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CORPORATION and CBS STUDIOS  
INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PARAMOUNT PICTURES  
CORPORATION, a Delaware  
corporation; and CBS STUDIOS INC.,  
a Delaware corporation,  
  
Plaintiffs,  
  
v.  
  
AXANAR PRODUCTIONS, INC., a  
California corporation; ALEC PETERS,  
an individual, and DOES 1-20,  
  
Defendants.

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

**PLAINTIFFS' STATEMENT OF  
UNCONTROVERTED FACTS  
AND CONCLUSIONS OF LAW IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Date: December 19, 2016  
Time: 9:00 a.m.  
Dept.:850

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

1 Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Central  
 2 District Local Rule 56-1, Plaintiffs Paramount Pictures Corporation (“Paramount”)  
 3 and CBS Studios Inc. (“CBS”) (Paramount and CBS collectively, “Plaintiffs”)  
 4 submit this Separate Statement of Uncontroverted Facts and Conclusions of Law in  
 5 support of their concurrently-filed Motion for Summary Judgment.

6 **UNCONTROVERTED FACTS**

<b><u>Uncontroverted Material Fact:</u></b>	<b><u>Supporting Evidence:</u></b>
9 1. Plaintiffs Paramount Pictures Corporation (“Paramount”) and 10 CBS Studios Inc. (“CBS”) (collectively, “Plaintiffs”), own 11 the copyrights to the Star Trek films and television series. 12	Declaration of David Grossman (“Grossman Decl.”), ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures).  Declaration of John Van Citters (“Van Citters Decl.”), ¶¶ 8, 10.
15 2. Plaintiff CBS owns the rights to <i>The Original Series</i> , as well as to 16 all of the subsequent Star Trek Television Series. 17	Van Citters Decl., ¶ 8.  Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series).
18 3. Paramount owns the copyrights in the Star Trek Motion Pictures. 19	Van Citters Decl. ¶ 10.  Grossman Decl., ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures).
22 4. Paramount owns the copyright in the novel entitled <i>Garth of Izar</i> . 23	Van Citters Decl., ¶ 11.  Grossman Decl., ¶ 94, Ex. WW (copyright registration for <i>Garth of                      Izar</i> novel), Ex. 21 ( <i>Garth of Izar</i> novel).
26 5. CBS owns the copyright in the novel entitled <i>Strangers from the                      27 Sky</i> . 28	Van Citters Decl., ¶ 11.  Grossman Decl., ¶ 95, Ex. XX (copyright registration for <i>Strangers</i>

1		<i>from the Sky</i> ).
2	6. CBS owns the copyright in the novel entitled <i>Infinity's Prism</i> .	Van Citters Decl., ¶ 11. Grossman Decl., ¶ 95, Ex. YY (copyright registration for <i>Infinity's Prism</i> ).
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6	7. The original Star Trek television series (" <i>The Original Series</i> ") debuted in 1966, and ran for three seasons, until 1969.	Van Citters Decl., ¶ 5. Grossman Decl., ¶ 92, Ex. 1 ( <i>The Original Series</i> DVDs).
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8		
9	8. In addition to <i>The Original Series</i> , there have been five further Star Trek television series totaling more than 700 episodes (collectively with <i>The Original Series</i> , the "Star Trek Television Series").	Van Citters Decl., ¶¶ 3, 4. Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 92, Exs. 1-5 (Star Trek Television Series DVDs).
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13	9. <i>The Original Series</i> chronicled the adventures of the U.S.S. Enterprise (one of the ships of "Starfleet") and its crew as they traveled through space during the twenty-third century, and featured numerous original and copyrightable elements, including but not limited to elements such as the plots of the episodes, mood, theme, characters, settings, pace and numerous original and copyrightable elements such as the Starship Enterprise (Starfleet registry number NCC-1701), original and fictitious races and species, including the Vulcan and Klingon races, the United Federation of Planets (the "Federation"), and fictional weapons and technology.	Van Citters Decl., ¶ 5. Grossman Decl., ¶ 92, Ex. 1 ( <i>The Original Series</i> DVDs).
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27	10. In "Whom Gods Destroy," one of the episodes of <i>The Original</i>	Van Citters Decl., ¶ 6.
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1	<i>Series</i> , James T. Kirk (played by	Grossman Decl., ¶ 92, Ex. 1( <i>The</i>
2	the actor William Shatner), the	<i>Original Series</i> DVDs).
3	Captain of the U.S.S. Enterprise,	
4	meets his hero, Garth of Izar, a	
	former starship captain.	
5	11. In “Whom Gods Destroy,” Kirk	Van Citters Decl., ¶ 6.
6	and Garth discuss Garth’s victory	Grossman Decl., ¶ 92, Ex. 1( <i>The</i>
7	in the Battle of Axanar.	<i>Original Series</i> DVDs).
8	12. The newest television series, <i>Star</i>	Van Citters Decl., ¶ 7.
9	<i>Trek: Discovery</i> , will premiere in	
10	2017.	
11	13. <i>Star Trek: Discovery</i> takes place	Van Citters Decl., ¶ 7.
12	ten years before the events	
13	depicted in <i>The Original Series</i> .	
14	14. Plaintiffs have licensed numerous	Van Citters Decl., ¶¶ 12, 64-65.
15	derivative works, including books,	
16	games and merchandise. These	
17	works also include reference	
18	guides, encyclopedias,	
19	documentaries, behind the scenes	
20	books, dictionaries and	
21	“companions” to various	
22	television series.	
23	15. Klingons are an alien race, from	Van Citters Decl., ¶ 25.
24	the planet Qo’noS, who are	
25	portrayed as a serious and war-like	
26	species.	
27	16. Klingons have distinctive visual	Van Citters Decl., ¶ 25.
28	elements including large,	
	protruding foreheads covered by	
	symmetrical bumps and ridges,	
	dark hair and skin and facial hair	
	and upward sloping eyebrows.	
	17. The Klingons were long-time	Van Citters Decl., ¶ 25.
	enemies of the Federation, and	
	engaged in a number of military	
	battles with Starfleet.	
	18. Vulcans are an iconic species,	Van Citters Decl., ¶ 30.
	owned by Plaintiffs, first	

