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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. 7 TO EXCLUDE TESTIMONY
AND DOCUMENTS DISCUSSING
PETERS' UNRELATED WORK
REGARDING STAR TREK PROPS**

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

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1 **I. INTRODUCTION**

2 Plaintiffs Paramount Pictures Corporation and CBS Studios, Inc.
3 (“Plaintiffs”) wish to simply ignore the reality of the history between Plaintiffs and
4 Defendant Alec Peters. Specifically, Plaintiffs’ motion in limine #7 (“Motion”)
5 seeks to exclude evidence and arguments relating to Mr. Peters’ prior engagement
6 with Plaintiffs, including the time and effort Mr. Peters’ volunteered to CBS in
7 connection with the archiving and auction of Star Trek props and costumes under
8 the arguments that such evidence is not relevant and is prejudicial. However,
9 Plaintiffs do not want the jury to know about relevant history and communications
10 between Plaintiffs and Mr. Peters. Indeed, evidence of Mr. Peters’ history and work
11 with Plaintiffs is highly relevant to Defendants’ state of mind, in particular
12 Defendants’ innocent intent and lack of willfulness, which impacts the
13 determination of statutory damages sought by Plaintiffs. Accordingly, Plaintiffs’
14 Motion should be denied and the Court should allow Defendants to admit such
15 evidence and testimony at trial.

16 **II. FACTUAL SUMMARY**

17 Alec Peters was retained by Plaintiff CBS Studios, Inc. (“CBS”) to assist with
18 the auctioning of Star Trek costumes and props. Declaration of Jennifer Jason
19 (“Jason Decl.”), ¶¶ 4-5, Exs. A, B. Mr. Peters further volunteered his time and
20 efforts to assist CBS with its prop and costume archives. *Id.* These interactions
21 established relationships between Mr. Peters and the same witnesses that Plaintiffs
22 have designated in this case, including John Van Citters, Liz Kalodner and Bill
23 Burke. Dkt. 151 (Joint Witness List). Through these relationships, Mr. Peters kept
24 an open dialogue about his own endeavors, as well as the actions of other third
25 parties that he felt may be violating Plaintiffs’ rights. Declaration of Amy Stern
26 (“Stern Decl.”), ¶ 6, Ex. 3 (Email from Elizabeth D. Kalodner); ¶ 7, Ex. 4 (Email
27 from John Van Citters). Moreover, these communications showed that Plaintiffs
28 considered Mr. Peters a “good guy” and trusted his expertise regarding Star Trek, as

1 well as exploited his services as a volunteer as Plaintiffs believed that Mr. Peters
 2 would “give an honest assessment”. Stern Decl. ¶ 5, Ex. 2 (Email from Elizabeth D.
 3 Kalodner). The context provides insights into the history of the relationship of the
 4 very same parties at issue in this case.

5 Indeed, this court already found in its order denying the parties’ respective
 6 summary judgment motions that the prior communications between the parties,
 7 including Mr. Peters reporting of third parties conduct with respect to intellectual
 8 property, is relevant to Mr. Peters’ state of mind. Dkt. 163 at 14 (Order re Plaintiffs’
 9 Motion for Partial Summary Judgment and Defendants’ Motion for Summary
 10 Judgment (“Order”)).

11 III. LEGAL STANDARD

12 Rulings on motions *in limine* are committed to the discretion of the trial court.
 13 *Gametech Int’l Inc. v. Trend Gaming Sys., L.L.C.*, 232 Fed. Appx. 676, 677 (9th Cir.
 14 2007). District courts may exercise their discretion to exclude irrelevant evidence,
 15 or to exclude evidence whose probative value is substantially outweighed by the
 16 danger of unfair prejudice. Fed. R. Evid. 401-403; *Dream Games of Arizona, Inc. v.*
 17 *PC Onsite*, 561 F.3d 983 (9th Cir. 2008). Evidence is relevant only if “it has any
 18 tendency to make a fact more or less probable than it would be without the evidence,
 19 and the fact is of consequence in determining the action.” Fed. R. Evid. 401.
 20 Moreover, “[t]he court may exclude relevant evidence if its probative value is
 21 substantially outweighed by a danger of . . . unfair prejudice, confusing the issues,
 22 [or] misleading the jury.” Fed. R. Evid. 403; *United States v. Ellis*, 147 F.3d 1131,
 23 1135-36 (9th Cir. 1998).

24 IV. ARGUMENT

25 a. Mr. Peters’ History and Work with Plaintiffs Are Relevant To 26 Show That Defendants’ Conduct Was Innocent and Does Not 27 Constitute Willful Infringement, Thereby Impacting The Available 28 Measure of Statutory Damages

1 Mr. Peters’ prior dealings with Plaintiffs, including the nature and length of
 2 Mr. Peters’ history and relationship with Plaintiffs, are highly relevant to the
 3 determination of whether Mr. Peters’ potential actions were willful. Where alleged
 4 infringement is innocent, or where the court finds that the “infringer was not aware
 5 and had no reason to believe that his or her acts constituted an infringement of
 6 copyright,” the Copyright Act provides for statutory damages “in a sum of not less
 7 than \$200. 17 U.S.C. § 504(c)(1). Where a defendant is found to have committed
 8 willful infringement, the court in its discretion can award statutory damages up to
 9 \$150,000. 17 U.S.C. § 504(c)(2)). However, a defendant that may be an innocent
 10 infringer is subject to a lower statutory damage minimum. *Id.*

11 In determining the adequate amount of statutory damages, a jury can consider
 12 the circumstances of the infringement. *PC Onsite*, 561 F.3d at 992 (citing *Peer Int’l*
 13 *Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990)). “A
 14 determination of willfulness requires an assessment of a defendant’s state of mind.”
 15 *Friedman v. Live Nation Merch., Inc.*, 833 F.3d 1180, 1186 (9th Cir. 2016).

16 Mr. Peters’ history working with Plaintiffs is important to establish the
 17 circumstances of Defendants’ actions; specifically that Defendants were not likely to
 18 know or have reason to know that Plaintiffs would consider Defendants’ actions as
 19 an infringement. As such, evidence and related testimony regarding Mr. Peters’
 20 prior work for Plaintiff CBS is highly relevant to Defendants’ knowledge, intent,
 21 and reasonable beliefs regarding his actions.

22 Plaintiffs’ allegations that such evidence and testimony would be prejudicial
 23 is unfounded. Mr. Peters’ work on prop and costume archiving and auctions is
 24 clearly differentiable from the creation of a film, both in the nature of the action and
 25 the time period in which it took place. This evidence can be easily presented to the
 26 jury as relevant background, and in a way will not be genuinely confusing, and is
 27 directly related to Defendants’ lack of intent or willfulness.

28 V. CONCLUSION

1 For the foregoing reasons, Defendants respectfully request that the Court deny
2 Plaintiffs' Motion and allow Defendants to introduce evidence and testimony of Mr.
3 Peters' prior history and work for CBS.

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Dated: January 6, 2017

WINSTON & STRAWN LLP

By: /s/ Erin R. Ranahan

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