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11 CORPORATION and CBS STUDIOS
INC.
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 PARAMOUNT PICTURES
CORPORATION, a Delaware
17 corporation; and CBS STUDIOS INC.,
a Delaware corporation,
18

19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a
California corporation; ALEC PETERS,
an individual, and DOES 1-20,
22

23 Defendants.
24

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

**PLAINTIFFS' MOTION IN
LIMINE NO. 2 TO EXCLUDE
SCRIPTS CREATED AFTER THE
LITIGATION WAS FILED AND
TESTIMONY DISCUSSING
THEM**

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

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary
4 Klausner, United States District Judge, Central District of California, located at 255
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude
7 scripts created after this litigation was filed on December 29, 2015, as well as
8 testimony regarding such scripts. Scripts created after this litigation was filed bear
9 no relevance on this case, because Plaintiffs have not filed suit based on these
10 scripts.

11 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’
12 counsel. This Motion is based on this Notice, the accompanying Memorandum of
13 Points and Authorities, the Declaration of Jennifer Jason, all records in this action
14 and on such further argument, evidence and authority as may be offered at the time
15 of hearing.

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Dated: December 16, 2016

LOEB & LOEB LLP
JONATHAN ZAVIN
DAVID GROSSMAN
JENNIFER JASON

By: /s/ Jennifer Jason
Jennifer Jason
Attorneys for Plaintiffs
PARAMOUNT PICTURES
CORPORATION and CBS STUDIOS
INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) filed this lawsuit on December 29, 2015, based on works created by Defendants Axanar Productions Inc. and Alec Peters (collectively, “Defendants”) that infringe Plaintiffs’ copyrighted Star Trek works, including a script that Defendants created with the intention of turning it into a full-length “independent Star Trek film.” Plaintiffs anticipate that Defendants will seek to introduce evidence and argument relating to versions of scripts that they created *after* this litigation was filed. Such scripts, and any testimony regarding them, are not relevant to the case because Plaintiffs have not filed suit regarding such scripts and, as such, they should be excluded at trial.

II. DISCUSSION

A. Post-Litigation Scripts and Testimony Discussing Them are Irrelevant and Should be Excluded.

Federal Rule of Evidence 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *See United States v. Curtin*, 489 F.3d 935, 948 (9th Cir. 2007)(citation omitted).

This case was filed on December 29, 2015. Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3. One of the infringing works identified in Plaintiffs’ complaint is the Axanar Script, which Defendants were in the process of converting into a full-length film. Mr. Peters testified that [REDACTED] [REDACTED]. *Id.*, ¶ 6, Ex. A, ¶ 7, Ex. C. Defendants had already shot one scene of the film, the Vulcan Scene. Jason Decl., ¶ 8, Ex. A. Plaintiffs anticipate that Defendants will introduce evidence or

1 arguments of later versions of the script that they created after this litigation was
2 filed, including version 10.0-NX, which is dated July 1, 2016.

3 Any versions of the script created after this litigation was filed (or any
4 testimony regarding them) bear no relevance to Plaintiffs' claims for infringement
5 because Plaintiffs have not filed suit based on these scripts. Defendants could
6 continue to prepare scripts ad infinitum and such scripts would be irrelevant because
7 they are not the subject of this lawsuit. Nothing in any script created after the
8 lawsuit was filed could be probative of whether the November 26, 2015 script, or
9 any movie based on that script, infringes Plaintiffs' rights, which is the issue for trial
10 in this case. *See Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528
11 U.S. 167, 189 (2000) ("It is well settled that a defendant's voluntary cessation of a
12 challenged practice does not deprive a federal court of its power to determine the
13 legality of the practice") (internal quotations and citation omitted). If allowed to
14 introduce later created scripts, Defendants could render any trial virtually impossible
15 by simply creating yet another new script the day before the trial. The jury's
16 consideration of evidence of different scripts created after this litigation would be
17 irrelevant, highly prejudicial and very confusing to the jury, which must only
18 consider the scripts at issue. *Chlopek v. Fed. Ins. Co.*, 499 F.3d 692, 700 (7th Cir.
19 2007) (trial court properly excluded evidence of subsequent remedial measures,
20 which would have been unfairly prejudicial).

21 Accordingly, the Court should exclude any evidence and argument relating to
22 scripts created after December 29, 2015.

23 **III. CONCLUSION**

24 For the foregoing reasons, Plaintiffs request that scripts created after the
25 litigation was filed and testimony discussing them be excluded from trial.

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Dated: December 16, 2016

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Jennifer Jason
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