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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

19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a  
California corporation; ALEC PETERS,  
an individual, and DOES 1-20,  
22

23 Defendants.  
24  
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Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION IN  
LIMINE NO. 1 TO PRECLUDE  
PLAINTIFFS FROM RELYING  
ON EVIDENCE CONCERNING  
ALLEGED DISCOVERY  
VIOLATIONS**

Pre-Trial Conference: January 9, 2017  
Trial: January 31, 2017

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios  
3 Inc. (“CBS”) (collectively, “Plaintiffs”) oppose the motion in limine by Defendants  
4 Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) to preclude  
5 Plaintiffs from relying on evidence concerning alleged discovery violations.

6 **I. INTRODUCTION**

7 By their motion in limine, Defendants seek to exclude from evidence the fact  
8 that Alec Peters failed to produce emails, between himself and his colleagues and  
9 collaborators, relating to his copying of the Star Trek works, and relating to his  
10 production of the Axanar Works. Further, Defendants’ motion seeks to exclude  
11 evidence that Peters failed to turn over his public statements, which are inconsistent  
12 with his post-litigation testimony, or his social media posts and communications that  
13 conflict with positions he has taken in this litigation. Evidence of this nature is not  
14 overly prejudicial to Defendants and is relevant to Plaintiffs’ claims because it is  
15 probative of Peters’ knowledge of the infringing nature of the Axanar Works.  
16 Further, Peters’ failure to turn over virtually all of the evidence that conflicts with  
17 his post-litigation arguments and positions is highly relevant to his credibility as a  
18 witness, and must be admitted.

19 **II. FACTS**

20 **A. Defendants’ Failure To Comply With Discovery Obligations.**

21 On June 21, 2016, the parties held a meet and confer regarding their  
22 respective requests for production and counsel for Plaintiffs, David Grossman and  
23 Jonathan Zavin, met and conferred with Defendants’ counsel Erin Ranahan. At the  
24 meeting, Ms. Ranahan agreed that Peters would produce all source material, other  
25 than Star Trek television series and films, which he used to create *Prelude to*  
26 *Axanar*, the *Vulcan Scene*, and the upcoming Axanar feature (together, the “Axanar  
27 Works”). Declaration of David Grossman (“Grossman Decl.”), ¶ 3. The parties  
28 agreed that they would not be exchanging copies of any Star Trek television

1 episodes and motion pictures and Ms. Ranahan expressly stated that to do so would  
2 be unnecessary as Mr. Peters informed her that he already owned all of the Star Trek  
3 films and television series. Peters, in his deposition, stated [REDACTED]  
4 [REDACTED]. Grossman Decl. ¶  
5 3, Ex. A.

6 While the parties agreed that exchanging videos and television episodes that  
7 each of them already had would be unnecessary, Plaintiffs did not relieve Mr. Peters  
8 or Axanar Productions, of producing other responsive discovery, including the  
9 source materials he used to create the Axanar Works, and any sketches, storyboards,  
10 or communications relating to the creation of the Axanar Works.

11 Specifically, Defendants were obligated to produce all of their relevant  
12 website postings, emails, text messages, social media postings and statements on  
13 crowdfunding websites, such as Indiegogo and Kickstarter. Defendants, however,  
14 failed to do so. Mr. Peters produced virtually none of the emails, website postings,  
15 social media postings, Facebook communications and podcasts that will be the  
16 subject of this trial. Those documents show that Mr. Peters intended to profit (and  
17 did profit) from the Axanar Works, and that Peters set out to copy Plaintiffs’ Star  
18 Trek works – down to excruciating details. Peters’ own minimal document  
19 production involved only a smattering of documents, all of which he believed would  
20 benefit his litigation position.

21 For example, at his deposition, Peters [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED].  
25 Grossman Decl. ¶ 4, Ex. A. However, despite Peters’ use of this document as  
26 source material, Defendants failed to produce *The Four Years War* during  
27 discovery, or at all. Instead, Plaintiffs learned of Defendants’ use of *The Four Years*  
28

1 War from a podcast made by Peters on or around May 31, 2016, several months  
2 after Plaintiffs filed their complaint.

3 Additionally, Defendants withheld thousands of pages of emails between  
4 Peters and Christian Gossett (the director of *Star Trek: Prelude to Axanar*) about the  
5 Axanar Works. Peters' extensive communications with Mr. Gossett were only  
6 uncovered when Mr. Gossett produced them in response to a third party subpoena in  
7 late October 2016. In fact, Peters, and the other key witness for Peters, Robert  
8 Burnett, withheld virtually all key e-mails relating to this case. At his first  
9 deposition, [REDACTED], Grossman Decl.  
10 ¶ 5, Ex. A. Faced with the fact that Gossett subsequently produced thousands or  
11 relevant e-mails between himself and Peters, which Peters had not produced, at his  
12 second deposition Peters testified that [REDACTED]. Grossman  
13 Decl. ¶ 6, Ex. A. Further, Robert Burnett, the director of Axanar (and represented  
14 by Peters' counsel), whose documents had been subpoenaed, failed to turn over any  
15 e-mails between himself and Peters, on the grounds that that this would be  
16 burdensome since Peters had them all and had turned them over to Plaintiffs.  
17 Grossman Dec. ¶ 7, Ex. B.

