Decl., Ex. 6 (Hunt	in <i>The Four Years War</i> publication, which was	Prelude to Axanar and explores those dates in
6		Tr. at 44:18-25); Oki	used by Defendants to	a very different way.
7		Decl., Ex. 5 (Burnett Tr. At 104:11-105:17);	create the Axanar Works. Van Citters	There is nothing similar between them
		Peters Decl., Ex. 2	Decl., ¶¶ 13-15, 19, 39,	outside of the title and
8			60.Grossman Decl.,	the name of one planet.
9			¶ 16, Ex. A (Peters tr. at 143:13-145:7), ¶ 35, Ex.	ECF No. 48, Counterclaim at 24-25,
10			V (blueprints for the	¶¶ 30-31; ECF No. 75-
10			soundstage at Paramount Studios that	15, Oki Decl., Ex. 13 (Peters Tr., Vol. I at
11			was used for Star Trek);	85:7-23); ECF No. 75-
12			¶ 36, Ex. A (145:12- 147:10), Ex. W	7, Oki Decl., Ex. 5 (Burnett Tr. at 22:8-
			(blueprints), ¶ 32, Ex. C	23:8; 202:12-203:4);
13			(Gossett tr. at 47:22- 48:6); ¶ 15, Ex. A	ECF No. 75-20, Peters Decl., Ex. 1 (<i>Prelude</i>
14			(Peters tr. at 371:13-	to Axanar)
15			372:9), Ex. J (Mr. Gossett email exchange	
			with Mr. Peters) ¶ 17,	See also, Evidentiary
16			Ex. B (Burnett tr. at 202:12-203:4). Van	Objections to Van Citters Decl., filed
17			Citters Decl., ¶¶ 13, 14,	concurrently herewith;
18			Ex. AAA (The Four	See also, Evidentiary
			Years War supplement), Ex. BBB (copyright	Objections to Grossman Decl., filed
19			registration for The	concurrently herewith
20			Four Years War). Grossman Decl., ¶ 13,	
21			Ex. A (Peters tr. at	
			38:22-41:17); ¶ 14, Ex. C (Gossett tr. at 48:10-	
22			50:10), Ex. I (April 26,	
23			2014 email from Christian Gossett to	
			Alec Peters). Dkt. No.	
24			72-63, Ex. 19 (<i>Prelude</i> to <i>Axanar</i>).	
25	20.	The three minute <i>Vulcan Scene</i> features two	Disputed.	Undisputed that the
26		characters, one of which	Defendants' Vulcan	scene, dialogue, and with the exception of
27		is completely original, as well as Defendants' own	characters are not "original." Vulcans are	the species, the character, in <i>the</i>
		dialogue.	a fictional species	Vulcan Scene are
28		Supporting Evidence :	created by Plaintiffs and portrayed in the Star	original.
		Supporting Difficult.	22	

1		Oki Decl., Ex. 13 (Peters	Trek Copyrighted Works. The Vulcans in	Defendants' latest script for the longer
2		Tr., Vol. I at 43:9-14, 85:7-23); Peters Decl.,	Defendants' Vulcan Scene are depicted	film <i>Axanar</i> includes the original character
3		¶ 10; Oki Decl., Ex. 5 (Burnett Tr. at 22:8-	wearing Vulcan robes,	of T'Lera, who has never been seen in Star
4		23:8, 202:12-203:4); Oki	on the planet Vulcan, with Vulcan	Trek and was created
5		Decl., Ex. 6 (Hunt Tr. At 44:18-25); Peters Decl.,	architecture in the background. Van	by Defendants. Peters Supp. Decl., ¶ 5
6		Ex. 2	Citters Decl. ¶¶ 43-53.	See also, Evidentiary
7				Objections to Van Citters Decl., filed
8				concurrently herewith; See also, Evidentiary
				Objections to
9				Grossman Decl., filed concurrently herewith
10	21.	As a war mockumentary, <i>Prelude</i> was largely	Disputed.	Defendants are not in a position to dispute the
11		inspired by works such as "M*A*S*H," "Band	Prelude speaks for itself and does not include	inspirations of Defendants' Works,
12		of Brothers," "Babylon	any characters or	and have presented no
13		5," "The Pacific" and "The Civil War."	copyrighted elements from the cited works.	evidence to refute that <i>Prelude</i> was inspired
14		Supporting Evidence :	Further, Plaintiffs specifically asked for	inspired by works such as "M*A*S*H," "Band
15		Oki Decl., Ex. 5 (Burnett	Defendants' source documents used to	of Brothers," "Babylon 5," "The Pacific" and
16		Tr. at 22:15-23:18); Oki Decl., Ex. 6 (Hunt Tr. at	create the Axanar	"The Civil War," all of which were viewed
		51:8-16); Oki Decl., Ex.	Works (other than the Star Trek films and	online and are publicly
17		13 (Peters Tr., Vol. I at 57:19-58:4); Peters	television episodes which the parties agreed	available. In addition, the memories and
18		Decl., Ex. 1	did not need to be exchanged) and	experiences of those shows and movies are
19			Defendants did not turn over any of these	not something that is tangible. Defendant
20			claimed sources.	Peters relies on his
21			Grossman Decl., ¶ 99.	experience and memory when creating
22			Defendants advertised <i>Prelude</i> as an	fictional works. ECF No. 75-7, Oki Decl.,
23			independent Star Trek film, not as a war	Ex. 5 (Burnett Tr. at 22:15-23:18); ECF No.
24			movie. Grossman Decl., ¶ 54, Ex. A	75-7, Oki Decl., Ex. 6 (Hunt Tr. at 51:8-16);
25			(Peters tr. at 97:14-	ECF No. 75-7, Oki
			98:22), Ex. HH (screenshot from	Decl., Ex. 13 (Peters Tr., Vol. I at 57:19-
26			Defendants' Kickstarter fundraising page).	58:4); ECF No. 75-20, Peters Decl., Ex. 1
27			Grossman Decl., ¶ 34, Ex. A (Peters tr. at	(<i>Prelude to Axanar</i>); ECF No. 75-19, Peters
28			471:25-474:20), Ex. U (March 7, 2015 email	Decl., ¶ 9
			23	

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1 2 3 4 5 6 7 8 9 10			from Alec Peters to Christian Gossett). Grossman Decl., ¶ 29, Ex. C (Gossett tr. at 36:11-37:8), Ex. R (March 24, 2013 email from Sean Tourangeau to Christian Gossett and Alec Peters). Grossman Decl., ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13, 2014 email exchange between Alec Peters, Tobias Richter, and Christian Gossett). Grossman Decl., ¶ 10, Ex. C (Gossett tr. at 30:7 31:13 Ex. F	Prelude to Axanar is called "The Four Years War, Part III, Prelude to Axanar" in the title credits. It cannot be disputed that it is a war movie. ECF No. 75-20, Peters Decl., Ex. 1 (Prelude to Axanar) The use of the name "Star Trek" is irrelevant to this lawsuit, which has no trademark claims. Further, the use of the phrase "independent" to truthfully convey
10			30:7-31:13, Ex. F (January 4, 2011 email	to truthfully convey that it is not associated
11 12			from Alec Peters to Christian Gossett), Ex. A (Peters tr. at 332:15-	with Plaintiffs has no bearing on this Motion.
13			334:4). Grossman Decl., ¶ 12,	See also, Evidentiary Objections to
14			Ex. C (Gossett tr. at 32:7-34:16), Ex. H	Grossman Decl., filed concurrently herewith
15			(November 13, 2013 email exchange	concurrency nerowith
16			between Alec Peters and Christian Gossett),	
17			Ex. A (Peters tr. at 359:18-361:11).	**
18	22.	Mr. Peters modeled his performance of Garth of	Disputed and irrelevant.	Undisputed that an actor takes influences
19		Izar after the veterans depicted in "Band of Brothers," the HBO war	Prelude speaks for itself. Mr. Peters was	from many sources and incorporates them into his performance, and
20		documentary mini- series.	not portraying anyone from an HBO series, he portrayed Plaintiffs'	that Plaintiffs are not in a position to judge Mr.
21		Supporting Evidence :	character, Garth of Izar.	Peters' inspirations. Director Gossett
22		Peters Decl., ¶ 7		specifically showed Defendant Peters
23				"Band of Brothers" as the model for what he
24				wanted his performance as Garth
25 26				of Izar to be. The fact that fans have seen that portrayal as inspired by
27				portrayal as inspired by Major Dick Winters, one of the stars of that
28				show, without Defendant Peters'
				prompting, shows that

1				it is in fact, effective.
2				ECF No. 75-7, Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:19-
3				58:4); ECF No. 75-19, Peters Decl., ¶ 9
4	23.	The Potential Fan Film was also intended to	Disputed.	Undisputed as to the stated fact. Disputed
5		borrow from war film	Axanar was not a "fan	in a way that
6		sources, including "The Longest Day," "Patton,"	film" and, prior to the filing of this lawsuit,	immaterial to the Motion, and not
7		and "The Hunt for Red October."	Mr. Peters repeatedly rejected the implication,	supported by the evidence.
8			often explicitly, that he was involved in a "fan	There were many
		Supporting Evidence:	film." Grossman Decl.,	instances in which
9		Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18); Peters Decl., ¶ 9	¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising	Defendants did call their works "fan films." The distinction
11		Teters Beer., 5	page), ¶ 49, Ex. A	between "fan films"
			(Peters tr. at 99:10- 101:10), Ex. DD	and "professional" films was made only to
12			(Defendants' Indiegogo fundraising page), ¶ 50,	distinguish the quality of Defendants' Works.
13			Ex. A (Peters tr. at 108:6-109:12), Ex. EE	ECF No. 90-16, Peters Decl., Ex. 6 (Press
14			(Facebook post by Alec Peters), ¶ 51, Ex. A	Release); ECF Nos. 90-22, 94-7 Peters
15			(Peters tr. at 109:16-	Decl., Ex. 12 (Emails between
16			110:2), Ex. FF (Post on the Axanar Facebook	Alec Peters and
17			page), ¶ 53 (Peters tr. at 133:16-143:5; 134:10-	Morgen Schneider, AX030370-
18			143:5; 137:13-138:13; 138:21-140:2; 140:19-	AX030372); ECF No. 90-23, Ex. 13 (Axanar
19			141:5; 141:16-142:22), Ex. ZZ (transcript of	Facebook Post, AX035850); ECF No.
20			podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-	90-24, Ex. 14 (Axanar Tweet,
21			107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at	AX035927); ECF No. 90-21, Ex. 11 (Star
22			349:18-24), Ex. KK (Peters email to Doug	Trek Fan Film Flyer,
23			Drexler).	PL0000106); ECF No. 90-19, Ex. 9 (Axanar
24			The Axanar Script is not similar to any of	Blog Post, PL0005718-
25			these war films and there is no evidence to	PL0005720); ECF No. 90-20, Ex. 10 (Axanar
26			support this purported	Blog
			fact. T	Post, PL0005973- PL0005989); ECF No.
27				90-18, Ex. 8 (Axanar Facebook
28				Post, PL0008222); ECF Nos. 90-26, 94-9,
			25	, ,

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1	Grossman Decl., ¶ 41, Ex. A (Peters tr. at	Ex. 16 (Email from Marian Cordry to
2	77:5-9), ¶ 42, Ex. AA	Holly Amos and John
3	(Axanar Script at pages 8, 21), ¶ 22, Ex. C	Van Citters, PL0008689); ECF No.
4	(Gossett tr. at 112:14- 113:8), ¶ 45, Ex. A	90-17, Ex. 7 (Axanar Facebook
5	(Peters tr. at 44:21- 55:20; 362:9-363:13);	Post, PL0011822); ECF Nos. 90-25, 94-8,
6	¶ 46, Ex. B (Burnett tr. at 194:9-195:16;	Ex. 15 (Emails among Bill Burke, John Van
7	195:18-23). Van Citters Decl., ¶¶ 15-62.	Citters, and Leslie Ryan, PL0012814-
8	7 11 11	PL0012816); ECF No. 90-15, Ex. 5 (Email
9		from Marian Cordry to John
10		Van Citters, PL0013502-
11		PL0013503); ECF No. 90-14, Ex. 4 (Peters
12		Facebook Post, PL0013517);
13		ECF Nos. 90-11, 94-4, Ex. 1 (Axanar Annual
14		Report, Revised, 2015, PL0013763-
15		PL0013785); ECF No. 90-13, Ex. 3 (Emails
16		between Alec Peters and
17		Mallory Levitt, PL0013787-
18		PL0013788); ECF No. 90-6, Ranahan Decl., ¶
19		5, Ex. E (Gossett Tr. at 175:17-18)
20		The potential fan film
21		is in fact a war film and has many elements
22		typical to war films, including ship to ship
23		combat, hand to hand combat, burdens of
24		command, political implications, spycraft,
25		chain of command, dealing with the deaths
26		of comrades, etc. ECF No. 75-20, Peters
27		Decl., Ex. 1 (<i>Prelude</i> to Axanar); ECF Nos.
28		75-22, 77-8, 77-9, Peters Decl., Ex. 3
		(July 1, 2016 Axanar

