

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

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

Assigned to: Hon. R. Gary Klausner

**DEFENDANTS AXANAR
PRODUCTIONS, INC., AND ALEC
PETERS' UNOPPOSED
APPLICATION TO FILE UNDER
SEAL**

Local Rule 79-5.2.2

[Filed concurrently with Sealed
Declaration of Kelly N. Oki and
Proposed Order]

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Local Rule 79-5.2.2(a)-(b),
3 Defendant Axanar Productions, Inc. and Alec Peters hereby request that this Court
4 enter an order permitting them to file under seal unredacted copies of their Opposition
5 to Plaintiffs’ Motion for Partial Summary Judgment and Defendants’ Response to
6 Plaintiffs’ Statement of Uncontroverted Facts and Conclusions of Law in Opposition
7 to Plaintiffs’ Motion for Partial Summary Judgment, Exhibits C and F to the
8 Declaration of Erin R. Ranahan (“Ranahan Decl.”), portions of the Declaration of
9 Alec Peters (“Peters Decl.”) and Exhibits 1, 2, 8, 12, 15, and 16 thereto, portions of
10 the Declaration of Bill Hunt (“Hunt Decl.”), and Defendants’ Evidentiary Objections
11 to the Declaration of John Van Citters. Defendants’ counsel has informed Plaintiffs’
12 counsel of Defendants’ intent to file this Application. *See* Declaration of Kelly N. Oki
13 filed concurrently herewith (hereafter, “Oki Decl.”) ¶ 2. Counsel for Plaintiffs has
14 indicated that Plaintiffs **will not** oppose the relief sought in this Application. *Id.*
15 Therefore, the Application is unopposed.

16 **I. Factual Background**

17 On July 12, 2016, Magistrate Judge Charles Eick entered the parties’ Stipulated
18 Protective Order. *See* ECF No. 53. The Stipulated Protective Order permits
19 designation as “Confidential Information” documents and information “that constitute
20 non-public, highly sensitive financial information regarding revenues, expenses and
21 profits generated in connection with the motion picture works at issue ... non-public
22 drafts of scripts, screenplays and other creative and artistic material, including
23 unreleased portions or versions of the films at issue ... documents or information
24 containing personal financial information of third parties, including for example
25 writers, producers and directors that are not a party to this litigation, as well as all
26 confidential and proprietary business or commercial information or trade secrets
27 within the meaning of Fed. R. Civ. P. 26(c) or California Civil Code § 3426.1.” ECF
28 No. 53 at 1. The Stipulated Protective Order also permits the parties to designate as

1 “Highly Confidential – Attorney’s Eyes Only” documents and information that consist
 2 of “competitively sensitive or proprietary information [that] could cause competitive
 3 harm if disclosed to an unauthorized person.” *Id.* at 3.

4 Plaintiffs and Defendants have both designated certain deposition testimony and
 5 documents as “Confidential” and “Highly Confidential – Attorney’s Eyes Only”
 6 pursuant to the Stipulated Protective Order. Under the Stipulated Protective Order,
 7 the parties must seek permission from the Court in order to file “Confidential” or
 8 “Highly Confidential – Attorney’s Eyes Only” documents under seal. ECF No. 53 at
 9 7. Defendants’ Opposition to Plaintiffs’ Motion for Partial Summary Judgment and
 10 Defendants’ Response to Plaintiffs’ Statement of Uncontroverted Facts and
 11 Conclusions of Law in Opposition to Plaintiffs’ Motion for Partial Summary
 12 Judgment quotes and describes documents and testimony that the parties designated as
 13 “Confidential” pursuant to the Stipulated Protective Order. Exhibits C, H, F, and G to
 14 the Ranahan Declaration, portions of the Peters Declaration and Exhibits 1, 2, 8, 12,
 15 15, and 16 thereto, portions of the Hunt Declaration, and Defendants’ Evidentiary
 16 Objections to the Declaration of John Van Citters constitute copies of all or portions
 17 of these documents and testimony, specifically:

Exhibit C to Ranahan Decl.	Excerpts from the September 28, 2016 deposition of John Van Citters (designated by Plaintiffs as “Confidential”)
Exhibit F to Ranahan Decl.	Excerpts from the September 30, 2016 deposition of Dan O’Rourke (designated by Plaintiffs as “Confidential”)
Peters Decl.	Portion of the Peters Declaration constituting confidential information regarding Defendant Peters’ financial information and business plans.
Exhibit 1 to Peters Decl.	Copy of the 2015 Axanar Annual Report, Bates number PL0013763-PL0013785 (designated by Plaintiffs as “Confidential”)

