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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  
20  
21

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

*Assigned to: Hon. R. Gary Klausner*

**DEFENDANTS AXANAR  
PRODUCTIONS, INC., AND ALEC  
PETERS' OPPOSITION TO  
PLAINTIFFS' MOTION *IN LIMINE*  
NO. 9 TO EXCLUDE TESTIMONY  
OF CHRISTIAN TREGILLIS**

Pretrial Conference: January 9, 2017  
Trial Date: January 31, 2017

1 **I. INTRODUCTION**

2 Plaintiffs do not dispute that Defendants’ expert Christian Tregillis is eminently  
3 qualified to testify regarding the financial issues in this case that are directly relevant  
4 to Plaintiffs’ claimed damages. In their Motion *in Limine*, Plaintiffs attempt to  
5 exclude Mr. Tregillis’ testimony based primarily on the fact that Plaintiffs have failed  
6 to come up with one iota of evidence of any actual lost profits or concrete harm that  
7 they have suffered as a result of Defendants’ alleged infringement and instead intend  
8 to present a baseless hypothetical argument to the jury that those who donated to the  
9 creation of *Prelude to Axanar* and *Axanar* did not spend that same money consuming  
10 Plaintiffs’ Star Trek works. Defendants should be permitted to rebut this dubious  
11 theory with an expert knowledgeable in the fields of economics and accounting. And  
12 in an unsurprising move given the complete lack of evidence of any lost profits,  
13 Plaintiffs indicate that they will rely on an outdated and unverified financial summary,  
14 hundreds of pages long, that Defendant Alec Peters created for purposes of this  
15 litigation, to attempt to prove that Defendants profited from the creation of the *Axanar*  
16 works. Particularly if this or any financial summary is admitted into evidence, Mr.  
17 Tregillis should be permitted to testify that Defendants’ expenditures exceeded the  
18 donations received, and is clearly qualified to do so.

19 Furthermore, Plaintiffs’ argument that Mr. Tregillis is unqualified to offer  
20 opinions on the benefits of fan films generally, and the *Axanar* works in particular, to  
21 Plaintiffs is meritless. Again, Plaintiffs do not dispute that Mr. Tregillis’ background  
22 in accounting, economics, and finance qualifies him to testify regarding these topics,  
23 but rather claim that Mr. Tregillis must be an expert in Star Trek and the movie  
24 industry in order to opine about the financial benefits to movie studios engendered by  
25 fan-made films and media. This is not the case.

26 Because Mr. Tregillis’ opinions are relevant to Plaintiffs’ claimed damages,  
27 based upon sufficient facts and his specialized knowledge, and will assist the jury in  
28 understanding the financial realities of this case and assessing Plaintiffs’ damages,

1 Plaintiffs’ Motion *in Limine* No. 9 should be denied in its entirety.

2 **II. LEGAL STANDARD**

3 Federal Rule of Evidence 702 permits a witness “who is qualified as an expert  
4 by knowledge, skill, experience, training, or education” to “testify in the form of an  
5 opinion or otherwise if: (a) the expert’s ... specialized knowledge will help the trier of  
6 fact to understand the evidence or to determine a fact in issue; (b) the testimony is  
7 based on sufficient facts or data; (c) the testimony is the product of reliable principles  
8 and methods; and (d) the expert has reliably applied the principles and methods to the  
9 facts of the case.” *Id.* Mr. Tregillis is more than qualified to testify as an expert under  
10 this standard.

11 **III. ARGUMENT**

12 **A. Mr. Tregillis’ Specialized Knowledge Qualifies Him As An Expert**

13 Mr. Tregillis has degrees in economics, finance, and accounting, is licensed as a  
14 Certified Public Accountant in two states, is accredited in Business Valuation and  
15 certified in Financial Forensics by the American Institute of Certified Public  
16 Accountants, and has a professional licensing certification from the Licensing  
17 Executives Society. He has over 25 years of experience in financial consulting and  
18 investigations, analyzing financial, accounting, economic, statistical, and market  
19 issues, primarily in regard to disputes and valuations. *See* ECF No. 165 (Defendants’  
20 summary of Mr. Tregillis’ qualifications and testimony). As such, Mr. Tregillis has  
21 specialized knowledge that will assist the jury in assessing Plaintiffs’ damages, if any.  
22 Plaintiffs do not dispute Mr. Tregillis’ qualifications.

