

1 Erin R. Ranahan (SBN: 235286)  
eranahan@winston.com  
2 Diana Hughes Leiden (SBN: 267606)  
dhleiden@winston.com  
3 Kelly N. Oki (SBN: 304053)  
koki@winston.com  
4 WINSTON & STRAWN LLP  
333 South Grand Avenue  
5 Los Angeles, CA 90071  
Telephone: (213) 615-1700  
6 Facsimile: (213) 615-1750

7 Attorneys for Defendants,  
AXANAR PRODUCTIONS, INC.,  
8 and ALEC PETERS

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
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.  
19  
20  
21  
22  
23

Case No. 2:15-cv-09938-RGK-E

**(DISCOVERY MATTER)**

**DEFENDANTS AXANAR  
PRODUCTIONS, INC. AND ALEC  
PETERS' OPPOSITION TO  
PLAINTIFFS' *EX PARTE*  
APPLICATION FOR ORDER  
(A) THAT DEFENDANTS ARE TO  
PRODUCE DEFENDANT ALEC  
PETERS FOR FURTHER  
DEPOSITION AFTER HE  
COMPLETES PRODUCTION OF  
RELEVANT DOCUMENTS;  
(B) THAT FINANCIAL SUMMARY  
REGARDING DEFENDANTS'  
EXPENDITURES OF FAN FUNDS  
BE DE-DESIGNATED; (C) THAT  
DEFENDANTS PROVIDE A  
PRIVILEGE LOG**

Original Complaint Filed: 12/29/15  
First Amended Complaint Filed: 3/11/16  
Discovery Cutoff: 11/2/16  
Pre-Trial Conference: 1/9/17  
Trial: 1/31/17

1 Defendants Axanar Productions, Inc. and Alec Peters (“Defendants”) hereby  
2 submit their Opposition to Plaintiffs Paramount Pictures Corporation and CBS  
3 Studios, Inc.’s (“Plaintiffs”) *Ex Parte* Application for an order (A) that Defendants  
4 are to produce Defendant Alec Peters for further deposition; (B) that financial  
5 summary regarding defendants’ expenditures of fan funds be de-designated; and (C)  
6 that Defendants provide a Privilege Log (the “*Ex Parte* Application”).

7 **I. INTRODUCTION**

8 Plaintiffs’ *Ex Parte* Application is not only procedurally improper, it is wholly  
9 unnecessary. By their *Ex Parte* Application, Plaintiffs belatedly seek to raise  
10 discovery issues in contravention of the Court’s rules and are wasting the Court’s time  
11 and resources on issues that Defendants have already agreed on, or which Defendants  
12 have been trying to resolve with Plaintiffs while Plaintiffs have refused to engage in  
13 productive discussions. Even if the Court reaches the merits of the belatedly-raised  
14 discovery issues, the relief sought is mooted by offers made by Defendants—both in  
15 writing and in person—*before* Plaintiffs filed their *Ex Parte* Application. Indeed,  
16 Defendants have already offered to make Alec Peters available for a second  
17 deposition; have repeatedly attempted to meet and confer with Plaintiffs about  
18 parameters of the privilege log before preparing it; and Defendants informed Plaintiffs  
19 that they are making an additional production today that will moot the remaining  
20 issues. Plaintiffs’ counsel did not respond to these offers, making clear that Plaintiffs  
21 had committed to file their *Ex Parte* Application regardless of Defendants’ response.  
22 But Plaintiffs fall far short of demonstrating that they are entitled to the extraordinary  
23 relief.

24 Plaintiffs’ alleged emergencies are wholly self-created and amount to little  
25 more than Plaintiffs’ failure to raise these issues with the Court in a timely manner,  
26 and refusal to *even discuss*, let alone come to reasonable terms regarding the  
27 outstanding issues about which they complain. Plaintiffs’ *Ex Parte* Application is a  
28 waste of the Court’s and the parties’ time, and should be denied in its entirety.

1 **II. SUMMARY OF FACTS**

2 To date, in response to Plaintiffs' requests, Defendants have produced in excess  
3 of 35,000 pages of responsive documents. [Declaration of Erin R. Ranahan (Dkt. 55-  
4 1) (¶¶ 16, 18).] This includes nearly 700 emails and all other documents reasonably  
5 located in the possession, custody and control of individual Alec Peters and his small  
6 fan film company, Axanar Productions. In contrast, Plaintiffs, despite being two large  
7 companies prosecuting this case against an individual and a small organization, have  
8 produced far less than what Defendants have provided. [Ranahan Decl. (Dkt. 55-1) ¶¶  
9 17, 19, 23.] In an effort to obtain the documents that Plaintiffs were withholding that  
10 Defendants viewed as critical to their investigation of certain issues, Defendants  
11 timely brought a discovery motion before the Magistrate Judge in this case on October  
12 21, 2016, which resulted in Plaintiffs being compelled to produce several categories of  
13 documents, responses to interrogatories, a witness to testify about certain topic, and a  
14 privilege log. (Dkt. 60.)

