

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

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

10 Attorneys for Plaintiffs
PARAMOUNT PICTURES
11 CORPORATION and CBS STUDIOS
INC.
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 PARAMOUNT PICTURES
CORPORATION, a Delaware
17 corporation; and CBS STUDIOS INC.,
a Delaware corporation,

18 Plaintiffs,

19 v.

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

22 Defendants.
23
24
25

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

**PLAINTIFFS' MOTION IN
LIMINE NO. 1 TO EXCLUDE
ALTERED FINANCIAL
STATEMENT AND ITS
CONTENTS, OR ANY OF THE
POST-LITIGATION
TRANSACTIONS REFLECTED
THEREIN**

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

26
27
28

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

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary
4 Klausner, United States District Judge, Central District of California, located at 255
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude
7 Defendants’ altered financial statement for Axanar Productions, which defendant
8 Alec Peters created after his first deposition in this case, as well as testimony
9 regarding such financial statement and any testimony or evidence regarding
10 financial transactions by Axanar Productions and Peters subsequent to the
11 commencement of the litigation. This altered financial statement, prepared for the
12 purpose of this litigation, [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED].

17 After his first deposition, wherein Peters was examined [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED]. This post-lawsuit document is also hearsay,
24 because it was created for the purpose of this litigation, and testimony regarding this
25 altered financial statement, or the purported financial transactions reflected in the
26 altered statement, would be misleading and prejudicial.

27 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’
28 counsel. This Motion is based on this Notice, the accompanying Memorandum of

1 Points and Authorities, the Declaration of Jennifer Jason, all records in this action
2 and on such further argument, evidence and authority as may be offered at the time
3 of hearing.

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

Dated: December 16, 2016

LOEB & LOEB LLP
JONATHAN ZAVIN
DAVID GROSSMAN
JENNIFER JASON

By: /s/ Jennifer Jason
Jennifer Jason
Attorneys for Plaintiffs
PARAMOUNT PICTURES
CORPORATION and CBS STUDIOS
INC.

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) filed this lawsuit on December 29, 2015, based on works created by Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) that infringe Plaintiffs’ copyrighted Star Trek works. Plaintiffs have asserted, in response to Defendants’ fair use defense, that Defendants profited from their infringement and that the Axanar works were a commercial venture. The evidence supporting Peters’ commercial endeavor, and his profit from infringing Plaintiffs’ works includes a financial statement for Axanar created in the normal course of business in October 2015 by Defendants, as well as Mr. Peters’ testimony, [REDACTED]

[REDACTED]. In addition, the financial statement and Peters’ initial testimony establish that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

After his first deposition, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Plaintiffs anticipate that Defendants will seek to introduce evidence, and argument relating to this altered financial statement (and the transactions reflected therein) that Peters created *after* this litigation was filed and after his initial

1 deposition. The altered financial statement [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]. This altered financial statement and any testimony regarding it,
5 are not relevant to the case and, as such, they should be excluded at trial.

6 **II. DISCUSSION**

7 **A. The Altered Financial Statement, Its Contents, and Testimony**
8 **Discussing It are Irrelevant and Should be Excluded.**

9 Federal Rule of Evidence 401 defines “relevant evidence” as “evidence
10 having any tendency to make the existence of any fact that is of consequence to the
11 determination of the action more probable or less probable than it would be without
12 the evidence.” See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir.
13 2007)(citation omitted).

14 This case was filed on December 29, 2015. Declaration of Jennifer Jason
15 (“Jason Decl.”), ¶ 3. In response to Plaintiffs’ document requests in this case, Mr.
16 Peters produced a financial statement for Axanar Productions which had been
17 created in the normal course of business in October 2015. Jason Decl., ¶ 6, Ex B.
18 At his first deposition in this case, [REDACTED]
19 [REDACTED]. *Id.* He testified, [REDACTED]
20 [REDACTED]. *Id.* Peters [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]. *Id.* He also [REDACTED]
25 [REDACTED]
26 [REDACTED]. *Id.* [REDACTED]
27 [REDACTED]. *Id.* [REDACTED]
28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]. *Id.* [REDACTED]
 3 [REDACTED]
 4 [REDACTED]. *Id.* [REDACTED]
 5 [REDACTED]
 6 [REDACTED]. *Id.*

7 After his first deposition, [REDACTED]
 8 [REDACTED]
 9 [REDACTED]. Jason Decl., ¶ 7.

10 After he was deposed [REDACTED]
 11 [REDACTED]
 12 [REDACTED]

13 [REDACTED]. After he was ordered to attend a second
 14 deposition, due to his failure to produce documents prior to his initial deposition,
 15 Mr. Peters [REDACTED]

16 [REDACTED]
 17 [REDACTED]. Jason Decl., ¶ 7, Ex.
 18 A (Peters tr. at 395:14-22). The altered financial statement created by Mr. Peters

19 after his initial deposition, [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED].

23 Jason Decl., ¶¶ 7-8, Ex. C.

24 Defendants have asserted the defense of fair use. Therefore, Plaintiffs will
 25 seek to introduce evidence regarding [REDACTED]
 26 [REDACTED], which are relevant to
 27 Plaintiffs' argument regarding the commercial nature of the Axanar works, and the
 28 benefits/profits Peters received and/or intended to receive from Axanar. On the

1 other hand, Defendants’ [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED].

5 The altered financial document itself is hearsay because it was prepared for
6 litigation. *PEAT, Inc. v. Vanguard Research, Inc.*, 378 F.3d 1154, 1160-61 (11th
7 Cir. 2004)(document prepared during the course of litigation to respond to discovery
8 request was hearsay because summary records prepared for litigation are
9 inadmissible). In addition, the jury’s consideration of Peters’ claim that [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] would be highly prejudicial and very confusing to the jury,
13 which must only consider the actions Peters took prior to the filing of this lawsuit.
14 *Escrow Disbursement Ins. Agency, Inc. v. Am. Title & Ins. Co.*, 551 F. Supp. 302,
15 305 (S.D. Fla. 1982)(“ This report was prepared two years after the filing of the
16 instant lawsuit. The implication is strong that it was prepared with the pending
17 litigation in mind. Thus, even if the report was not hearsay; or, if hearsay, was
18 admissible under the public records exception, it is still inadmissible under FRE 403
19 as it is unduly prejudicial.”). Further, Peters’ claim that [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED].

23 Accordingly, the Court should exclude any evidence and argument relating to
24 the altered financial statement and its contents, or any of the financial transactions
25 after the commencement of the litigation.

26 **III. CONCLUSION**

27 For the foregoing reasons, Plaintiffs request that the altered financial
28 statement, its contents, and testimony discussing the altered financial statement and

1 its contents, or any of the post-litigation transactions reflected therein, should be
2 excluded from the trial.

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

Dated: December 16, 2016

LOEB & LOEB LLP
JONATHAN ZAVIN
DAVID GROSSMAN
JENNIFER JASON

By: /s/ Jennifer Jason
Jennifer Jason
Attorneys for Plaintiffs
PARAMOUNT PICTURES
CORPORATION and CBS STUDIOS
INC.