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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

21 v.  
22

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

23 Defendants.  
24  
25  
26  
27  
28

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

**DECLARATION OF JOHN VAN  
CITTERS IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
MOTION FOR SUMMARY  
JUDGMENT**

Date: December 19, 2016  
Time: 9:00 a.m.  
Dept.: 850

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

1 I, John Van Citters, hereby declare as follows:

2 1. I am Vice President of Product Development at CBS Consumer  
3 Products. I am providing this testimony in support of the Plaintiffs' Opposition to  
4 Defendants' Motion for Summary Judgment.<sup>1</sup> The following is of my own personal  
5 knowledge and, if called as a witness, I could and would competently testify thereto.

6 2. I have been employed by Plaintiff CBS Studios Inc. ("CBS") since  
7 2006. Prior to that, I was employed by Plaintiff Paramount Pictures Corporation  
8 ("Paramount") since 1998. I have been working with Star Trek since November of  
9 1998. In connection with my roles at both CBS and Paramount, I have become  
10 intimately familiar with Star Trek. I have seen every Star Trek film, television  
11 episode, and have read the Star Trek books. I am familiar with innumerable  
12 licensed Star Trek merchandise. I recently helped consult in the creation of an  
13 authorized Star Trek encyclopedia. I review all the content of all Star Trek works as  
14 part of my role as a Vice President of Product Development for CBS.

15 3. There have been six television series for Star Trek (the "Star Trek  
16 Television Series"):

- 17 (1) *Star Trek* (1966-1969) ("*The Original Series*")
- 18 (2) *Star Trek: The Animated Series* (1973-1974)
- 19 (3) *Star Trek: The Next Generation* (1987-1994)
- 20 (4) *Star Trek: Deep Space Nine* (1993-1999)
- 21 (5) *Star Trek: Voyager* (1995-2001)
- 22 (6) *Star Trek: Enterprise* (2001-2005).

23  
24  
25 <sup>1</sup> This declaration is identical to my declaration that was filed in support of  
26 Plaintiffs' Motion for Partial Summary Judgment (Dkt. No. 72-60), except for the  
27 following changes. First, Plaintiffs have not re-lodged copies of "Prelude to Axanar"  
28 and the Vulcan Scene. Second, Paragraphs 11 and 66 now state that the Star Trek  
Copyrighted Works are distributed on cable and identify the budget for an average  
one hour episode of the final season of the last television series of Star Trek to be  
between \$2.2 million to \$2.4 million. Finally, the image of Soval in the top left  
corner of the chart in Paragraph 23 was replaced with a different image.

4. There have been more than 700 episodes of the Star Trek Television Series.

5. *The Original Series* debuted in 1966 and ran for three seasons, until 1969. The series chronicled the adventures of the U.S.S. Enterprise (one of the ships of “Starfleet”) and its crew as they traveled through space during the twenty-third century, and featured numerous original elements, including but not limited to the Starship Enterprise (Starfleet registry number NCC-1701), original and fictitious races and species, including the Vulcan and Klingon races, the United Federation of Planets (the “Federation”), and fictional weapons and technology.

6. In one of the episodes of *The Original Series* called “Whom Gods Destroy,” James T. Kirk (played by the actor William Shatner), the Captain of the U.S.S. Enterprise, meets his hero, Garth of Izar, a former starship captain. In that episode, Kirk and Garth discuss Garth’s victory in the Battle of Axanar.

7. The newest television series, *Star Trek: Discovery*, will premiere in 2017. *Star Trek: Discovery* takes place ten years before the events depicted in *The Original Series*, much like Defendants’ unlicensed Axanar Works which are set approximately twenty years prior to *The Original Series*.

8. Plaintiff CBS Studios Inc. (“CBS”) owns the copyrights in the Star Trek Television Series.

9. There have been thirteen Star Trek motion pictures (the “Star Trek Motion Pictures”):

- (1) *Star Trek – The Motion Picture* (1979)
- (2) *Star Trek II – The Wrath of Khan* (1982)
- (3) *Star Trek III The Search for Spock* (1984)
- (4) *Star Trek IV: The Voyage Home* (1986)
- (5) *Star Trek V: The Final Frontier* (1989)
- (6) *Star Trek VI – The Undiscovered Country* (1991)
- (7) *Star Trek Generations* (1994)

(8) *Star Trek: First Contact* (1996)

(9) *Star Trek: Insurrection* (1998)

(10) *Star Trek Nemesis* (2002)

(11) *Star Trek* (2009)

(12) *Star Trek Into Darkness* (2013)

(13) *Star Trek Beyond* (2016).

