

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. 9 TO PRECLUDE
PLAINTIFFS FROM
REFERENCING THE QUALITY
OF DEFENDANTS' WORKS**

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 reference to the use of film-industry professionals to
6 produce the Axanar Works.

7 **I. INTRODUCTION**

8 By their motion in limine, Defendants seek to exclude from evidence the fact
9 that Defendants employed numerous film-industry professionals to produce *Prelude*
10 *to Axanar*, the *Vulcan Scene*, and the upcoming Axanar Motion Picture
11 (collectively, the “Axanar Works”). Defendants are also seeking to exclude
12 evidence relating to the quality of the Axanar Works.

13 The professional nature of the Axanar Works includes the fact that Peters
14 used numerous experienced Star Trek professionals (such as actors, make-up artists
15 and visual effects personnel) to replicate Star Trek. Peters is contesting that his
16 works have the same “concept and feel” of Plaintiffs’ works, but the evidence
17 relating to his use of experienced professionals, including a number of whom were
18 employed on authorized Star Trek work supports Plaintiffs’ position that the Axanar
19 Works were intended to copy, and did copy, Plaintiffs’ works, and were intended to
20 have the same look and feel as the Star Trek works, and did have the same look and
21 feel as those works.

22 Further, the detail and quality of the Axanar Works demonstrates that Peters
23 willfully infringed Plaintiffs’ works, by ensuring that even small details conformed
24 to Star Trek canon. Peters is claiming that he should not be held liable for “willful”
25 infringement, and that he is an “innocent” infringer (a defense that should not
26 legally have any application to this case). Evidence relating to the creation of the
27 Axanar Works, and the quality and detail of the copying engaged in by Peters and
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1 his colleagues, supports a finding of willful infringement, and this evidence should
2 be permitted at trial.

3 **II. FACTS**

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

5 Defendants produced, or plan to produce, the Axanar Works [REDACTED]
6 [REDACTED], many of whom have
7 worked on Plaintiffs' Star Trek Copyrighted Works. Declaration of David
8 Grossman ("Grossman Decl.") ¶ 2, Ex. A. Also, the characters featured in the
9 Axanar Works are portrayed by professional actors [REDACTED]
10 [REDACTED] and, in some cases, have appeared in Plaintiffs' Star Trek copyrighted
11 works. Grossman Decl. ¶ 3, Ex. A.

12 Supported by considerable budgets obtained through crowd-funding (the
13 budget for Axanar was similar to CBS' budget for a one-hour episode of the last
14 Star Trek television series). See Dkt. 88-70, Declaration of John Van Citters, at ¶
15 66. Given the participation of film-industry professionals, the production quality of
16 the Axanar Works is considerable. Defendants' goal in producing the Axanar
17 Works was to create "a sci-fi feature with big-budget production values," and
18 Defendants believed that the Axanar Works achieved that goal. Grossman Decl. ¶ 4,
19 Ex. A. In a podcast, Peters even noted that he thinks it's "heartwarming and
20 rewarding when people are just blown away and they say this is like a real movie.
21 Yeah, it is, that was our goal and we're happy people think so." Grossman Decl. ¶
22 5, Ex. A. Additionally, in raising money for the Axanar Works, Peters stated:

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24 *Axanar is the first fully-professional, independent Star Trek film. While*
25 *some might call it a 'fan film' as we are not licensed by CBS, Axanar*
26 *has professionals working in front and behind the camera, with a fully*
professional crew—many of whom have worked on Star Trek itself—
who ensure Axanar will be the quality of Star Trek all fans want to
see."

27 Grossman Decl. ¶ 6, Exs. A-B.
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1 **III. ARGUMENT**

2 The use of film-industry professionals, including professionals employed in
3 an identical capacity by Plaintiffs or Plaintiffs’ predecessors, is evidence of the kind
4 of work Defendants intended to produce, namely, a Star Trek “sci-fi feature with
5 big-budget production values” that was, “like a real movie.” Grossman Decl. ¶¶ 4-
6 5, Exs. A, C. The jury will be asked to determine whether Peters created a work that
7 was similar in concept and feel to the Star Trek works, and Peters’ use of industry
8 professionals, and the resulting high quality of the productions, is evidence that the
9 Axanar Works were intended to, and did, replicate the look and feel of Star Trek.

10 Moreover, the use of professionals, and Peters’ attempts to create high-quality
11 audio-visual productions support a finding of intentional, willful infringement.
12 Peters is asserting “innocent” infringement, and is arguing that he should not be held
13 liable for willful infringement of Plaintiffs’ copyrights. The methods by which
14 Peters went about producing the Axanar Works, including by using professionals
15 and attempting to create high-quality productions, shows that this was not an
16 “amateur” home-video production and instead, was a deliberate attempt to copy
17 Plaintiffs’ works and create infringing derivative works that were substantially
18 similar to Plaintiffs’ works.

19 The professional nature of the works, and the quality that was sought, and
20 obtained, in connection with the copying of Plaintiffs’ copyrights, is also relevant to
21 Defendants’ affirmative defenses. Defendants argue that waiver, implied license,
22 estoppel, and other affirmative defenses should be invoked to insulate them from
23 liability. However, Defendants will have to show that they were permitted to create
24 the Axanar Works, and that Plaintiffs either expressly or impliedly allowed
25 Defendants to create these professional, high-quality derivative works. Plaintiffs
26 believe that these affirmative defenses are no longer in the case or before the jury,
27 and there is no support for these affirmative defenses, but so long as Defendants
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1 assert them, and if these defenses are allowed to be considered by the jury, this
2 evidence directly relates to (and refutes) those defenses.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that Defendants'
5 motion in limine no. 9 to preclude Plaintiffs from referencing the professionalism or
6 quality of Defendants' works 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.