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8 and ALEC PETERS

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

11
12 PARAMOUNT PICTURES
CORPORATION, a Delaware
13 corporation; and CBS STUDIOS INC., a
Delaware corporation

14 Plaintiffs,

15 vs.

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

18 Defendants.
19

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

Assigned to: Hon. R. Gary Klausner

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF MOTION *IN LIMINE* NO. 4 TO
PRECLUDE PLAINTIFFS FROM
RELYING ON EVIDENCE
REGARDING ITEMS THAT ARE
UNORIGINAL, IN THE PUBLIC
DOMAIN, OR FROM THIRD
PARTIES**

Pretrial Conference: January 9, 2017
Trial Date: January 31, 2017

1 Pursuant to Federal Rule of Evidence 201, Defendants AXANAR
2 PRODUCTIONS, INC. and ALEC PETERS (collectively “Defendants”) hereby
3 request that the Court take judicial notice of the documents listed herein. Federal Rule
4 of Evidence 201(b) states that the court may take judicial notice of facts that are “(1)
5 generally known within the trial court’s territorial jurisdiction; or (2) can be accurately
6 and readily determined from sources whose accuracy cannot reasonably be
7 questioned.” *See* Fed. R. Evid. 201. A court may consider judicially noticeable facts
8 in connection with a motion to dismiss, *Shwarz v. U.S.*, 234 F.3d 428, 435 (9th Cir.
9 2000), and must generally take judicial notice if a party requests it and supplies the
10 court with the requisite information. *See* Fed. R. Evid. 201(c)(2).

11 Defendants request that the court take judicial notice of the below websites and
12 literary sources in connection with their Motion *in Limine* Number 4 to preclude
13 Plaintiffs from relying on evidence regarding items that are unoriginal, in the public
14 domain, or from third parties. Copies of the sources are attached hereto. California
15 Courts have found that websites may be the proper subject of judicial notice. *See*
16 *Caldwell v. Caldwell*, No. C 05-4166 PJH, 2006 WL 618511, at *3-4 (N.D. Cal. Mar.
17 13, 2006) (recognizing that websites are the proper subject of judicial notice, but
18 denying defendant’s request where a copy of the website at issue was not provided to
19 the court); *Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 965 (C.D. Cal. 2005)
20 (finding that websites are proper subjects for judicial notice); *Hendrickson v. eBay,*
21 *Inc.*, 165 F. Supp. 2d 1082, 1084 n.2 (C.D. Cal. 2001) (same). California Courts have
22 further found that courts may judicially notice the contents of a book, as long as the
23 request does not ask the court to determine the truth or falsity of those contents. *See,*
24 *e.g., Phillips v. Worldwide Internet Solutions*, No. C 05-5125 SBA, at *1 n.1 (N.D.
25 Cal. Jun. 20, 2006); *Keimer v. Buena Vista Books, Inc.*, 75 Cal. App. 4th 1220, 1224
26 n.4 (1st Dist. 1999).

1 Accordingly, Defendants respectfully request that the Court take judicial notice
2 of:

- 3 1. Attached hereto as **Exhibit A** is a true and correct copy of “SOVAL NAME
4 MEANING,” <https://www.kidpaw.com/names/soval> (last visited Dec. 5,
5 2016).
- 6 2. Attached hereto as **Exhibit B** is a true and correct copy of “GARTH
7 (NAME”), [https://en.wikipedia.org/wiki/Garth_\(name\)](https://en.wikipedia.org/wiki/Garth_(name)) (last visited Dec. 5,
8 2016).
- 9 3. Attached hereto as **Exhibit C** is a true and correct copy of “EPSILON
10 BOOTIS,” https://en.wikipedia.org/wiki/Epsilon_Bo%C3%B6tis (last
11 visited Dec. 5, 2016).
- 12 4. Attached hereto as **Exhibit D** is a true and correct copy of a screenshot
13 from NOSFERATU (Jofa-Atelier Berlin- Johannisthal, Prana-Film GmbH
14 (1922); attached hereto as **Exhibit E** is a true and correct copy of ELF,
15 Merriam Webster, <http://www.merriam-webster.com/dictionary/elf> (last
16 visited Mar. 27, 2016).
- 17 5. Attached hereto as **Exhibit F** is a true and correct copy of VULCAN,
18 Merriam Webster, <http://www.merriam-webster.com/dictionary/Vulcan>
19 (last visited Mar. 27, 2016).
- 20 6. Attached hereto as **Exhibit G** are true and correct copies of excerpts
21 discussing various triangular medals from WILLIAM T. R. MARVIN, *THE*
22 *MEDALS OF THE MASONIC FRATERNITY: DESCRIBED AND ILLUSTRATED*
23 (1880).
- 24 7. Attached hereto as **Exhibit H** is a true and correct copy of a relevant
25 excerpt from THE ODYSSEY OF HOMER, translated by WILLIAM CULLEN
26 BRYANT, James R. Osgood and Co. (1871).
- 27 8. Attached hereto as **Exhibit I** is a true and correct copy of RIGEL,
28 Merriam Webster, <http://www.merriam-webster.com/dictionary/Rigel>

1 (last visited Mar. 27, 2016).

