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

(DISCOVERY MATTER)

**DECLARATION OF ERIN R.
RANAHAN IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' *EX PARTE*
APPLICATION**

Discovery Cutoff: November 2, 2016
Pre-Trial Conference: January 9, 2017
Trial: January 31, 2017

1 **DECLARATION OF ERIN R. RANAHAH**

2 1. I am an attorney at the law firm of Winston & Strawn LLP, attorneys for
3 Defendants Axanar Productions, Inc. and Alec Peters (jointly, “Defendants”) in this
4 matter. I am licensed to practice before the Courts of the State of California and this
5 United States District Court. I have personal knowledge of the matters set forth
6 herein, and if called as a witness, could and would competently testify thereto.

7
8 **Privilege Log**

9 2. Defendants have repeatedly attempted to hold meaningful meet and
10 confers regarding Plaintiffs’ belated demands for a privilege log.

11 3. We first discussed a privilege log at our initial in-person meet and confer
12 on June 21, 2016, where Plaintiffs’ counsel, Mr. Zavin, made clear that he believed
13 privilege logs served no purpose. I responded that in this case, where Plaintiffs were
14 claiming that the majority of relevant documents we were seeking were privileged, we
15 considered Plaintiffs production of a privilege log to be useful here. Plaintiffs thus
16 agreed to produce a privilege log during our June 21, 2016 meet and confer, and did
17 not ask that Defendants prepare or produce one.

18 4. When several months went by without Plaintiffs producing the privilege
19 log they had promised, I reached out to Plaintiffs’ counsel in September and inquired
20 as to the status of Plaintiffs’ privilege log. *See* Exhibit A to the Decl. of David
21 Grossman (Dkt. 62-1) (“Grossman Decl.”).

22 5. On September 26, 2016, Plaintiffs’ counsel responded that he did not
23 “recall an agreement on a privilege log,” stated that privilege logs are “generally not
24 productive,” and demanded a privilege log from Defendants in exchange for
25 Plaintiffs’ agreement to produce one themselves. *See* Grossman Decl., Exh. A.

26 6. In response to Plaintiffs’ counsel’s September 26, 2016 email, I informed
27 Plaintiffs’ counsel that I find privilege logs useful. I further informed Plaintiffs’
28 counsel that we had not withheld anything privileged communications (*see* Grossman

1 Decl. Exh. A). This was because we decided not to collect the attorney
2 communications file that contained only privileged information, knowing that
3 Plaintiffs had repeatedly expressed that they had no interest in privilege logs.

4 7. On October 3, 2016 I requested that Plaintiffs articulate the scope of what
5 they sought with respect to Defendants’ preparation of a privilege log, but Plaintiffs’
6 counsel refused to engage in such a discussion. I specifically stated to Mr. Grossman:

7 [Defendants] understand that [Plaintiffs’] views of privilege
8 logs is they are largely worthless (both you and Mr. Zavin
9 expressed this view—he back in June during our in person meet
10 and confer, and you noted they are generally “not productive”
11 in your 9/26 email), and while you previously agreed to
12 produce one (Mr. Zavin in June) you have never asked us for
13 one or expressed any interest in reviewing one until now. Are
14 you suggesting that we should log emails with other attorneys
15 Alec has spoken to about defending him in this case? Or about
16 anything? This request is way overbroad and does not extend
17 to anything relevant you are attempting to uncover in
18 prosecuting this action. If there are specific attorneys who you
19 are questioning whether the communication is privileged we are
20 happy to gather and log those. Otherwise, you are simply
21 raising this issue as a “tit for tat” to overburden Defendants,
22 without any regard to whether such communications bear any
23 relevance whatsoever to prosecuting your case.