1				Script)
2				In the potential fan film, only 7 of 57
3 4				characters have ever been seen before, and those characters are all
5				minor ones. ECF No. 75-19, Peters Decl., ¶
6				15; ECF Nos. 75-22, 77-8, 77-9, Peters
7				Decl., Ex. 3 (July 1, 2016 Axanar Script)
8				See also, Evidentiary Objections to Van
9				Citters Decl., filed concurrently herewith;
10				See also, Evidentiary Objections to
11	24	Will de Daniel I.	D' (1	Grossman Decl., filed concurrently herewith
12	24.	While the Potential Fan Film is unfinished, and	Disputed.	Undisputed as to the stated fact.
13		its scripts still in flux, the most recent draft	The Axanar Works are not a "fan film" and	Disputed in a way that
14		script featured 50 original characters (of a	Peters denied, prior to this lawsuit, that the	is immaterial to the Motion and not
15		total 57 characters).	Axanar Works were properly characterized	supported by the evidence.
16		Supporting Evidence:	as such. Grossman Decl., ¶ 48, Ex. A	There were many instances in which
17		Peters Decl., ¶ 15	(Peters tr. at 92:19- 94:1), Ex. CC	Defendants did call their works "fan
18			(Indiegogo fundraising page), ¶ 49, Ex. A	films." The distinction between "fan films"
19			(Peters tr. at 99:10- 101:10), Ex. DD	and "professional" films was made only to
20			(Defendants' Indiegogo fundraising page), ¶ 50,	distinguish the quality of Defendants' Works.
21			Ex. A (Peters tr. at 108:6-109:12), Ex. EE	ECF No. 90-16, Peters Decl., Ex. 6 (Press
22			(Facebook post by Alec Peters), ¶ 51, Ex. A	Release); ECF Nos. 90-22, 94-7 Peters
23			(Peters tr. at 109:16- 110:2), Ex. FF (Post on	Decl., Ex. 12 (Emails between
24			the Axanar Facebook page), ¶ 53 (Peters tr. at	Alec Peters and Morgen Schneider,
25			133:16-143:5; 134:10- 143:5; 137:13-138:13;	AX030370- AX030372); ECF No.
26			138:21-140:2; 140:19- 141:5; 141:16-142:22),	90-23, Ex. 13 (Axanar Facebook Post,
27			Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A	AX035850); ECF No. 90-24, Ex. 14 (Axanar
28			(Peters tr. at 106:6- 107:7), Ex. II (tweet)	Tweet, AX035927); ECF No.
			27	

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1	¶ 57, Ex. A (Peters tr. at	90-21, Ex. 11 (Star Trek Fan
2	349:18-24), Ex. KK (Peters email to Doug	Film Flyer,
3	Drexler).	PL0000106); ECF No. 90-19, Ex. 9 (Axanar
4		Blog Post, PL0005718-
5	n	PL0005720); ECF No. 90-20, Ex. 10 (Axanar
6	41, Ex. A (Peters tr. at 77:5-9),	Blog Post, PL0005973-
7	¶ 42, Ex. AA (script).	PL0005989); ECF No.
	Irrelevant to the extent	90-18, Ex. 8 (Axanar Facebook
8	Defendants claim to have altered the Axanar	Post, PL0008222); ECF Nos. 90-26, 94-9,
9	Script after the filing of suit.	Ex. 16 (Email from Marian Cordry to
10	Disputed that the	Holly Amos and John Van Citters,
11	Axanar Script contains "original" characters.	PL0008689); ECF No. 90-17, Ex. 7 (Axanar
12	The referenced characters are Klingons,	Facebook Post, PL0011822);
13	Vulcans, and Starfleet officers and personnel.	ECF Nos. 90-25, 94-8 Ex. 15 (Emails among
14	Van Citters Decl., ¶ 59.	Bill Burke, John Van
15		Citters, and Leslie Ryan, PL0012814-
16		PL0012816); ECF Nos. 90-15, Ex. 5
17		(Email from Marian Cordry to John
18		Van Citters, PL0013502-
19		PL0013503); ECF No. 90-14, Ex. 4 (Peters
20		Facebook Post, PL0013517);
21		ECF Nos. 90-11, 94-4, Ex. 1 (Axanar Annual
22		Report, Revised, 2015, PL0013763-
23		PL0013785); ECF No. 90-13, Ex. 3 (Emails
24		between Alec Peters and
		Mallory Levitt,
25		PL0013787- PL0013788); ECF No.
26		90-6, Ranahan Decl., ¶ 5, Ex. E (Gossett Tr. at
27		175:17-18)
28		Scripts are never final. A "locked" script
	28	

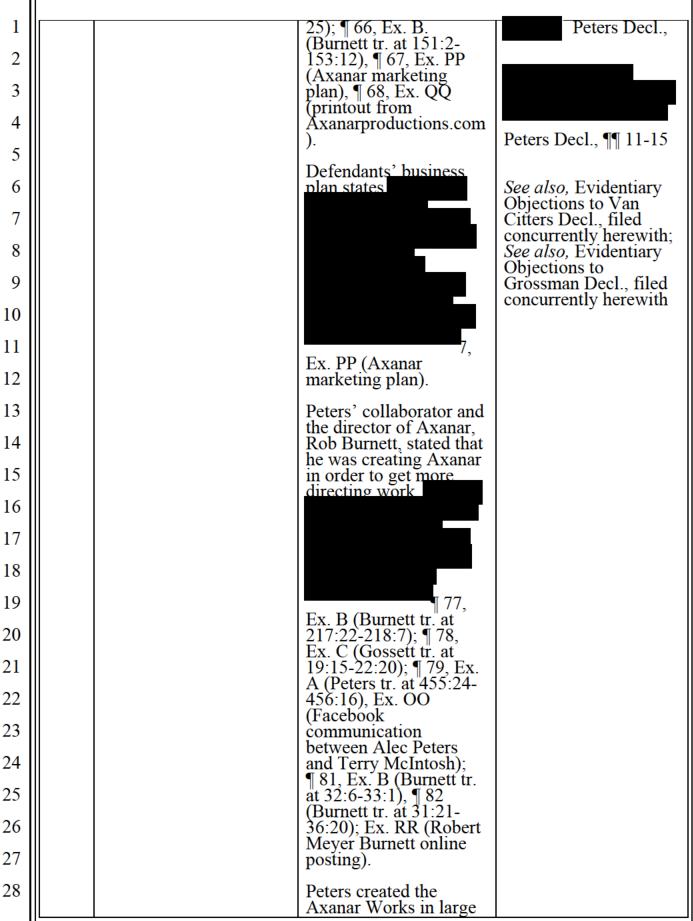
1 2				simply means that writers do not add sets, scenes or
3				characters before
				shooting begins. Mr. Peters did not refer to
4				it as "the best Star Trek movie script
5				ever!" He was expressly restating a
6				comment by someone else. ECF No. 75-19,
7				Peters Decl., ¶ 13 ECF Nos. 75-22, 77-8,
8				77-9, Peters Decl., Ex. 3 (July 1, 2016
9				Axanar Script)
10				Plaintiffs' claim suggests that there can
11				be no "original" characters in the Star
12				Trek universe.
13				See also, Evidentiary Objections to Van
14				Citters Decl., filed concurrently herewith;
15				See also, Evidentiary Objections to
16				Grossman Decl., filed concurrently herewith
17	25.	At the Motion to	Disputed.	Disputed. A "locked"
18		Dismiss stage of these proceedings, this Court	The Court noted that the	script simply means that writers do not add
19		relied on the truth of Plaintiffs' allegation that	particular cited allegation was	sets, scenes, or characters before
20		as of August 2015, there was a "fully revised and	supported by specific facts, including Mr.	shooting begins. Mr. Peters did not refer to
21		locked" script for the Potential Fan Film.	Peters' own public posting that he had	it as "the best Star Trek movie script
22		Supporting Evidence :	created a "fully revised and locked script."	ever!" He was expressly restating a
23		FAC ¶ 36; ECF No. 54	Grossman Decl., ¶ 40, Ex. Z.	comment by someone else. ECF No. 75-19,
24		(Order re Defendants' Motion to Dismiss) at 5,		Peters Decl., ¶ 13 ECF Nos. 75-22, 77-8,
25		7		77-9, Peters Decl., Ex. 3 (July 1, 2016
26				Axanar Script)
27				See also, Evidentiary Objections to
28				Grossman Decl., filed concurrently herewith
-	26.	As has been shown	Disputed.	Undisputed that Mr.
			29	

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1		through discovery, Defendants used "locked	t	Peters has also testified that more recent scripts
2		script" as a term of art meaning that no new		have superseded version 7.7. Peters
3		sets, scenes or characters will be added to a script,		Decl., ¶ 13, Peters Decl., Ex. 3; Oki Decl.,
4		and is used to aid in budgeting purposes.		Ex. 6 (Hunt Tr. at 49:18-50:5). A
5		Supporting Evidence:	cl., ¶ 41,	"locked" script simply means
6		Oki Decl., Ex. 6 (Hunt	Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA	that writers do not add sets, scenes, or
7		Tr. at 47:19-48:6); Peters Decl., ¶ 13, Peters	(script).	characters before shooting begins. Mr.
8		Decl., Ex. 3		Peters did not refer to it as "the best Star
9				Trek movie script ever!" He was
10				expressly restating a comment by someone
12				else. ECF No. 75-19, Peters Decl., ¶ 13 ECF Nos. 75-22, 77-8,
13				77-9, Peters Decl., Ex. 3 (July 1, 2016
14				Axanar Script)
15				See also, Evidentiary Objections to Grossman Decl., filed
16				concurrently herewith
17	27.	Many scripts have been created since the	Disputed.	Plaintiffs do not dispute the stated fact.
18		unfinished August 2015 script, all using varying	It is irrelevant whether Peters modified the	This fact is established.
19		degrees of the Star Trek Universe.	script after the lawsuit.	
20 21		Supporting Evidence:		
22		Peters Decl., ¶ 13, Peters Decl., Ex. 3		
23	28.	Defendants are not currently committed to	Disputed.	Plaintiffs do not dispute the stated fact.
24		using any of the existing scripts in the Potential	Defendants' post- lawsuit revisions and	This fact is established.
25		Fan Film, and have not decided what format,	"considerations" are irrelevant.	
26		length and substance the Potential Fan Film will	mole vant.	
27		take, though are considering whether to		
28		make more mockumentary style		
		works.	30	
	30			

1		Supporting Evidence:		
2 3		Oki Decl., Ex. 13 (Peters		
4		Tr., Vol. I at 74:10-23); Peters Decl., ¶¶ 13-14; Oki Decl., Ex. 6 (Hunt		
5		Tr. at 49:18-50:5); Oki Decl., Ex. 5 (Burnett Tr.		
	20	at 88:7-18 97:11-98:7)	Di di di di di	
6 7	29.		Disputed, to the extent that Plaintiffs' Star Trek Copyrighted Works are	Plaintiffs do not dispute the stated fact, which does not state
8			distributed in other markets as well, such as	that it is an exhaustive list. This fact is
9			cable distribution, print, etc. Further, Plaintiffs	established.
10			object to the statements of Mr. Tregillis as	The subpoena issued to Mr. Tregillis was
11			hearsay. There is no declaration from Mr.	neither timely nor reasonable. See
12		Supporting Evidence:	Tregillis.	Ranahan Declaration, ¶ 3 and Ex. A.
13		Oki Decl., Ex. 3 (Report	Further, Plaintiffs timely subpoenaed Mr.	
14		of Christian Tregillis) at ¶¶ 7-12, 34-35; ECF No. 72-63	Tregillis for deposition, prior to the filing of Defendants' Motion for	
15		72-03	Summary Judgment. Defendants' counsel	
16			refused to make Mr. Tregillis available for	
17			deposition on the grounds that the "fact	
18			discovery" deadline had passed (prior to the	
19			service of any expert reports) and stated that	
20			she was not making any of Defendants' experts	
21			available for deposition. Thereafter, Defendants	
22			submitted the Tregillis report as an exhibit to	
23			Ms. Oki's declaration, and yet still refused to	
24			make him available for deposition on the	
25			subpoenaed date, or at any time prior to the	
26			deadline to file this Opposition.	
27			His testimony, if not	
28			excluded as hearsay, should be excluded for	
- 1	I		31	

1			failure to make him	
2			available pursuant to a timely-served subpoena.	
	30.	Defendants' Works are	Disputed.	Undisputed with
3		not intended to be commercialized, and	Peters stated: "But	respect to the stated fact.
4		Defendants have no	Axanar is not just an	
5		ambitions of competing against Plaintiffs' Works	independent Star Trek film; it is the beginning	Plaintiffs attempt to mischaracterize the
6		in movie theaters, on	of a whole new way	document in way that
		streaming services, or to	that fans can get the content they want, by	takes this statement out of context. This
7		otherwise sell their	funding it themselves.	statement was made to address how fans
8		Works for profit.	Why dump hundreds or thousands of dollars a	watch science fiction
9		Supporting Evidence:	year on 400 cable channels, when what	shows they enjoy, not how to stop fans from
10		Oki Decl., Ex. 13 (Peters Tr., Vol. I at 225:5-6);	you really want is a few good sci-fi shows?"	watching Plaintiffs' Works. ECF Nos. 88-
11		Oki Decl., Ex. 4 (Report of Henry Jenkins) at 4	Grossman Decl., ¶ 49, Ex. A (Peters tr. at	2, 91-1, Grossman Decl., ¶ 13, Ex. A
12			99:10-100:15), Ex. DD (Axanar Indiegogo	(Peters tr. at 99:10- 100:15), ECF No. 88-
13			fundraising page).	32, Grossman Decl., Ex. DD (Axanar
14			Plaintiffs' Star Trek Copyrighted Works are	Indiegogo fundraising page)
15			distributed via cable.	
			Van Citters Decl., ¶ 11.	Prelude to Axanar and Axanar were created
16			Peters attempted to meet with Netflix to	for a love of Star Trek. However, the Axanar
17			become a producer of	team, as with any
18			Star Trek productions, attempted to tradem	production, would hope that the work
19				would be good enough
20				to use to help promote their careers in the future. This was not
21			58,	the reason Defendants pursued Axanar, but an
22			Ex. A (Peters tr. at	ancillary benefit.
			442:21-449:9); Ex. LL (Facebook message	Li-A-Ping Decl., ¶ 2, Ex. 1(Peters tr. at 81:5-
23			exchange between Terry McIntosh and	15); ECF Nos. 88-2, 91-1, Grossman Decl.,
24			Alec Peters); ¶ 59, Ex. E (McIntosh tr. at	¶ 13, Ex. A (Peters tr. at 387:13-20)
25			20:23-22:15), ¶ 60, Ex.	ŕ
26			C (Gossett tr. at 126:10- 128:14), Ex. MM (April	Defendant Peters is
27			20, 2015 email exchange between Alec	
28			Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-	
		I	(1 ctc15 tf. at 257.11-	