1	appearing in the form of Mr. Spock in <i>The Original Series</i> .	
2	19. Vulcans are depicted with their	Van Citters Decl., ¶ 29.
3	pointed ears and upswept	
4	eyebrows, they are portrayed as	
5	stern and eschew emotions for	
6	logic and reason.	
6	20. Vulcan men are usually depicted	Van Citters Decl., ¶ 29.
7	with straight, dark (or gray) hair	
7	cut in a “bowl” style.	Van Citters Decl., ¶ 29.
8	21. Vulcans are part of the Federation,	
9	and are portrayed as an advanced	
9	technological species.	Van Citters Decl., ¶¶ 21, 45. Grossman Decl., ¶ 92, Ex. 1( <i>The Original Series</i> DVDs).
10	22. Ambassador Soval was first seen	
11	in the <i>Star Trek: Enterprise</i> pilot	
12	episode “Broken Bow” in 2001,	
13	and was featured many times	
13	throughout the <i>Enterprise</i> series	Van Citters Decl., ¶¶ 21-24, 45-46.
14	such as in the episode “The	
15	Expanse” from 2003.	
14	23. Soval is portrayed by actor Gary	
15	Graham, who reprised his role as	
16	Ambassador Soval in Defendants’	
17	infringing works, and even wore	
18	virtually identical makeup and	
18	costumes that he had in the	
19	<i>Enterprise</i> series, rendering the	
19	portrayal of that character all but	
20	identical to that seen in Plaintiffs’	
20	works.	Van Citters Decl., ¶¶ 17-20.
21	24. Defendants’ works incorporate	
21	Plaintiffs’ character, Garth of Izar.	Van Citters Decl., ¶ 18.
22	25. Garth of Izar, like Captain Kirk,	
23	was a Starfleet Captain.	Van Citters Decl., ¶ 18.
24	26. In <i>The Original Series</i> , Garth of	
25	Izar was introduced and portrayed	
25	as a former starship captain whose	
26	exploits were “required reading”	
26	at the Starfleet Academy due to	
27	his heroic conduct during the	
27	Battle of Axanar.	
28		

1	27. In the episode that introduced	Van Citters Decl., ¶ 18.
2	Garth (entitled “Whom Gods	
3	Destroy”), Captain Kirk finds	
4	Garth in an asylum after he had	
	been declared criminally insane.	
5	28. This character was further	Van Citters Decl., ¶ 18.
6	developed and explored by	
7	Plaintiffs in the 2003 novel	
8	entitled “Garth of Izar.”	
9	29. Paramount has a licensed work	Van Citters Decl., ¶ 12.
10	called <i>Star Trek: The Role Playing</i>	
11	<i>Game</i> .	
12	30. Garth of Izar’s military battles	Van Citters Decl., ¶ 19.
13	against the Klingon Empire,	
14	including the Battle of Axanar,	
15	were explored by Paramount’s	
16	licensee, FASA, in <i>Star Trek: The</i>	
17	<i>Role Playing Game</i> .	
18	31. <i>The Four Years War</i> supplement	Van Citters Decl., ¶ 13.
19	is a guide that was used in	
20	connection with <i>Star Trek: The</i>	
21	<i>Role Playing Game</i> .	
22	32. The <i>Four Years War</i> supplement	Van Citters Decl., ¶¶ 13, 14, Ex. AAA
23	also describes the Battle of Axanar	( <i>The Four Years War</i> supplement).
24	(a related mission guide for the	
25	role-playing game was called	
26	“Return to Axanar”), and the	
27	military campaigns of Federation	
28	Fleet Captain Garth of Izar.	
	33. The copyright in <i>The Four Years</i>	Van Citters Decl., ¶ 14, Ex. AAA
	<i>War</i> is owned by Paramount.	( <i>The Four Years War</i> supplement),
		Ex. BBB (copyright registration for
		<i>The Four Years War</i> ).
	34. <i>The Four Years War</i> was used as	Grossman Decl., ¶ 13, Ex. A (Peters
	source material by Defendants in	tr. at 38:22-41:17); ¶ 14, Ex. C
	order to create their Axanar	(Gossett tr. at 48:10-50:10), Ex. I
	Works.	(April 26, 2014 email from Christian
		Gossett to Alec Peters).