24 Plaintiffs’ counsel did not respond to my October 3, 2016 inquiries. A true and
25 correct copy of the October 3, 2016 email to Plaintiffs’ counsel is attached hereto as
26 **Exhibit 1.**

27 8. On October 10, 2016, I further sought to clarify with Plaintiffs’ counsel
28 what they sought by Defendants’ production of a privilege log. I specifically stated to
Mr. Grossman:

[Defendants] are not refusing to produce a privilege log – we
did not collect any privileged communications in our own
documents, so did not withhold any to log I also offered
below to discuss what you were concerned about with respect
to documents that we may have withheld as privileged, and
what communications you expected to be in the production that
may have been withheld or not otherwise produced. You have
not provided a single substantive example If you want us
to go out and collect certain categories of privileged emails so
that we can log them, we are merely trying to understand what
you believe those should be so that we can evaluate the

1 proportionality of the request (not simply “any discussion that
2 Alec had with a lawyer,” which is what you requested below.)

3 Plaintiffs’ counsel again failed to provide a substantive response to my inquiry. A
4 true and correct copy of the October 10, 2016 email is attached hereto as **Exhibit 2**.

5 9. On October 19, 2016, after the deposition of Defendant Peters, I again
6 attempted to engage in a meaningful discussion regarding the privilege log with
7 Plaintiffs’ counsel. Mr. Grossman called me a “liar” for saying that we had not
8 “withheld” documents as privileged, and I again explained that the privileged
9 documents were all in one folder, and because Plaintiffs repeatedly expressed that
10 privilege logs were useless, we did not collect the folder, did not load them, did not
11 review them, so we did not “withhold” them. I then again asked if Plaintiffs wanted to
12 discuss some scope of what communications Plaintiffs want collected and logged, so
13 we could proceed with preparing a privilege log commensurate with the needs of this
14 case. Plaintiffs’ counsel was not responsive to my attempts to resolve this issue.

15 10. On October 27, 2016, I again sought to clarify with Plaintiffs’ counsel
16 what attorney communications Plaintiffs wanted Defendants to include in the privilege
17 log, and what the corresponding document request numbers from the discovery
18 Plaintiffs propounded were. I specifically stated to Mr. Grossman:

19 With respect to your request for a privilege log, I am perplexed
20 by your newfound desire to obtain a privilege log, as you and
21 Jonathan [Zavin] have both told me repeatedly that you find
22 them useless Is there actually something you are
23 specifically concerned about that you believe we have
24 improperly withheld as privileged? You have not identified any
25 type of communication that you question the privilege
26 designation (instead you reference communications that are
27 undoubtedly privileged), and surely you do not believe that
28 every communication Alec had with a lawyer is relevant to
Axanar or should be logged. I have never represented that Alec
has not had discussions with lawyers at any point. What I
intended with my last written communication on this was that
when we collected all Axanar documents, we intentionally did
not collect the attorney communications folder, so did not load
them into the system, as it is an entire folder that is dedicated to
Alec’s attorney discussions, for any matter, for any purpose.
What I have now asked you multiple times, is – what attorney
communications are you interested in us collecting, reviewing,

1 and including on the privilege log? I have still not been
2 provided with a response. And for what requests do you
believe these are called for? Perhaps it will be easier to discuss.

3 *See* Grossman Decl., Exh. G. Plaintiffs' counsel again failed to provide a substantive
4 response to my inquiry.

5

6 **Plaintiffs' October 3 Letter**

7 11. With respect to Plaintiffs' October 3, 2016 letter Plaintiffs, for some
8 inexplicable reason, chose to hand deliver the letter, only to me, while I was out of
9 town that week in Maui for an ABTL Conference. Plaintiffs' counsel did not include
10 other members of Defendants' defense team on the communication, and did not email
11 a courtesy copy to the rest of the defense team. This was a departure from how the
12 parties have communicated and sent correspondence the entire case, and is in direct
13 contravention to the practice of copying every member of both teams on all
14 communications the parties had previously engaged in. *See* Grossman Decl., Exh. G).
15 Because of this method of delivery, neither I nor anyone on my team saw the letter
16 when it was delivered, and did not discover the letter until Plaintiffs' counsel
17 mentioned it during the deposition of Alec Peters on October 19. It is curious that
18 with various depositions and other opportunities that we saw Plaintiffs' counsel during
19 this time (such as during the depositions of Rob Burnett (10/11), Diana Kingsbury
20 (10/12), Liz Kalodner (10/13)), Plaintiffs never bothered to ask about whether I had
21 received the letter, or attempted to engage in discussions about the items raised by the
22 letter.