1 2	show	in order to vease his own
3	the 1	oducing" abilities, in nopes that he CBS
4		Gros , Ex. A
5	(Pet 456:	ers tr. at 455:24- (16); ¶ 77, Ex. B
6	(But 218:	rnett tr. at 217:22- 27); ¶ 78, Ex. C
7	(Gos 22:2	ssett tr. at 19:15- (0).
8		Burnett, the editor relude to Axanar,
9	and	director of the full th Axanar Film,
10	also crea	stated that he was ting the Axanar
11 12	Wor	ks as a "spec mercial" in order to
13	abili	vease his directing titles in the hopes to in other jobs in
14	Hol	ywood. Grossman I., ¶ 82, Ex. B
15	(Bur 36:2	rneft tr. at 31:21- 00), Ex. RR (Robert
16		ver Burnett online ing).
17	Pete	rs
18		
19		
20		65, Ex. A
21	(Pet 25);	ers tr. at 234:11- ¶ 66, Ex. B
22 23		rnett tr. at 151:2- 12), ¶ 67, Ex. PP anar marketing
24	plan	
25		
26		
27	(But	64, Ex. B rnett tr. at 142:14-
28		rnett tr. at 142:14- (8); ¶ 67, Ex. PP anar marketing); Ex. QQ (printout
		34

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1			from Axanarproductions.com	
2).	
3 4	31.	Plaintiffs' most recent feature film, <i>Star Trek Beyond</i> , had a	Objection, irrelevant and hearsay. Plaintiffs object to the statements of Mr. Tregillis as	Undisputed as to the stated fact.
5		production budget of \$185 million and has grossed over \$350	hearsay. There is no declaration from Mr.	Disputed in a manner that is immaterial to
6		million worldwide since its July 22, 2016 release.	Tregillis.	motion.
7		Supporting Evidence :	Further, Plaintiffs subpoenaed Mr. Tregillis for deposition,	The subpoena issued to Mr. Tregillis was neither timely nor
8		Oki Decl., Ex. 3 (Report of Christian Tregillis) at	prior to the filing of Defendants' Motion for	reasonable. See Ranahan Declaration, ¶
9		¶ 10	Summary Judgment. Defendants' counsel	3 and Ex. A.
10			refused to make Mr. Tregillis available for	See also, Evidentiary Objections to
11			deposition on the grounds that the "fact	Grossman Decl., filed concurrently herewith
12			discovery" deadline had passed (prior to the	concurrently nerewith
13			service of any expert	
14			reports) and stated that she was not making any	
15			of Defendants' experts available for deposition.	
16			Thereafter, Defendants submitted the Tregillis	
17			report as an exhibit to Ms. Oki's declaration,	
18			and yet still refused to make him available for	
19			deposition on the subpoenaed date, or at	
20			any time prior to the deadline to file this	
21			Opposition. Grossman Decl., ¶ 100, Ex. JJJ	
22			(email exchange with counsel for	
23			Defendants).	
24			His testimony, if not excluded as hearsay,	
25			should be excluded for failure to make him	
26			available pursuant to a timely-served subpoena.	
27	32.	Plaintiffs' Works are budgeted and produced	Disputed and irrelevant.	Undisputed as to the stated fact.
28		for appeal to the general public worldwide, offering the type of	Plaintiffs object to statements of Mr. Tregillis as hearsay.	Disputed in a manner
	35			Disputed in a manner

1	production, special effects, talent, and other	There is no declaration from Mr. Tregillis.	that is immaterial to motion.
2	qualities that result in extensive profits.	Further, Plaintiffs	The subpoena issued to
3	_	timely subpoenaed Mr.	Mr. Tregillis was
4	Supporting Evidence :	Tregillis for deposition, prior to the filing of	neither timely nor reasonable. See
5	Oki Decl., Ex. 3 (Report	Defendants' Motion for	Ranahan Declaration, ¶ 3 and Ex. A.
	of Christian Tregillis) at ¶ 10	Summary Judgment. Defendants' counsel	
6		refused to make Mr. Tregillis available for	See also, Evidentiary Objections to Van
7		deposition on the	Citters Decl., filed
8		grounds that the "fact discovery" deadline had	concurrently herewith
9		passed (prior to the service of any expert	
		reports) and stated that	
10		she was not making any of Defendants' experts	
11		available for deposition. Thereafter, Defendants	
12		submitted the Tregillis	
13		report as an exhibit to Ms. Oki's declaration,	
		and yet still refused to	
14		make him available for deposition on the	
15		subpoenaed date, or at any time prior to the	
16		deadline to file this	
17		Opposition. Grossman Decl., ¶ 100, Ex. JJJ	
18		(email exchange with counsel for	
		Defendants).	
19		His testimony, if not excluded as hearsay,	
20		should be excluded for failure to make him	
21		available pursuant to a	
22		timely-served subpoena. Further, there is no	
23		evidence that the assertion is true of all of	
		Plaintiffs works, or that	
24		all of Plaintiffs' works are similar in this	
25		regard. Specifically,	
26		the one hour episodes of the last Star Trek	
27		television series were budgeted at	
		approximately \$2.2	
28		million to \$2.4 million, the same range as	

1			Axanar's budget,	
2			particularly if Peters was to raise more funds	
2			to complete Axanar.	
3	33.		Van Citters Decl., ¶ 66. Undisputed that	
4			Plaintiffs did not serve a	Undisputed as to the
5			takedown notice. Instead, Plaintiffs filed	stated fact.
			this lawsuit, and	
6		Supporting Evidence:	requested the court to enjoin the distribution	Adds allegations
7			of the Axanar Works.	immaterial to motion.
8		Oki Decl., Ex. 10 (Deposition of Dan		
9		O'Rourke, Sept. 30,		
		2016 ("O'Rourke Tr.") at 99:15-100:2); Oki		
10		Decl., Ex. 9 (Deposition		
11		of John Van Citters, Sept. 28, 2016 ("Van		
12		Cifters Tr.") at 160:13-		
	34.		Disputed.	Undisputed as to the
13			This is a	stated fact, and Plaintiffs cite no
14			mischaracterization of	evidence to refute this
15			Plaintiffs' interrogatory responses and	fact. This fact is established.
16			deposition testimony	
		Supporting Evidence:	which extensively discuss the harm to	
17		Oki Decl., Ex. 14 (CBS	Plaintiffs from the unchecked creation of	
18		Studios Inc.'s Responses	unauthorized derivative	
19		to Requests for Admission, Set Two,	works.	
		Response to Request for		Decl., Ex. 14
20		Admission Nos. 72-73); Oki Decl., Ex. 15		(Paramount Pictures Corporation's
21		(Paramount Pictures		Responses to Requests
22		Corporation's Responses to Requests for		for Admission, Set Two, Response to
23		Admission, Set Two,		Request for Admission
		Response to Request for Admission Nos. 72-73);		Nos. 72-73); ECF No. 75-17, Oki Decl., Ex.
24		Oki Decl., Ex. 1 (CBS) Studios Inc.'s Amended		15 (CBS Studios Inc.'s
25		Responses to		Responses to Requests for Admission, Set
26		Interrogatories, Set One, Response to		Two, Response to Request for Admission
		Interrogatory Nos. 4-9);		Nos. 72-73); ECF Nos.
27		Oki Decl., Ex. 2 (Paramount Pictures		75-11, 77-4, Oki Decl., Ex. 9 (Van Citters Tr.
28		Corporations Amended		at 94:8-95:7, 119:19-
		Responses to		124:18); ECF Nos. 75-

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l				
1		Interrogatories, Set One, Response to		12, 77-5, Oki Decl., Ex. 10, O'Rourke Tr.
2		Interrogatory Nos. 4-9); Oki Decl., Ex. 3 (Report		at 60:22-61:5; 63:8-16; Li-A-Ping Decl., ¶ 4,
3 4		of Christian Tregillis) at ¶ 58-62; Oki Decl., Ex. 9		Ex. 3 (Tregillis Report, ¶¶ 58-62)
5		(Van Citters Tr. at 94:8- 95:7, 119:19-124:18); Oki Decl., Ex. 10		
6		(O'Rourke Tr. at 60:22-		
7	35.		Disputed.	Undisputed that Plaintiffs did not
8			Plaintiffs did concern themselves with	complain about Prelude from the time
9			Prelude, and considered it an infringing work.	it was released un 2014 until this lawsuit was
10		Supporting Evidence :	Grossman Decl., ¶ 97, Ex. CCC (Van Citters	filed, and has still never sent YouTube a
11		Oki Decl., Ex. 9 (Van Citters Tr. at 52:14-18,	and O'Rourke testimony).	takedown notice regarding that <i>Prelude,</i>
12		54:9-23, 119:19- 124:18); Oki Decl., Ex.	• ,	and that Plaintiffs' witnesses testimony
13		10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)		speaks for itself. Disputed in a manner that is immaterial to
14				motion.
15				See also, Evidentiary Objections to
16				Grossman Decl., filed concurrently herewith
17				
18	36.		Disputed.	Undisputed as to the stated fact. Plaintiffs
19			There is no admissible evidence to support the	present no evidence to refute stated fact.
20 21			stated fact.	Li-A-Ping Decl., Ex. 4 (Jenkins Report at 3);
22			The unsworn statements by Jonathan Lane,	ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin Tr. at 40:18-41:18);
23			Henry Jenkins, and Christian Tregillis are hearsay, as is Exhibit 1	ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van
24		Supporting Evidence :	to the Watkins declaration. There are	Citters Tr. at 62:1-25, 137:5-21); ECF No.
25		Declaration of Jonathan Lane, Nov. 15, 2016	no declaration from Mr. Tregillis or Mr. Jenkins.	75-10, Oki Decl., Ex. 8 (Kalodner Tr. at 33:22-
26		("Lane Decl."), Ex. 1; Oki Decl., Ex. 4 (Report	The cited testimony	42:17); ECF No. 75-9, Oki Decl., Ex. 7
27		of Henry Jenkins) at 2; Declaration of Reece	from John Van Citters, Elizabeth Kalodner, and	(Burke Tr. at 40:5- 45:7); ECF No. 75-18,
28		Watkins, Nov. 15, 2016 ("Watkins Decl."), Ex. 1; Oki Decl., Ex. 3	Bill Burke does not provide that there is increased and continued	Oki Decl, Ex. 16 (StarTrek.com Article); ECF No. 75-29,
		1, ORI DOCI., LA. J	38	LOI 110. 13-27,

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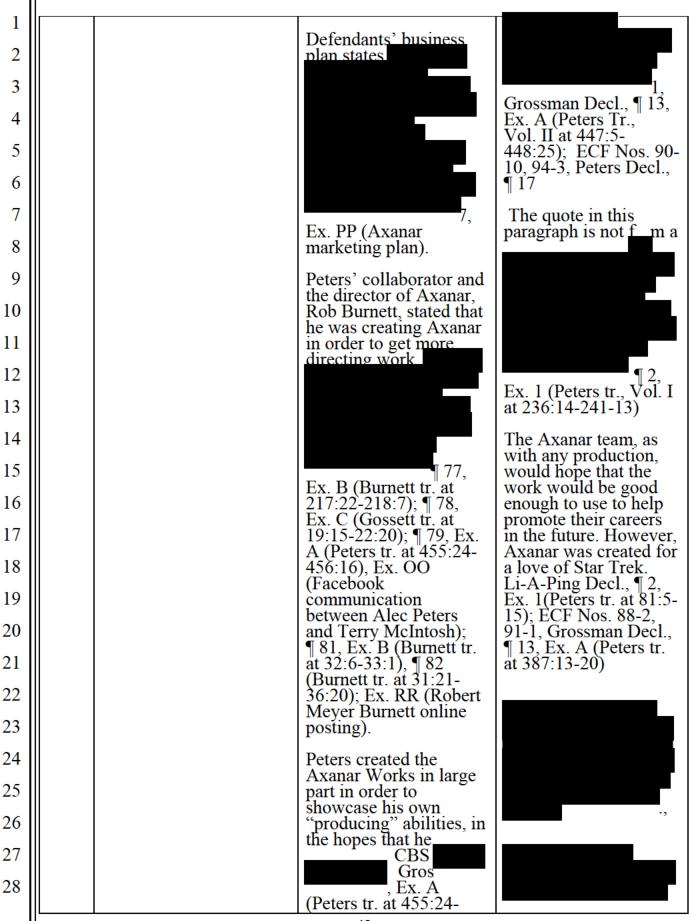
1		(Report of Christian	enthusiasm for	Watkins Decl., Ex. 1
2		Tregillis) ¶ 63; Oki Decl., Ex. 9 (Van Citters	Plaintiffs' works due to the Axanar Works.	(Facebook Post); ECF Nos. 75-14, 77-7, Oki
3		Tr. at 137:5-21); Oki Decl., Ex. 8 (Deposition	Exhibit 16 is simply an	Decl., Ex. 12 (Abrams Tr., Ex. 310 (Tweets));
		of Elizabeth Kalodner	article about the	Li-A-Ping Decl., ¶ 4,
4		("Kalodner Tr."), Oct. 13, 2016 at 33:22-	licensed tour of a replica of the set from	Ex. 3 (Tregillis Report, ¶¶ 58-62)
5		42:17); Oki Decl., Ex. 7 (Deposition of Bill	The Original Series.	The subpoenas issued
6		Burke, Nov. 3, 2016	Further, Plaintiffs	to Mr. Tregillis and Dr.
7		("Burke Tr.") at 40:5- 45:7; Oki Decl., Ex. 16	timely subpoenaed Mr. Jenkins for deposition,	Jenkins were neither timely nor reasonable.
8			prior to the filing of Defendants' Motion for	See Ranahan Decl., ¶ 3 and Ex. A.
			Summary Judgment.	
9			Defendants' counsel refused to make Mr.	See also, Evidentiary Objections to
10			Jenkins available for deposition on the	Grossman Decl., filed concurrently herewith
11			grounds that the "fact	concurrency nerowith
12			discovery" deadline had passed (prior to the	
13			service of any expert reports) and stated that	
			she was not making any	
14			of Defendants' experts available for deposition.	
15			Thereafter, Defendants submitted the Jenkins	
16			report as an exhibit to	
17			Ms. Oki's declaration, and yet still refused to	
18			make him available for deposition on the	
			subpoenaed date, or at	
19			any time prior to the deadline to file this	
20			Opposition. Grossman Decl., ¶ 100, Ex. JJJ	
21			(email exchange with	
22			counsel for Defendants).	
23			His testimony, if not excluded as hearsay,	
24			should be excluded for failure to make him	
			available pursuant to a	
25	37.	Star Trek fans have	timely-served subpoena. Disputed.	Undisputed that Star
26		produced and disseminated fan fiction	This is inaccurate and	Trek fans have produced and
27		for over 50 years,	irrelevant.	disseminated fan
28		without complaint, and rather with	The unsworn statements	fiction for over 50 years, and Plaintiffs
		encouragement from	of Christian Tregillis	have provided only one
	I		39	