1	35. Defendants admitted that they	Van Citters Decl., ¶ 14, Ex. AAA
2	used <i>The Four Years War</i> to create	( <i>Four Years War</i> ).
3	the Axanar Works.	Grossman Decl., ¶ 13, Ex. A (Peters
4		tr. at 38:22-41:17), ¶ 14, Ex. C
5		(Gossett tr. at 48:10-50:5), Ex. I
6		(April 26, 2014 email from Christian
		Gossett to Alec Peters).
7	36. <i>Star Trek: Prelude to Axanar</i> , is a	Grossman Decl., ¶ 18, Ex. A (Peters
8	twenty-one minute film.	tr. at 34:10-12).
9	37. <i>Star Trek: Prelude to Axanar</i> was	Grossman Decl., ¶ 18, Ex. A (Peters
10	funded on Kickstarter.	tr. at 34:5-9).
11	38. Kickstarter is a crowdsourcing	Grossman Decl., ¶ 18, Ex. A (Peters
12	website where parties can raise	tr. at 69:14-70:6).
13	money to fund their projects.	
14	39. In exchange for donations on	Grossman Decl., ¶ 69, Ex. D
15	<i>Prelude to Axanar</i> , Defendants	(Kingsbury tr. at 114:16-25).
16	provided donors with perks that	
17	included various branded	
18	merchandise.	
19	40. <i>Prelude to Axanar</i> was released on	Grossman Decl., ¶ 19, Ex. L
20	YouTube in August of 2014.	(YouTube page).
21	41. Defendant Peters wrote the	Grossman Decl., ¶ 23, Ex. A (Peters
22	<i>Prelude to Axanar</i> screenplay.	tr. at 57:1-58:25).
23	42. <i>Star Trek: Prelude to Axanar</i>	Van Citters Decl. ¶¶ 15, 17, Exhibit
24	features Plaintiffs' character,	19 ( <i>Prelude to Axanar</i> ).
25	Garth of Izar, and describes his	Grossman Decl., ¶ 23, Ex. A (Peters
26	military exploits during the war	tr. at 36:20-37:25; 46:18-48:1); ¶ 24,
27	between the Federation and the	Ex. B (Burnett tr. at 191:17-192:25).
28	Klingon Empire.	
	43. <i>Prelude to Axanar</i> features the	Van Citters Decl., ¶¶ 15, 37, 38
	Federation.	Exhibit 19 ( <i>Prelude to Axanar</i> ).
		Grossman Decl., ¶ 23, Ex. A (Peters
		tr. at 44:21-55:20 , ¶ 24, Ex. B
		(Burnett tr. at 107:6-15); ¶ 22, Ex. C
		(Gossett tr. at 67:5-70:23), Ex. N

1		(brochure for <i>Prelude to Axanar</i> ).
2	44. <i>Prelude to Axanar</i> features	Van Citters Decl., ¶¶ 15, 25-28,
3	Klingons.	Exhibit 19 ( <i>Prelude to Axanar</i> ).
4		Grossman Decl., ¶ 23, Ex. A (Peters
5		tr. at 44:21-55:20); ¶ 22, Ex. C
6		(Gossett tr. at 67:5-70:23), Ex. N
		(brochure for <i>Prelude to Axanar</i> ).
7	45. <i>Prelude to Axanar</i> features	Van Citters Decl. ¶¶ 15, 29-32,
8	Vulcans.	Exhibit 19 ( <i>Prelude to Axanar</i> ).
9		Grossman Decl., ¶ 23, Ex. A (Peters
10		tr. at 44:21-55:20).
11	46. <i>Prelude to Axanar</i> features	Van Citters Decl. ¶¶ 15, 33-34,
12	Starfleet.	Exhibit 19 ( <i>Prelude to Axanar</i> ).
13		Grossman Decl., ¶ 23, Ex. A (Peters
		tr. at 44:21-55:20).
14	47. <i>Prelude to Axanar</i> features	Van Citters Decl. ¶¶ 15, 17-18,
15	Starfleet officers and commanders,	Exhibit 19 ( <i>Prelude to Axanar</i> ).
16	including Garth of Izar.	Grossman Decl., ¶ 23, Ex. A (Peters
17		tr. at 36:20-37:16; 414:2-415:19), ¶
18		33, Ex. S (July 8, 2014 email from
		Alec Peters to Christian Gossett and
		Rocio Everett).
19	48. <i>Prelude to Axanar</i> features the	Van Citters Decl. ¶¶ 15, 21-24,
20	character Soval.	Exhibit 19 ( <i>Prelude to Axanar</i> ).
21	49. <i>Prelude to Axanar</i> features	Van Citters Decl. ¶¶ 15, 35-36,
22	Klingon battlecruisers.	Exhibit 19 ( <i>Prelude to Axanar</i> ).
23	50. Defendants have created	Van Citters Decl., ¶¶ 15, 25-28,
24	substantially similar	Exhibit 19 ( <i>Prelude to Axanar</i> ).
25	representations of Klingons, and	Grossman Decl., ¶¶ 30, 31 Ex. B
26	in doing so have copied the	(Burnett tr. at 202:21-203:25; 215:4-
27	makeup, hair, costumes, weaponry	216:9); ¶ 26, Ex. A (Peters tr. at 82:6-
28	and accessories worn by those	85:12), ¶ 45 (Peters tr. at 44:21-
	species.	55:20); ¶ 41, Ex. A (Peters tr. at 77:5-