23 12. On October 19, I immediately began investigating the issues raised
24 therein, and informed Plaintiffs I would take another look through any emails we had
25 collected and marked as non-responsive, which was about 160 emails. I personally
26 looked through every one, marked some of those that were remotely related to the
27 issues in this case for production, and as a result produced some additional emails on
28 October 25, 2016.

Axanar Expenditures

1
2 13. The financial documents Defendants previously produced, and which
3 Defendants produced an updated version of on October 28, 2016, contain highly
4 sensitive information. In particular, the financial documents contain Defendant Alec
5 Peters’ preliminary notes, which are currently being reviewed by an accountant and
6 have not yet been verified. Given the sensitivities about leaking premature
7 information to donors and other parties, serious harm to Defendants could result if the
8 financial documents are shared with third parties, mischaracterized and misused.
9 These concerns extend to third parties who have demonstrated their desire to leak
10 confidential information from this lawsuit in an effort to disparage Defendants. I
11 explained all of this in Exhibit G to the Declaration of David Grossman.

12 14. Plaintiffs’ assertion that Defendants’ designation is based on
13 “embarrassment” is utterly false and ignores the actual reasons Defendants provided
14 Plaintiffs in writing before they decided to file their *Ex Parte* Application. As I
15 explained, and which Plaintiffs have not responded, this includes that Plaintiffs have
16 been careless and disregarded confidentiality agreements in this case on several
17 occasions, including:

- 18 (a) In May 2016, after Mr. Zavin made an agreement with me that the fact of
19 the settlement discussions should remain confidential, Plaintiffs made a
20 public announcement about these ongoing discussions in violation of that
21 agreement;
- 22 (b) During the deposition of Alec Peters on October 19, Plaintiffs allowed a
23 non-attorney to view an “attorneys eyes only” document during a
24 deposition, and it was not until I caught it happening that Plaintiffs
25 acknowledged he should not have seen it and asked him to leave the
26 room;

1 (c) On multiple occasions, Plaintiffs have generally described the contents of
2 the financial documents in various pleadings without redacting or seeking
3 to file this information under seal (*see* Dkt. 55, 56); and

4 (d) Plaintiffs cited information from depositions in their *Ex Parte*
5 Application when it was agreed that all deposition testimony would be
6 treated as confidential until further discussion between the parties.

7 (e) Plaintiffs publicly filed Exhibit G to the Grossman Decl. even though I
8 marked it “CONFIDENTIAL” at the top given the discussion about the
9 financial information.

10 15. Understandably, Defendants do not have the utmost faith that Plaintiffs
11 abide by confidentiality agreements, or that Plaintiffs’ counsel are able to control their
12 clients when it comes to confidentiality designations. This is especially true because
13 there are third party witnesses in this case that have made it quite clear through social
14 media postings they seek to leak confidential information, and certain of Plaintiffs’
15 witnesses testified that they were in contact with these witnesses.

16 16. Despite the highly sensitive nature of the financial documents at issue,
17 Defendants are producing a revised version of this information that it will designate
18 “Confidential,” thus mooted the issue.

19
20 **A Second Deposition of Defendant Alec Peters**

21 17. Defendants have agreed on multiple occasions to allow Plaintiffs to
22 depose Defendant Alec Peters again, *before* Plaintiffs resorted to filing their *Ex Parte*
23 Application, including in an October 27, 2016 email to Plaintiffs’ counsel, and again
24 in person on October 27, 2016. Defendants agreed to make Defendant Peters
25 available for a second deposition for the express purpose of obtaining his testimony
26 regarding documents Plaintiffs have received from both Defendants and third parties
27 since October 19, 2016, the date of Defendant Peters’ first (but quite recent)
28 deposition. *See* Grossman Decl, Exh. G. This fact notwithstanding, Plaintiffs filed

EXHIBIT 1

Ranahan, Erin R.

