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

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION IN
LIMINE NO. 5 TO PRECLUDE
PLAINTIFFS FROM RELYING
ON EVIDENCE CONCERNING
PERSONAL DRAMA, SMEAR
CAMPAIGN, AND OTHER
IRRELEVANT
COMMUNICATIONS**

Pre-Trial Conference: January 9, 2017
Trial: January 31, 2017

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios Inc. (“CBS”) (collectively, “Plaintiffs”) oppose the motion in limine by Defendants Axanar Productions, Inc. (“Axanar Productions”) and Alec Peters (“Peters”) (collectively, “Defendants”) to exclude testimony and documents that include personal attacks against Peters.

I. INTRODUCTION

Defendants’ motion in limine no. 5 should be denied as it fails to identify any specific evidence or testimony to be excluded. Defendants’ motion is styled as a motion “to preclude plaintiffs from relying on evidence concerning personal drama, smear campaign, and other irrelevant communications.” However, Defendants do not identify any evidence or testimony that can be said to fit their characterization, and their vague motion should be denied on that basis alone.

Moreover, the few general descriptions of testimony and evidence provided by Defendants in their motion are not the proper subject of a motion in limine. The fact that the director of *Star Trek: Prelude to Axanar*, Christian Gossett, testified regarding the creation and production of the Axanar Works, is not part of any “smear campaign.” The fact that Terry McIntosh, a former volunteer for the Axanar film project, produced documents showing that Mr. Peters sought to meet with Netflix and hoped to be a “producer” of Star Trek – is neither irrelevant, nor does it involve any “personal drama.” There is absolutely no basis for the exclusion of any evidence turned over by Mr. Gossett and Mr. McIntosh. Further, the documentary evidence provided by Mr. Gossett and Mr. McIntosh includes thousands of pages of emails and messages that Alec Peters failed and refused to turn over in this action. Peters’ misconduct should not be rewarded, as these third-party witnesses have every right to testify at trial, and to present evidence relating to their participation in the creation of the Axanar Works.

1 Finally, the fact that Peters [REDACTED]
2 [REDACTED]
3 [REDACTED], cannot be excluded from trial under any theory.
4 Indeed, Peters' use of production funds to [REDACTED]
5 [REDACTED], is highly probative of whether or not Peters'
6 profited from or benefited from the infringement. Whether Peters benefited from
7 Axanar is directly relevant to his liability for damages.

8 **II. FACTS**

9 **A. The Nature of the Evidence.**

10 Between 2010, when he began writing a screenplay for an Axanar motion
11 picture, and the present, Defendant Peters worked with a series of collaborators.
12 Some of these collaborators, like Christian Gossett and Terry McIntosh, have
13 testified in this lawsuit regarding their roles in the creation of the Axanar Works,
14 and regarding statements made by Peters.

15 In addition to their testimony on the use of the Star Trek copyrighted works in
16 the creation of Axanar (testimony that is obviously relevant to substantial similarity
17 and copying), some of Peters' prior collaborators also have knowledge of how he
18 spent the funds that were donated to his company to be used in connection with the
19 production of a film. All of this testimony is relevant, and Defendants' motion in
20 limine does not identify any particular document, or testimony, that is the proper
21 subject of a motion to exclude.

22 **III. ARGUMENT**

23 Under Federal Rule of Evidence 402, "[r]elevant evidence is admissible,"
24 unless otherwise excluded. Defendants argue that the above-referenced matters
25 should be excluded because they are either irrelevant, or overly prejudicial.
26 However, this evidence is relevant, and highly probative, because it goes to both the
27 copying of the Star Trek works by Defendants, and to the profits made by
28 Defendants from such infringements.

1 Defendant Peters' relationship with Diana Kingsbury is also relevant to this
2 inquiry. [REDACTED]

3 [REDACTED]. The use of funds raised from Star Trek fans
4 purportedly for the creation of a film, to pay [REDACTED]
5 [REDACTED] is evidence that Peters profited from his infringing conduct.

6 Defendants have also failed to establish that no one other than Peters was
7 aware of how funds were spent by Defendant Alec Peters. His collaborators,
8 including Christian Gossett (the director of *Prelude to Axanar*), and Terry McIntosh
9 (the associate producer of *Prelude to Axanar*), were intimately tied to the production
10 of the Axanar Works, and should be permitted to explain how they became aware of
11 various expenditures.

12 The fact that Mr. Gossett was not disclosed in Plaintiffs' initial disclosures is
13 also no bar to his testimony. Failure to comply with Rule 26 does not compel
14 exclusion where a failure to disclose is either substantially justified or harmless.
15 Fed. R. Civ. P. 37(c)(1); and *see Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259
16 F.3d 1101, 1106 (9th Cir. 2001) ("The information may be introduced if the parties'
17 failure to disclose the required information is substantially justified or harmless.").
18 Here, Defendants cannot genuinely claim that Plaintiffs' failure to disclose a
19 possible witness right at the start of the case, the director of *Star Trek: Prelude to*
20 *Axanar*, of whom Defendants were no doubt aware, is either prejudicial or
21 surprising. This witness was far better known at that time to Defendants than to
22 Plaintiffs. Further, Mr. Gossett's deposition was taken months ago in discovery, by
23 both parties to this lawsuit, and he produced thousands of pages of email
24 communications with Peters (which Peters failed to turn over), demonstrating that
25 Peters was aware, at all times, of Gossett's involvement in, and relevance to, the
26 creation of the Axanar Works.

27 Nor will Defendants be unduly prejudiced by this information. The subject
28 matter of these third party-produced documents, and their testimony, relates

1 exclusively to Defendant Peters’ activities concerning the Axanar Works. There has
2 never been an attempt by Plaintiffs (or any testimony in this case) to impugn his
3 actions in his private life, or in the operation of his other businesses. Furthermore,
4 Peters will have the opportunity to cross-examine and impeach any witness who
5 makes a personal attack against him. Finally, the underlying basis for seeking to
6 exclude these witnesses is Peters’ claim that these witnesses do not like him. There
7 is no rule of law, and Defendants cite none, that the only witnesses who can testify
8 are those that like the Defendants.

9 **IV. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request that Defendants’
11 motion in limine No. 5 to exclude testimony and documents that include personal
12 attacks against Peters, including testimony from Christian Gossett and Terry
13 McIntosh, be denied.

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Dated: January 6, 2017

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