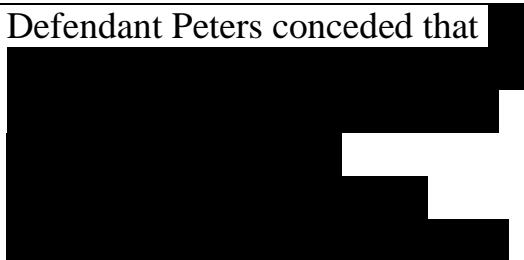


1		9), ¶ 42, Ex. AA (Axanar Script at page 3 for use of Bat’leth and page 30 for use of Mek’leth).
2		
3	51. Defendants have created	Van Citters Decl., ¶¶ 15, 29-32,
4	substantially similar	Exhibit 19 ( <i>Prelude to Axanar</i> ).
5	representations of Vulcans, and in	Grossman Decl., ¶ 26, Ex. A (Peters
6	doing so have copied the makeup,	tr. at 82:6-85:12); Grossman Decl., ¶
7	hair, costumes, and accessories	23, Ex. A (Peters tr. at 44:21-55:20).
8	worn by those species.	
9	52. Mr. Peters also admitted that	Grossman Decl., ¶ 26, Ex. A (Peters
10	[REDACTED]	tr. at 82:6-85:12); ¶ 23, Ex. A (Peters
11		tr. at 44:21-55:20).
12	53. Mr. Peters admitted that	Grossman Decl., ¶ 25, Ex. A (Peters
13	[REDACTED]	tr. at 319:8-323:10), Ex. O (March 17,
14		2014 email from Alec Peters to
15	54. Mr. Peters stated “I am the keeper	Christian Gossett and Hamilton Cox).
16	of the faith with fans. They love	Grossman Decl., ¶ 34, Ex. A (Peters
17	that about us. Our faithfulness to	tr. at 471:25-475:1), Ex. U (March 7,
18	the universe.”	2015 email from Alec Peters to
19		Christian Gossett).
20	55. Mr. Peters testified that	Grossman Decl., ¶ 34, Ex. A (Peters
21	[REDACTED]	tr. at 420:13-421:19; 471:25-475:1),
22		Ex. T (July 15, 2014 email from
23		Christian Gossett to Alec Peters); Ex.
24		U (March 7, 2015 email from Alec
25		Peters to Christian Gossett); ¶ 27, Ex.
26		A (Peters tr. at 347:4-348:10), Ex. P
27		(email exchange between Mr. Peters
28		and Mr. Gossett); ¶ 47, Ex. A (Peters

1	56. The director of <i>Prelude to Axanar</i>	Grossman Decl., ¶ 21, Ex. C (Gossett
2	testified that <i>Prelude to Axanar</i> is	tr. at 185:25-186:8).
3	57. Prior to the filing of this lawsuit,	Grossman Decl., ¶ 41, Ex. A (Peters
4	Axanar, Defendants drafted a final	tr. at 77:5-9), Ex. AA (script).
5	58. In 2015, Defendants released one	Van Citters Decl., ¶ 43, Exhibit 20
6	scene from the full-length film,	(Vulcan Scene).
7	which they call the “Vulcan	Grossman Decl., ¶ 43, Ex. A (Peters
8	Scene.”	tr. at 79:11-17).
9	59. The Vulcan Scene features	Van Citters Decl., ¶ 43, Exhibit 20
10	Vulcans.	(Vulcan Scene); ¶ 47.
11		Grossman Decl., ¶ 43, Ex. A (Peters
12		tr. at 425:11-426:3; 77:5-9); Ex. AA
13	60. The Vulcan Scene features the	Van Citters Decl., ¶ 43, Exhibit 20
14	character Soval.	(Vulcan Scene); ¶¶ 45-46.
15		Grossman Decl., ¶ 41, Ex. A (Peters
16		tr. at 77:5-9), Ex. AA (script at pages
17	61. The Vulcan Scene features the	Van Citters Decl., ¶ 43, Exhibit 20
18	planet Vulcan.	(Vulcan Scene); ¶¶ 48, 49.
19		Grossman Decl., ¶ 41, Ex. A (Peters
20		tr. at 77:5-9), Ex. AA (script at pages
21		21-23); ¶ 44, Ex. N (Burnett tr. at
22	62. The shot of planet Vulcan in the	Van Citters Decl., ¶ 43, Exhibit 20
23	Vulcan Scene was copied from	(Vulcan Scene); ¶ 48.
24	<i>Star Trek III: The Search for</i>	Grossman Decl., ¶ 43, Ex. A (Peters
25	<i>Spock</i> .	tr. at 82:2-85:12); ¶ 44, Ex. B (Burnett
26	63. The Vulcan Scene features Vulcan	Van Citters Decl., ¶ 43, Exhibit 20
27	ships.	(Vulcan Scene); ¶50.
28		Grossman Decl., ¶ 43 Ex. A (Peters tr.