From: Ranahan, Erin R.
Sent: Monday, October 03, 2016 7:10 PM
To: 'David Grossman'
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly; Mornin, Joe
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Dear David,

(1) Please let us know if 10/17 still works for Gossett-- we are now available on that date and want to confirm in the calendar;

(2) Can you confirm that Terry McIntosh's deposition in Seattle is taking place on 10/14, at the place and time specified in the subpoena? We want to arrange our travel plans for that ASAP.

(3) As far as the privilege log: thank you for agreeing to produce a privilege log 10/14. We understand that your views of privilege logs is they are largely worthless (both you and Mr. Zavin have expressed this view--he back in June during our in person meet and confer, and you noted they are generally "not productive" in your 9/26 email), and while you previously agreed to produce one (Mr. Zavin in June) you have never asked us for one or expressed any interest in reviewing one until now. Are you suggesting that we should log emails with other attorneys Alec has spoken to about defending him in this case? Or about anything? This request is way overbroad and does not extend to anything relevant you are attempting to uncover in prosecuting this action.

If there are specific attorneys who you are questioning whether the communication is privileged we are happy to gather and log those. Otherwise, you are simply raising this issue as a "tit for tat" to overburden Defendants, without any regard to whether such communications bear any relevance whatsoever to prosecuting your case. As we have explained, we actually see value in reviewing what communications you have dubbed privileged based on our discussions about the common interest privilege, as well as any communications with J.J. Abrams and Justin, which we don't believe are privileged at all based on your insistence that these are third parties that do not speak for Plaintiffs. We believe these communications are relevant to our defense against your assertion of willfulness, and to your claim that Plaintiffs have been damaged by Axanar, or have had their market impacted by Axanar. A privilege log will allow us to view the basis of the communications and whether an attorney was actually included, or whether privilege was potentially broken with the inclusion of third parties. Further, given that Paramount has not produced a single email whatsoever (which is remarkable for a Plaintiff), and your 30(b)(6) witness was clueless about whether any such collection had taken place, we are attempting to investigate whether you collected any emails at all, or whether you collected emails and then determined they were all privileged.

(4) We will provide verifications shortly and in advance of Mr. Peters' deposition, as he will be the one verifying Axanar's responses.

(5) We have produced all source documents that we could reasonably locate after a diligent search. It sounds like you are aware of a specific source you have not seen in the production, in which case you are free to ask Alec and other witnesses about them during their depositions. Isn't that sufficient here? Especially since you apparently already have information from your public monitoring to support your claim? If you want to let me know what the source you have in mind is, I am happy to inquire again to make sure there was not something still in Defendants' possession that was used as a source that can be copied. We also would consider stipulating that it was used as a source if your information is verified as accurate. But unless it is some obscure source that you cannot otherwise obtain, it doesn't seem like the source itself is what you need.

Regards,

-Erin

Erin R. Ranahan
Partner
Winston & Strawn LLP
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F: +1 (213) 615-1750
<http://www.winston.com>

-----Original Message-----

From: David Grossman [mailto:dgrossman@loeb.com]
Sent: Thursday, September 29, 2016 6:13 PM
To: Ranahan, Erin R.
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

Again, we did not agree to produce a privilege log in June. However, we are working on one and will provide it by October 14. That is subject to your agreement that Alec Peters and Axanar will provide a log as well. You did not respond to my prior email where I pointed out that Alec Peters had spoken to counsel other than Winston & Strawn. If his position is that he has not spoken to any other attorneys about this matter, he can provide a declaration this week stating that.

We also have not received any verifications from Defendants yet - unless I am mistaken. Please let us know when those will be provided.

Finally, I have been asking for the last two weeks for all of the source documents that Defendants used to create the Axanar works - your response that any documents will be provided three days before a deposition is not sufficient. Please speak to your client and let me know what source documents were used in the creation of the Axanar works, other than films. They have publicly stated that documents - that have not yet been produced - were used to create the Axanar works, and yet those documents have not yet been provided.

