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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

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

**PLAINTIFFS' MOTION IN
LIMINE NO. 5 TO EXCLUDE
TESTIMONY AND DOCUMENTS
OF JONATHAN LANE**

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

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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 as irrelevant or improper all testimony and documents of Jonathan Lane, including
8 his personal opinions regarding the impact of *Prelude to Axanar* on Plaintiffs’ Star
9 Trek films and television series.

10 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’
11 counsel. This Motion is based on this Notice, the accompanying Memorandum of
12 Points and Authorities, the Declaration of Jennifer Jason, all records in this action
13 and on such further argument, evidence and authority as may be offered at the time
14 of hearing.

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Dated: December 16, 2016

LOEB & LOEB LLP
JONATHAN ZAVIN
DAVID GROSSMAN
JENNIFER JASON

By: /s/ Jennifer Jason
Jennifer Jason
Attorneys for Plaintiffs
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INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) will seek to introduce the testimony and documents of Jonathan Lane (“Lane”), including his personal opinions on *Prelude to Axanar* and his compendium of *Star Trek* fan films. This witness is not a qualified expert and he may not present opinion testimony, or testify regarding facts outside of his personal knowledge, under Federal Rule of Evidence 602. Additionally, his expected testimony will be irrelevant to this case and prohibitively time consuming. Therefore, the Court should exclude testimony from this witness in its entirety.

II. DISCUSSION

A. Lane is a Lay Witnesses Who May not Provide Opinion Testimony.

Under Federal Rule of Evidence 602, “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony.” Where lay witnesses give their opinions, their testimony should be limited to “those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact at issue.” *United States v. LaPierre*, 998 F.2d 1460, 1465 n.4 (9th Cir. 1993) (quoting Federal Rule of Evidence 701).

Based on Lane’s declaration filed in support of Defendants’ motion for summary judgment, Lane will likely testify that he is a “Star Trek fan,” with “extensive knowledge...of, Star Trek fan fiction.” Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3, Ex. A. Based solely on this qualification, Defendants will attempt to introduce a document of over one hundred pages authored by Lane purporting to give a comprehensive overview of every Star Trek fan film ever made. *Id.* This document includes Lane’s own synopses of each film’s plot, quality, and

1 impact on the industry. *Id.* Apart from links to YouTube, where most films are
2 available for viewing, the document is a complete work of opinion.

3 Lane has never been presented by Defendants as an expert, but, as outlined
4 above, he will likely offer extensive opinion testimony for consumption by the jury.
5 As a lay witness, Lane risks usurping the function of the jury by presenting his
6 personal opinions regarding Star Trek fan films and the public's reaction thereto.
7 Therefore, the Court should exclude the testimony of Lane except to the extent it
8 relates to his own personal knowledge.

9 **B. The Testimony of Lane Includes Inadmissible Hearsay.**

10 Plaintiffs also move to exclude the expected testimony of Lane because it will
11 include, or will be based upon, inadmissible hearsay. Such testimony and evidence
12 is inadmissible under Federal Rules of Evidence 801 and 802 and related statutory
13 and case authority. *See, e.g., Anderson v. United States*, 417 U.S. 211, 219-20
14 (1974) (“[t]he primary justification for the exclusion of hearsay is the lack of any
15 opportunity for the adversary to cross-examine the absent declarant whose out-of-
16 court-statement is introduced into evidence”).

17 The potential testimony and documentary evidence of Lane will rely
18 extensively, if not exclusively, on hearsay. Lane's compendium of Star Trek fan
19 films presents hundreds of anecdotes and data points about dozens of fan films.
20 Jason Decl. ¶ 3, Ex. A. Other than YouTube links, this document is largely
21 unsourced. *Id.* Lane does not claim personal knowledge of any specific fact
22 presented, nor does he explain how he came to know the contents of this document.
23 *Id.* The only reasonable assumption is that *someone* told Lane these facts, or else he
24 read them *somewhere*. In either case, these facts are hearsay and inadmissible under
25 the Federal Rules of Evidence. Therefore, any testimony by Lane about Star Trek
26 fan films, as well as his compendium of fan films, should be excluded.

27 **C. The Testimony of Lane is Irrelevant.**

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

6 Lane’s compendium of fan-produced Star Trek films is completely irrelevant
7 to this matter. For the reasons set forth in Plaintiffs’ Motion in Limine No. 6,
8 evidence regarding Star Trek fan films should be excluded. Also, presumably,
9 Defendants will introduce Lane’s testimony to highlight the number and type of
10 films that have been produced by Star Trek fans without legal action by Plaintiffs.
11 However, Plaintiffs’ decision to proceed against infringers other than Defendants
12 also has no bearing on liability. Plaintiffs are under no obligation to sue every entity
13 using its intellectual property and may single out a particular wrongdoer for a
14 variety of reasons. See *Paramount Pictures Corp. v. Carol Publ’g Grp.*, 11 F. Supp.
15 2d 329, 336 (S.D.N.Y. 1998) (the court held that a copyright holder may pursue a
16 single infringer for reasons such as a change in corporate policy and that, “the lack
17 of earlier litigation against other similar works is simply irrelevant.”). There is also
18 no probative value to Lane’s testimony or compendium with respect to Defendants’
19 fair use defense. The issue for trial regarding market harm is whether if works like
20 the Axanar works, self-described by Defendants as professional independent Star
21 Trek films, made by professional actors and professional technical personnel (some
22 of whom worked on authorized Star Trek works), that were produced and intended
23 to be produced with a budget of well over \$1 million,¹ were to proliferate, whether
24 that would cause market harm to Plaintiffs. This has nothing to do with the types of
25 “fan films” in Lane’s compendium, which are completely irrelevant to this issue.
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27 _____
28 ¹ It is actually clear that if Defendants were allowed to finish the Axanar full
length film, its budget would substantially exceed \$2 million.

1 Admitting Lane’s compendium of fan films would be an extreme and
2 unnecessary burden on the jury’s time and the resources of the Court. It would
3 likely take days to introduce each of the dozens of films analyzed by Lane and
4 establish what, if any, elements of *Star Trek* each film infringes, the quality of the
5 films, the degree of professionalism with respect to each film, the production budget
6 for each film, the profit made by the creators of each film, etc. There is simply no
7 probative value, though significant cost, in conducting dozens of miniature trials
8 regarding fan films that are fundamentally irrelevant to this case.

9 **III. CONCLUSION**

10 For the foregoing reasons, Plaintiffs request that testimony or documents by
11 Lane regarding this matter be excluded from trial.

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13 Dated: December 16, 2016

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DAVID GROSSMAN
JENNIFER JASON

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By: /s/ Jennifer Jason
Jennifer Jason
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