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2	72. Defendants also took characters, sequence, themes, mood, dialogue, and settings from the Star Trek Copyrighted Works.	Van Citters Decl., ¶¶ 15-62.
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5	73. Defendants expressly set out to create an authentic and	Grossman Decl., ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH
6	“independent Star Trek film” that	(screenshot from Defendants’
7	stayed true to Star Trek canon	Kickstarter fundraising page).
8		Grossman Decl., ¶ 34, Ex. A (Peters tr. at 471:25-474:20), Ex. U (March 7,
9		2015 email from Alec Peters to Christian Gossett).
10		Grossman Decl., ¶ 29, Ex. C (Gossett tr. at 36:11-37:8), Ex. R (March 24,
11		2013 email from Sean Tourangeau to Christian Gossett and Alec Peters).
12		Grossman Decl., ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13,
13		2014 email exchange between Alec Peters, Tobias Richter, and Christian Gossett).
14		Grossman Decl., ¶ 10, Ex. C (Gossett tr. at 30:7-31:13, Ex. F (January 4,
15		2011 email from Alec Peters to Christian Gossett), Ex. A (Peters tr. at
16		332:15-334:4).
17		Grossman Decl., ¶ 12, Ex. C (Gossett tr. at 32:7-34:16), Ex. H (November
18		13, 2013 email exchange between Alec Peters and Christian Gossett),
19		Ex. A (Peters tr. at 359:18-361:11).
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24	74. Defendants have set the Axanar Works in 2241.03 to 2245.1, which is twenty-one years before <i>The Original Series</i> episode “Where No Man Has Gone Before.”	Van Citters Decl., ¶ 15, Ex. 19 ( <i>Prelude to Axanar</i> ); ¶ 39.
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<p>1 2 3 4 5 6 7 8 9</p>	<p>75. Defendants set out to create a motion picture “prequel” to <i>The Original Series</i>.</p>	<p>Grossman Decl., ¶ 16, Ex. A (Peters tr. at 143:13-145:7), ¶ 35, Ex. V (blueprints for the soundstage at Paramount Studios that was used for Star Trek); ¶ 36, Ex. A (145:12-147:10), Ex. W (blueprints from the set of <i>The Next Generation</i>), ¶ 32, Ex. C (Gossett tr. at 47:22-48:6); ¶ 15, Ex. A (Peters tr. at 371:13-372:9), Ex. J (Mr. Gossett email exchange with Mr. Peters) ¶ 17, Ex. B (Burnett tr. at 202:12-203:4).</p>
<p>10 11 12 13 14 15</p>	<p>76. The element of stardates was first used in the second pilot of <i>The Original Series</i> “Where No Man Has Gone Before” in 1966 (Reg. No. PA-58-303), and was subsequently used in <i>The Next Generation</i>, <i>Deep Space Nine</i>, <i>Voyager</i>, and every Star Trek Motion Picture.</p>	<p>Van Citters Decl., ¶ 39.</p>
<p>16 17 18 19</p>	<p>77. Defendant Peters conceded that </p>	<p>Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12).</p>
<p>20 21 22 23 24 25</p>	<p>78. The sequence of events of Defendants’ works is taken from the Star Trek Copyrighted Works – the events depicted and discussed therein take place in and around the Battle of Axanar, as described both in <i>The Original Series</i> and in greater detail in <i>The Four Years War</i>.</p>	<p>Van Citters Decl., ¶ 60.</p>
<p>26 27 28</p>	<p>79. Defendants’ works take place in the same settings as the Star Trek Copyrighted Works as they are set in alien star systems created by</p>	<p>Van Citters Decl., ¶ 62.</p>


1	Plaintiffs, on spaceships belonging	
2	to the United Federation of	
3	Planets, on Klingon battlecruisers	
4	fighting for the Klingon Empire,	
5	and on planets such as Qo'noS,	
6	Vulcan and Axanar.	
7		
8	80. Defendants' works use the	Van Citters Decl., ¶ 59.
9	protected characters embodied by	
10	the U.S.S. Enterprise and Klingon	
11	starships.	
12	81. Defendants appropriated the mood	Van Citters Decl., ¶¶ 55, 56.
13	and theme from the Star Trek	
14	Copyrighted Works, attempting to	
15	recreate the drama between the	
16	Federation and the Klingon	
17	Empire in a military space drama.	
18	82. The second Star Trek motion	Van Citters Decl., ¶ 20.
19	picture, <i>The Wrath of Khan</i> , was a	
20	derivative work that expanded	
21	upon one of the episodes of <i>The</i>	
22	<i>Original Series</i> which featured a	
23	villain named Khan.	
24	83. Defendants raised [REDACTED]	Grossman Decl., ¶ 73, Ex. A (Peters
25	[REDACTED]	tr. at 70:24-71:4).
26	84. Defendants spent [REDACTED]	Grossman Decl., ¶ 73, Ex. A (Peters
27	[REDACTED]	tr. at 190:19-191:24).
28	85. Mr. Peters [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr.
	[REDACTED]	at 189:2-23), Ex. SS (financial
	[REDACTED]	summary at AX031122-AX031129).
	86. Defendants [REDACTED]	Grossman Decl., ¶ 61, Ex. B (Burnett
	[REDACTED]	tr.at 61:24-62:11); ¶ 74, Ex. A (Peters
	[REDACTED]	tr. at 122:21-25), Ex. SS (financial
	[REDACTED]	summary at AX030960, AX030959,
	[REDACTED]	AX031046, AX031128).
	87. Defendants [REDACTED]	Grossman Decl., ¶ 61, Ex. B (Burnett
	[REDACTED]	tr.at 62:12-18; 93:23-25; 140:21-
	[REDACTED]	141:3); ¶ 70 (Kingsbury tr. at 39:22-