10. Plaintiff Paramount Pictures Corporation (“Paramount”) owns the copyrights in the Star Trek Motion Pictures.

11. Plaintiffs also own the copyrights in numerous other Star Trek works, including the novels entitled: *Garth of Izar* (Registration No. TX0005745716), *Strangers from the Sky* (Registration No. TX0006429184), and *Infinity’s Prism* (Registration No. TX0006872810) (collectively, the “Star Trek Books”) (the “Star Trek Books,” the “Star Trek Television Series” and the “Star Trek Motion Pictures,” are referred to collectively as the “Star Trek Copyrighted Works”). The Star Trek Copyrighted Works are distributed via cable, among other channels of distribution.

12. Plaintiffs have licensed numerous derivative works, including books, games, merchandise, reference guides, documentaries, dictionaries, encyclopedias and behind the scenes features.

13. One of these licensed works is *Star Trek: The Role Playing Game*, which was licensed by Paramount. *The Four Years War* supplement is a guide that was used in connection with *Star Trek: The Role Playing Game*. *The Four Years War* supplement describes the Battle of Axanar (and a related mission guide for that licensed role-playing game was called “Return to Axanar”), and the military campaigns of Federation Fleet Captain Garth of Izar.

14. The copyright to *The Four Years War* is owned by Paramount. *The Four Years War* (Registration No. TX0008260896) is attached hereto as **Exhibit AAA**. The Copyright Registration to the Four Years War is attached hereto as **Exhibit BBB**.

1           **PRELUDE TO AXANAR**

2           15. I have reviewed Defendants' *Prelude to Axanar*.

3           16. *Prelude to Axanar* copies many elements from the Star Trek  
4 Copyrighted Works, as set forth below.

5  
6           **Garth of Izar**

7           17. *Star Trek: Prelude to Axanar* features Plaintiffs' character, Garth of  
8 Izar, and describes his military exploits during the war between the Federation and  
9 the Klingon Empire. In *Prelude to Axanar*, Garth of Izar is Captain Kirk's hero who  
10 prevailed against the Klingons in the Battle of Axanar.

11          18. Likewise, in the Star Trek Copyrighted Works, Garth of Izar is Captain  
12 Kirk's hero who prevailed in the Battle of Axanar. Garth of Izar, like Captain Kirk,  
13 was a Starfleet Captain. In *The Original Series*, Garth of Izar was introduced and  
14 portrayed as a former starship captain whose exploits were "required reading" at the  
15 Starfleet Academy due to his heroic conduct during the Battle of Axanar. In the  
16 episode that introduced Garth (entitled "Whom Gods Destroy"), Captain Kirk finds  
17 Garth in an asylum after he had been declared criminally insane. In the episode  
18 "Whom Gods Destroy" in *The Original Series* as well as in the *Axanar* Works,  
19 Garth is Captain Kirk's hero and prevailed in the Battle of Axanar. The character  
20 Garth of Izar was also developed and explored in the 2003 novel entitled *Garth of*  
21 *Izar*.

22          19. Further, Garth of Izar's military battles against the Klingon Empire,  
23 including the Battle of Axanar, were explored by Paramount's licensee, FASA, in  
24 *Star Trek: The Role Playing Game*. Garth's victory in the Battle of Axanar is also  
25 discussed in *The Four Years War* (see, e.g., page 17 referring to "Captain Garth's  
26 overwhelming victory at the Battle of Axanar").

27          20. The second Star Trek motion picture, *The Wrath of Khan*, was a  
28 derivative work that expanded upon one of the episodes of *The Original Series*

which featured a megalomaniacal villain named Khan. In *Prelude to Axanar*, a villain (Garth) from a single episode of *The Original Series* (“Whom Gods Destroy”) was used as the star. Likewise, in *Star Trek II – The Wrath of Khan* (PA 147-513), a villain (Khan) from a single episode of *The Original Series* (“Space Seed”) was used as the titular star of a derivative film.

### **Soval**

21. *Prelude to Axanar* features the character of Soval. In *Prelude to Axanar*, Soval is a Vulcan ambassador. Likewise, in the Star Trek Copyrighted Works, Soval is a Vulcan ambassador. Soval, a Vulcan diplomat, was first seen in the *Enterprise* pilot episode “Broken Bow” in 2001 (Reg. No. PA-1-072-515), and many times throughout the *Enterprise* series such as in the episode “The Expanse” from 2003 (Reg. No. PA-1-205-604).