23 **B. Mr. Tregillis’ Testimony Rebutting Plaintiffs’ Claims of Lost Profits**  
24 **and Defendants’ Purported Profits Are Squarely Relevant to Both**  
25 **Actual and Statutory Damages**

26 **1. Mr. Tregillis’ Testimony Is Relevant to Actual Damages**

27 Plaintiffs have not yet elected to seek to recover either statutory or actual  
28 damages in this case. If Plaintiffs ultimately elect to seek their actual damages, they

1 will have to prove either (1) the amount of money adequate to compensate them for  
2 the reduction of fair market value of the works caused by the infringement or (2)  
3 Defendants’ profits resulting from the infringement. *See* 17 U.S.C. § 504(b). It is  
4 certainly true that Plaintiffs have not provided any evidence whatsoever of any lost  
5 profits or revenues as a result of Defendants’ alleged infringement. However,  
6 Plaintiffs have indeed put forth a *theory* of hypothetical lost profits—that monies  
7 donated to fund the making of *Axanar* and *Prelude to Axanar* were funds necessarily  
8 not spent on Plaintiffs’ Star Trek works—that Mr. Tregillis’ testimony will rebut. *See*  
9 Declaration of Jennifer Jason, Ex. B (hereinafter, “Tregillis Report”) ¶ 61 (citing  
10 Paramount’s damages theory: “Any dollar that a donor spends on *Axanar* is a dollar  
11 that they do not have for authorized Star Trek merchandise or products.”); *id.* ¶¶ 62,  
12 64. Indeed, in coming to his conclusion that there is zero evidence of any such  
13 diverted funds, Mr. Tregillis analyzed, among other things, documents related to  
14 Defendants’ fundraising campaigns, noting that several individuals made multiple  
15 small donations, rebutting Plaintiffs’ zero-sum damages theory. *Id.* ¶ 64. His  
16 testimony on that point alone would be helpful to the jury, as the alternative is to show  
17 the jury a 167-page document with hundreds of donor names and amounts.

18 And Mr. Tregillis also offers expert testimony regarding the lack of any profits  
19 Defendants made from the free distribution of their works. Plaintiffs have indicated  
20 that they will rely Mr. Peters’ unverified and interim notes of donations, costs and  
21 expenditures related to crowdfunding campaigns to attempt to prove that Defendants  
22 somehow “profited” from the free distribution of their works. *See* Mot. at 5; *see also*  
23 Plaintiffs’ Mot. *in Limine* No. 1 (seeking to exclude a second, updated and more  
24 accurate financial summary).<sup>1</sup> Curiously, at the same time, Plaintiffs seek to exclude  
25 Defendants’ financial and accounting expert to rebut their claims that the funds  
26 donated to the creation of the *Axanar* Works exceeded Defendants’ expenses

27  
28 <sup>1</sup> Plaintiffs’ repeated claim that the second financial summary was somehow altered  
lacks any merit for the reasons set forth in Defendants’ Opposition to Plaintiffs’  
Motion *in Limine* No. 1.

1 associated with their production.

2 Neither of the financial summaries are relevant to this case, given that the Court  
3 found “Defendants [did] not profit directly from distributing their works.” ECF No.  
4 163 (Order Re: Plaintiffs’ Motion for Partial Summary Judgment and Defendants’  
5 Motion for Summary Judgment) at 10. However, should Plaintiffs decide to seek  
6 actual damages and disgorgement of profits at trial under 17 U.S.C. § 504(b), and  
7 should the Court allow introduction of the amount of money Defendants raised  
8 through crowdfunding at trial, Defendants would be entitled “to prove [their]  
9 deductible expenses and the elements of profit attributable to factors other than the  
10 copyrighted work” by the testimony of Mr. Tregillis. 17 U.S.C. § 504(b). And any  
11 claim that Mr. Tregillis examined the “wrong” financial summary (*i.e.*, the more  
12 correct one) is eviscerated by the fact that Plaintiffs are free to question Mr. Tregillis  
13 about the unverified and interim notes that they claim are more relevant at his  
14 deposition.

15 For these reasons, Mr. Tregillis’ testimony is directly relevant to determining  
16 the amount of Plaintiffs’ actual damages (if any).