1		41:9); ¶ 74, Ex. SS (financial summary at AX030958-AX030964 ).
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3	88. Defendants	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 65:7-18; 193:22-194:18), Ex. SS (financial summary at AX031058-AX031059).
4		Grossman Decl., ¶ 63, Ex. A (Peters tr. at 353:8-13; 487:21-488:8; 225:12-227:20), Ex. NN (lease).
5		Grossman Decl., ¶ 62, Ex. C (Gossett tr. at 35:11-36:7).
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10	89. Defendants	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 209:15-212:22), Ex. SS (financial summary at AX031019-AX031033).
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13	90. Defendants	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 195:21-198:1; 213:5-10), Ex. SS (financial summary at AX031051-AX031055).
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20	91. Defendants	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 201:6-204:7), Ex. SS (financial summary at AX030967-AX030981).
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25	92. Ms. Kingsbury was Mr. Peters' girlfriend in 2014.	Grossman Decl., ¶ 72, Ex. D (Kingsbury tr.at 15:21-24; 18:7-11; 141:4-15); ¶ 71, Ex. A (Peters tr.at 197:12-15).
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1	93. Mr. Peters [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 204:11-16, 205:3-16), Ex. SS (financial summary at AX030985-AX030986).
2	[REDACTED]	
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4	94. Mr. Peters [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 203:25-204:1); Ex. SS (financial summary at AX030981-AX030983).
5	[REDACTED]	
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7	95. Mr. Peters [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 217:6-15), Ex. SS (financial summary at AX030986-AX030987).
8	[REDACTED]	
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10	96. Mr. Peters [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 205:14-16), Ex. SS (financial summary at AX030967-AX030987).
11	[REDACTED]	
12	97. Defendants [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 205:20-207:9), Ex. SS (financial summary at AX031098-AX031110).
13	[REDACTED]	
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15	98. Mr. Peters [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 207:10-12), Ex. SS (financial summary at AX031098).
16	[REDACTED]	
17	99. Mr. Peters [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 208:2-16), Ex. SS (financial summary at AX031009-AX031010).
18	[REDACTED]	
19		
20	100. In raising money for the Axanar Works, Mr. Peters stated,	Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1); Ex. CC (Indiegogo site).
21	“Axanar is the first fully-	
22	professional, independent Star	
23	Trek film. While some may call it	
24	a ‘fan film’ as we are not licensed	
25	by CBS, Axanar has professionals	
26	working in front and behind the	
27	camera, with a fully-professional	
28	crew--many of whom have	
	worked on Star Trek itself--who	
	ensure Axanar will be the quality	
	of Star Trek that all fans want to	



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<p>see.”</p>	
<p>101. Defendants </p>	<p>Grossman Decl., ¶ 39, Ex. B (Burnett tr. at 55:4-14, 58:10-22,59:11-22).</p>
<p>102. Peters repeatedly referenced the Axanar Works as a professional production.</p>	<p>Grossman Decl., ¶ 52, Ex. A (Peters tr. at 91:11-92:7), Ex. GG (statement made by Alec Peters in an interview), ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants’ Kickstarter fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Defendants’ Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5, 134:10-143:5, 135:11-136:2, 137:13-19-138:13, 138:21-140:2, 140:19-141:3,141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 11, Ex. A (Peters tr. at 170:22-171:3), Ex. G (printout from Axanarproductions.com), ¶ 56, Ex. A (Peters tr. at 124:8-127:15), Ex. JJ (press kit).</p>
<p>103. Peters repeatedly stated that his production was not to be called a “fan film.”</p>	<p>Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-101:10), Ex. DD (Defendants’ Indiegogo fundraising</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p>		<p>page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5, 134:10-143:5, 137:13-19 -138:13, 138:21-140:2,140:19-141:5, 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK (Peters email to Doug Drexler).</p>
<p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>104. Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” and [REDACTED]</p>	<p>Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B. (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan), ¶ 68, Ex. QQ (printout from Axanarproductions.com).</p>
<p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>	<p>105. Mr. Peters’ collaborator and the director of Axanar, Rob Burnett, stated [REDACTED]</p>	<p>Grossman Dec., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-:36:20); Ex. RR (Robert Meyer Burnett online posting).</p>
<p>27</p> <p>28</p>	<p>106. Mr. Peters created the Axanar Works [REDACTED]</p>	<p>Grossman Decl., ¶ 79, Ex. A (Peters</p>

1		tr. at 455:24-456:16); ¶ 77, Ex. B
2		(Burnett tr. at 217:22-218:7); ¶ 78, Ex.
3		C (Gossett tr. at 19:15-:22:20).
4	107. Mr. Burnett, the editor of <i>Prelude</i>	Grossman Decl., ¶ 82, Ex. B (Burnett
5	to <i>Axanar</i> , and director of the full	tr. at 31:21-36:20), Ex. RR (Robert
6	length <i>Axanar</i> Film, also stated	Meyer Burnett online posting).
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9	108. Mr. Peters	Grossman Decl., ¶ 65, Ex. A (Peters
10		tr. at 234:11-25); ¶ 66, Ex. B (Burnett
11		tr. at 151:2-153:12), Ex. PP (Axanar
12		marketing plan).
13	109. Defendants	Grossman Decl., ¶ 64, Ex. B (Burnett
14		tr. at 142:14-148:8); Ex. PP (Axanar
15		marketing plan); Ex. QQ (printout
16	110. Peters stated: “But Axanar is not	Grossman Decl., ¶ 49, Ex. A (Peters
17	just an independent Star Trek film;	tr. at 99:10-100:15), Ex. DD (Axanar
18	it is the beginning of a whole new	Indiegogo fundraising page).
19	way that fans can get the content	
20	they want, by funding it	
21	themselves. Why dump hundreds	
22	or thousands of dollars a year on	
23	400 cable channels, when what	
24	you really want is a few good sci-	
25	fi shows?”	
26	111. The continued production and	Van Citters Decl., ¶ 63.
27	distribution of the Axanar Works	
28	would cause irreparable harm to	
	the market for Star Trek	
	Copyrighted Works because Star	
	Trek fans will view the Axanar	
	Works (and donate for the	
	production of future works)	
	instead of paying to view the Star	