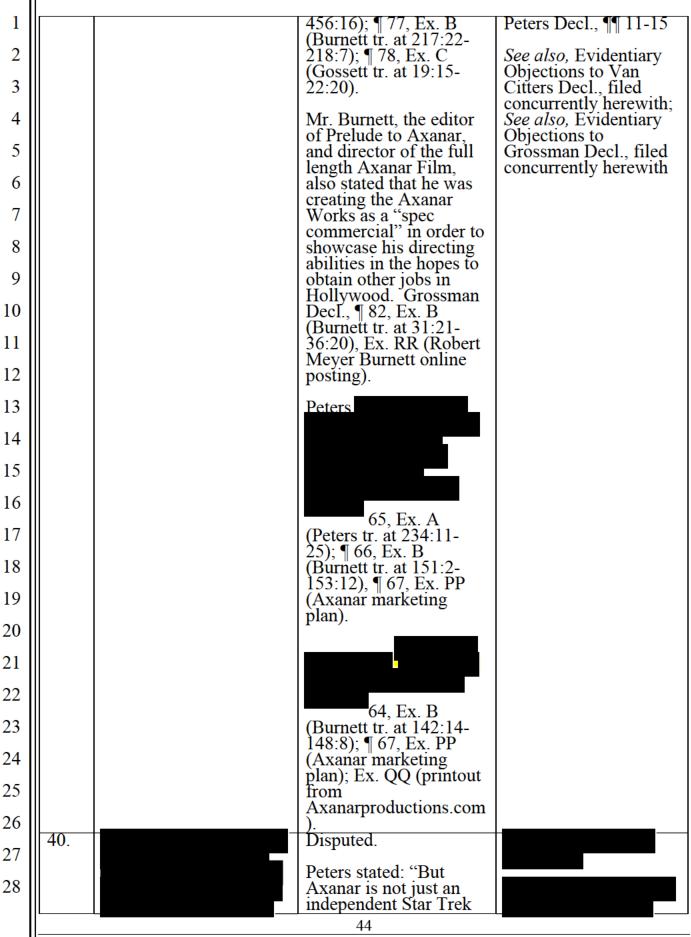
1 Plaintiffs. and Jonathan Lane are example of a lawsuit hearsay. during that time. 2 **Supporting Evidence:** Plaintiffs have filed suit No lawsuit has ever been filed against a 3 Oki Decl., Ex. 3 (Report in the past against infringers of their Star Star Trek fan film, and of Christian Tregillis) at 4 ¶¶ 10-12; Lane Decl., Trek works. See, e.g. in fact CBS has stated Ëx. 1 at 1 Paramount Pictures to Defendants that they 5 Corp. v. Carol Publ'g have only once ever *Group*, 11 F. Supp. 2d 329 (S.D.N.Y. 1998). issued a Cease and 6 Desist letter to a fan film. Hundreds of fan 7 Moreover, whether or films have been made not Plaintiffs have filed over the last 40 years 8 suit before is irrelevant. with absolutely no See id. at 337 (Court interference by 9 rejected defenses of Paramount or CBS. Li-A-Ping Decl., Ex. 4 abandonment and 10 (Jenkins Report at 3); estoppel asserted by a ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin defendant who created a 11 work that infringed on Tr. at 40:18-41:18); the Star Trek 12 copyrights, holding: ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van "Defendants instead 13 Citters Tr. at 62:1-25, allege that Paramount's 137:5-21); ECF No. failure to commence 75-10, Oki Decl., Ex. 8 litigation against other 14 potentially infringing (Kalodner Tr. at 33:22-15 42:17); ECF No. 75-9, books estops them from bringing this action. Oki Decl., Ex. 7 Extending the doctrine (Burke Tr. at 40:5-16 of estoppel so that a 45:7); ECF No. 75-18, 17 defendant may rely on a Oki Decl, Ex. 16 plaintiff's conduct (StarTrek.com Article); Li-A-Ping Decl., ¶ 4, 18 toward another party is Ex. 3 (Tregillis Report, both unsupported by $\P = 58-62$ 19 law and pernicious as a matter of policy."). 20 Even though Plaintiffs There is no sworn were ordered to 21 declaration from Mr. produce all communications Tregillis and, although 22 regarding fan films, Plaintiffs timely they did not produce subpoenaed Mr. 23 Tregillis for deposition, any cease and desist prior to the filing of letter ever sent to any Defendants' Motion for 24 fan film. ECF No. 60 Summary Judgment, (Order dated Oct. 21, Defendants' counsel 25 2016) refused to make Mr. 26 Tregillis available for deposition on the The subpoena issued to grounds that the "fact Mr. Tregillis was 27 discovery" deadline had neither timely nor 28 passed (prior to the reasonable. See service of any expert Ranahan Declaration, ¶

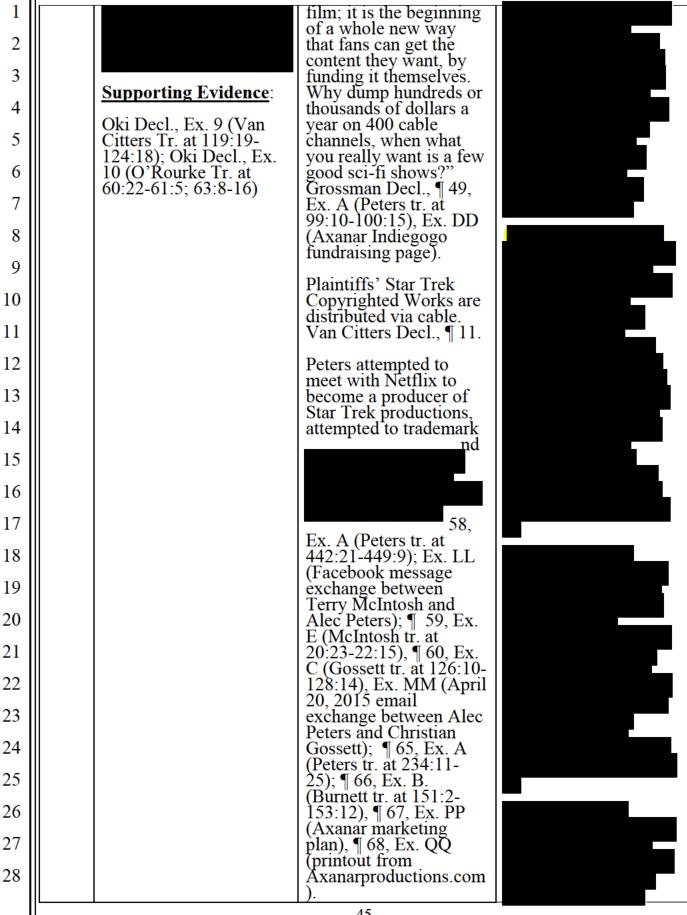
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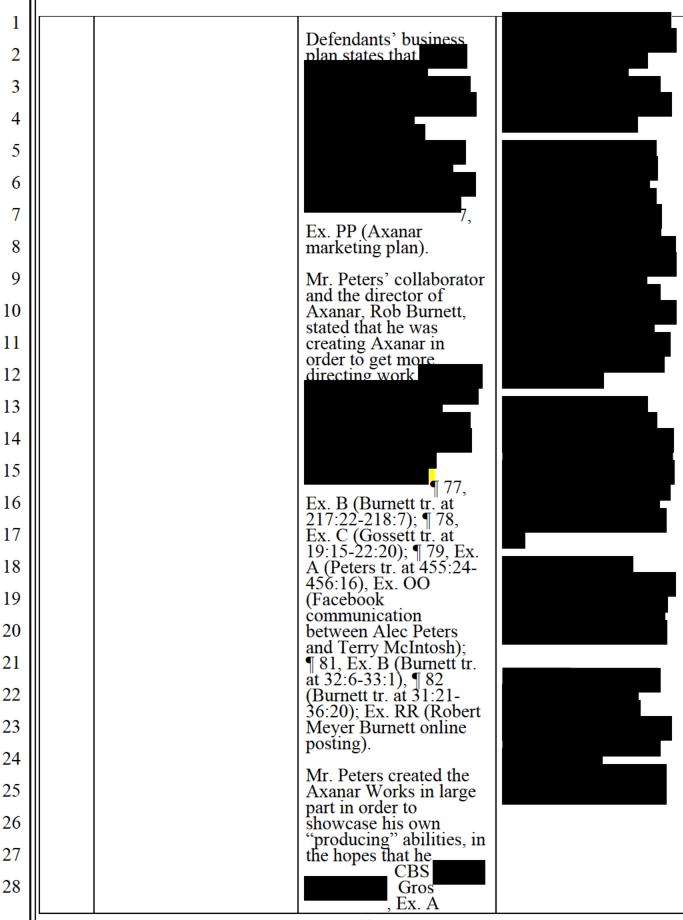
1 2 3 4 5 6 7 8 9 10 11 12 13 14	38.	Plaintiffs have benefitted	reports) and stated that she was not making any of Defendants' experts available for deposition. Thereafter, Defendants submitted the Tregillis report as an exhibit to Ms. Oki's declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants). His testimony, if not excluded as hearsay, should be excluded for failure to make him available pursuant to a timely-served subpoena. Disputed.	3 and Ex. A. See also, Evidentiary Objections to Grossman Decl., filed concurrently herewith Undisputed as to the
14	38.	Plaintiffs have benefitted from the unpaid and		Undisputed as to the stated fact.
15		often unacknowledged labor of fans, who have	The statements of Henry Jenkins are	
16		helped to maintain engagement in the	hearsay and lack foundation.	Disputed in a manner
17 18		Plaintiffs' Works during leaner years in Plaintiffs' cycle of production.	Further, Plaintiffs	that is immaterial to motion.
19		Supporting Evidence:	timely subpoenaed Mr. Jenkins for deposition, prior to the filing of	The subpoena issued to
20		Oki Decl., Ex. 4 (Report	Defendants' Motion for Summary Judgment.	Dr. Jenkins was neither timely nor reasonable.
21		of Henry Jenkins) at 8	Defendants' counsel refused to make Mr.	See Ranahan Declaration, ¶ 3 and
22			Jenkins available for deposition on the	Ex. A.
23			grounds that the "fact discovery" deadline had	See also, Evidentiary Objections to
24			passed (prior to the service of any expert	Grossman Decl., filed concurrently herewith
25			reports) and stated that she was not making any of Defendants' experts	
26			available for deposition. Thereafter, Defendants	
27			submitted the Jenkins report as an exhibit to	
28			Ms. Oki's declaration, and yet still refused to	
			/1	

1			make him available for	
2			deposition on the subpoenaed date, or at	
3			any time prior to the deadline to file this	
			Opposition. Grossman	
4			Decl., ¶ 100, Ex. JJJ (email exchange with	
5			counsel for	
6			Defendants). His testimony, if not	
7			excluded as hearsay,	
			should be excluded for failure to make him	
8			available pursuant to a timely-served subpoena.	
9	39.	Prelude had a	Disputed.	Undisputed as to the
10		production budget of \$125,000.00, and was	The Axanar Works are	stated fact.
11		posted on YouTube.com	commercial works for	The Axanar Works are
		to be viewed for free, with no profit to	profit.	non-commercial, given away for free, and no
12		Defendants.	Peters attempted to meet with Netflix to	profit has been made from them. ECF No.
13		Supporting Evidence:	become a producer of	75-19, Peters Decl, ¶
14		Peters Decl., ¶ 7	Star Trek productions, attempted to tradem	11; ECF No. 75-15, Oki Decl., Ex. 13
15		7 11	1	(Peters Tr., Vol. I at 224:21-225:4); ECF
				Nos. 90-10, 94-3,
16				Peters Decl., ¶¶ 11-15
17			Ex. A (Poters tr. et	
18			Ex. A (Peters tr. at 442:21-449:9); Ex. LL	
19			(Facebook message exchange between	
			Terry McIntosh and	
20			Alec Peters); ¶ 59, Ex. E (McIntosh tr. at	
21			20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-	
22			128:14), Ex. MM (April	
23			20, 2015 email exchange between Alec	
24			Peters and Christian	Grossman Decl.,
			Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-	¶ 13, Ex. A (Peters Tr., Vol. II at 447:5 -
25			25); ¶ 66, Ex. B. (Burnett tr. at 151:2-	448:25); ECF Nos. 90- 10, 94-3, Peters Decl.,
26			153:12), ¶ 67, Ex. PP	¶ 17
27			(Axanar marketing plan), ¶ 68, Ex. QQ	
28			(printout from Axanarproductions.com	
).	
- 1			42	