## 17 **2. Mr. Tregillis’ Testimony Is Relevant to Statutory Damages**

18 Mr. Tregillis’ testimony would also be relevant to determining the appropriate  
19 amount of statutory damages, in the event Plaintiffs so elect. Statutory damages must  
20 “bear some relation to actual damages suffered.” *Van Der Zee v. Greenidge*, 2006 WL  
21 44020, at \*2 (S.D.N.Y. 2006) (factors a court may consider in computing statutory  
22 damages include the “revenues lost by the Plaintiffs [and] the value of the copyright”);  
23 *Muppets Studio, LLC v. Pacheco*, CV 12-7303 JGB FFMX, 2013 WL 2456617, at \*1  
24 (C.D. Cal. June 6, 2013); 4 Nimmer on Copyright § 14.04 [B][1][a] (2005) (“the  
25 determination of statutory damages within the applicable limits may turn upon such  
26 factors as . . . the revenues lost by the plaintiffs as a result of the defendant’s conduct  
27 ...”).

28 The jury “has wide discretion in determining the amount of statutory damages

1 to be awarded, *constrained only by the specified maxima and minima.*” *Harris v.*  
2 *Emus Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984) (emphasis added). The trier  
3 of fact must be guided by “what is just in the particular case ... considering the nature  
4 of the copyright, the circumstances of the infringement and the like.” *F.W.*  
5 *Woolworth*, 344 U.S. at 232. Courts have considered the following factors as relevant  
6 to informing a jury’s determination of statutory damages: (1) the expenses saved and  
7 the profits reaped, (2) the revenues lost by the plaintiff, (3) the value of the copyright,  
8 (4) the deterrent effect on others besides the defendant, (5) whether the defendant’s  
9 conduct was willful, (6) whether a defendant has cooperated in providing particular  
10 records from which to assess the value of the infringing material produced, (7) the  
11 potential for discouraging the defendant, and (8) the conduct and attitude of the  
12 parties. *Coach, Inc. v. Am. Fashion Gift*, CV 12-07647-MWF RZX, 2013 WL 950938,  
13 at \*2 (C.D. Cal. Mar. 12, 2013); *Coach, Inc. v. Diva Shoes & Accessories*, No. 10–  
14 5151 SC, 2011 WL 1483436, at \*6 (N.D. Cal. Apr. 19, 2011); *see also, Bryant v.*  
15 *Media Right Prods., Inc.*, 603 F.3d 135, 144 (2d Cir. 2010).

16 Indeed, consideration of a defendant’s profits and the plaintiff’s lost revenues  
17 are often key factors in determining appropriate statutory damages. *See Adobe Sys.,*  
18 *Inc. v. Tilley*, C 09-1085 PJH, 2010 WL 309249, at \*5 (N.D. Cal. Jan. 19, 2010)  
19 (“courts . . . have considered whether the amount of damages requested bears a  
20 ‘plausible relationship’ to the plaintiff’s actual damage”); *Rovio Entm’t Ltd v. Royal*  
21 *Plush Toys, Inc.*, No. C 12-5543 SBA, 2014 WL 1153780, at \*2 (N.D. Cal. Mar. 20,  
22 2014) (awarding a statutory damages amount that was “plausible” based on actual  
23 damages because “courts . . . have considered whether the amount of damages  
24 requested bears a ‘plausible relationship’ to the plaintiff’s actual damage.”).

25 It is critical that the jury be permitted to hear relevant evidence relating to  
26 factors that courts have found inform the jury’s broad discretion in determining a just  
27 amount of statutory damages, and Mr. Tregillis provides testimony to assist the jury in  
28 this assessment. Given the due process concerns with awarding statutory damages

1 that bear no relation to actual damages, Defendants would be entitled to present Mr.  
2 Tregillis to provide economic analysis of Plaintiffs’ overall lack of evidence regarding  
3 actual damages even if Plaintiffs ultimately elect to seek to recover statutory damages.  
4 Mr. Tregillis, with his extensive economic background and experience in cases like  
5 this, will be able to provide testimony to the jurors about the financial realities of this  
6 case to aid in their determination.

7 Plaintiffs concede that Mr. Tregillis’ background qualifies him to render  
8 opinions on Plaintiffs’ purported “lost profits” (or lack thereof) and Defendants’  
9 profits, but argue that “his testimony on those subjects is unsupported by data.” Mot.  
10 at 4. Plaintiffs curiously note that “Tregillis does not conclude that no money destined  
11 for Plaintiffs’ products was given to Defendants instead” but rather “states that he is  
12 not aware of any information that money was diverted.” *Id.* at 4. That is precisely the  
13 basis of Mr. Tregillis’ opinion—after reviewing the relevant evidence and testimony,  
14 Mr. Tregillis concluded that there was nothing to support Plaintiffs’ damages theory.  
15 Defendants should not be penalized for Plaintiffs’ failure to come up with any  
16 evidence to support their damages theory.