15 Apparently in response to being required to finally undertake a diligent search  
16 for responsive documents, Plaintiffs suddenly decided to manufacture their own  
17 discovery issues. Even though the time has run out to properly compel anything under  
18 the governing schedule of this case, Defendants have continued to engage in good  
19 faith efforts to resolve these disputes, but it appears Plaintiffs were more interested in  
20 filing the *Ex Parte* Application than genuinely reaching an efficient and reasonable  
21 resolution.

22 Additionally, Defendants made a supplemental production earlier in the week in  
23 response to Plaintiffs' complaint about emails, and informed Plaintiffs they intend to  
24 produce additional documents Friday, October 28. [Grossman, Exhibit G.] These  
25 documents included revised financial documents, designated confidential, and various  
26 other items. Plaintiffs refused to wait *one day* to review this supplemental production,  
27 deciding to race to the Courthouse in a colossal waste of resources.

1 **III. PLAINTIFFS' EX PARTE APPLICATION CANNOT SATISFY THE**  
2 **REQUIREMENTS FOR EX PARTE RELIEF**

3 With less than a week left in discovery, Plaintiffs have not bothered to follow  
4 any of the Local Rule 37 or Local Court procedures governing discovery disputes and  
5 cannot satisfy the standard to obtain emergency relief. As the Court noted in *In re*  
6 *Intermagnetics America Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989):

7 [E]x parte applications throw the system out of whack. They impose an  
8 unnecessary administrative burden on the court and an unnecessary  
9 adversarial burden on counsel who are required to make a hurried  
10 response under pressure, usually for no good reason. Such applications  
11 allow the applicant to jump 'ahead of the pack' and 'cut in line ahead of  
12 those litigants awaiting determination of their properly noticed and  
13 timely filed motions.

14 An *ex parte* application is the procedural equivalent of shouting "Fire!" in a  
15 crowded theatre. *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 493  
16 (C.D. Cal. 1995) (finding that "[e]x parte motions are rarely justified," as they are  
17 "inherently unfair, and they pose a threat to the administration of justice"). There is  
18 no fire here. Citing *Mission Power*, this Court's first procedural rule cautions against  
19 the misuse of *ex parte* applications, noting that: "*Ex parte* applications are ONLY for  
20 extraordinary relief. Sanctions may be imposed for misuse of *ex parte* applications."  
21 *Id.* See <https://www.cacd.uscourts.gov/honorable-r-gary-klausner>.

22 This Court also notes in its Pretrial Order that:

23 **Any motion challenging the adequacy of responses to discovery must**  
24 **be filed timely, and served and calendared sufficiently in advance of**  
25 **the discovery cut-off date to permit the responses to be obtained**  
26 **before that date, if the motion is granted.**

27 *Id.* at p. 2, C, (emphasis in original).

28 Plaintiffs apparently do not believe these rules apply to them, waiting until just

1 a few days before the close of the discovery to seek *Ex Parte* relief about various  
2 discovery issues for which there is no timely-filed motion, no Local Rule 37 joint  
3 stipulation, and Plaintiffs appear in denial about the offers Defendants made that  
4 render moot Plaintiffs' requested relief.

5 Plaintiffs also cannot demonstrate that: (1) they will be "irreparably  
6 prejudiced;" or that (2) Plaintiff is "without fault in creating the crisis that requires *ex*  
7 *parte* relief or that the crisis occurred as a result of excusable neglect." *Mission*  
8 *Power Eng'g*, 883 F. Supp. at 490; *ESG Capital Partners LP v. Stratos*, No. 2:13-cv-  
9 01639, 2014 WL 1830903, at \*1 (C.D. Cal. May 8, 2014) (citing *Missing Power*  
10 *Eng'g Co.*, 883 F. Supp. at 492).