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077
Fax: 310.919.3943

-----Original Message-----

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Wednesday, September 28, 2016 9:14 PM
To: David Grossman
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.

Subject: Re: Axanar-- Verifications, Common Interest, etc.

David,

Once again, when will Plaintiffs produce a privilege log? We have been requesting these since June, and it's part of your obligation under the Federal Rules to produce if you are withholding documents as privileged. It's long overdue and you are prejudicing our ability to review in time to challenge any items.

Can you produce this week?

Thanks,

-Erin

Sent from my iPhone

On Sep 26, 2016, at 5:24 PM, David Grossman <dgrossman@loeb.com<mailto:dgrossman@loeb.com>> wrote:

Erin,

We will not be providing a privilege log on 10/3, which is Rosh Hashanah. Further, we have not taken a "broader interpretation" of privilege than the defendants. Moreover, the conversation that you referred to which I had with Diana regarding pre-lawsuit joint defense communications was in a meet and confer relating to the 30b6 depositions and did not address documents. I said, in that discussion, that I was not aware of any pre-lawsuit discussions regarding whether or not to file this lawsuit that did not involve lawyers. If you are insisting on the production of a log, we will put one together in due course. As for your assertion that there is nothing privileged that has been withheld by Alec Peters and Axanar, I am not sure that is correct as Alec has publicly stated that he has spoken with other attorneys other than you - both before and after you were retained. If you are demanding a privilege log, the defendants need to provide one as well.

You have not responded to my question from last week regarding the third party witnesses you are representing and whether you will be producing their documents this week. These deponents were noticed for several weeks ago and while we agreed to move the depositions at your firm's request to October, we did not agree to delay the production of documents and I requested your agreement that those documents would be produced ahead of time. Please confirm that they will be provided by 9/30.

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]

Sent: Monday, September 26, 2016 3:11 PM

To: David Grossman; Jonathan Zavin; Jennifer Jason

Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.

Subject: RE: Axanar-- Verifications, Common Interest, etc.

Hi David,

Jonathan and I specifically discussed the privilege log point during the June meet and confer (which you and Jennifer were present for, though it was several months ago). Jonathan made the same point you make below, and I explained that I had recently had a motion where we obtained documents that had been designated privileged in another case, and that we do believe privilege logs can be useful, especially in a case like this, because you are withholding documents that we may want to challenge as not-privileged based on those that are party to the communications (which will be apparent from the privilege log itself).

We are not withholding anything from before the lawsuit was filed as privileged, and we are only withholding post-lawsuit communications that include an attorney on the communication. It sounds like you have taken a far broader interpretation of privileged; hence, the need to review your privilege log.

Please provide by 10/3.

Best,

-Erin

Erin R. Ranahan

Partner

Winston & Strawn LLP

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F: +1 (213) 615-1750

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From: David Grossman [mailto:dgrossman@loeb.com]
Sent: Monday, September 26, 2016 3:03 PM
To: Ranahan, Erin R.; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

We will work on getting the verifications this week.

The common interest discussion related to whether that doctrine extended to pre-litigation discussions. I believe that it does. Purely non-legal communications (that are also not protected by work product) would likely not fall under that category. However, I don't believe any documents have been withheld that fall into that latter category.

I don't recall any agreement on a privilege log. They are generally not productive but if you are demanding that a log be provided, let us know when the defendants intend to provide theirs.

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077
Fax: 310.919.3943

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From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Monday, September 26, 2016 2:44 PM
To: David Grossman; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: Axanar-- Verifications, Common Interest, etc.

Counsel,

I believe we are still waiting for Plaintiffs' verifications for all three sets of interrogatories. Can you please send those ASAP? Back in June you assured we would have these shortly. We would like them in advance of the depositions this week.

David-you and Diana discussed at the last in person meet and confer (9/8) whether Plaintiffs were standing by the position that communications between non-lawyers at CBS and Paramount about the lawsuit are covered by a "comment interest" privilege. You were going to look into this and get back to us. If you are standing by this, please provide the authority for this. We also understood from our June meet and confer that you would be producing a privilege log, which should include any of the documents you are withholding on this basis. Please advise.