1	Trek Copyrighted Works.	
2	112. Peters was in charge of Axanar Productions’ conduct and was responsible for the infringing conduct of Axanar Productions.	Grossman Decl., ¶ 86, Ex. C (Gossett tr. at 38:6-16; 161:14-23; 162:9-163:14); ¶ 84, Ex. A (Peters tr. at 55:21-58:9; 78:9-80:10), ¶ 87, Ex. E (McIntosh tr. at 52:12-20).
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6	113. Peters is the president of Axanar Productions.	Grossman Decl., ¶ 83, Ex. A (Peters tr. at 182:1-2).
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8	114. Peters was responsible for many of the creative decisions on the Axanar Works.	Grossman Decl., ¶ 85, Ex. B (Burnett tr. at 201:19-202:11); ¶ 86, Ex. C (Gossett tr. at 38:6-16; 161:14-23; 162:9-163:14).
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11	115. Peters supervised and controlled Axanar Productions.	Grossman Decl., ¶ 83, Ex. A (Peters tr. at 60:6-61:2), ¶ 87, Ex. E (McIntosh tr. at 52:12-20).
12		
13	116. Peters [REDACTED]	Grossman Decl., ¶ 88, Ex. A (Peters tr. at 9:21-23; 21:18-25).
14	[REDACTED]	
15	[REDACTED]	
16	117. In the years prior to Peters’ creation of the Axanar Works, Peters sent several emails to CBS to report third parties whom Peters believed were using Plaintiffs’ intellectual property without authorization.	Grossman Decl., ¶ 89, Ex. TT (Peters emails to CBS).
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**CONCLUSIONS OF LAW**

21	<b><u>CONCLUSIONS OF LAW</u></b>	
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23	<b><u>Undisputed Conclusion of Law:</u></b>	<b><u>Supporting Law:</u></b>
24	<b>Defendants are Liable for Copyright Infringement</b>	
25	1. Substantial similarity may be determined as a matter of law.	<i>Sid &amp; Marty Krofft TV Prods. v. McDonald's Corp.</i> , 562 F.2d 1157, 1164 (9th Cir. 1977).
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<p>2. The Copyright Act grants copyright owners “a bundle of exclusive rights, including the rights to ‘reproduce the copyrighted work in copies’ and ‘to prepare derivative works based upon the copyrighted work.’”</p>	<p><i>Castle Rock Entertainment v. Carol Publishing Group</i>, 150 F.3d 132, 137 (2d Cir. 1998), citing 17 U.S.C. §106.</p>
<p>3. Copyright infringement is established when the owner of a valid copyright demonstrates ownership of the works at issue and unauthorized copying by the defendant.</p>	<p><i>Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.</i>, 499 U.S. 340, 361(1991).</p>
<p>4. Characters, including objects, vehicles and ships, are protected under copyright law when they have “physical as well as conceptual qualities” and are “sufficiently delineated” so as to merit copyright protection.</p>	<p><i>DC Comics v. Towle</i>, 802 F.3d 1012, 1021 (9th Cir. 2015).</p>
<p>5. The Ninth Circuit, in <i>DC Comics v. Towle</i>, recently affirmed the copyright protections afforded to iconic inanimate objects, such as the “Batmobile,” and that decision applies with equal force to the Starship Enterprise (call-sign NCC-1701), and to the Klingon battlecruisers portrayed in Plaintiffs’ Star Trek Copyrighted Works and copied by Defendants.</p>	<p><i>DC Comics v. Towle</i>, 802 F.3d 1012, 1021 (9th Cir. 2015).</p>
<p>6. Where, as here, there is direct evidence of copying, the question is whether there is “substantial similarity as a matter of law,” which involves an examination of whether Defendants copied</p>	<p><i>Feist Publications, Inc. v. Rural Telephone Serv., Inc.</i>, 499 U.S. 340, 361 (1991).</p>

1	“elements of the work that were	
2	original.”	
3	<b>Defendants’ Fair Use Defense Fails.</b>	
4	7. The “central purpose” of the fair	<i>Campbell v. Acuff-Rose Music, Inc.</i> , 510 U.S. 569, 578-580 (1994).
5	use inquiry is to determine	
6	whether the infringing works are	
7	“transformative.”	
8	8. The question of whether or not a	<i>Kelly v. Arriba Soft Corp.</i> , 336 F.3d 811, 818 (9th Cir. 2003).
9	work is “transformative” is often	
10	determinative on the issue of fair	
11	use.	
12	9. The creation of a derivative work	<i>Salinger v. Colting</i> , 641 F. Supp.2d 250 (S.D.N.Y. 2009).
13	that is set in a (slightly) different	
14	time than the original does not	
15	constitute a “transformative use.”	
16	10. The Supreme Court held in	<i>Harper &amp; Row, Publr. v. Nation</i> <i>Enters.</i> , 471 U.S. 539, 568 (1985).
17	<i>Harper &amp; Row, Publr. v. Nation</i>	
18	<i>Enters.</i> , 471 U.S. 539, 568 (1985)	
19	that a plaintiff can demonstrate the	
20	existence of harm to its potential	
21	market merely by showing “that if	
22	the challenged use should become	
23	widespread, it would adversely	
24	affect the potential market for the	
25	copyrighted work...This inquiry	
26	must take account not only of	
27	harm to the original but also of	
28	harm to the market for derivative	
29	works.” (internal citations and	
30	quotations omitted).	
31	11. Moreover, “[i]f the defendant’s	<i>Harper &amp; Row, Publr. v. Nation</i> <i>Enters.</i> , 471 U.S. 539, 568 (1985).
32	work adversely affects the value	
33	of any of the rights in the	
34	copyrighted work (in this case the	
35	adaptation [and serialization]	
36	right) the use is not fair.” <i>Id.</i>	
37	(citation omitted).	
38	12. Here, by creating a derivative	<i>Paramount Pictures Corp. v. Carol</i> <i>Publ’g Group</i> , 11 F. Supp.2d 329,
39	work, set in the Star Trek	
40	universe, using Plaintiffs’	

