

1 Erin R. Ranahan (SBN: 235286)
eranahan@winston.com
2 Diana Hughes Leiden (SBN: 267606)
dhleiden@winston.com
3 Kelly N. Oki (SBN: 304053)
koki@winston.com
4 WINSTON & STRAWN LLP
333 South Grand Avenue
5 Los Angeles, CA 90071
Telephone: (213) 615-1700
6 Facsimile: (213) 615-1750

7 Attorneys for Defendants,
AXANAR PRODUCTIONS, INC.,
8 and ALEC PETERS

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

11
12 **Winston & Strawn LLP**
333 S. Grand Avenue
Los Angeles, CA 90071-1543

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.**

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

Assigned to: Hon. R. Gary Klausner

**DEFENDANTS AXANAR
PRODUCTIONS, INC.'S AND ALEC
PETERS' OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE
NO. 3 TO EXCLUDE TESTIMONY
OR DOCUMENTS BY J.J. ABRAMS
AND JUSTIN LIN AND THEIR
PUBLIC STATEMENTS, OR
ANYTHING RELATED TO THEIR
PUBLIC STATEMENTS OR
DOCUMENTS REGARDING THIS
MATTER**

Pretrial Conference: Jan. 9, 2017
Trial Date: Jan. 31, 2017

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 **I. INTRODUCTION**

2 By their Motion *in Limine* No. 3 (“Motion”), Plaintiffs Paramount Pictures
3 Corporation and CBS Studios, Inc. (“Plaintiffs”) seek to exclude evidence and
4 testimony relating to public statements made by J.J. Abrams and Justin Lin—the
5 directors and producers of the certain Star Trek Films. Plaintiffs contend that
6 because Messers. Abrams and Lin are not employees or authorized representatives
7 of Plaintiffs, their statements are irrelevant. However, Defendants Axanar
8 Productions Inc. (“Axanar Productions”) and Alec Peters (“Peters”) do not seek to
9 introduce Abrams’ or Lin’s statements as statements of party-opponents under Rule
10 801. Rather, Defendants seek to introduce their testimony as probative evidence of
11 Star Trek fan film culture, which is directly relevant to Plaintiffs’ willful
12 infringement claim and to the determination of the amount of any actual or statutory
13 damages.

14 **II. FACTUAL SUMMARY**

15 In March 2016, Justin Lin, the director of the most recent Star Trek motion
16 picture, *Star Trek Beyond*, publicly commented on this case, stating: “[t]his is
17 getting ridiculous! I support the fans. Trek belongs to all of us.” Declaration of
18 Kelly N. Oki In Support of Defendants’ Motion for Summary Judgment (“Oki
19 Decl.”), Ex. 11 (Lin Tr. at 17:17-25).)

20 Shortly thereafter, in May 2015, J.J. Abrams, who directed and/or produced
21 the three most recent Star Trek movies, publicly stated that he and Justin Lin
22 “realized this [case] was not an appropriate way to deal with the fans.” (Oki Decl.,
23 Ex. 12 (Abrams Tr. at 20:23-21:13).) Moreover, Abrams stated that “fans should be
24 celebrating [Star Trek]. Fans of Star Trek are part of this world. So [Justin] went to
25 the studio and pushed them to stop this lawsuit and now, within the next few weeks,
26 it will be announced this is going away, and that fans would be able to continue
27 working on their project.” *Id.*

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1 In the 1976 book *Star Trek: The New Voyages*, Gene Roddenberry, creator of
2 the original Star Trek Series, stated:

3 We were particularly amazed when thousands, then tens of thousands
4 of people began creating their own personal Star Trek adventures.
5 Stories, and paintings, and sculptures, and cookbooks. And songs, and
6 poems, and fashions. And more. The list is still growing. It took some
7 time for us to fully understand and appreciate what these people were
8 saying. Eventually we realized that there is no more profound way in
9 which people could express what Star Trek has meant to them than by
10 creating their own very personal Star Trek things.

11
12 Because I am a writer, it was their Star Trek stories that especially
13 gratified me. I have seen these writings in dog-eared notebooks of fans
14 who didn't look old enough to spell "cat." I have seen them in
15 meticulously produced fanzines, complete with excellent artwork.
16 Some of it has even been done by professional writers, and much of it
17 has come from those clearly on their way to becoming professional
18 writers. Best of all, all of it was plainly done with love.