Also, we are confirming that the depositions Wednesday and Friday are starting at 10am. Please provide us the name of all attendees from your side so that we can add to the security list.

Best,

-Erin

Erin R. Ranahan

Partner

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VCard<<http://www.winston.com/vcards/621.vcf>> | Email<<mailto:eranahan@winston.com>> |
winston.com<<http://www.winston.com>>

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EXHIBIT 2

Ranahan, Erin R.

From: Ranahan, Erin R.
Sent: Monday, October 10, 2016 4:13 PM
To: 'David Grossman'
Cc: Jonathan Zavin; Leiden, Diana Hughes; Oki, Kelly
Subject: RE: Axanar-- Verifications, Common Interest, etc.

David--

A couple of responses to the substantive issues below:

(1) We are not refusing to produce a privilege log-- we did not collect any privileged communications in our documents, so did not withhold any to log. Conversely, there are at least 111 separate documents that you DID produce with mysterious redactions on them, including on emails with no attorney on them at all (such as emails between Burke and Van Citters. e.g., PL0006993). You have also informed us that you consider other documents privileged that do not include lawyers (e.g., between Paramount and CBS). We are entitled to understand the basis of those withholdings. I also offered below to discuss what you were concerned about with respect to documents that we may have withheld as privileged, and what communications you expected to be in the production that may have been withheld or not otherwise produced. You have not provided a single substantive example. And Mr. Zavin did agree during our in person meet and confer in June to provide a privilege log for Plaintiffs' documents, and there was never any request that we provide one until your email below. If you want us to go out and collect certain categories of privileged emails so that we can log them, we are merely trying to understand what you believe those should be so that we can evaluate the proportionality of the request (not simply "any discussion that Alec had with a lawyer," which is what you requested below.)

(2) Of course we have discussed this with our clients, and believe we have already produced the source documents that they maintained a physical copy of. Again, I invite you to let me know if you are aware of any that are missing, or you are free to ask the witnesses about those source documents in their depositions.

Best,

-Erin

Erin R. Ranahan
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-----Original Message-----

From: David Grossman [mailto:dgrossman@loeb.com]
Sent: Tuesday, October 04, 2016 5:36 PM
To: Ranahan, Erin R.
Cc: Jonathan Zavin; Leiden, Diana Hughes; Oki, Kelly
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

I have been checking with Gossett's counsel and he doesn't know if Gossett can do the 17th anymore. Gossett is working on a project and proposed that we take him on Saturday the 22nd, which I can do if that works from your end. He is also going to figure out if there is a weekday(or days) that he can make work, including the 17th.

Terry McIntosh works nights and is requesting an afternoon start date, so we will have to adjust the time and potentially the date as well. I am waiting on him to confirm his availability and will let you know as soon as I have it.

With respect to your third paragraph, I disagree with everything you have stated. You can refer to my prior emails regarding the privilege log issue - there was no agreement in June with Jonathan and the meeting you reference included me and Jen Jason, who later emailed a confirmation letter describing the discovery items that had been agreed to. And there certainly never would have been an agreement to unilaterally provide a privilege log if Defendants were not willing to do so. Please provide a basis for your refusal to provide a privilege log for your clients.

Regarding production of the materials that your clients used to create the Axanar works, I requested that you speak to your clients and provide confirmation that all such documents have been produced. Your email is not responsive to that request. Please respond and confirm that all documents that were used to create the Axanar works have been produced, and that you have confirmed that fact with your clients (including Rob Burnett and Bill Hunt).

David Grossman
Loeb & Loeb LLP
10100 Santa Monica Blvd. Suite 2200
Los Angeles, CA 90067
Tel: 310.282.2077
Fax: 310.919.3943

-----Original Message-----

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Monday, October 03, 2016 7:10 PM
To: David Grossman
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly; Mornin, Joe
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Dear David,

(1) Please let us know if 10/17 still works for Gossett-- we are now available on that date and want to confirm in the calendar;

(2) Can you confirm that Terry McIntosh's deposition in Seattle is taking place on 10/14, at the place and time specified in the subpoena? We want to arrange our travel plans for that ASAP.