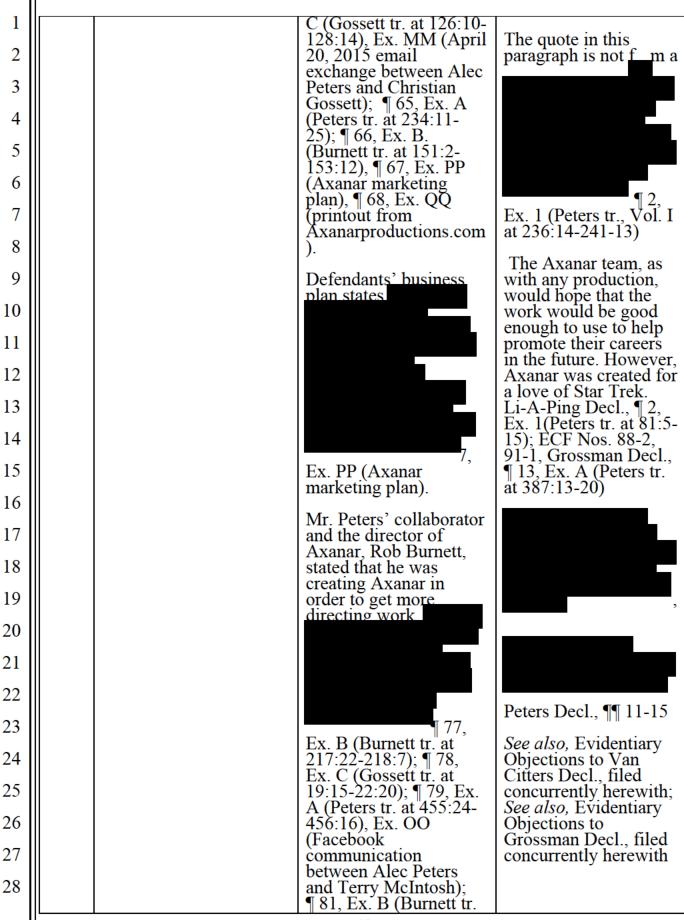






1	(Peters tr. at 455:24- 456:16): ¶ 77. Ex. B	
2	456:16); ¶ 77, Ex. B (Burnett tr. at 217:22- 218:7); ¶ 78, Ex. C	
3	(Gossett tr. at 19:15- 22:20).	
4	Mr. Burnett, the editor	
5	of Prelude to Axanar,	
6	and director of the full length Axanar Film, also stated that he was	
7	creating the Axanar	
8	Works as a "spec commercial" in order to	
9	showcase his directing abilities in the hopes to	
10	obtain other jobs in Hollywood. Grossman Decl., ¶ 82, Ex. B	
11	(Burnett tr. at 31:21-	
12	36:20), Ex. RR (Robert Meyer Burnett online	
13	posting). Mr. Peters intended to	
14	IVII Perers intended to	
15		
16		
17	65, Ex. A (Peters tr. at 234:11-	
18	25); ¶ 66, Ex. B	
19	(Burnett tr. at 151:2- 153:12), ¶ 67, Ex. PP	
20	(Axanar marketing plan).	
21		
22		
23	64, Ex. B	
24	(Burnett tr. at 142:14- 148:8); ¶ 67, Ex. PP	
25	(Axanar marketing plan); Ex. QQ (printout	
26	from Axanarproductions.com	
27). Grossman Decl., ¶ 97,	
28	Ex. CCC (Van Citters and O'Rourke	
	testimony).	
	47	

1 41. Disputed. Undisputed as to the 2 stated fact. The report of Christian This document is taken 3 Tregillis lacks out of context. This foundation and is statement was made to 4 address how fans hearsay. watch science fiction 5 shows they enjoy, not The testimony cited how to stop fans from does not support the 6 purported "fact." watching Plaintiffs' Works. ECF Nos. 88-2, 91-1, Grossman Supporting Evidence: 7 Oki Decl., Ex. 3 (Report Peters stated: "But of Christian Tregillis) at Decl., ¶ 13, Ex. A Axanar is not just an 8 ¶¶ 10-12; Oki Decl., Ex. independent Star Trek (Peters tr. at 99:10-12 (Abrams Tr. at 42:7-100:15), ECF No. 88film; it is the beginning 9 11); Oki Decl., Ex. 9 of a whole new way 32. Grossman Decl.. (Van Citters Tr. at that fans can get the Ex. DD (Axanar 10 119:19-124:18); Oki Decl., Ex. 10 (O'Rourke content they want, by Indiegogo fundraising funding it themselves. page) 11 Tr. at 60:22-61:5; 63:8-Why dump hundreds or 16) thousands of dollars a Defendant Peters did 12 year on 400 cable channels, when what 13 you really want is a few good sci-fi shows?" 14 Grossman Decl., ¶ 49, Ex. A (Peters tr. at 15 99:10-100:15), Ex. DD (Axanar Indiegogo 16 fundraising page). 17 Plaintiffs' Star Trek Copyrighted Works are 18 distributed via cable. Grossman Decl., ¶ 13, Ex. A (Peters Tr., Van Citters Decl., ¶ 11. 19 Vol. II at 447:5 -448:25); ECF Nos. 90-10, 94-3, Peters Decl., Peters attempted to 20 meet with Netflix to become a producer of ¶ 17 21 Star Trek productions, attempted to trademark Defendant 22 23 24 25 Ex. A (Peters tr. at 442:21-449:9); Ex. LL 26 (Facebook message Grossman Decl., ¶ 13, exchange between Ex. A (Peters Tr., 27 Terry McIntosh and Vol. II`at 447:5 -Aleć Peters); ¶ 59, Ex. 448:25); ECF No. 90-28 10, 94-3, Peters Decl., E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. ¶ 17



1 2 3	at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21- 36:20); Ex. RR (Robert Meyer Burnett online
	posting).
5	Mr. Peters created the Axanar Works in large
6	part in order to showcase his own "producing" abilities, in
7	the hopes that he CBS
8	Gros , Ex. A
9	(Peters tr. at 455:24- 456:16); ¶ 77, Ex. B
10	(Burnett tr. at 217:22- 218:7); ¶ 78, Ex. C
11	(Gossett tr. at 19:15- 22:20).
12	Mr. Burnett, the editor of Prelude to Axanar,
13	and director of the full length Axanar Film,
14	also stated that he was creating the Axanar
15	Works as a "spec commercial" in order to
16	showcase his directing abilities in the hopes to
17	obtain other jobs in Hollywood. Grossman
18	DecI., ¶ 82, Ex. B (Burnett tr. at 31:21-
19 20	36:20), Ex. RR (Robert Meyer Burnett online
21	posting). Peters
22	
23	
24	
25	65, Ex. A (Peters tr. at 234:11-
26	25); ¶ 66, Ex. B (Burnett tr. at 151:2-
27	153:12), ¶ 67, Ex. PP (Axanar marketing
28	plan). Defendants
	50

1				
2			64, Ex. B	
3 4			(Burnett tr. at 142:14- 148:8); ¶ 67, Ex. PP (Axanar marketing	
5			plan); Ex. QQ (printout from	
6			Axanarproductions.com	
7			Grossman Deel ¶ 07	
8			Grossman Decl., ¶ 97, Ex. CCC (Van Citters and O'Rourke	
9	42.		testimony). Disputed.	Undisputed as to the
10			This is not a fact; it is	stated fact, and no admissible evidence
11			argument.	refuting the fact is presented. This fact is
12		Supporting Evidence:	Defendants' work is not, and was not	established. Disputed in a way that
13		Oki Decl., Ex. 9 (Van	intended to be, a "fan film." Grossman Decl.,	is immaterial. tMotionotion Motion.
14		Citters Tr. at 119:19- 124:18); Oki Decl., Ex.	¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC	There were many instances in which
15		10 (O'Rourke Tr. at 60:22-61:5; 63:8-16)	(Indiegogo fundraising page), ¶ 49, Ex. A	Defendants did call their works "fan
16			(Peters tr. at 99:10- 101:10), Ex. DD	films." The distinction between "fan films"
17			(Defendants' Indiegogo fundraising page), ¶ 50,	and "professional" films was made only to
18			Ex. A (Peters tr. at 108:6-109:12), Ex. EE	distinguish the quality of Defendants' Works.
19			(Facebook post by Alec Peters), ¶ 51, Ex. A	ECF No. 90-16, Peters Decl., Ex. 6 (Press
20			(Peters tr. at 109:16- 110:2), Ex. FF (Post on	Release); ECF Nos. 90-22, 94-7 Peters
21			the Axanar Facebook page), ¶ 53 (Peters tr. at	Decl., Ex. 12 (Emails between
22			133:16-143:5; 134:10- 143:5; 137:13-138:13;	Alec Peters and Morgen Schneider,
23			138:21-140:2; 140:19- 141:5; 141:16-142:22),	AX030370- AX030372); ECF No.
24			Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A	90-23, Ex. 13 (Axanar Facebook Post,
25			(Peters tr. at 106:6- 107:7), Ex. II (tweet)	AX035850); ECF No. 90-24, Ex. 14 (Axanar
26			¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK	Tweet, AX035927); ECF No.
27			(Peters email to Doug Drexler).	90-21, Ex. 11 (Star Trek Fan
28			The evidence does not	Film Flyer, PL0000106); ECF No.
			support Defendants' 51	90-19, Ex. 9 (Axanar
			J1	

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1	purported "fact," and the commercial nature	Blog Post, PL0005718-
2	of Defendants' work,	PL0005720); ECF No.
3	and the potential harm to Plaintiffs, are	90-20, Ex. 10 (Axanar Blog
4	discussed at length in the Van Citters and	Post, PL0005973- PL0005989); ECF No.
5	O'Rourke depositions and Plaintiffs'	90-18, Ex. 8 (Axanar Facebook
6	interrogatory responses. Oki Decl., Exs. 1-2;	Post, PL0008222); ECF Nos. 90-26, 94-9,
7	Grossman Decl., ¶ 97,	Ex. 16 (Email from
	Ex. CCC (Van Citters and O'Rourke	Marian Cordry to Holly Amos and John
8	testimony).	Van Citters, PL0008689); ECF No.
9		90-17, Ex. 7 (Axanar Facebook
10		Post, PL0011822); ECF Nos. 90-25, 94-8
11		Ex. 15 (Emails among
12		Bill Burke, John Van Citters, and Leslie
13		Ryan, PL0012814- PL0012816); ECF No.
14		90-15, Ex. 5 (Email from Marian Cordry to
15		John Van Citters, PL0013502-
16		PL0013503); ECF No.
		90-14, Ex. 4 (Peters Facebook
17		Post, PL0013517); ECF Nos. 90-11, 94-4,
18		Ex. 1 (Axanar Annual Report, Revised, 2015,
19		PL0013763- PL0013785); ECF No.
20		90-13, Ex. 3 (Emails between
21		Alec Peters and
22		Mallory Levitt, PL0013787-
23		PL0013788); ECF No. 90-6, Ranahan Decl., ¶
24		5, Ex. E (Gossett Tr. at 175:17-18)
25		See also, Evidentiary
26		Objections to Van Citters Decl., filed
27		concurrently herewith;
		See also, Evidentiary Objections to
28		Grossman Decl., filed concurrently herewith

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1	43.	There were approximately 12 more	Disputed.	Undisputed as to the stated fact. This fact is
2		scripts prepared after the August 2015 Facebook	It is irrelevant whether Defendants worked on	established.
3		post proclaiming a "fully revised and locked"	their script since the lawsuit w	See also, Evidentiary Objections to
4		script, including new	lawsuit w	Grossman Decl., filed concurrently herewith
5		scripts that were prepared after this		concurrently herewith
6		litigation commenced.		
7		Supporting Evidence:	Ex. A (Peters tr. at	
8		Peters Decl., ¶ 13; Peters Decl., Ex. 3	77:5-9), ¶ 42, Ex. AA (script).	
9	44.	Though Defendants halted plans for any	Disputed.	Undisputed as to the stated fact. This fact is
10		filming and temporarily stopped working on the	It is irrelevant whether Defendants worked on	established.
11		project altogether after Plaintiffs filed suit,	their script since the lawsuit was filed.	
12		Defendants resumed drafting scripts when it		
13		was publicly announced that this lawsuit was		
14		"going away."		
15		Supporting Evidence:		
16		Oki Decl., Ex. 5 (Burnett Tr. at 174:3-10); Oki		
17		Decl., Ex. 6 (Hunt Tr. at 56:12-25); Oki Decl.,		
18		Ex. 12 (Abrams Tr. at 20:23-21:13)		
19	45.	In March 2016, Justin Lin, the director of the	Undisputed.	This fact is established.
20		most recent Star Trek motion picture, Star		
21		Trek Beyond, publicly commented on this case,		
22		stating: "[t]his is getting ridiculous! I support the		
23		fans. Trek belongs to all of us."		
24		Supporting Evidence:		
25		Oki Decl., Ex. 11 (Lin Tr. at 17:11-23); ECF		
26		No. 48, Counterclaim		
27	46.	In May 2015, J.J. Abrams, who directed	Undisputed.	This fact is established.
28		and/or produced the		
20		three most recent Star Trek movies, publicly		
- 1	1		53	

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1		stated that he and Justin		
2		Lin "realized this [case] was not an appropriate		
3		way to deal with the fans."		
4		Supporting Evidence :		
		Oki Decl., Ex. 12		
5		(Abrams Tr. at 20:23- 21:13); ECF No. 48,		
6	47.	Counterclaim ¶¶ 21-22 In May 2015, J.J.	Undisputed.	This fact is established.
7	47.	Abrams stated that "fans	Ondisputed.	This fact is established.
8		should be celebrating [Star Trek]. Fans of Star		
9		Trek are part of this world. So [Justin] went		
10		to the studio and pushed		
		them to stop this lawsuit and now, within the next		
11		few weeks, it will be announced this is going		
12		away, and that fans would be able to		
13		continue working on their project."		
14		Supporting Evidence :		
15		Oki Decl., Ex. 12		
16		(Abrams Tr. at 20:23- 21:13); ECF No. 48,		
17	48.	Counterclaim ¶¶ 21-22 In the 1976 book Star	Disputed and irrelevant.	Undisputed as to the
18		Trek: The New Voyages,	•	stated fact. Of course Plaintiffs'
		Mr. Roddenberry stated in the Foreword that he	The purported fact is not supported by the	Answer is evidence
19		"realized that there is no more profound way in	cited authority as the Counterclaim and the	that a fact is not disputed.
20		which people could express what Star Trek	Answer are not evidence. Further, in	Disputed in a manner
21		has meant to them than	1976 the only "fan	that is immaterial to motion.
22		by creating their own very personal Star Trek	films" that existed were a few homemade 8 mm	monon.
23		[fan fiction]."	movies, with no means of widespread	
24		Supporting Evidence :	distribution such as YouTube.	
25		ECF No. 48,	3 & 2 & 3 & 3 .	
		Counterclaim at 15-17, ¶ 7; ECF No. 49,		
26		Answer to Counterclaim at 1-2, ¶ 7		
27	49.	Since Mr. Roddenberry's	Disputed. Irrelevant.	Undisputed as to the stated fact.
28		statement, a substantial number of films have	The statements of Mr. Lane and Mr. Jenkins	The subpoena to Dr.
		indifficer of fiffing flave	54	The suppoetta to D1.
			- · · · · · · · · · · · · · · · · · · ·	_