19
20 It is now a source of great joy for me to see their view of Star Trek,
21 their new Star Trek stories, reaching professional publication here. I
22 want to thank these writers, congratulate them on their efforts, and wish
23 them good fortune on these and further of their voyages into other
24 times and dimensions. Good writing is always a very personal thing
25 and comes from the writer's deepest self. Star Trek was that kind of
26 writing for me, and it moves me profoundly that it has also become so
27 much a part of the inner self of so many other people.

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1 The public statements made by the recent directors of Star Trek not only echo
2 Roddenberry’s sentiment, but are extremely probative of why Peters would believe
3 Plaintiffs’ would tolerate his attempt at creating Star Trek fan fiction. Defendants
4 previously made this point in the parties’ Joint Stipulation Regarding Defendants’
5 Motion to Compel Discovery From Plaintiffs, stating that the public statements
6 made by Messrs. Abrams and Lin “will demonstrate that Defendants reasonably
7 believed – and actually were – operating within the enduring tradition of *Star Trek*-
8 inspired works of fan fiction, which have been long tolerated and encouraged by
9 Plaintiffs since the inception of the *Star Trek* franchise. (Dkt. 55 at 41.) After
10 considering the arguments made by both parties, the Court compelled Plaintiffs’ to
11 produce Messrs. Abram and Lin to testify as to this subject matter. (Minute Order,
12 Dkt. 60.) Their statements that “Trek belongs to all of us,” and that “fans would
13 [soon] be able to continue working on their project” certainly suggest that there was
14 a common understanding in the Star Trek fan film community that Defendants’
15 activities fell squarely in line with the tolerated Star Trek tradition.

16 Indeed, Defendants relied on this statement in creating the most recent script.
17 Hunt testified: “[W]hen the goal is you’re trying to make the project as good as it
18 can be, Rob [Burnett] and I never stopped working on it. I mean, we stopped
19 physically working on the script at the end of December, when the lawsuit
20 happened, but we kept talking about it and we kept coming up with ideas. And then
21 in – I want to say May or June, when J.J. Abrams made his announcement that the
22 lawsuit was perhaps going to be dropped, I think Rob [Burnett] contacted me, and
23 we thought, why don’t we work on it a little bit more so we can be ready?”
24 Declaration of Amy Stern in Support of Defendants’ Oppositions to Plaintiffs’
25 Motions *in Limine*, Ex. 1 (Hunt Tr. at 87:13-88:8), concurrently filed.)

26 Messers. Lin and Abrams testified [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 [REDACTED] Abrams testified [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Additionally, both Messers. Lin and Abrams testified [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Ultimately, Plaintiffs’ director and producer [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 **III. LEGAL STANDARD**

16 Rulings on motions *in limine* are committed to the discretion of the trial court.
17 *Gametech Int’l Inc. v. Trend Gaming Sys., L.L.C.*, 232 Fed. Appx. 676, 677 (9th Cir.
18 2007). District courts may exercise their discretion to exclude irrelevant evidence,
19 or to exclude evidence whose probative value is outweighed by other considerations.
20 Fed. R. Evid. 401-403; *Wicker v. Oregon ex rel. Bureau of Labor*, 543 F.3d 1168,
21 1177-78 (9th Cir. 2008). Evidence is relevant only if “it has any tendency to make a
22 fact more or less probable than it would be without the evidence, and the fact is of
23 consequence in determining the action.” Fed. R. Evid. 401.

24 **IV. ARGUMENT**

25 **a. Evidence and Testimony Concerning Abrams’ and Lin’s Public**
26 **Statements Are Directly Relevant to Star Trek Fan Film Culture**

27 In its January 3, 2016 Order (“Order”) on the parties’ motions for summary
28 judgment, the Court acknowledged that “Star Trek has a long history of fan films

1 that stayed free from copyright disputes.” Dkt. No. 163 at 14. In finding that a
2 determination on willful infringement was inappropriate on summary judgment, the
3 Court also stated that “Peters’ belief that the *Axanar* Works were noncommercial
4 fan films in light his understanding from CBS that it would tolerate such films
5 creates an issue of his state of mind that must be adjudicated by the jury.” *Id.*