18 Peters also failed to produce any of the social media messages between  
19 himself and his collaborators on the Axanar project, including the co-writer of the  
20 Axanar script, Bill Hunt, Peters' ex-girlfriend and paid crew-member, Diana  
21 Kingsbury, and Robert Burnett, the director of the upcoming Axanar feature. The  
22 documents that Plaintiffs *were* able to obtain through independent investigation  
23 show that Peters engaged in extensive discussions regarding the creative details of  
24 the Axanar project, including deciding which of Plaintiffs' copyrighted materials  
25 were to be used as source material to create the Axanar Works. Further, Peters  
26 engaged in communications with third party witness Terry McIntosh, none of which  
27 he produced, but that show that Peters was attempting to meet with Netflix, was  
28 using the name "Star Trek" to garner online views for the infringing Axanar Works,

1 and was attempting to leverage his use of Plaintiffs’ intellectual property so that he  
2 could become a “producer.”

3 Mr. Peters also has denied that he “copied” Star Trek, and has done so by  
4 hiding the very evidence that would contradict his litigation statements. For  
5 example, in the First Amended Complaint, Plaintiffs alleged that Defendants copied  
6 many elements from Plaintiffs’ intellectual property: “including the United  
7 Federation of Planets, ‘beaming up,’ Klingons, Vulcans, the Starship Enterprise,  
8 spacedocks, [and] the interrelationship between species, planets and alliances.  
9 Defendants have intentionally sought to replicate the Star Trek Copyrighted Works  
10 (down to copying costumes, makeup and jewelry) and, in doing so, they have sought  
11 to create a ‘Star Trek’ film.” FAC, Dkt. No. 26, ¶ 46. Defendants denied this  
12 allegation: “Defendants deny that *Prelude to Axanar* copies any protected  
13 expression from any of the Star Trek Works. Defendants deny that *Prelude to*  
14 *Axanar* is substantially similar to, is derivative of, or infringes any of the Star Trek  
15 Works.... Defendants deny the allegations in paragraph 46. In particular,  
16 Defendants deny...**that Soval’s robe in Prelude to Axanar contains ‘ancient**  
17 **Vulcan script’ (the robe contains Chinese letters).**” Dkt. No. 47, ¶ 46, pp.8-9  
18 (emphasis added).

19 The Vulcan (robe) costume depicted in the FAC does not contain “Chinese  
20 letters” – and based on Mr. Peters’ unproduced emails, it is clear that his attention to  
21 detail in recreating the Star Trek universe would not have allowed for “Chinese  
22 letters” to appear on the costume of a fictional alien character in the Star Trek  
23 universe. Mr. Peters engaged in many email exchanges approving innumerable  
24 details of the *Star Trek: Prelude to Axanar*, and *Star Trek: Axanar* productions and,  
25 in one of those exchanges, Mr. Peters approved the costume to be worn by a Vulcan  
26 ambassador character named Soval. Mr. Peters (in the email he did not produce)  
27 stated: “I think the outer robe works too. We can add Vulcan Glyphs.” Grossman  
28 Decl. ¶ 8, Exs. C-D.

1 Below on the left is the costume that Mr. Peters approved, before he added  
2 the Vulcan writing, compared to the image on the right from the FAC, which Mr.  
3 Peters claimed was not Vulcan writing, but rather was unprotected “Chinese letters.”



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12 The evidence now shows that Mr. Peters knew, at the time these denials were  
13 made, that he had set out to create an authentic, professional Star Trek film, and that  
14 he was engaged in a lengthy process, documented by **many hundreds of**  
15 **unproduced emails**, through which he was attempting to willfully copy Plaintiffs’  
16 intellectual property. Peters’ attempts to hide the true evidence from the Court and  
17 the jury is relevant to his credibility, and to his claims that he did not engage in  
18 willful infringement.

19  
20 Peters’ extensive withholding of documents and information is relevant to his  
21 credibility and also to his willful conduct in deliberately copying all aspects of  
22 Plaintiffs’ works. Burnett’s withholding of e-mails is likewise relevant to his  
23 credibility. The emails withheld by Peters (but produced by Christian Gossett, the  
24 director of *Star Trek: Prelude to Axanar*), demonstrate the degree of copying  
25 engaged in by Peters and the jury should be made aware that the information that is  
26 most damaging to Peters’ claims of “innocent” infringement was in his possession  
27 and control, but was not produced by him in this lawsuit.

28

1 **III. ARGUMENT**

2 Under Federal Rule of Evidence 402, “[r]elevant evidence is admissible.” By  
3 withholding relevant evidence regarding the source material of the Axanar Works,  
4 his copying of elements of Plaintiffs’ works, and other material issues, Peters sought  
5 to diminish the extent that the Axanar Works are derivative of Plaintiffs’ properties,  
6 and his own involvement in selecting the source material to be used. Pursuant to 17  
7 U.S.C. § 504(c), if the “court finds, that infringement was committed willfully, the  
8 court in its discretion may increase the award of statutory damages . . . .”

9 Defendants’ withholding of probative materials is relevant to establishing the  
10 willful nature of their actions. The willful nature of the withholding is especially  
11 egregious here, where a considerable number of the documents were readily  
12 available to Peters throughout the litigation.

13 Defendants will also not be improperly prejudiced by admission of their  
14 failure to turn over (or delete) relevant documents in this lawsuit. Defendants’  
15 decision to withhold the subject materials constituted a calculated risk that the true  
16 source material for the Axanar Works, and the full extent of Defendants’ copying of  
17 Plaintiffs’ works, would remain hidden. Excluding this evidence now would  
18 reward Defendants for their own sharp dealing. This evidence is directly relevant to  
19 Peters’ (and Burnett’s) credibility, and should be permitted at trial in this action.

20 **IV. CONCLUSION**

21 For the foregoing reasons, Plaintiffs respectfully request that Defendants’  
22 motion in limine no. 1 to exclude reference to Defendants’ failure to comply with  
23 discovery obligations be denied.

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25 Dated: January 6, 2017

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By: /s/ David Grossman

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