(3) As far as the privilege log: thank you for agreeing to produce a privilege log 10/14. We understand that your views of privilege logs is they are largely worthless (both you and Mr. Zavin have expressed this view--he back in June during our in person meet and confer, and you noted they are generally "not productive" in your 9/26 email), and while you previously agreed to produce one (Mr. Zavin in June) you have never asked us for one or expressed any interest in reviewing one until now. Are you suggesting that we should log emails with other attorneys Alec has spoken to about defending him in this case? Or about anything? This request is way overbroad and does not extend to anything relevant you are attempting to uncover in prosecuting this action.

If there are specific attorneys who you are questioning whether the communication is privileged we are happy to gather and log those. Otherwise, you are simply raising this issue as a "tit for tat" to overburden Defendants, without any regard to whether such communications bear any relevance whatsoever to prosecuting your case. As we have explained, we actually see value in reviewing what communications you have dubbed privileged based on our discussions about the common interest privilege, as well as any communications with J.J. Abrams and Justin, which we don't believe are privileged at all based on your insistence that these are third parties that do not speak for Plaintiffs. We believe these communications are relevant to our defense against your assertion of willfulness, and to your claim that Plaintiffs have been damaged by Axanar, or have had their market impacted by Axanar. A privilege log will allow us to view the basis of the communications and whether an attorney was actually included, or whether privilege was potentially broken with the inclusion of third parties. Further, given that Paramount has not produced a single email whatsoever (which is remarkable for a Plaintiff), and your 30(b)(6) witness was clueless about whether any such collection had taken place, we are attempting to investigate whether you collected any emails at all, or whether you collected emails and then determined they were all privileged.

(4) We will provide verifications shortly and in advance of Mr. Peters' deposition, as he will be the one verifying Axanar's responses.

(5) We have produced all source documents that we could reasonably locate after a diligent search. It sounds like you are aware of a specific source you have not seen in the production, in which case you are free to ask Alec and other witnesses about them during their depositions. Isn't that sufficient here? Especially since you apparently already have information from your public monitoring to support your claim? If you want to let me know what the source you have in mind is, I am happy to inquire again to make sure there was not something still in Defendants' possession that was used as a source that can be copied. We also would consider stipulating that it was used as a source if your information is verified as accurate. But unless it is some obscure source that you cannot otherwise obtain, it doesn't seem like the source itself is what you need.

Regards,

-Erin

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-----Original Message-----

From: David Grossman [mailto:dgrossman@loeb.com]
Sent: Thursday, September 29, 2016 6:13 PM
To: Ranahan, Erin R.
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

Again, we did not agree to produce a privilege log in June. However, we are working on one and will provide it by October 14. That is subject to your agreement that Alec Peters and Axanar will provide a log as well. You did not respond to my prior email where I pointed out that Alec Peters had spoken to counsel other than Winston & Strawn. If his position is that he has not spoken to any other attorneys about this matter, he can provide a declaration this week stating that.

We also have not received any verifications from Defendants yet - unless I am mistaken. Please let us know when those will be provided.

Finally, I have been asking for the last two weeks for all of the source documents that Defendants used to create the Axanar works - your response that any documents will be provided three days before a deposition is not sufficient. Please speak to your client and let me know what source documents were used in the creation of the Axanar works, other than films. They have publicly stated that documents - that have not yet been produced - were used to create the Axanar works, and yet those documents have not yet been provided.

David Grossman
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-----Original Message-----

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Wednesday, September 28, 2016 9:14 PM
To: David Grossman
Cc: Jonathan Zavin; Jennifer Jason; Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: Re: Axanar-- Verifications, Common Interest, etc.

David,

Once again, when will Plaintiffs produce a privilege log? We have been requesting these since June, and it's part of your obligation under the Federal Rules to produce if you are withholding documents as privileged. It's long overdue and you are prejudicing our ability to review in time to challenge any items.