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1		been created by fans	are unsworn hearsay.	Jenkins was neither
2		without any complaint	Further, Plaintiffs	timely nor reasonable. Ranahan Decl. ¶ 3 and
_		by Plaintiffs, some using characters from the Star	timely subpoenaed Mr.	Ex. A.
3		Trek Works and exact	Jenkins for deposition,	
4		replicas of Star Trek	prior to the filing of Defendants' Motion for	
4		movie sets.	Summary Judgment.	
5		Supporting Evidence :	Defendants' counsel	
6		Lana Daal Ev 1 at 26:	refused to make Mr.	
0		Lane Decl., Ex. 1 at 26; Oki Decl., Ex. 4 (Report	Jenkins available for deposition on the	
7		of Henry Jenkins)	grounds that the "fact	
8			discovery" deadline had passed (prior to the	
			service of any expert	
9			reports) and stated that	
10			she was not making any of Defendants' experts	
			available for deposition.	
11			Thereafter, Defendants	
12			submitted the Jenkins report as an exhibit to	
			Ms. Oki's declaration,	
13			and yet still refused to	
14			make him available for deposition on the	
			subpoenaed date, or at	
15			any time prior to the	
16			deadline to file this Opposition. Grossman	
			Decl., ¶ 100, Ex. JJJ	
17			(email exchange with	
18			counsel for Defendants).	
			His testimony, if not	
19			excluded as hearsay, should be excluded for	
20			failure to make him	
21			available pursuant to a	
21	50.	For over 50 years,	timely-served subpoena. Disputed.	Undisputed as to the
22		Plaintiffs have tolerated,		sated fact.
22		and even encouraged a	This is inaccurate and	
23		community of fandom and fan fiction	irrelevant and the statements of Mr.	No lawsuit has ever
24		surrounding Star Trek.	Jenkins and Mr.	been filed against a
25		_	Tregillis lack	Star Trek fan film, and
23		Supporting Evidence :	foundation and constitute hearsay.	in fact CBS has stated to Defendants that they
26		Oki Decl., Ex. 4 (Report	•	have only once ever
27		of Henry Jenkins) at 3; Oki Decl., Ex. 11 (Lin	Plaintiffs have filed suit	issued a Cease and Desist letter to a fan
		Tr. at 40:18-41:18); Oki	in the past against infringers of their Star	film. Hundreds of fan
28		Decl., Ex. 3 (Report of	Trek works. See, e.g.	films have been made
		Christian Tregillis)	Paramount Pictures	over the last 40 years
			55	

1	¶¶ 24, 63; Oki Decl., Ex.	Corp. v. Carol Publ'g	with absolutely no
2	9 (Van Citters Tr. at 62:1-25, 137:5-21); Oki	Group, 11 F. Supp. 2d 329 (S.D.N.Y. 1998).	interference by Paramount or CBS.
3	Decl., Ex. 8 (Kalodner Tr. at 33:22-42:17), Oki	Moreover, whether or	ECF No. 75-6, Li-A- Ping Decl., Ex. 4
4	Decl., Ex. 7 (Burke Tr.	not Plaintiffs have filed	(Jenkins Report at 3);
4	at 40:5-45:7); Oki Decl., Ex. 16	suit before is irrelevant. See id. at 337 (Court	ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11 (Lin
5	ZAN TO	rejected defenses of	Tr. at 40:18-41:18);
6		abandonment and estoppel asserted by a	ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9 (Van
		defendant who created a	Citters Tr. at 62:1-25,
7		work that infringed on the Star Trek	137:5-21); ECF No. 75-10, Oki Decl., Ex. 8
8		copyrights, holding:	(Kalodner Tr. at 33:22-
		"Defendants instead	42:17); ECF No. 75-9,
9		allege that Paramount's failure to commence	Oki Decl., Ex. 7 (Burke Tr. at 40:5-
10		litigation against other	45:7); ECF No. 75-18,
11		potentially infringing books estops them from	Oki Decl, Ex. 16 (StarTrek.com Article);
		bringing this action.	Li-A-Ping Decl., ¶ 4,
12		Extending the doctrine of estoppel so that a	Ex. 3 (Tregillis Report, ¶¶ 58-62)
13		defendant may rely on a	
14		plaintiff's conduct toward another party is	Even though Plaintiffs were ordered to
		both unsupported by	produce all
15		law and pernicious as a matter of policy.").	communications
16		matter or poney.).	regarding fan films, they did not produce
17		Further, Plaintiffs	any cease and desist
1 /		timely subpoenaed Mr. Tregillis and Mr.	letter ever sent to any fan film. ECF No. 60
18		Jenkins for depositions,	(Order dated Oct. 21,
19		prior to the filing of Defendants' Motion for	2016)
		Summary Judgment.	The subpoenas issued
20		Defendants' counsel refused to make these	to Mr. Tregillis and Dr. Jenkins were neither
21		designated experts	timely nor reasonable.
22		available for deposition, on the grounds that the	See Ranahan Declaration, ¶ 3 and
		"fact discovery"	Ex. A.
23		deadline had passed (prior to the service of	See also, Evidentiary
24		any expert reports) and	Objections to
25		stated that she was not making any of	Grossman Decl., filed concurrently herewith
		Defendants' experts	concurrency nerowith
26		available for deposition. Thereafter, Defendants	
27		submitted these reports	
28		as exhibits to Ms. Oki's declaration, and yet still	
20		refused to make them	

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1	available for deposition
2	on the subpoenaed date, or at any time prior to the deadline to file this
3	Opposition. Grossman Decl., ¶ 100, Ex. JJJ
4	(email exchange with
5	counsel for Defendants).
6	The testimony of
7	Tregillis and Jenkins, if not excluded as hearsay, should be excluded for
8	failure to make them
9	available pursuant to a timely-served subpoena.

Plaintiffs also submitted the following additional, uncontroverted facts and supporting evidence:

4 5	Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
.6 .7 .8	51.	Plaintiffs Paramount Pictures Corporation ("Paramount") and CBS Studios Inc. ("CBS") (collectively, "Plaintiffs"), own the copyrights to the Star Trek	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
19 20		films and television series. Supporting Evidence Declaration of David	
21 22 23		Grossman ("Grossman Decl."), ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex. VV	
24 25		(copyright registrations for the Star Trek Motion Pictures). Declaration of John Van	
26 27	52.	Citters ("Van Citters Decl."), ¶¶ 8, 10. Plaintiff CBS owns the rights to <i>The Original Series</i> , as well as to all of the	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters
28		subsequent Star Trek Television Series.	Decl. filed concurrently herewith

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Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	Supporting Evidence	
	Van Citters Decl., ¶ 8. Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series).	
53.	Paramount owns the copyrights in the Star Trek Motion Pictures.	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	Supporting Evidence	
	Van Citters Decl. ¶ 10. Grossman Decl., ¶ 91, Ex.	
	VV (copyright registrations for the Star Trek Motion Pictures).	
54.	Paramount owns the copyright in the novel entitled <i>Garth of Izar</i> .	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters
	Supporting Evidence	Decl. filed concurrently herewith
	Van Citters Decl., ¶ 11. Grossman Decl., ¶ 94, Ex.	
	WW (copyright registration for Garth of Izar novel). Dkt. No. 72-63, Ex. 21 (Garth of Izar novel).	
55.	CBS owns the copyright in the novel entitled <i>Strangers</i> from the Sky.	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters
	Supporting Evidence	Decl. filed concurrently herewith
	Van Citters Decl., ¶ 11. Grossman Decl., ¶ 95, Ex.	
	XX (copyright registration for <i>Strangers from the Sky</i>).	
56.	CBS owns the copyright in the novel entitled <i>Infinity's Prism</i> .	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters
	Supporting Evidence	Decl. filed concurrently herewith
	Van Citters Decl., ¶ 11. Grossman Decl., ¶ 96, Ex. YY (copyright registration	

Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
57.	The original Star Trek television series ("The Original Series") debuted in 1966, and ran for three seasons, until 1969.	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	Supporting Evidence Van Citters Decl., ¶ 5.	
	Grossman Decl., ¶ 92, Ex. 1 (<i>The Original Series</i> DVDs).	
58.	In addition to <i>The Original Series</i> , there have been five further Star Trek television series totaling more than 700 episodes (collectively with <i>The Original Series</i> , the "Star Trek Television Series").	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	Supporting Evidence	
	Van Citters Decl., ¶¶ 3, 4.	
	Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 92, Exs. 1-5 (Star Trek Television Series	
59.	DVDs). The Original Series	Undisputed. See Evidentiary Objections to
	chronicled the adventures of the U.S.S. Enterprise (one of	Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters
	the ships of "Starfleet") and its crew as they traveled through space during the	Decl. filed concurrently herewith
	twenty-third century, and featured numerous original	
	and copyrightable elements, including but not limited to	
	elements such as the plots of the episodes, mood, theme,	
	characters, settings, pace and numerous original and	
	copyrightable elements such as the Starship Enterprise (Starfleet registry number	
	NCC-1701), original and fictitious races and species,	
	including the Vulcan and Klingon races, the United	
	Killigoli faces, the Office	

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1 2	Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
3		weapons and technology.	
4		Supporting Evidence	
5		Van Citters Decl., ¶ 5.	
6		Grossman Decl., ¶ 92, Ex. 1	
7	60.	(The Original Series DVDs). In "Whom Gods Destroy,"	Undisputed. See Evidentiary Objections to
8		one of the episodes of <i>The Original Series</i> , James T.	Grossman Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
9		Kirk (played by the actor William Shatner), the Captain of the U.S.S.	Deci. med concurrently nerewith
10		Enterprise, meets his hero,	
11		Garth of Izar, a former starship captain.	
12		Supporting Evidence	
13		Van Citters Decl., ¶ 6.	
14		Grossman Decl., ¶ 92, Ex. 1(The Original Series	
15	<u></u>	DVDs).	Hadiamatad Gas Faid actions Oliver
16	61.	In "Whom Gods Destroy," Kirk and Garth discuss Garth's victory in the Battle	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith;
17		of Axanar.	See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
18		Supporting Evidence	
19		Van Citters Decl., ¶ 6.	
20		Grossman Decl., ¶ 92, Ex. 1(The Original Series	
21		DVDs).	
22	62.	The newest television series, Star Trek: Discovery, will	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
23		premiere in 2017.	
24		Supporting Evidence	
25	63.	Van Citters Decl., ¶ 7. Star Trek: Discovery takes	Undisputed. See Evidentiary Objections to
26		place ten years before the events depicted in <i>The</i>	Van Citters Decl. filed concurrently herewith
27		Original Series.	
28		Supporting Evidence	
ľ		<u> </u>	'

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2	Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
3		Van Citters Decl., ¶ 7.	
4	64.	Plaintiffs have licensed numerous derivative works, including books, games and	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
5		merchandise. These works also include reference guides,	
6 7 8		encyclopedias, documentaries, behind the scenes books, dictionaries and "companions" to various television series.	
9		Supporting Evidence	
10		Van Citters Decl., ¶¶ 12, 64-65.	
11	65.	Klingons are an alien race,	Undisputed. See Evidentiary Objections to
12		from the planet Qo'noS, who are portrayed as a serious and	Van Citters Decl. filed concurrently herewith
13		war-like species. Supporting Evidence	
14			
15	66.	Van Citters Decl., ¶ 25. Klingons have distinctive	Undisputed. See Evidentiary Objections to
16		visual elements including large, protruding foreheads covered by symmetrical	Van Citters Decl. filed concurrently herewith
17 18		bumps and ridges, dark hair and skin and facial hair and	
19		upward sloping eyebrows. Supporting Evidence	
20			
21	67.	Van Citters Decl., ¶ 25. The Klingons were long-time enemies of the Federation,	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
22		and engaged in a number of military battles with Starfleet.	
23		Supporting Evidence	
24	<u></u>	Van Citters Decl., ¶ 25.	
25	68.	Vulcans are an iconic species, owned by Plaintiffs, first appearing in the form of	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
26 27		Mr. Spock in The Original Series.	
28		Supporting Evidence	
		1	

