

1 LOEB & LOEB LLP  
DAVID GROSSMAN (SBN 211326)  
2 dgrossman@loeb.com  
JENNIFER JASON (SBN 274142)  
3 jjason@loeb.com  
10100 Santa Monica Blvd., Suite 2200  
4 Los Angeles, CA 90067  
Telephone: 310.282.2000  
5 Facsimile: 310.282.2200

6 LOEB & LOEB LLP  
JONATHAN ZAVIN (admitted *pro hac vice*)  
7 jzavin@loeb.com  
345 Park Avenue  
8 New York, NY 10154  
Telephone: 212.407.4000  
9 Facsimile: 212.407.4990

10 Attorneys for Plaintiffs  
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,  
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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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Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION IN  
LIMINE NO. 7 TO PRECLUDE  
INTRODUCTION OR MENTION  
OF CERTAIN OF DEFENDANTS'  
FINANCIAL INFORMATION  
AND INACCURATE  
REFERENCE TO "PROFITS"  
DEFENDANTS ALLEGEDLY  
EARNED**

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

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios Inc. (“CBS”) (collectively, “Plaintiffs”) oppose the motion in limine by Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) to exclude evidence relating to Defendants’ financial records.

**I. INTRODUCTION**

By their motion in limine (the “Motion”), Defendants seek to exclude from evidence the financial records of Defendants, with the exception of the amount of funds collected through Defendants’ several Kickstarter and Indiegogo fundraising campaigns. Defendants assert that information relating to how Defendants spent the proceeds of those fundraisers is irrelevant to this matter and that Plaintiffs should be precluded from characterizing any funds raised and spent by Defendants as “profits.” On the contrary, the jury must be permitted to review Defendants’ financial records in detail in determining the amount of money that Defendant Peters received in profits or other financial benefits from Defendants’ infringing activities.

**II. FACTS**

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

In response to Plaintiffs’ discovery requests, Defendants produced a 215-page document (the “Financial Records”) detailing all funds raised to produce *Star Trek: Prelude to Axanar* and the upcoming Axanar feature (the “Axanar Works”) as well as the expenditure of those funds. Plaintiffs will present the Financial Records to the jury so that it can evaluate profits and financial benefits obtained by Peters (and Axanar Productions) in connection with the Axanar Works.

Plaintiffs will also introduce documents and testimony demonstrating Defendants’ plans to use the movie studio (built using funds raised to produce the Axanar Works), the lease to which [REDACTED], a for-profit corporation solely owned by Peters, and Peters personally, to generate a profit from additional independent films.

1 Plaintiffs will also present evidence of financial expenditures that Peters made  
2 using funds that were raised to create the infringing Axanar Works, including

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]. See Dkt. Nos. 75-3 and 75-4, Oki  
6 Declaration, Exs. 1-2. These payments demonstrate that Peters received profits  
7 from Axanar as a direct infringer and vicarious and contributory infringer. This  
8 evidence of monies obtained by Peters from Axanar is clearly relevant should  
9 Plaintiffs elect actual damages and profits (including Peter’s profits) under section  
10 504(b) of the Copyright Act. Further, the profits that the Defendants received would  
11 be relevant to the jury in awarding statutory damages, if such damages were elected  
12 by Plaintiffs.

13 **III. ARGUMENT**

14 Defendants have argued that, “Defendants did not make any profit from the  
15 free distribution of [the Axanar] Works, and had and have no intent to do so in the  
16 future. ... There is simply no evidence that Defendants stand to profit from  
17 Plaintiffs’ Works.” Dkt. No. 87, Opposition to Plaintiffs’ Motion for Partial  
18 Summary Judgment at 16.

19 Defendants now are attempting to withhold the very evidence from the jury  
20 that would establish that, contrary to Peters’ arguments, he profited from the Axanar  
21 Works, which were part of a professional, commercial endeavor. By precluding  
22 evidence of the expenditures made by Peters and his colleagues, it would not be  
23 possible for the jury to verify Defendants’ claims.

24 Defendants suggest that the jury can make a determination regarding “profits”  
25 with having access only to the amount of money raised by Defendants. In their  
26 motion, Defendants cite to 17 U.S.C. section 504 for the proposition that “[i]n  
27 establishing the infringer’s profits, the copyright owner is required to present proof  
28 only of the infringer’s gross revenue, and the infringer is required to prove his or her

1 deductible expenses and the elements of profit attributable to factors other than the  
2 copyrighted work.” Motion at 6-7. Presumably, Defendants intend to testify that all  
3 of the money raised by Axanar was spent, and therefore there were no “profits.”  
4 However, the jury must be permitted to consider whether the expenses claimed by  
5 Defendants were legitimate expenditures towards producing the Axanar Works, or  
6 merely funds redirected for the personal use of Peters, i.e., profits taken by Peters  
7 from Axanar. For example, although Defendants belatedly characterized [REDACTED]  
8 [REDACTED]  
9 [REDACTED], that argument is specious and the jury should be allowed to consider  
10 whether those costs are more fairly identified as profits, either to Axanar, Peters  
11 individually, or both.

12 Defendants’ gross revenue received from the infringing conduct amounts to  
13 approximately \$1.5 million. If the Court grants Defendants’ motion to exclude  
14 evidence relating to Axanar’s expenditures, and thus eliminates Plaintiffs’ ability  
15 challenge the appropriateness of any expenses, it should only do so subject to  
16 Defendants’ stipulation that the entirety of the funds raised for the Axanar Works  
17 constitute profits from infringing conduct. Further, Peters has been sued personally  
18 as a direct and indirect infringer (and the Court has already determined that if the  
19 jury finds substantial similarity of the Axanar Works with the Star Trek Works, that  
20 Peters is personally liable as an infringer), so monies paid to him with respect to  
21 Axanar constitute his “gross revenues” as an infringer, and are indispensable  
22 evidence regarding Peters’ profit from Axanar.

23 There are other documents, and additional testimony, relating to Peters’  
24 commercialization of the Axanar Works, and the profits he received, and intended to  
25 receive, from infringing upon Plaintiffs’ copyrights. This evidence includes Peters’  
26 build-out of a commercial film “studio” that he intended to lease out, through his  
27 solely-owned for profit company (Axanar Productions). Whether those expenses  
28 are legitimately connected to producing the Axanar Works, or can be attributed to

1 Defendant Peters’ future for-profit business ventures, are facts that the jury must be  
2 permitted to determine. There is no basis for the exclusion of any expenditures  
3 made or income received by Peters and his colleagues in connection with the  
4 Axanar Works, and the jury should not be deprived of this absolutely necessary  
5 information.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully request that Defendants’  
8 motion in limine no. 7 to exclude Defendants’ financial records be denied.

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Dated: January 6, 2017

LOEB & LOEB LLP  
JONATHAN ZAVIN  
DAVID GROSSMAN  
JENNIFER JASON

By: /s/ David Grossman  
David Grossman  
Attorneys for Plaintiffs  
PARAMOUNT PICTURES  
CORPORATION and CBS STUDIOS  
INC.