22. Soval is portrayed by actor Gary Graham, who reprised his role as Ambassador Soval in Defendants’ Axanar Works, and even wore virtually identical makeup and costumes that he had in the *Enterprise* series, rendering the portrayal of that character all but identical to that seen in Plaintiffs’ works.

23. The left side of the chart below contains images of the character Soval from *Prelude to Axanar*. On the right side of the chart, the top image is Soval from the episode “The Expanse” of the *Enterprise* series. The bottom image on the right side of the chart is an image of the character Soval from the *Enterprise* episode “The Awakening.”

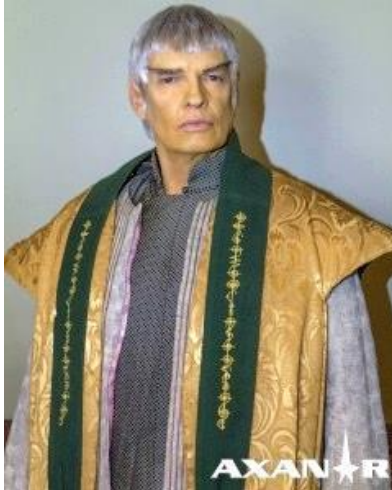
**Soval in *Prelude to Axanar***



**Soval in the Star Trek Copyrighted Works**







24. In both *Prelude to Axanar* and the Star Trek Copyrighted Works, as exemplified above, the character Soval has gray hair that is in a bowl cut with bangs, and has distinctive black eyebrows. In both *Prelude to Axanar* and the Star Trek Copyrighted Works, Soval wears a gray tunic with a gold robe over it, and a green sash with ancient Vulcan script.

### **Klingons**

25. *Prelude to Axanar* features the Klingon race. In the Star Trek Copyrighted Works, Klingons are a warrior race from the planet Qo'noS. They are portrayed as a serious and war-like species. Klingons have distinctive visual elements including large, protruding foreheads covered by symmetrical bumps and ridges, dark hair and skin and facial hair and upward sloping eyebrows. The Klingons were long-time enemies of the Federation, and engaged in a number of military battles with Starfleet.

26. Klingons first appeared on *The Original Series* episode "Errand of Mercy" in 1967 (Reg. No. PA-58-283). They have made many appearances in the Star Trek Television Series and Star Trek Motion Pictures. In the chart below, the

images on the left side are from Defendants' *Prelude to Axanar* and the images on the right side are from Plaintiffs' Star Trek Copyrighted Works.

### Klingon in *Prelude to Axanar*



### Klingon in Star Trek



27. The Klingon makeup design in *Prelude to Axanar*, including the facial hair, thick eyebrows, and facial ridges, mimics the later Klingon makeup that began with *Star Trek—The Motion Picture* in 1979 and continued through all the later series – *The Next Generation*, *Deep Space Nine*, *Voyager*, and *Enterprise*, as well as *Star Trek III The Search for Spock*, *Star Trek IV: The Voyage Home*, *Star Trek V: The Final Frontier*, *Star Trek VI – The Undiscovered Country*, *Star Trek Generations*, *Star Trek: First Contact*, *Star Trek: Insurrection*, and *Star Trek*



1 *Nemesis*. The top image on the right shows an example of the Klingon makeup used  
2 in *Star Trek—The Motion Picture* in 1979.

3 28. Additionally, in *Prelude to Axanar*, the Klingon commander is wearing  
4 an altered costume that was worn in *Star Trek VI—The Undiscovered Country*. The  
5 costume as worn in *Star Trek VI—The Undiscovered Country* is displayed in the  
6 bottom right image.