Can you produce this week?

Thanks,

-Erin

Sent from my iPhone

On Sep 26, 2016, at 5:24 PM, David Grossman <dgrossman@loeb.com<mailto:dgrossman@loeb.com>> wrote:

Erin,
We will not be providing a privilege log on 10/3, which is Rosh Hashanah. Further, we have not taken a "broader interpretation" of privilege than the defendants. Moreover, the conversation that you referred to which I had with Diana regarding pre-lawsuit joint defense communications was in a meet and confer relating to the 30b6 depositions and did not address documents. I said, in that discussion, that I was not aware of any pre-lawsuit discussions regarding whether or not to file this lawsuit that did not involve lawyers. If you are insisting on the production of a log, we will put one together in due course. As for your assertion that there is nothing privileged that

has been withheld by Alec Peters and Axanar, I am not sure that is correct as Alec has publicly stated that he has spoken with other attorneys other than you - both before and after you were retained. If you are demanding a privilege log, the defendants need to provide one as well.

You have not responded to my question from last week regarding the third party witnesses you are representing and whether you will be producing their documents this week. These deponents were noticed for several weeks ago and while we agreed to move the depositions at your firm's request to October, we did not agree to delay the production of documents and I requested your agreement that those documents would be produced ahead of time. Please confirm that they will be provided by 9/30.

From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Monday, September 26, 2016 3:11 PM
To: David Grossman; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Hi David,

Jonathan and I specifically discussed the privilege log point during the June meet and confer (which you and Jennifer were present for, though it was several months ago). Jonathan made the same point you make below, and I explained that I had recently had a motion where we obtained documents that had been designated privileged in another case, and that we do believe privilege logs can be useful, especially in a case like this, because you are withholding documents that we may want to challenge as not-privileged based on those that are party to the communications (which will be apparent from the privilege log itself).

We are not withholding anything from before the lawsuit was filed as privileged, and we are only withholding post-lawsuit communications that include an attorney on the communication. It sounds like you have taken a far broader interpretation of privileged; hence, the need to review your privilege log.

Please provide by 10/3.

Best,

-Erin

Erin R. Ranahan

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From: David Grossman [mailto:dgrossman@loeb.com]

Sent: Monday, September 26, 2016 3:03 PM
To: Ranahan, Erin R.; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: RE: Axanar-- Verifications, Common Interest, etc.

Erin,

We will work on getting the verifications this week.

The common interest discussion related to whether that doctrine extended to pre-litigation discussions. I believe that it does. Purely non-legal communications (that are also not protected by work product) would likely not fall under that category. However, I don't believe any documents have been withheld that fall into that latter category.

I don't recall any agreement on a privilege log. They are generally not productive but if you are demanding that a log be provided, let us know when the defendants intend to provide theirs.

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From: Ranahan, Erin R. [mailto:ERanahan@winston.com]
Sent: Monday, September 26, 2016 2:44 PM
To: David Grossman; Jonathan Zavin; Jennifer Jason
Cc: Leiden, Diana Hughes; Oki, Kelly; Waters, Patricia S.
Subject: Axanar-- Verifications, Common Interest, etc.

Counsel,

I believe we are still waiting for Plaintiffs' verifications for all three sets of interrogatories. Can you please send those ASAP? Back in June you assured we would have these shortly. We would like them in advance of the depositions this week.

David-you and Diana discussed at the last in person meet and confer (9/8) whether Plaintiffs were standing by the position that communications between non-lawyers at CBS and Paramount about the lawsuit are covered by a

"comment interest" privilege. You were going to look into this and get back to us. If you are standing by this, please provide the authority for this. We also understood from our June meet and confer that you would be producing a privilege log, which should include any of the documents you are withholding on this basis. Please advise.

Also, we are confirming that the depositions Wednesday and Friday are starting at 10am. Please provide us the name of all attendees from your side so that we can add to the security list.

Best,

-Erin

Erin R. Ranahan

Partner

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