1 2 3 4	copyrighted characters, settings, and plots, Defendants are, by definition, causing market harm to Plaintiffs by damaging Plaintiffs’ potential market for derivative works.	336 (S.D.N.Y. 1998).
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**Plaintiffs Are Entitled to Partial Summary Judgment on Liability**

6 7 8 9 10 11 12 13 14 15 16 17 18	13. In copyright cases, summary judgment can be granted as to liability	<i>Munhwa Broad. Corp. v. Song</i> , No. CV 14-04213-RGK (RZx), 2015 U.S. Dist. LEXIS 77909, at *21 (C.D. Cal. May 12, 2015)(Klausner, J.); <i>Toho Co., LTD v. Priority Records, LLC</i> , CV 01-04744-SVW (RZx), 2002 U.S. Dist. LEXIS 14093, at *19 (C.D. Cal. Mar. 26, 2002)(granting plaintiffs’ motion for partial summary judgment and finding defendants liable for copyright infringement) <i>ZZ Top v. Chrysler Corp.</i> , 54 F. Supp. 2d 983, 986 (W.D. Wash. 1999) (granting plaintiffs’ motion for partial summary judgment and finding defendant liable for infringing plaintiff’s copyright).
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**Plaintiffs Are Entitled to Declaratory Relief**

20 21 22 23 24 25 26 27	14. An actual controversy has arisen and now exists relating to the rights and duties of Plaintiffs and Defendants under the United States copyright laws in that Plaintiffs contend that they are the sole owners of the Star Trek Copyrighted Works and that the Axanar Works infringe Plaintiffs’ rights in the Star Trek Copyrighted Works.	The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.
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**Plaintiffs Are Entitled to a Permanent Injunction**

<p>15. In determining whether to issue a permanent injunction in copyright infringement actions, courts evaluate four factors: (1) irreparable harm; (2) inadequacy of monetary damages; (3) the balance of hardships; and (4) whether the public interest would be served by a permanent injunction.</p>	<p><i>eBay, Inc. v. MercExchange, LLC</i>, 547 U.S. 388, 391 (2006).</p>
<p>16. Plaintiffs may establish irreparable harm stemming from the infringement (<i>e.g.</i>, loss of market share, reputational harm).”</p>	<p><i>MGM Studios, Inc. v. Grokster, Ltd.</i>, 518 F. Supp. 2d 1197, 1215 (C.D. Cal. 2007)(internal brackets omitted), citing 6 Patry, <i>supra</i>, § 22:74.</p>
<p>17. The continued production and distribution of Axanar Works would cause irreparable harm to the market for Star Trek Copyrighted Works because Star Trek fans will view the Axanar Works (and donate for the production of future works) instead of paying to view the Star Trek Copyrighted Works.</p>	<p><i>Warner Bros. Entm’t Inc. v. RDR Books</i>, 575 F. Supp. 2d 513, 552 (S.D.N.Y. 2008).</p>
<p>18. Second, a legal remedy is inadequate if it would require a multiplicity of suits.”</p>	<p><i>MGM Studios, Inc. v. Grokster, Ltd.</i>, 518 F. Supp. 2d 1197, 1220 (C.D. Cal. 2007) (internal citations and quotations omitted).</p>
<p>19. Fourth, the public interest would be served with a permanent injunction because it would protect Plaintiffs’ copyrights in the Star Trek Copyrighted Works against increased infringement.</p>	<p><i>MGM Studios, Inc. v. Grokster, Ltd.</i>, 518 F. Supp. 2d 1197, 1222 (C.D. Cal. 2007); <i>see Perfect 10 v. Google, Inc.</i>, 416 F. Supp. 2d 828, 859 (CD. Cal. 2006).</p>



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**Peters is Liable for Contributory Infringement**

20. To hold a party liable for contributory copyright infringement, Plaintiffs must show that the party (1) knew or had reason to know of direct infringement and (2) materially contributed to the infringing conduct of another.

*UMG Recordings, Inc. v. Sinnott*, 300 F. Supp. 2d 993, 998-1001 (E.D. Cal. 2004).

**Peters is Liable for Vicarious Infringement**

21. To establish vicarious liability for copyright infringement, “Plaintiffs must establish that [a defendant] 1) had the right and ability to supervise or control the infringing [parties], and 2) obtained a financial benefit from the infringing [parties].”

*UMG Recordings, Inc. v. Sinnott*, 300 F. Supp. 2d 993, 998-1001 (E.D. Cal. 2004).

Dated: November 16, 2016

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