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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,
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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' OPPOSITION TO
DEFENDANTS' MOTION IN
LIMINE NO. 6 TO PRECLUDE
PLAINTIFFS FROM REFERRING
TO IRRELEVANT SUPERSEDED
SCRIPTS**

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios
3 Inc. (“CBS”) (collectively, “Plaintiffs”) oppose the motion in limine by Defendants
4 Axanar Productions, Inc. (“Axanar Productions”) and Alec Peters (“Peters”)
5 (collectively, “Defendants”) to exclude any reference to prior scripts for the Axanar
6 Works.

7 **I. INTRODUCTION**

8 By their motion in limine, Defendants seek to exclude from evidence prior
9 scripts of the Axanar Works, including the script that Defendant Peters testified was
10 going to be used to shoot the full-length “*Star Trek: Axanar*” motion picture.
11 Defendants’ motion has no merit and should be denied. Defendants argue that, after
12 the lawsuit was filed, they altered their prior scripts, and therefore, the jury should
13 not be permitted to analyze the script that Defendants had created prior to the filing
14 of this lawsuit. Defendants have it backwards. The scripts that were created *after*
15 the filing of the lawsuit are irrelevant as they were created post-litigation, with the
16 intention of altering the characters and stories from the pre-existing script for
17 litigation purposes. These post-lawsuit scripts are not evidence and should be
18 excluded.

19 However, the pre-lawsuit script is the very document that Defendants
20 intended to use in shooting the Axanar feature beginning in January 2016. The
21 Court has already ruled that the Axanar Script (which, prior to the filing of this
22 lawsuit was to be the shooting script for *Star Trek: Axanar*) is the proper subject of
23 this copyright infringement suit. *See* Dkt No. 163, Order, at 9 (“After reviewing
24 evidence before the Court, including the *Axanar* Works, the Court is satisfied that
25 Defendants have achieved their goal of creating authentic Star Trek films and script.
26 The *Axanar* Works are substantially similar to the Star Trek Copyrighted Works, at
27 least under the extrinsic test.”). The pre-lawsuit script has already been determined
28 to be the subject of this case, it should be admitted at trial, and any subsequent script

1 will only impede the jury’s task, which is to evaluate the facts as pled, not irrelevant
2 remediation efforts.

3 **II. FACTS**

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

5 Before Plaintiffs filed this lawsuit, Defendants had planned to begin shooting
6 the Axanar Motion Picture in January 2016. Declaration of David Grossman
7 (“Grossman Decl.”) ¶ 2, Ex. A. At that time, Defendants’ most recent script was
8 dated in November, 2015 and labeled as version “7.7.” At his deposition, Peters
9 confirmed [REDACTED]

10 [REDACTED]
11 [REDACTED]. Grossman
12 Decl. ¶ 3, Ex. A.

13 After being served with Plaintiffs’ complaint in this lawsuit, Defendant Peters
14 claims that he, and others, rewrote portions of the Axanar Script. According to
15 Defendants’ motion in limine, the most recent script involves changes that Peters
16 believes may distance the upcoming Axanar feature from Plaintiffs’ copyrighted
17 Star Trek works. Peters argues that the scripts drafted after Plaintiffs filed this
18 lawsuit should be the basis of Plaintiffs’ infringement claims, rather than the script
19 [REDACTED].

20 *Id.*

21 **III. ARGUMENT**

22 Any versions of the script created after this litigation was filed on December
23 29, 2015 bear no relevance to Plaintiffs’ claims for infringement because Plaintiffs
24 did not file suit based on those scripts. Defendants could continue to prepare scripts
25 *ad infinitum* but all of those scripts would be irrelevant because they are not the
26 subject of this lawsuit. The creation of post-lawsuit scripts is not the creation of
27 “evidence” and should not be permitted.

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1 The pre-lawsuit scripts are, however, evidence, and will be analyzed at the
2 trial of this matter. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC),*
3 *Inc.*, 528 U.S. 167, 189 (2000) (“It is well settled that a defendant’s voluntary
4 cessation of a challenged practice does not deprive a federal court of its power to
5 determine the legality of the practice”) (internal quotations and citation omitted).
6 Further, Defendants’ attempt to exclude the final shooting script is yet another
7 attempt to reargue something they have already lost (twice). In response to the First
8 Amended Complaint, Defendants moved to dismiss on the grounds, *inter alia*, that
9 the lawsuit was premature because no film had been created from the Axanar Script.
10 In its decision denying the motion, the Court ruled that the lawsuit was not
11 premature, because the script for Axanar was fixed in a tangible medium of
12 expression, and was intended at the time to be the basis for a film. Defendants
13 argued this same point again, in the motion for summary judgment proceedings, and
14 the Court ruled, again, that the Axanar Script was the proper subject of a claim for
15 copyright infringement. Dkt. No. 163, Order, at 3 (“The claim against the *Axanar*
16 Motion Picture is not based on ‘abstract disagreements’ and is ripe for
17 adjudication.”). If Plaintiffs are required to rely on subsequent scripts, instead of the
18 script that was intended for use in shooting the upcoming Axanar Motion Picture,
19 Defendants could render any trial virtually impossible by simply creating another
20 new script the day before the trial. Furthermore, introducing to the jurors any scripts
21 other than number “7.7,” would render the trial unnecessarily confusing, and would
22 be highly prejudicial to Plaintiffs. *Chlopek v. Fed. Ins. Co.*, 499 F.3d 692, 700 (7th
23 Cir. 2007) (trial court properly excluded evidence of subsequent remedial measures,
24 which would have been unfairly prejudicial).

25 **IV. CONCLUSION**

26 For the foregoing reasons, Plaintiffs respectfully request that Defendants’
27 motion in limine no. 6 to exclude prior scripts of the Axanar Works be denied.
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Dated: January 6 , 2017

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