1	Exhibit 2 to Peters Decl.	Summary of Defendants' Financial Records, Bates number AX035571 (designated by Defendants as "Confidential")
2		
3		
4	Exhibit 8 to Peters Decl.	Copy of a Facebook post by Axanar, Bates number PL0008222 (designated by Plaintiffs as "Confidential")
5		
6	Exhibit 12 to Peters Decl.	E-mail exchange between Defendant Peters and a purported Axanar donor, discussing Defendants' financial information, Bates number AX30370 (designated by Defendants as "Confidential")
7		
8		
9		
10	Exhibits 15 and 16 to Peters Decl.	E-mail communications produced by Plaintiffs, Bates numbers PL0012814 – PL0012816, PL0008689, (designated by Plaintiffs as "Confidential")
11		
12		
13	Hunt Decl.	Portions of the Hunt Declaration discussing the various versions of the script for the unmade potential feature length fan film.
14		
15	Evidentiary Objections to the Declaration of John Van Citters	Evidentiary objections containing citations to confidential deposition testimony of Alec Peters (designated by Defendants as "Confidential")
16		
17		

18 Furthermore, Defendants' Opposition to Plaintiffs' Motion for Partial Summary
19 Judgment and Defendants' Response to Plaintiffs' Statement of Uncontroverted Facts
20 and Conclusions of Law in Opposition to Plaintiffs' Motion for Partial Summary
21 Judgment refer to and quote from Exhibits C and F to the Ranahan Declaration, the
22 Peters Declaration and Exhibits 1, 2, 8, 12, 15 and 16 thereto, the Declaration of Bill
23 Hunt, and Defendants' Evidentiary Objections to the Declaration of John Van Citters,
24 which all discuss highly sensitive and confidential information.

25 Defendants apply to file under seal the unredacted Opposition to Plaintiffs'
26 Motion for Partial Summary Judgment, unredacted Defendants' Response to
27 Plaintiffs' Statement of Uncontroverted Facts and Conclusions of Law in Opposition
28 to Plaintiffs' Motion for Partial Summary Judgment, and the foregoing documents

1 pursuant to the Stipulated Protective Order and Local Rule 79-5.2.2. Due to the
2 sensitive nature of this information, good cause exists to approve Defendants'
3 application to file portions of the Peters Declaration and Exhibits 2 and 12 thereto,
4 portions of the Hunt Declaration, and Defendants' Evidentiary Objections to the
5 Declaration of John Van Citters under seal pursuant to Local Rule 79-5.2.2(a).
6 Pursuant to Local Rule 79-5.2.2(b)(i), Plaintiffs shall demonstrate such good cause for
7 Exhibits C and F to the Ranahan Declaration and Exhibits 1, 8, 15, and 16 to the
8 Peters Declaration. Defendants will file a redacted version of these documents, the
9 Opposition to Plaintiffs' Motion for Partial Summary Judgment, and Defendants'
10 Response to Plaintiffs' Statement of Uncontroverted Facts and Conclusions of Law in
11 Opposition to Plaintiffs' Motion for Partial Summary Judgment that refer to and quote
12 these Exhibits and documents. Pursuant to Local Rule 79-5.2.2(b), Counsel for
13 Defendants conferred with counsel for Plaintiffs on whether Exhibits 1, 8, 15, and 16
14 to the Peters Declaration could be redacted rather than filed under seal in their
15 entirety. Oki Decl. ¶ 7. Plaintiffs requested that Defendants seal the documents in
16 their entirety. *Id.*

17 **II. Good Cause Exists to File the Unredacted Opposition to Plaintiffs' Motion**
18 **for Partial Summary Judgment and Supporting Documents Under Seal**

19 The decision to seal records is left to the discretion of the District Court.
20 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner*
21 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). There are "compelling reasons" to
22 seal the exhibits described herein. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
23 1172, 1180 (9th Cir. 2006). The "compelling reasons" standard is met where public
24 disclosure of the "court files might [] become a vehicle for improper purposes,' such
25 as the use of records to gratify private spite, promote public scandal, circulate libelous
26 statements, or release trade secrets." *In re Electronic Arts Inc.*, 298 F. App'x. 568,
27 569 (9th Cir. 2008) (quoting *Nixon* and *Kamakana*, *supra*) (internal quotations
28 omitted); *Bauer Bros. LLC v. Nike, Inc.*, No. 09CV500-WQH-BGS, 2012 WL

1 1899838, at *2 (S.D. Cal. May 24, 2012).

2 Portions of the Peters Declaration contain highly confidential information
3 regarding Defendants proprietary business information, and false and damaging
4 accusations made by non-party Christian Gossett. These are precisely the sort of
5 “compelling reasons” that justify filing documents under seal, as allowing this
6 information to become public would prejudice Defendants with respect to their
7 confidential proprietary business information, and circulate libelous statements.
8 Defendants submit a proposed redacted version of the declaration herewith, with the
9 redactions limited to the material described above.