6 To state it another way, the jury must determine whether Peters could have
7 believed that Plaintiffs would tolerate Defendants’ Works. This requires evidence
8 of the unique relationship that the Star Trek franchise (and those closely associated
9 with it) has with its fans. Specifically, there is a documented history of unlicensed
10 fan films and creative works that unabashedly borrow from Plaintiffs’ Works. *See*
11 Dkt. No. 75-26. These films, some of which feature characters from Plaintiffs’
12 Works and exact replicas of Star Trek movie sets, have long been encouraged by
13 creators of the Star Trek franchise. *Id.* Indeed, Gene Roddenberry, creator of the
14 original Star Trek Series, stated in 1976 that “there is no more profound way in
15 which people could express what Star Trek has meant to them than by creating their
16 own very personal Star Trek [fan fiction].”

17 The public statements made by the recent directors of Star Trek not only echo
18 Roddenberry’s sentiment, but are extremely probative of why Peters would believe
19 Plaintiffs’ would tolerate his attempt at creating Star Trek fan fiction. Their
20 statements that “Trek belongs to all of us,” and that “fans would [soon] be able to
21 continue working on their project” certainly suggest that there was a common
22 understanding in the Star Trek fan film community that Defendants’ Works fell
23 squarely in line with the tolerated Star Trek tradition.¹ Given this unique
24 relationship between Star Trek and its fans, the public statements made by Lin and
25 Abrams are directly probative of why Peters would believe Defendants’ Works did

26 ¹ To this point, Plaintiffs’ contention that Abrams and Lin lack foundation regarding
27 Star Trek fan film culture is without merit. *See U.S. Salt, Inc. v. Broken Arrow, Inc.*,
28 563 F.3d 687, 690 (8th Cir. 2009) (“[P]erceptions based on industry experience, is a
sufficient foundation for lay opinion testimony.”)

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1 not constitute willful infringement and, as a consequence, evidence concerning their
2 statements should be admitted. *See Sharper Image Corp. v. Honeywell Intern., Inc.*,
3 222 F.R.D. 621, 631 (N.D. Cal. 2004) (noting that “courts have acknowledged that a
4 considerable number of circumstance-specific factors or circumstances could be
5 probative of whether a defendant’s infringement should be deemed willful”).

6 **b. Evidence and Testimony Concerning Abrams’ and Lin’s Public**
7 **Statements Are Also Directly Relevant to Statutory Damages**

8 This evidence is also relevant to the statutory damages inquiry—if the jury
9 finds that the infringement was committed willfully, the award of statutory damages
10 may be increased to \$150,000. *See* 17 U.S.C. § 504(c)(2). The Supreme Court has
11 found that in copyright cases, the jury has the power to consider factors that might
12 inform them on what they find fair and “just” when deciding where on the wide
13 scale a plaintiff should be awarded statutory damages in a copyright case. *F.W.*
14 *Woolworth Co. v. Contemporary Arts. Inc.*, 344 U.S. 228, 232 (1952) (quoting *L.A.*
15 *Westermann Co. v. Dispatch Printing Co.*, 249 U.S. 100, 106 (1919)). Revenues
16 lost by plaintiffs have been considered relevant as part of a list of non-exhaustive
17 factors for the jury to consider. *Peer Int’l Corp. v. Luna Records, Inc.*, 887 F. Supp.
18 560, 568 (S.D.N.Y. 1995).

19 The takeaway from Abrams’ and Lin’s public statements—specifically, that
20 their support for Star Trek fan works is indicative of a fan culture that tolerates
21 works like Defendants’—are probative regarding damages. Moreover, the fact that
22 Plaintiffs’ Star Trek producer and director [REDACTED]
23 [REDACTED] may aid the jury in
24 exercising their wide discretion in determining the proper level of damages. Peters
25 would be severely prejudiced should they not be able to fully detail the relationship
26 the Star Trek franchise has with its fans. As such, Plaintiffs’ Motion should be
27 denied.
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V. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs’ Motion and allow Defendants to introduce evidence and testimony of statements and opinions of J.J. Abrams and Justin Lin.

Dated: January 6, 2017

WINSTON & STRAWN LLP

By: /s/ Erin R. Ranahan

Erin R. Ranahan
Diana Hughes Leiden
Kelly N. Ōki
Attorneys for Defendants,
AXANAR PRODUCTIONS, INC.
and ALEC PETERS

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333 S. Grand Avenue
Los Angeles, CA 90071-1543