11 Plaintiffs do not explain how any of the items they seek are material to the  
12 prosecution of their case, and thus cannot explain how they could possibly be  
13 "irreparably prejudiced" without emergency relief. Moreover, Plaintiffs cannot show  
14 that they were without fault in creating this so-called crisis. Defendants produced the  
15 vast majority of their documents in early September 2016—before Plaintiffs produced  
16 anything. This includes the documents that Plaintiffs seek to de-designate here.  
17 Defendants promptly raised their discovery disputes in accordance with the Court's  
18 rules, allowing the Court to order compliance within the discovery period. *See* the  
19 Parties' Joint Stipulation Regarding Defendants' Motion to Compel Discovery (Dkt.  
20 55); this Court's Order Regarding the Parties' Joint Stipulation (Dkt. 60).

21 With respect to their own discovery disputes, Plaintiffs did not bother following  
22 the Local Rule 37 Procedures at all.<sup>1</sup> Despite Defendants' counsel being in the same  
23 place as Plaintiffs' counsel routinely from late September through October during  
24 depositions, Plaintiffs waited until the end of October to seek relief.

25  
26  
27 <sup>11</sup> Had Plaintiffs followed the joint stipulation procedure, they would have been  
28 required to include the requests that are at issue, as well as explained the compromises  
they set forth in an attempt to resolve these issues. By moving *ex parte*, Plaintiffs  
have managed to entirely ignore these items.

1 **IV. THE EX PARTE APPLICATION IS UNNECESSARY BECAUSE THE**  
2 **ISSUES RAISED ARE MOOT**

3 Even if the *Ex Parte* Application were timely, Plaintiffs' *Ex Parte* Application  
4 is wholly unnecessary, as the issues are moot. Plaintiffs seek an order (1) requiring  
5 Defendant Alec Peters for another deposition; (2) De-Designating a highly sensitive  
6 financial summary from "highly confidential;" and (3) requiring a Privilege Log (the  
7 "*Ex Parte* Application").

8 **A. Defendants Already Agreed To A Second Deposition of Mr. Peters**

9 First, Defendants agreed—both in writing and in person *before* Plaintiffs filed  
10 their *Ex Parte* Application—to put up Alec Peters for another deposition to allow  
11 Plaintiffs to question Mr. Peters about the new documents Plaintiffs have obtained  
12 since his October 19, 2016 deposition. [Declaration of David Grossman ("Grossman  
13 Decl.") ("Dkt. 62-1") Ex. G.] Plaintiffs initially made their email request to take  
14 another deposition of Alec Peters on October 24, 2016. Grossman Decl., Ex. G.  
15 Plaintiffs made another demand via email on October 26, 2016 at 10:21 a.m., asking  
16 for a response by "noon tomorrow". Grossman Decl. (Dkt. 62-1) Exh. F, para. 3.

17 Defendants responded eight hours before the requested deadline, at 3:30 a.m.,  
18 stating, among other things, that they agreed to make Alec Peters available for a  
19 second deposition to discuss documents received since his October 19, 2016  
20 deposition. *This email is attached to Mr. Grossman's declaration as Exhibit G.*  
21 Plaintiffs did not respond to this email. And again, *before* Plaintiffs' filed their *Ex*  
22 *Parte* Application, counsel for Plaintiffs and Defendants were both present during the  
23 October 27 deposition ordered by the Court in its October 21 Order, where Plaintiffs'  
24 counsel raised for the first time Plaintiffs' intent to file an *Ex Parte* Application.  
25 [Ranahan Decl. ¶18.] Counsel for the parties then discussed these issues for the first  
26 time in person, and Defendants reiterated that in a recent email, Defendants' counsel  
27 had offered to put up Mr. Peters for a second deposition. [*Id.*] Remarkably,  
28 Plaintiffs' counsel, Mr. Grossman, refused to accept this point, and claimed during

1 that discussion that he was not aware of this offer, even though Mr. Grossman  
2 *attached as Exhibit G to his declaration* the email communication in which  
3 Defendants’ counsel made that offer. [*Id.*]

4 **B. Plaintiffs Have Refused To Engage In A Meaningful Discussion**  
5 **With Defendants About The Privilege Log**

6 Second, with respect to the privilege log, after Plaintiffs repeatedly referred to  
7 privilege logs as “useless” when trying to avoid producing their own privilege log,  
8 Defendants have repeatedly attempted to engage Plaintiffs in a discussion about what  
9 Plaintiffs are now interested in being logged on Defendants privilege log. [Ranahan  
10 Decl. ¶¶ 2, 7, 8, 9, 10 and Exh. 1] Plaintiffs have repeatedly refused to respond or  
11 engage in this discussion. *Id.* As Defendants have explained repeatedly to Plaintiffs,  
12 they did not collect from Mr. Peters a folder containing only his attorney  
13 communications, which included privileged communications between Mr. Peters and  
14 attorneys about any personal or business issue from any time. Defendants expressed  
15 their willingness to collect and review that folder, but believed it would be most  
16 productive to understand the scope of what attorney-related documents Plaintiffs  
17 expected to be logged, such as subjects, search terms, or types of attorney discussions  
18 Plaintiffs believe should be logged. Plaintiffs have refused to have this discussion so  
19 that they can apparently prop up another manufactured dispute in an attempt to obtain  
20 some belated relief from the Court.