1 2	Fact No.	Moving Party's Alleged Additional Uncontroverted	Moving Party's Reply to Opposition
		Facts	
3		Van Citters Decl., ¶ 30.	
4	69.	Vulcans are depicted with their pointed ears and	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
5		upswept eyebrows, they are portrayed as stern and	
6		eschew emotions for logic and reason.	
7		Supporting Evidence	
8		Van Citters Decl., ¶ 29.	
9	70.	Vulcan men are usually depicted with straight, dark	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
10		(or gray) hair cut in a "bowl" style.	van Chiefs Beef. Med concurrently herewith
11		Supporting Evidence	
12		Van Citters Decl., ¶ 29.	
13	71.	Vulcans are part of the Federation, and are portrayed as an advanced technological	Undisputed. <i>See</i> Evidentiary Objections to Van Citters Decl. filed concurrently herewith
14		species.	
15		Supporting Evidence	
16		Van Citters Decl., ¶ 29.	
17	72.	Ambassador Soval was first seen in the <i>Star Trek: Enterprise</i> pilot episode	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith; See also Evidentiary Objections to Van Citters
18		"Broken Bow" in 2001, and	Decl. filed concurrently herewith
19		was featured many times throughout the <i>Enterprise</i>	
20		series such as in the episode "The Expanse" from 2003.	
21		Supporting Evidence	
22		Van Citters Decl., ¶¶ 21, 45.	
		Van Citters Decl., ¶¶ 21, 45. Grossman Decl., ¶92, Ex. 5	
23		(The Enterprise DVDs).	
	73.	Soval is portrayed by actor	Disputed.
24	73.	Soval is portrayed by actor Gary Graham, who reprised his role as Ambassador Soval	Gary Graham's makeup and hair as Soval in
24 25	73.	(The Enterprise DVDs). Soval is portrayed by actor Gary Graham, who reprised his role as Ambassador Soval in Defendants' infringing works, and even wore virtually identical makeup	Gary Graham's makeup and hair as Soval in Defendants' Works were different from that of the Soval who appeared in Plaintiffs' Works. The ears, while pointed, were different from
2324252627	73.	Soval is portrayed by actor Gary Graham, who reprised his role as Ambassador Soval in Defendants' infringing works, and even wore virtually identical makeup and costumes that he had in	Gary Graham's makeup and hair as Soval in Defendants' Works were different from that of the Soval who appeared in Plaintiffs' Works. The ears, while pointed, were different from those Gary Graham wore in "Enterprise."
242526	73.	(The Enterprise DVDs). Soval is portrayed by actor Gary Graham, who reprised his role as Ambassador Soval in Defendants' infringing works, and even wore virtually identical makeup	Gary Graham's makeup and hair as Soval in Defendants' Works were different from that of the Soval who appeared in Plaintiffs' Works. The ears, while pointed, were different from

Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	to that seen in Plaintiffs' works. Supporting Evidence	Graham's robes were Chinese, in the <i>Vulcan Scene</i> , he wore Japanese-style robes over a business suit. These costumes were not
	Van Citters Decl., ¶¶ 21-24, 45-46.	identical to each other, much less to the one Soval wore in Plaintiffs' Works. ECF Nos. 88-2, 91-1, Grossman Decl., ¶ 13,
	13-10.	Ex. A (Peters Tr., Vol. II at 425:11-22); ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to</i>
		Axanar at 45-:58, 2:32-45, 3:11-20, 3:49-58, 7:30-43, 9:30-43, 10:14-28); ECF No. 75-19,
		Peters Decl., Ex. 2 (<i>Vulcan Scene</i>). See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
74.	Defendants' works incorporate Plaintiffs'	Undisputed that Garth of Izar is incorporated, but disputed that Defendants have portrayed
	character, Garth of Izar.	him in the same way as Defendant, and disputed that Plaintiffs have copyright
	Supporting Evidence Van Cittars Deal 9917 20	protection in Garth of Izar. See also Evidentiary Objections to Van Citters Decl.
75.	Van Citters Decl., ¶¶17-20. Garth of Izar, like Captain Kirk, was a Starfleet Captain.	filed concurrently herewith Disputed. Garth of Izar was a Fleet Captain, and thus closer to an Admiral, commanding
	Supporting Evidence	many ships, than a ship captain like Kirk. ECF Nos. XX- not on docket Grossman Decl., Ex. 1
	Van Citters Decl., ¶ 18.	(Whom Gods Destroy at 32:20). See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
76.	In The Original Series, Garth of Izar was introduced and	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	portrayed as a former starship captain whose exploits were "required reading" at the	
	Starfleet Academy due to his heroic conduct during the Battle of Axanar.	
	Supporting Evidence	
	Van Citters Decl., ¶ 18.	
77.	In the episode that introduced Garth (entitled "Whom Gods	Undisputed. <i>See</i> Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	Destroy"), Captain Kirk finds Garth in an asylum after he had been declared criminally	
	insane.	
	Supporting Evidence	
78.	Van Citters Decl., ¶ 18. This character was further developed and explored by	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith

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Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	Plaintiffs in the 2003 novel entitled "Garth of Izar."	
	Supporting Evidence	
	Van Citters Decl., ¶ 18.	
79.	Paramount has a licensed work called Star Trek: The Role Playing Game.	Undisputed. <i>See</i> Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	Supporting Evidence	
	Van Citters Decl., ¶ 12.	
80.	Garth of Izar's military battles against the Klingon Empire, including the Battle	Undisputed. <i>See</i> Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	of Axanar, were explored by	
	of Axanar, were explored by Paramount's licensee, FASA, in Star Trek: The Role Playing Game.	
	Supporting Evidence	
	Van Citters Decl., ¶ 19.	
81.	The Four Years War supplement is a guide that was used in connection with	Undisputed.
	Star Trek: The Role Playing Game.	
	Supporting Evidence	
	Van Citters Decl., ¶ 13.	
82.	The Four Years War supplement also describes the Battle of Axanar (a related	Disputed. The Battle of Axanar is discussed on only two pages of <i>The Four Years War</i> supplement. The Battle of Axanar discussed in
	mission guide for the role- playing game was called	The Four Years War supplement is entirely different than the battle portrayed in Prelude to
	"Return to Axanar"), and the military campaigns of	Axanar. The Four Years War supplement does not describe the military campaigns of Garth of
	Garth of Izar.	Izar. Garth of Izar is only mentioned twice in the supplement: once in a discussion of the Battle of Axanar, and in a one-sentence
	Supporting Evidence	summary of the Battle of Axanar in a timeline. ECF No. 88-71, Van Citters Decl., Ex. AAA
	Van Citters Decl., ¶¶ 13, 14, Ex. AAA (<i>The Four Years</i>	(The <i>Four Years War</i> supplement at pp. 16, 35). <i>See also</i> Evidentiary Objections to Van
83.	War supplement). The copyright in The Four Years War is owned by Paramount.	Citters Decl. filed concurrently herewith Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith

Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	Supporting Evidence	
	Van Citters Decl., ¶ 14, Ex. AAA (<i>The Four Years War</i> supplement), Ex. BBB (copyright registration for <i>The Four Years War</i>).	
84.	The Four Years War was used as source material by Defendants in order to create their Axanar Works.	Undisputed that Defendants had a copy of the Four Years War, but disputed that it was used as source material besides in a de minimus way. Only the title and the name of the planet were used. ECF Nos. 88-2, 91-1 Grossman
	Supporting Evidence	Decl., ¶ 13, Ex. A (Peters tr. at 40:19-41:17); See also Evidentiary Objections to Grossman
	Grossman Decl., ¶ 13, Ex. A (Peters tr. at 38:22-41:17); ¶ 14, Ex. C (Gossett tr. at	Decl. filed concurrently herewith
	48:10-50:10), Ex. I (April 26, 2014 email from Christian	
85.	Gossett to Alec Peters). Defendants admitted that they used <i>The Four Years</i>	Undisputed that Defendants had a copy of the Four Years War, but disputed that it was used
	War to create the Axanar Works.	as source material besides in a <i>de minimus</i> way. Only the title and the name of the planet
	Supporting Evidence	were used. ECF Nos. 88-2, 91-1 Grossman Decl., ¶ 13, Ex. A (Peters tr. at 40:19-41:17); See Evidentiary Objections to Van Citters
	Van Citters Decl., ¶ 14, Ex. AAA (Four Years War).	Decl. See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Grossman Decl., ¶ 13, Ex. A (Peters tr. at 38:22-41:17),	
	¶ 14, Ex. C (Gossett tr. at 48:10-50:10), Ex. I (April 26, 2014 email from Christian	
86.	Gossett to Alec Peters). Star Trek: Prelude to	Undisputed. See Evidentiary Objections to
00.	Axanar, is a twenty-one minute film.	Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Grossman Decl., ¶ 18, Ex. A (Peters tr. at 34:10-12).	
87.	Star Trek: Prelude to Axanar was funded on Kickstarter.	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Grossman Decl., ¶ 18, Ex. A	

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Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	(Peters tr. at 34:5-9).	
88.	Kickstarter is a crowdsourcing website where parties can raise money to fund their projects.	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Grossman Decl., ¶ 18, Ex. A (Peters tr. at 69:14-70:6).	
89.	In exchange for donations on Prelude to Axanar, Defendants provided donors	Disputed. The merchandise did not include any Star Trek marks and was "Axanar" branded, not Star Trek branded. ECF Nos. 90-
	with perks that included various branded merchandise.	10, 94-3, Peters Decl., ¶ 11. See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Grossman Decl., ¶ 69, Ex. D (Kingsbury tr. at 114:16-24).	
90.	Prelude to Axanar was released on YouTube in August of 2014.	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Grossman Decl., ¶ 19, Ex. L (YouTube page).	
91.	Defendant Peters wrote the Prelude to Axanar screenplay.	Disputed. Defendant Alec Peters collaborated with Christian Gossett in writing the screenplay for <i>Prelude to Axanar</i> . ECF Nos.
	Supporting Evidence	90-10, 94-3, Peters Decl., ¶ 2. ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>). See also Evidentiary Objections to Grossman Decl.
	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 57:1-58:25).	filed concurrently herewith
92.	Star Trek: Prelude to Axanar features Plaintiffs' character,	Undisputed. See Evidentiary Objections to Van Citters Decl. See also Evidentiary Objections to Grossman Deal, filed
	Garth of Izar, and describes his military exploits during the war between the	Objections to Grossman Decl. filed concurrently herewith
	Federation and the Klingon Empire.	
	Supporting Evidence	
	Van Citters Decl. ¶¶ 15, 17. Dkt. No. 72-63, Ex. 19 (Prelude to Axanar).	

Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 36:20-37:25; 46:18-48:1); ¶ 24, Ex. B (Burnett tr. at 191:17- 192:25).	
93.	Prelude to Axanar features the Federation. Supporting Evidence	Undisputed. See Evidentiary Objections to Van Citters Decl. See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
94.	Van Citters Decl., ¶¶ 15, 37, 38. Dkt. No. 72-63, Ex. 19 (Prelude to Axanar). Grossman Decl., ¶ 20, Ex. M (illustrated script for Prelude), ¶ 23, Ex. A (Peters tr. at 44:21-55:20, ¶ 24, Ex. B (Burnett tr. at 107:6-15); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for Prelude to Axanar). Prelude to Axanar features Klingons. Supporting Evidence	Disputed. Prelude to Axanar features only one Klingon, Kharn. ECF Nos. 90-10, 94-3, Peters Decl., ¶ 9; ECF No. 75-19, Peters Decl., Ex. 1 (Prelua to Axanar). See also Evidentiary Objections to
	Van Citters Decl., ¶¶ 15, 25-28. Dkt. No. 72-63, Ex. 19 (Prelude to Axanar). Grossman Decl., ¶ 20, Ex. M (illustrated script for Prelude), ¶ 23, Ex. A (Peters tr. at 44:21-55:20); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for Prelude to Axanar).	Van Citters Decl. See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
95.	Prelude to Axanar features Vulcans. Supporting Evidence	Disputed. Prelude to Axanar features only one Vulcan, Soval. Peters Decl., ¶ 8. ECF No. 75-19; EC
	Van Citters Decl. ¶¶ 15, 29-32. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).	Nos. 90-10, 94-3, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>). See also Evidentiary Objections to Use Concurrently herewith
	Grossman Decl., ¶ 20, Ex. M (illustrated script for Prelude), ¶ 23, Ex. A (Peters tr. at 44:21-55:20).	
96.	Prelude to Axanar features	Disputed.

Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	Starfleet. Supporting Evidence Van Citters Decl. ¶¶ 15, 33-34. Dkt. No. 72-63, Ex. 19 (Prelude to Axanar). Grossman Decl., ¶ 20, Ex. M	"Starfleet" is a generic term used in science fiction generally, and in Star Trek itself, to indicate space ships from different races. ECl Nos. 90-10, 94-3, Peters Decl., ¶ 7; Do't have docket no., Grossman Decl., Ex. 1 (Errand of Mercy at 42:28). See also Evidentiary Objections to Van Citters Decl. See also Evidentiary Objections to Grossman Decl.
97.	(illustrated script for Prelude), ¶ 23, Ex. A (Peters tr. at 44:21-55:20). Prelude to Axanar features	filed concurrently herewith Undisputed. See Evidentiary Objections to
	Starfleet officers and commanders, including Garth of Izar.	Van Citters Decl. See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Van Citters Decl. ¶¶ 15, 17- 18. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).	
	Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>), ¶ 23, Ex. A (Peters tr. at 36:20-37:16; 414:2-415:19), ¶ 33, Ex. S (July 8, 2014 email from Alec Peters to Christian Gossett and Rocio Everett).	
98.	Prelude to Axanar features the character Soval.	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	Supporting Evidence	
	Van Citters Decl. ¶¶ 15, 21- 24. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).	
	Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>).	
99.	Prelude to Axanar features Klingon battlecruisers.	Disputed.
	Supporting Evidence	Prelude to Axanar features different Klingon battlecruisers from those seen in Plaintiffs' Works. The battlecruisers featured in Prelude to Axanar are original designs created by
	Van Citters Decl. ¶¶ 15, 35- 36. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).	to Axanar are original designs created by Axanar VFX coordinator Tobias Richter. EC Nos. 90-10, 94-3, Peters Decl., ¶ 10. See also Evidentiary Objections to Van Citters Decl.

