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PARAMOUNT PICTURES
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,
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23 Defendants.
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Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' MOTION IN
LIMINE NO. 4 TO EXCLUDE
TESTIMONY OR DOCUMENTS
BY REECE WATKINS**

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

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 the testimony and documents of Reece Watkins (“Watkins”). Watkins’ testimony is
8 primarily inappropriate lay opinion, and is otherwise hearsay and, anecdotal and of
9 no probative value.

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

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Dated: December 16, 2016

LOEB & LOEB LLP
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By: /s/ Jennifer Jason

Jennifer Jason
Attorneys for Plaintiffs
PARAMOUNT PICTURES
CORPORATION and CBS STUDIOS
INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively,
4 “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters
5 (collectively, “Defendants”) will seek to introduce the testimony and documents of
6 Reece Watkins (“Watkins”), including his personal opinion on the impact of
7 *Prelude to Axanar* on Plaintiffs’ copyrighted works. Plaintiffs also anticipate that
8 Defendants will seek to introduce inadmissible and irrelevant hearsay evidence for
9 Watkins. Watkins is not a qualified expert and may not testify as to his opinion, or
10 about facts outside of his personal knowledge, under Federal Rule of Evidence 602.
11 Any admissible testimony Watkins may present to the jury will be anecdotal to the
12 point of irrelevance. Therefore, the Court should exclude testimony from this
13 witness in its entirety.

14 **II. DISCUSSION**

15 **A. Watkins is a Lay Witness Who May not Provide Opinion**
16 **Testimony.**

17 Under Federal Rule of Evidence 602, “[a] witness may testify to a matter only
18 if evidence is introduced sufficient to support a finding that the witness has personal
19 knowledge of the matter. Evidence to prove personal knowledge may consist of the
20 witness’s own testimony.” Where lay witnesses give their opinions, their testimony
21 should be limited to “those opinions or inferences which are (a) rationally based on
22 the perception of the witness and (b) helpful to a clear understanding of the witness’
23 testimony or the determination of a fact at issue.” *United States v. LaPierre*, 998
24 F.2d 1460, 1465 n.4 (9th Cir. 1993) (quoting Federal Rule of Evidence 701).

25 Based on Watkins’ declaration filed in support of Defendants’ motion for
26 summary judgment, Watkins will likely attempt to testify regarding his own
27 experience viewing *Prelude to Axanar*, and how it allegedly renewed his interest in
28 Plaintiffs’ merchandise. Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3, Ex. A.

1 Through the production of a Facebook post from October 25, 2016, Watkins will
2 likely also present his personal belief that *Prelude to Axanar* could not cause harm
3 to Plaintiffs. *Id.* Watkins may support this opinion by showing a number of
4 positive replies to his Facebook post, most of which express similar opinions. *Id.*

5 Watkins has never been presented by Defendants as an expert, but, as outlined
6 above, this witness will likely offer extensive opinion testimony for consumption by
7 the jury. As a lay witness, Watkins risks usurping the function of the jury by
8 presenting his personal opinions regarding Star Trek fan films and the public's
9 reaction thereto. In this case, the Court should exclude the testimony of Watkins
10 except to the extent it relates to his own personal knowledge.

11 **B. The Testimony of Watkins Includes Inadmissible Hearsay.**

12 Plaintiffs also move to exclude the expected testimony of Watkins because it
13 will include, or will be based upon, inadmissible hearsay. Such testimony and
14 evidence is inadmissible under Federal Rules of Evidence 801 and 802 and related
15 to statutory and case authority. *See, e.g., Anderson v. United States*, 417 U.S. 211,
16 219-20 (1974) (“[t]he primary justification for the exclusion of hearsay is the lack of
17 any opportunity for the adversary to cross-examine the absent declarant whose out-
18 of-court-statement is introduced into evidence”).

19 The potential testimony and documentary evidence of Watkins will rely
20 extensively, if not exclusively, on hearsay. In his declaration, Watkins attaches a
21 Facebook post made by him on October 25, 2016, as well as fifty-six replies thereto.
22 Jason Decl. ¶ 3, Ex. A. Each of these replies will likely be presented by Watkins for
23 its truth, principally that at least those people were also triggered to purchase
24 Plaintiffs' merchandise by watching *Prelude to Axanar*. However, Watkins does
25 not have any actual knowledge of the activities of any of the people who replied to
26 his Facebook post. Therefore, to the extent Watkins testifies about the contents of
27 these Facebook replies, or presents them to the jury, he will be providing
28 inadmissible hearsay. If Defendants wish to relay the experience of any of Watkins'

1 responders, they must produce these individuals so that Plaintiffs are given the
2 opportunity of cross-examination. Otherwise, this testimony and evidence should be
3 excluded.

4 **C. The Testimony Watkins is Irrelevant, Anecdotal and Unduly**
5 **Prejudicial.**

6 Federal Rule of Evidence 401 defines “relevant evidence” as “evidence
7 having any tendency to make the existence of any fact that is of consequence to the
8 determination of the action more probable or less probable than it would be without
9 the evidence.” See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir.
10 2007)(citation omitted).

11 Watkins’ non-hearsay testimony is irrelevant, completely anecdotal, and non-
12 probative in the context of *Star Trek*’s worldwide popularity. Presumably,
13 Defendants will use Watkins’ testimony to illustrate the fact that at least one fan of
14 *Prelude to Axanar* also spent money on merchandise licensed by Plaintiffs. It is, of
15 course, possible that Watkins purchased Plaintiffs’ merchandise because he watched
16 *Prelude to Axanar*. However, that fact is irrelevant to the jury’s inquiry in this case,
17 which does not turn on whether Plaintiffs’ licensed merchandise has experienced a
18 de minimis benefit from *Prelude to Axanar*. Instead, market harm exists where, “if
19 the challenged use ‘should become widespread, it would adversely affect the
20 potential market for the copyrighted work’... This inquiry must take account not
21 only of harm to the original but also of harm to the market for derivative works.”
22 *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 568 (1985)
23 (citation omitted). Watkins’ purely anecdotal claim that *Prelude to Axanar* inspired
24 him to engage more with Plaintiffs’ merchandise is irrelevant to whether
25 Defendants’ film does or does not occupy Plaintiffs’ marketplace for Plaintiffs’ *Star*
26 *Trek*. If anything, Watkins’ potential testimony seems to indicate that *Prelude to*
27 *Axanar* is the exact type of work that Plaintiffs may create and rely upon to generate
28 interest in their merchandise. This testimony is irrelevant and should be excluded.

1 Furthermore, the fact that a single fan of *Star Trek* purchased Plaintiffs’
2 merchandise after watching *Prelude to Axanar* is too anecdotal to offer any
3 probative value for the jury. For over fifty years, *Star Trek* has been a global
4 entertainment phenomenon with millions of fans. The actions of a single fan, who
5 also happens to be a guest-blogger for Axanar.com and a self-described “staunch
6 supporter” of Defendants, would present an unfair and prejudicial representation of
7 *Star Trek* fans in general to the jury. Jason Decl. ¶¶ 4-5, Exs. B-C. Therefore,
8 Watkins’ testimony should be excluded.

9 **III. CONCLUSION**

10 For the foregoing reasons, Plaintiffs request that testimony or documents by
11 Watkins regarding this matter be excluded from trial.

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Dated: December 16, 2016

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