21 **C. Defendants Produced (Irrelevant) Updated Expenditure Information**  
22 **Designated “Confidential” Despite Plaintiffs’ Repeated Refusal To**  
23 **Honor Confidentiality Agreements In This Case**

24 Third, Plaintiffs want to be able to de-designate from “highly confidential”  
25 certain highly sensitive financial information consisting of thousands of pages of Alec  
26 Peters’ Quicken financial notes about expenditures in furtherance of creating *Prelude*  
27 *to Axanar* and the unfinished *Axanar*. As a preliminary matter, these documents are  
28 simply not relevant. How Defendants specifically spent funds that were donated by

1 enthusiastic fans for *Axanar* projects—one of which is not even complete because this  
2 lawsuit interrupted it—has no bearing on any issue in this case.<sup>2</sup> Plaintiffs obviously  
3 have no standing to scrutinize or complain about money not going to the fan film they  
4 are trying to shut down. Contrary to Plaintiffs’ representation in their *Ex Parte*  
5 Application, these notes were not prepared by an accountant, but were notes by Alec  
6 Peters. This information is currently being reviewed by an accountant. As  
7 Defendants have explained, these were preliminary notes from Quicken and were not  
8 a final accounting, which is still being prepared. Despite Defendants’ position that  
9 these documents lack any relevance to this case, Defendants produced the financial  
10 information they had available at the time in an effort to be cooperative and avoid  
11 wasting the Court’s time on discovery disputes. Defendants fully intend to seek to  
12 exclude these expenditures before trial.

13 Plaintiffs’ assertion that Defendants’ designation is based on “embarrassment”  
14 is utterly false and ignores the actual reasons Defendants provided Plaintiffs in writing  
15 for not wanting to de-designate this document before they decided to file their *Ex*  
16 *Parte* Application. [Grossman Decl., Ex. G.] This includes that Plaintiffs have been  
17 careless and disregarded confidentiality agreements in this case on several occasions,  
18 including (i) after originally claiming that the fact of the settlement discussions should  
19 remain confidential, Plaintiffs made a public announcement about these ongoing  
20 discussions; (ii) allowing a non-attorney to view an “attorneys eyes only” document  
21 during a deposition; (iii) describing these financial documents in various pleadings  
22 without redacting or seeking to file this information under seal; and (iv) citing  
23 information from depositions in their *Ex Parte* Application when it was agreed that all  
24 deposition testimony would be treated as confidential until further discussion.  
25 [Ranahan Decl., ¶ 14] Plaintiffs are also in frequent contact with individuals who  
26 have made clear that it is their goal to leak *Axanar* and Mr. Peters’ confidential

27 <sup>2</sup> Notably, Plaintiffs objected, and the Court agreed, to producing their own  
28 expenditures relating to the Plaintiffs’ works. Obviously expenditures are not  
“profits,” and in fact would presumably be subtracted from any revenue to assess any  
profits.

1 information. *Id.* In any event, and despite the serious concerns Defendants have about  
2 Plaintiffs' disregard for honoring the confidentiality designations made in this case,  
3 and even though Defendants intend to contest the relevance of this information if  
4 Plaintiffs seek to introduce it, Defendants had already planned and indeed did  
5 produce a revised version of Mr. Peters' Quicken notes today (Friday, October 28)  
6 that will be designated only "confidential," which moots this issue. Defendants  
7 would expect that going forward, Plaintiffs would take better care in honoring the  
8 confidentiality designations governing this case.

9 **V. CONCLUSION**

10 The Court should deny Plaintiffs' *Ex Parte* Application in its entirety and issue  
11 sanctions against Plaintiffs for filing an *Ex Parte* Application knowing full well that  
12 the requested relief was moot.

13  
14 Dated: October 28, 2016

**WINSTON & STRAWN LLP**

15  
16 By: /s/ Erin R. Ranahan  
17 Erin R. Ranahan  
18 Diana Hughes Leiden  
19 Kelly N. Ōki  
Attorneys for Defendants,  
AXANAR PRODUCTIONS, INC.  
and ALEC PETERS

20 LA:419093.2