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2	Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition	
3 4		Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>).	filed concurrently herewith; See also Evidentiary Objections to Grossman Decl. filed concurrently herewith	
5	100.	Defendants have created	Disputed.	
6		substantially similar representations of Klingons,	The representation of Kharn, the only Klingon	
7		and in doing so have copied the makeup, hair, costumes,	featured in <i>Prelude to Axanar</i> , is not substantially similar to the Klingons seen in	
8		weaponry and accessories worn by those species.	Plaintiffs' Works. Klingons did not even have a consistent appearance across Plaintiffs'	
9		Supporting Evidence	Works, appearing as little more than actors wearing brown makeup to darken their skin in	
10		Van Citters Decl., ¶¶ 15, 25-	Star Trek: The Original Series, and appearing as characters with large head ridges, and big,	
11		28. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).	dog-like teeth in later television episodes and motion pictures. ECF Nos. 90-10, 94-3, Peters	
12		Grossman Decl., ¶ 20, Ex. M	Decl., ¶ 9; Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 360:12-361:11);ECF No. 75-19,	
13		(illustrated script for <i>Prelude</i>), ¶¶ 30, 31 Ex. B	Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>). See also Evidentiary Objections to Van Citters	
14		(Burnett tr. at 202:21-203:25; 215:4-216:9); ¶ 26, Ex. A	Decl. filed concurrently herewith; <i>See also</i> Evidentiary Objections to Grossman Decl.	
15		(Peters tr. at 82:6-85:12), ¶ 45 (Peters tr. at 44:21-	filed concurrently herewith	
16		55:20); ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA		
17		(Axanar Script at page 3 for use of Bat'leth and page 30		
18	101.	for use of Mek'leth). Defendants have created	Disputed.	
19	101.	substantially similar representations of Vulcans,	The one Vulcan appearing in Defendants'	
20		and in doing so have copied	Works is substantially different: his hair, age,	
21		the makeup, hair, costumes, and accessories worn by	and costume are different from any Vulcan seen in Plaintiffs' Works. ECF Nos. 90-10,	
22		those species.	94-3, Peters Decl., ¶ 8; ECF Nos. 88-2, 91-1, Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. H. et 260:12, 261:11) ECF No. 75, 10, Peters	
23		Supporting Evidence	II at 360:12-361:11);ECF No. 75-19, Peters Decl., Ex. 1 (Prelude to Axanar). See also	
24		Van Citters Decl., ¶¶ 15, 29- 32. Dkt. No. 72-63, Ex. 19	Evidentiary Objections to Van Citters Decl. filed concurrently herewith; See also	
		(Prelude to Axanar).	Evidentiary Objections to Grossman Decl. filed concurrently herewith	
25		Grossman Decl., ¶ 20, Ex. M (illustrated script for		
26		<i>Prelude</i>),¶ 26, Ex. A (Peters tr. at 82:6-85:12); Grossman		
27		Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20).		
28	102.	itted that	Disputed.	
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Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	Supporting Evidence	ECF Nos. 90-10, 94-3, Peters Decl., ¶¶ 8-9; ECF Nos. 88-2, 91-1, Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. II at 360:12-361:11); ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to Axanar</i>). See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12); ¶ 23, Ex. A (Peters tr. at 44:21-55:20).	
103.		Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Grossman Decl., ¶ 25, Ex. A (Peters tr. at 319:8-323:10), Ex. O (March 17, 2014 email from Alec Peters to Christian Gossett and Hamilton Cox).	
104.	Mr. Peters stated "I am the keeper of the faith with fans. They love that about us. Our faithfulness to the universe."	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Grossman Decl., ¶ 34, Ex. A (Peters tr. at 471:25-475:1),	
	Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett).	
105.	his	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Supporting Evidence	
	Grossman Decl., ¶ 34, Ex. A	
	Grossman Decl., ¶ 34, Ex. A (Peters tr. at 420:13-421:19; 471:25-475:1), Ex. T (July 15, 2014 email from Christian Gossett to Alec Peters); Ex. U (March 7,	

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2	Fact No.	Moving Party's Alleged Additional Uncontroverted	Moving Party's Reply to Opposition
		Facts	
3 4		2015 email from Alec Peters to Christian Gossett); ¶ 27, Ex. A (Peters tr. at 347:4-	
5		348:10), Ex. P (email exchange between Mr. Peters	
6		and Mr. Gossett); ¶ 47, Ex. A (Peters tr. at 456:24-458:18),	
7		Ex. BB (Peters email exchange), ¶ 28, Ex. A (Peters tr. at 376:16-377:11),	
8		¶ 38. Ex. A (Peters tr. at	
9 10		377:17-378:13), Ex. Y (email exchange), ¶ 37, Ex. A (Peters tr. at 373:10-375:16), Ex. X (Peters email	
		exchange).	
11	106.	The director of <i>Prelude to</i> Axanar testified that <i>Prelude</i>	Disputed.
12 13		to Axanar is an infringing work.	Calls for a legal conclusion, fails to consider fair use, and is based on a fundamental
14		Supporting Evidence	misunderstanding of copyright law, as he also testified that more original elements make it
15		Grossman Decl., ¶ 21, Ex. C (Gossett tr. at 185:25-186:8).	more infringing, which is incorrect. Also, Mr. Gossett has a personal vendetta against Mr. Peters and is no longer associated with Axanar,
16			so his credibility on these issues at the very least creates yet another factual dispute. ECF
17			No. 90-6, Ranahan Decl., ¶ 5, Ex. E (Gossett Tr. at 124:7-14, 139:5-140:18, 187:25-188:7); ECF No. 90-10, 94-3, Peters Decl., ¶¶ 22-23;
18 19			Li-A-Ping Decl., ¶ 3, Ex. 2 (O'Rourke tr. at 74:13-25; 75:17-8); <i>See also</i> Evidentiary
	107.	Prior to the filing of this	Objections to Grossman Decl. Disputed.
20		lawsuit, Axanar, Defendants drafted a final shooting	Defendants still do not have a "final shooting
21 22			script" for the unmade Potential Fan Film. ECF Nos. 88-2, 91-1, Grossman Decl., ¶ 13,
23			Ex. A (Peters Tr., Vol. I at 77:5-9); ECF. No. 75-8, Oki Decl., Ex. 6 (Hunt Tr. at 49:10-50:24). See also Evidentiary Objections to
24		Supporting Evidence	50:24). See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
25		Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (script).	
262728	108.	In 2015, Defendants released one scene from the full- length film, which they call the "Vulcan Scene."	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
۷٥		Supporting Evidence	71
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Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	Dkt. No. 72-63, Ex. 20 (Vulcan Scene).	
	Grossman Decl., ¶ 43, Ex. A (Peters tr. at 79:11-17).	
109.	The Vulcan Scene features Vulcans.	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith;
	Supporting Evidence	See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Van Citters Decl., ¶¶ 43, 47. Dkt. No. 72-63, Ex. 20 (Vulcan Scene).	
	Grossman Decl., ¶ 43, Ex. A	
	(Peters tr. at 425:11-426:3; 77:5-9); ¶ 42, Ex. AA (script at pages 21-23).	
110.	The Vulcan Scene features the character Soval.	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	Supporting Evidence	See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
	Van Citters Decl., ¶¶ 43, 45-	Beel. Med concarrency herewith
	46.	
	Dkt. No. 72-63, Ex. 20 (Vulcan Scene).	
	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42,	
	Ex. AA (script at pages 21-23).	
111.	The Vulcan Scene features the planet Vulcan.	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith: See also Evidentiary Objections to Grossman
	Supporting Evidence	Decl. filed concurrently herewith
	Van Citters Decl., ¶¶ 43, 48,	
	49. Dkt. No. 72-63, Ex. 20	
	(Vulcan Scene).	
	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (script at pages 21-	
	23); ¶ 44, Ex. N (Burnett tr. at 103:13-18).	
112.	The shot of planet Vulcan in	Disputed.
	the Vulcan Scene was copied from Star Trek III: The	The shot of planet Vulcan in the Vulcan Scene

Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	Search for Spock. Supporting Evidence Grossman Decl., ¶ 43, Ex. A (Peters tr. at 82:2-85:12); ¶ 44, Ex. B (Burnett tr. at 106:11-17).	was not copied from <i>Star Trek III: The Search for Spock</i> . ECF No. 88-2, 91-1, Grossman Decl., ¶ 13, Ex. A (Peters Tr., Vol. I at 84:9-11). <i>See also</i> Evidentiary Objections to Van Citters Decl. filed concurrently herewith; <i>See also</i> Evidentiary Objections to Grossman Decl. filed concurrently herewith
113.	The Vulcan Scene features Vulcan ships. Supporting Evidence Van Citters Decl., ¶¶ 43, 50. Dkt. No. 72-63, Ex. 20 (Vulcan Scene). Grossman Decl., ¶ 43 Ex. A (Peters tr. at 82:2-85:12).	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith; See also Evidentiary Objections to Grossman Decl. filed concurrently herewith
114.	Defendant Alec Peters himself announced, on August 15, 2015, that he had completed the "fully revised and locked script" which he referred to as "the best Star Trek movie script ever!" Supporting Evidence Grossman Decl., ¶ 40, Ex. Z	Disputed. A "locked" script simply means that writers do not add sets, scenes or characters before shooting begins. Mr. Peters did not refer to it as "the best Star Trek movie script ever!" He was expressly restating a comment by someone else. ECF No. 75-19, Peters Decl., ¶ 13; ECF Nos. 75-22, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 Axanar Script). See also Evidentiary Objections to Grossman Decl. filed concurrently berewith
115.	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).	filed concurrently herewith Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
116.	Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21).	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith

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117.	Supporting Evidence Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 8), ¶ 45, Ex. A (Peters tr. at 362:9-363:13); ¶ 46, Ex. B (Burnett tr. at 195:18-23). Klingon Commander Chang was the villain featured in Star Trek VI: The Undiscovered Country. Supporting Evidence Grossman Decl., ¶ 45, Ex. A (Peters tr. at 44:21-55:20; 3	Disputed. Character Chang is a Lieutenant in the potential fan film script. ECF Nos. 75-22, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 Axanar Script); See Evidentiary Objections to Grossman Decl. filed concurrently herewith Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
120.	Supporting Evidence 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). Supporting Evidence Grossman Decl. ¶ 45, Ev. A	Of the 57 characters that appear in the most recent script of the unmade Potential Fan Film, there are only seven characters that have appeared previously in Plaintiffs' Works. All seven of those characters played minor roles. ECF No. 75-19, Peters Decl., ¶ 15; ECF Nos. 75-22, 77-8, 77-9, Peters Decl., Ex. 3 (July 1, 2016 Axanar Script); ECF Nos. 88-29, Grossman Decl., Ex. AA (Nov. 26, 2015 Axanar Script); ECF No. 90-10, 94-3, Peters Decl., ¶ 29. See also Evidentiary Objections to Grossman Decl. filed concurrently herewith Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
121.	Grossman Decl., ¶ 45, Ex. A (Peters tr. at 362:9-363:13); ¶ 93, Ex. 11 (Star Trek VI: Undiscovered Country DVD)	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith

1 2	Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
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6		Supporting Evidence	
7		Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).	
8		Grossman Decl., ¶ 42, Ex.	
9	100	AA (Axanar Script).	
10	122.	Defendants also took characters, sequence, themes,	Disputed.
11		mood, dialogue, and settings from the Star Trek	Defendants did not "take" characters, sequence, themes, moods, or dialogue from
12		Copyrighted Works.	Plaintiffs' Works. None of the settings in Prelude to Axanar is the same as any setting
13		Supporting Evidence	used in Plaintiffs' Works. As for the <i>Vulcan</i>
14		Van Citters Decl., ¶¶ 15-62.	Scene, Defendants used only one setting that was similar to one that had appeared in
			Plaintiffs' Works. ECF Nos. 88-29, Grossman Decl., Ex. AA (Nov. 26, 2015 Axanar Script);
15			ECF Nos. 90-10, 94-3, Peters Decl., ¶ 6; ECF No. 75-19, Peters Decl., Ex. 1 (<i>Prelude to</i>
16			Axanar). See also Evidentiary Objections to Van Citters Decl. filed concurrently herewith
17	123.		Undisputed as to the use of these phrases but
18			disputed as to whether these phrases are original to Star Trek; ECF No. 31, Plaintiffs'
19			Opposition to Defendants' Motion to Dismiss, p. 14; ECF No. 33, Defendants' Reply in
20		Supporting Evidence	Support of Motion to Dismiss, p. 4; ECF No. 26, FAC ¶ 46, p. 32; ECF No. 29, Defendants'
21			Motion to Dismiss, p. 9; ECF No. 30, Defendants' Request for Judicial Notice, Ex. O
22		Van Citters Decl., ¶ 58. Grossman Decl., ¶ 42, Ex.	("H.G. Wells, War of the Worlds). See also
		AA (Axanar Script).	Evidentiary Objections to Van Citters Decl. filed concurrently herewith; See also
23			Evidentiary Objections to Grossman Decl. filed concurrently herewith
24	124.	Defendants expressly set out to create an authentic and	Undisputed. See Evidentiary Objections to Grossman Decl. filed concurrently herewith
25		"independent Star Trek film"	Grossman Deer. Thea concurrently herewith
26		that sta	
27			
28		Supporting Evidence	
		Grossman Decl., ¶ 54, Ex. A	75
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Fact No.	Moving Party's Alleged Additional Uncontroverted Facts	Moving Party's Reply to Opposition
	(Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants' Kickstarter fundraising page).	
	Grossman Decl., ¶ 34, Ex. A (Peters tr. at 471:25-474:20), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett).	
	Grossman Decl., ¶ 29, Ex. C (Gossett tr. at 36:11-37:8), Ex. R (March 24, 2013 email from Sean Tourangeau to Christian Gossett and Alec Peters).	
	Grossman Decl., ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13, 2014 email exchange between Alec Peters, Tobias Richter, and Christian Gossett).	
	Grossman Decl., ¶ 10, Ex. C (Gossett tr. at 30:7-31:13, Ex. F (January 4, 2011 email from Alec Peters to Christian Gossett), Ex. A (Peters tr. at 332:15-334:4).	
	Grossman Decl., ¶ 12, Ex. C (Gossett tr. at 32:7-34:16), Ex. H (November 13, 2013 email exchange between Alec Peters and Christian Gossett), Ex. A (Peters tr. at 359:18-361:11).	
125.	Defendants have set the Axanar Works in 2241.03 to 2245.1, which is twenty-one years before <i>The Original</i> Series episode "Where No Man Has Gone Before."	Undisputed. See Evidentiary Objections to Van Citters Decl. filed concurrently herewith
	Supporting Evidence Van Citters Decl., ¶¶ 15, 39.	
126.	Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>). Defendants set out to create a	Undisputed. See Evidentiary Objections to
120.	Defendants set out to create a	76