2 9. Attached hereto as **Exhibit J** is a true and correct copy of TERRA,
3 Merriam Webster, <http://www.merriam-webster.com/dictionary/terra>
4 (last visited Mar. 28, 2016).

5 10. Attached hereto as **Exhibit K** is a true and correct copy of the Flag of the
6 United Federation of Planets, as compared to the Flag of the United
7 Nations.

8 11. Attached hereto as **Exhibit L** is a true and correct copy of
9 TELEPORTATION, Merriam Webster, [http://www.merriam-
11 webster.com/dictionary/teleportation](http://www.merriam-
10 webster.com/dictionary/teleportation) (last visited Mar. 28, 2016).

12 12. Attached hereto as **Exhibit M** is a true and correct copy of Sten
13 Odenwald's *Who Invented Faster Than Light Travel?*,
14 <http://www.astronomycafe.net/anthol/scifi1.html> (last visited Mar. 28,
15 2016).

16 13. Attached hereto as **Exhibit N** is a true and correct copy of FEDERATION,
17 Merriam Webster, [http://www.merriam-
19 webster.com/dictionary/federation](http://www.merriam-
18 webster.com/dictionary/federation) (last visited Mar. 27, 2016).

20 14. Attached hereto as **Exhibit O** is a true and correct copy of a relevant
21 excerpt from H.G. Wells, *The War of the Worlds*, Leipzig (1898).

22 15. Attached hereto as **Exhibit P** is a true and correct copy of BRIDGE,
23 Merriam Webster, <http://www.merriam-webster.com/dictionary/bridge>
24 (last visited Mar. 27, 2016).

25 16. Attached hereto as **Exhibit Q** is a true and correct copy of WHOM GODS
26 DESTROY (STAR TREK: THE ORIGINAL SERIES), Wikipedia,
27 [https://en.wikipedia.org/wiki/Whom_Gods_Destroy_\(Star_Trek%3A_Th
28 e_Original_Series\)](https://en.wikipedia.org/wiki/Whom_Gods_Destroy_(Star_Trek%3A_The_Original_Series)) (last visited Dec. 15, 2016).

17. Attached hereto as **Exhibit R** is a true and correct copy of WHOM THE
GODS WOULD DESTROY, Wikipedia,

1 https://en.wikipedia.org/wiki/Whom_the_gods_would_destroy (last
2 visited Dec. 15, 2016).

3 18. Attached hereto as **Exhibit S** is a true and correct copy of THE SYSTEM
4 OF DOCTOR TARR AND PROFESSOR FETHER, Wikipedia,
5 [https://en.wikipedia.org/wiki/The_System_of_Doctor_Tarr_and_Professor](https://en.wikipedia.org/wiki/The_System_of_Doctor_Tarr_and_Professor_Fether)
6 [r_Fether](https://en.wikipedia.org/wiki/The_System_of_Doctor_Tarr_and_Professor_Fether) (last visited Dec. 15, 2016).

7 19. Attached hereto as **Exhibit T** is a true and correct copy of “Is ‘those
8 whom the gods wish to destroy they first make mad’ a classical
9 quotation?,” Blog of Roger Pearse, [http://www.roger-](http://www.roger-pearse.com/weblog/2015/10/31/is-those-whom-the-gods-wish-to-destroy-they-first-make-mad-a-classical-quotation/)
10 [pearse.com/weblog/2015/10/31/is-those-whom-the-gods-wish-to-destroy-](http://www.roger-pearse.com/weblog/2015/10/31/is-those-whom-the-gods-wish-to-destroy-they-first-make-mad-a-classical-quotation/)
11 [they-first-make-mad-a-classical-quotation/](http://www.roger-pearse.com/weblog/2015/10/31/is-those-whom-the-gods-wish-to-destroy-they-first-make-mad-a-classical-quotation/) (last visited Dec. 15, 2016).

12 Accordingly, this Court is entitled to take judicial notice of the above
13 documents, and Defendants specifically request that this Court take judicial notice of
14 the Exhibits identified above and attached hereto.

15
16 Dated: December 16, 2016

WINSTON & STRAWN LLP

17
18 By: /s/ Erin R. Ranahan
19 Erin R. Ranahan
20 Attorneys for Defendants,
21 AXANAR PRODUCTIONS, INC.
22 and ALEC PETERS