10 Exhibit 2 to the Peters Declaration is a Summary of Defendants’ Financial
11 Information. The financial document cited constitutes the type of sensitive
12 information that deserves protection. *FDIC v. Tarkanian*, No. 10cv980-WQH-BGS,
13 2012 WL 1327856, at *2 (S.D. Cal. Apr. 17, 2012); *Coloplast A/S v. Generic Med.*
14 *Devices*, No. C10-227 BHS, 2012 WL 3629037, at *1 (W.D. Wash. Aug. 22, 2012)
15 (documents sealed to protect “confidential sensitive business and/or financial
16 information”); *see also IMAX Corp. v. Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th
17 Cir. 1998) (noting that confidential and proprietary business information is “to be filed
18 under seal.”). Due to the highly sensitive nature of the information contained in
19 Exhibit 2, Defendants designated this summary as “Confidential,” Oki Decl. ¶ 5, and
20 seek to file a copy of this document entirely under seal. Because the summary, in its
21 entirety, constitutes confidential information, it cannot be suitably redacted to
22 eliminate the production of such confidential information. *Id.*

23 Similarly, Exhibit 12 to the Peters Declaration is an e-mail exchange between
24 Defendant Peters and a purported donor, discussing Defendants’ highly sensitive
25 financial information. Due to the highly sensitive nature of the information contained
26 in Exhibit 12, Defendants designated this e-mail as “Confidential.” Oki Decl. ¶ 6.

27 The Hunt Declaration contains detailed discussions of the scripts of the unmade
28 potential feature length fan film. Oki Decl. ¶ 8. Defendants have always treated the

1 script as confidential material. ECF No. 75-19, Declaration of Alec Peters in support
2 of Defendants' Motion for Summary Judgment ¶ 14. The script (like all of the other
3 draft scripts produced by Defendants) was designated as Confidential under the
4 Stipulated Protective Order. Oki Decl. ¶ 8. Requiring the script to be publicly filed
5 would prejudice Defendants enormously as it is a work in progress that continues to
6 be revised. *Id.* Unfinished creative works like the script are documents that are
7 "traditionally kept secret" and therefore there is no presumption of public access that
8 need be rebutted (and in any event there is no overriding need for the public to view a
9 script for a film that has not yet been made). *Kamakana*, 447 F.3d at 1180.
10 Furthermore, the script is precisely the type of confidential information contemplated
11 by the Stipulated Protective Order and that is routinely designated as such. ECF No.
12 53 at 1; *Corbello v. Devito*, No. 2:08-cv-00867-RCJ-PAL, 2010 WL 4974540, at *1-2
13 (D. Nev. Dec. 1, 2010) (permitting plaintiff to file "undated *Jersey Boys* scripts" under
14 seal that had been designated confidential by the defendants). Defendants submit
15 proposed redacted versions of the excerpts from the Hunt Declaration herewith, with
16 the redactions limited to the material described above.

17 Defendants' Evidentiary Objections to the Declaration of John Van Citters
18 contains references and quotes to Mr. Peters' confidential deposition testimony about
19 Axanar's unexecuted confidential business plans. Oki Decl. ¶ 9. As such, Defendants
20 submit a proposed redacted version of the Evidentiary Objections herewith, with the
21 redactions limited to the confidential material contained in references to Mr. Peters'
22 deposition testimony.

23 Pursuant to Local Rule 79-5.2.2(b)(1), Plaintiffs shall file a declaration
24 establishing that all or part of Exhibits 1, 8, 15 and 16 are sealable.

25 For the foregoing reasons, good cause exists for filing the unredacted
26 Opposition to Plaintiffs' Motion for Partial Summary Judgment, Defendants'
27 Response to Plaintiffs' Statement of Uncontroverted Facts and Conclusions of Law in
28 Opposition to Plaintiffs' Motion for Partial Summary Judgment, Exhibits C and F to

1 the Ranahan Declaration, portions of the Peters Declaration and Exhibits 1, 2, 8, 12,
2 15, and 16 thereto, portions of the Hunt Declaration, and Defendants' Evidentiary
3 Objections to the Declaration of John Van Citters under seal. Accordingly,
4 Defendants hereby respectfully request that the Court grant this Application.

5 Dated: November 28, 2016

WINSTON & STRAWN LLP

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: /s/ Erin R. Ranahan
Erin R. Ranahan
Diana Hughes Leiden
Kelly N. Oki
Attorneys for Defendants,
AXANAR PRODUCTIONS, INC.
and ALEC PETERS