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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

19 Plaintiffs,

20 v.

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

23 Defendants.
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27
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Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION IN
LIMINE NO. 3 TO PRECLUDE
PLAINTIFFS FROM
INTRODUCING EVIDENCE
REGARDING ALLEGEDLY
INFRINGED WORKS NOT
IDENTIFIED IN THE FIRST
AMENDED COMPLAINT**

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. (“Axanar”) and Alec Peters (“Peters”) (collectively,
5 “Defendants”) to exclude works not referenced in Plaintiffs’ complaint, including
6 the Star Trek Role Playing Game used by Defendants.

7 **I. INTRODUCTION**

8 By their motion in limine, Defendants seek to exclude from evidence
9 documents and materials that they, admittedly, used to create the Axanar Works,
10 and that were known to them at all relevant times. Defendants seek to exclude a
11 booklet titled *The Four Years War* that was produced by the FASA Corporation in
12 1986 (the copyright to which is owned by Plaintiff Paramount), as a supplement to
13 *Star Trek: The Role-Playing Game*. First, while not specifically named in the First
14 Amended Complaint (“FAC”), *The Four Years War* was included in the FAC in the
15 definition of the Star Trek Copyrighted Works on which the Plaintiffs were suing,
16 and Defendants had notice of that fact. Second, although Defendants used this
17 document as a basis for *Star Trek: Prelude to Axanar*, the *Vulcan Scene*, and the
18 upcoming Axanar feature (collectively, the “Axanar Works”), **and** Peters [REDACTED] (and
19 failed to produce) a copy, Defendants did not disclose its existence to Plaintiffs
20 during discovery. This motion in limine is an attempt to take advantage of
21 Defendants’ own discovery misconduct, is without any basis in law, and should be
22 denied.

23 **II. FACTS**

24 **A. The Nature of the Disputed Evidence.**

25 Between 1982 and 1989, the FASA Corporation produced materials for the
26 licensed work, *Star Trek: The Role-Playing Game*. Similar in structure to Dungeons
27 & Dragons, this game instructed participants to act out various Star Trek themed
28 scenarios as outlined in illustrated booklets. *The Four Years War* is a 46-page

1 booklet that was designed for use as a companion text to the primary game
2 instructions. Presented as a compendium of fictional historical analysis, firsthand
3 accounts, and technical details, *The Four Years War* was intended to give players a
4 broad understanding of the Federation’s war with the Klingon Empire in the 23rd
5 century, and Garth of Izar’s role in that war. *The Four Years War* is no longer in
6 print, but can be obtained online.

7 Defendant Alec Peters [REDACTED].

8 Declaration of David Grossman (“Grossman Decl.”) ¶ 2, Ex. A.

9 **B. *The Four Years War* is Included in the FAC**

10 Paragraph 19 of the FAC is as follows:

11
12 19. Plaintiffs also own the United States copyrights in
13 numerous other Star Trek works, including works in which
14 Garth of Izar appears, including but not limited to the
15 following novels: Garth of Izar (Registration No.
16 TX0005745716, owned by Paramount), Strangers from the
17 Sky (Registration No. TX0006429184, owned by CBS),
18 and Infinity’s Prism (Registration No. TX0006872810,
19 owned by CBS), as well as works in which starships
20 appear, including but not limited to Star Trek Titan: Sword
21 of Damocles (Registration No. TX0007050792, owned by
22 CBS)(collectively, the “Star Trek Books”) (the “Star Trek
23 Books,” together, with the “Star Trek Television Series”
24 and the “Star Trek Motion Pictures,” are referred to
25 collectively as the “Star Trek Copyrighted Works”).

26 *The Four Years War* is a work in which Garth of Izar appears and is therefore
27 specifically included in both the defined term Star Trek Books (which by its own
28 terms was not limited to only the few specific books named in paragraph 19), and
consequently in the defined term Star Trek Copyrighted Works. It is the Star Trek
Copyrighted Works that the Plaintiffs alleged in the FAC that the Defendants
infringed. See FAC ¶¶ 28, 30, 41, 44, 48, 55, 57, 63 and 67. Thus, Defendants’
motion is completely frivolous in that the FAC itself put them on notice of a claim
regarding all books in which Garth of Izar appeared. It is rendered even more

1 frivolous because the work, *The Four Years War*, was specifically identified to
2 Defendants in discovery as an infringed work.

3 **C. Peters’ Failure to Produce This Content.**

4 On June 21, 2016, the parties held a meet and confer regarding their
5 respective requests for production. Counsel for Plaintiffs, David Grossman and
6 Jonathan Zavin, met and conferred with Defendants’ counsel Erin Ranahan. At the
7 meeting, Ms. Ranahan agreed that Peters would produce all source material, other
8 than the Star Trek television series and films, which he used to create the Axanar
9 Works. Grossman Decl. ¶ 3.

10 At his deposition, Peters [REDACTED]
11 [REDACTED]. Grossman Decl. ¶ 4, Ex. A. However, despite
12 Peters’ use of this document as source material, Defendants failed to produce *The*
13 *Four Years War* during discovery, or at all. Instead, Plaintiffs learned of
14 Defendants’ use of *The Four Years War* in or around September 2016 from a
15 podcast published by Peters on or around May 31, 2016, five months after Plaintiffs
16 filed this lawsuit, and months after the filing of the amended complaint. Defendants
17 also were able to obtain, in October 2016, from the director of *Star Trek: Prelude to*
18 *Axanar*, Christian Gossett, emails with Mr. Peters regarding use of *The Four Years*
19 *War* to create the Axanar Works. In fact, in these emails, which were not turned
20 over, without any explanation for their withholding, by Peters; Gossett and Peters
21 discuss the use of *The Four Years War* as a “bible” for their creation of the Axanar
22 Works. Grossman Decl. ¶ 5, Exs. B and C.