17 **C. Mr. Tregillis is Qualified to Render an Opinion that Defendants’**  
18 **Works Benefitted, Rather than Harmed, Plaintiffs**

19 While conceding that his testimony is relevant to the case, Plaintiffs argue that  
20 Mr. Tregillis is not qualified to render opinions that: (1) fan films generally benefit  
21 commercial film studios; and (2) that Defendants’ works benefitted Plaintiffs. *See*  
22 Mot. at 1-5. Plaintiffs’ position is that in order to render these opinions, Mr. Tregillis  
23 must be an expert in “the Star Trek films and television series,” “an expert in the film  
24 or television business,” and/or “a fan of Plaintiffs’ products.” *Id.* at 2. While Mr.  
25 Tregillis does not claim to be an expert in those fields, his *opinions*—rather than the  
26 facts underlying them—are predicated on his specialized knowledge of accounting,  
27 economics, and licensing.

28 In rendering his opinion that fan films generally—and Defendants’ works in

1 particular—benefit official studio releases and film franchises, Mr. Tregillis relied  
2 upon the following: Plaintiffs’ box office and DVD revenues (Tregillis Report ¶¶ 10-  
3 11), evidence of continued interest in Star Trek (*id.* ¶¶ 13-23), the amount of money  
4 raised by Defendants’ crowdfunding efforts (*id.* ¶¶ 25-30), the popularity of other fan  
5 films (*id.* ¶ 31), shrinking box office revenues and the studios’ attempts to use box sets  
6 and marketing to garner interest in existing franchises (*id.* ¶¶ 33-39), studios’ use of  
7 social media to market existing franchises and promote their upcoming films (*id.* ¶¶  
8 40-47), Defendants’ testimony regarding the value of social media in generating  
9 revenue from their intellectual property (*id.* ¶ 48), Defendants’ testimony regarding  
10 fan films (*id.* ¶ 55), and recognition from those associated with new Star Trek reboot  
11 movies that fan films are beneficial and do not harm Plaintiffs (*id.* ¶¶ 56-57).

12 Mr. Tregillis then applied his specialized knowledge in accounting, economics,  
13 and finance to conclude—based on this evidence—that “fan films generally benefit  
14 official studio releases and film/story franchises, and that the Axanar Works have  
15 benefited Star Trek and Plaintiffs.” *Id.* ¶ 63. Looking beyond Plaintiffs’ rhetoric,  
16 their complaint about Mr. Tregillis’ testimony appears to be that he is not an expert in  
17 the evidence that he considered, not that he is unqualified to render the opinions. If  
18 Plaintiffs’ argument was accepted, damages expert would almost never be qualified to  
19 testify because they would have to be an expert in the subject matter of the case or the  
20 parties’ businesses.

21 Finally, Plaintiffs’ argument that Mr. Tregillis is not qualified to render his  
22 opinion because “Tregillis incorrectly assumes that *Prelude to Axanar* is a ‘fan film’”  
23 is both factually inaccurate and has zero relevance to this issue. *Id.* at 3-4. Mr.  
24 Tregillis’ opinion is that films and online series and episodes created by fans of Star  
25 Trek benefit the studios by generating further interest in a franchise, translating into  
26 better performance of the studios’ new films and series. *See, e.g.*, Tregillis Report ¶¶  
27 25, 31, 63. This has nothing to do with whether the fan-made productions are labeled  
28 “fan films” or “professional films.” Plaintiffs are free to cross-examine Mr. Tregillis



1 and could have introduced their own evidence as to why Defendants' high-quality  
2 works have harmed, rather than benefitted, them (though they did not come up with  
3 anything). The fact that the *Axanar* works were created by one of Star Trek's biggest  
4 fans, rather than Plaintiffs, is not a faulty assumption but rather an undisputed fact.

5 **IV. CONCLUSION**

6 For all of these reasons, the Court should deny Plaintiffs' Motion *in Limine* No.  
7 9 to exclude the testimony of Christian Tregillis in its entirety.

8  
9 Dated: January 6, 2017

**WINSTON & STRAWN LLP**

10  
11 By: /s/ Erin R. Ranahan  
12 Erin R. Ranahan  
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14 AXANAR PRODUCTIONS, INC.  
15 and ALEC PETERS  
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