23 Finally, after the discovery of Defendants’ use of this document, Plaintiffs
24 served interrogatory responses that specifically identified *Star Trek: The Role*
25 *Playing Game* – and *The Four Years War* as infringed works. See Declaration of
26 Kelly Oki, Exs. 1 and 2 (ECF Nos. 75-3 and 75-4).

27 Defendants, therefore, have been aware of this evidence at all relevant times.
28 They were specifically told during discovery that *The Four Years War* was one of

1 the works copied by Peters (which Peters already knew) and there is no basis for the
2 exclusion of such evidence.¹

3 **III. ARGUMENT**

4 Under Federal Rule of Civil Procedure 8(a)(2), a complaint must include only
5 “a short and plain statement of the claim showing that the pleader is entitled to
6 relief.” To comply with Rule 8, “[s]pecific facts are not necessary; the statement
7 need only give the defendant fair notice of what the... claim is and the grounds upon
8 which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations and internal
9 quotation marks omitted). For a copyright complaint, it is sufficient if it “alleges
10 representative acts of infringement, rather than a comprehensive listing.” *Blizzard*
11 *Entm’t, Inc. v. Lilith Games (Shanghai) Co. Ltd.* 3:15- cv-04084-CRB, 2015 WL
12 8178826, at *6 (N.D. Cal. Dec. 8, 2015). In fact, as seen above, the booklet for *The*
13 *Four Years War* was included in the FAC.

14 Furthermore, Rule 15(b) of the Federal Rules of Civil Procedure provides
15 that, “[i]f, at trial, a party objects that evidence is not within the issues raised in the
16 pleadings, the court may permit the pleadings to be amended” and that the court
17 should, “freely permit an amendment when doing so will aid in presenting the merits
18 and the objecting party fails to satisfy the court that the evidence would prejudice
19 that party’s action or defense on the merits.” Under Rule 15(b), amendments to
20

21 ¹ This is not the first time Defendants have sought to exclude this evidence,
22 which they failed to turn over even though they themselves used it to create the
23 Axanar Works. In their opposition to Plaintiffs’ motion for summary judgment,
24 Defendants submitted the very same interrogatory responses identified in their
25 pending motion, but asserted (contrary to the clear content of the interrogatory
26 responses themselves) that *The Four Years War* had not been identified in those
27 interrogatory responses. See Defendants’ Opposition to Plaintiffs’ Motion for
28 Partial Summary Judgment, p. 3 (“Plaintiffs’ claim that Defendants took their plot
from the subject matter of a supplement to *Star Trek: The Role Playing Game*, titled,
“The Four Years War,” is wholly irrelevant to this lawsuit, given that *Plaintiffs have*
not even named this as an allegedly infringed work. Defendants’ Response to
Statement of Undisputed Facts (“RSUF”) 29.”). This statement was false when
made, and was actually contradicted by the very evidence Defendants cited to –
Plaintiffs’ interrogatory responses that were appended to the Declaration of Kelly
Oki as Exhibits 1 and 2. Dkt. Nos. 75-3 and 75-4.

1 pleadings may be made at any time, even after judgment. *Page v. Wright*, 116 F.2d
2 449, 454 (7th Cir. 1940).

3 Under the liberal requirements of Rule 8 as it applies to copyright matters, the
4 allegations in Plaintiffs' complaint provided fair notice that Plaintiffs alleged
5 infringement of any and all Star Trek Copyrighted Works. Defendants should have
6 been particularly aware of potential infringement of Star Trek materials that they
7 owned, had copies of, and expressly used to create their infringing works, including
8 *The Four Years War*. Defendants now claim that their own unexplained failure to
9 produce *The Four Years War* in discovery should act as a shield to that document's
10 admissibility into evidence. However, Plaintiffs were the only parties that could
11 have been prejudiced by Defendants' failure to divulge their source materials and
12 Plaintiffs should not be further prejudiced by that failure.

13 Finally, even if *The Four Years War* was not explicitly described in the FAC,
14 that is not a valid basis for excluding evidence from trial, and Defendants have not
15 cited to any authority to support their motion. Any exclusion of evidence would not
16 only need to be supported by legal authority, but also would require a showing that
17 the inclusion of such evidence would unfairly prejudice Defendants. Given that: (a)
18 Defendants had a copy of *The Four Years War* at all relevant times; (b) Defendants
19 failed and refused to produce a copy of this work during discovery even though it
20 was used as a "bible" for the creation of the Axanar Works, and (c) Plaintiffs
21 identified this specific work in interrogatory responses describing the Star Trek
22 works copied by Defendants, there is no valid basis to claim that this evidence
23 should be excluded. This motion is entirely without merit and should be denied.

24 **IV. CONCLUSION**

25 For the foregoing reasons, Plaintiffs respectfully request that Defendants'
26 motion in limine no. 3 to exclude works not referenced in Plaintiffs' complaint,
27 including *The Four Years War*, be denied.

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Dated: January 6, 2017

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