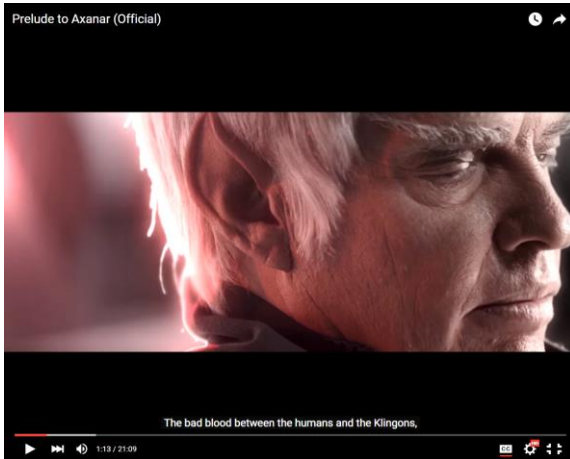
### 7 Vulcans

8 29. *Prelude to Axanar* features the Vulcan race. In the Star Trek  
9 Copyrighted Works, Vulcans are a humanoid race with pointy ears from the planet  
10 Vulcan that are responsible, in large part, for the founding of the United Federation  
11 of Planets. Vulcans are depicted with their iconic pointed ears and upswept  
12 eyebrows, they are portrayed as stern and eschew emotions for logic and reason.  
13 Vulcan men are usually depicted with straight, dark (or gray) hair cut in a “bowl”  
14 style. Vulcans are part of the Federation, and are portrayed as an advanced  
15 technological species.

16 30. Vulcans first appeared in the form of Mr. Spock in *The Original Series*.  
17 The first Vulcan appearances were in the first and second pilot episodes of *The*  
18 *Original Series* “The Cage” (Reg. No. PA 314-430) and “Where No Man Has Gone  
19 Before” in 1966 (Reg. No. PA-58-303). Vulcans also appeared in *The Original*  
20 *Series* episodes “The Man Trap” in 1966 (Reg. No. PA-58-307) and “Amok Time”  
21 in 1967 (Reg. No. PA-58-289). They appear in many other Star Trek Television  
22 Series and Star Trek Motion Pictures.

23 31. In the chart below, the image on the left side is from *Prelude to Axanar*  
24 and the image on the right side is from *The Original Series* episode “Space Seed” in  
25 1967 (Reg. No. PA-58-280).  
26  
27  
28

### Vulcan in *Prelude to Axanar*



### Vulcan in Star Trek



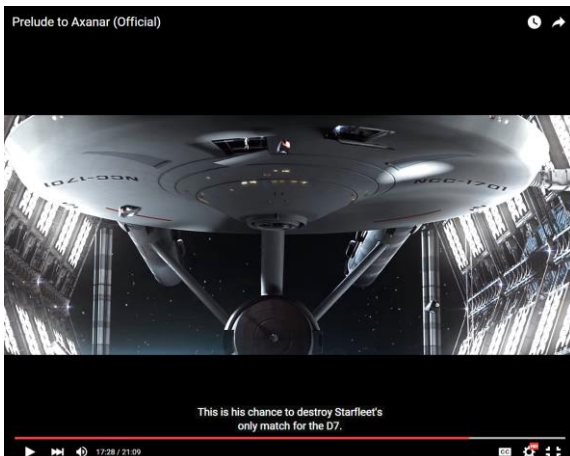
32. In both *Prelude to Axanar* and the Star Trek Copyrighted Works, Vulcans have pointy ears and distinctive eyebrows.

### The U.S.S. Enterprise (Registry No. NCC-1701)

33. *Prelude to Axanar* features the U.S.S. Enterprise (Registry No. NCC-1701). In Star Trek, the U.S.S. Enterprise is a space ship that is part of “Starfleet.”

34. In the chart below, the image on the left is from *Prelude to Axanar* and the image on the right is from the Star Trek Copyrighted Works. The Enterprise is first seen in the first and second pilot episodes of *The Original Series*, “The Cage” and “Where No Man Has Gone Before” (pictured in the image below on the right).

### Starship Enterprise (NCC-1701) in *Prelude to Axanar*



### Starship Enterprise (NCC-1701) in Star Trek

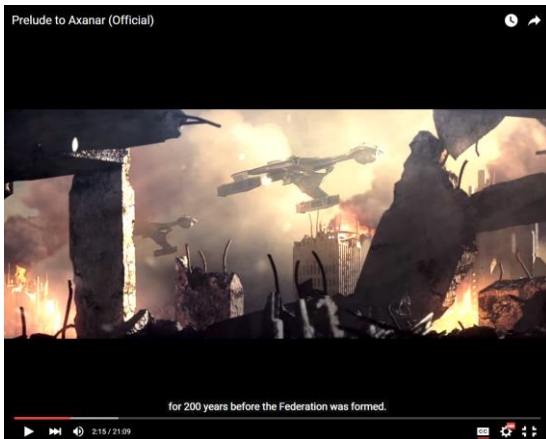


**Klingon Warships**

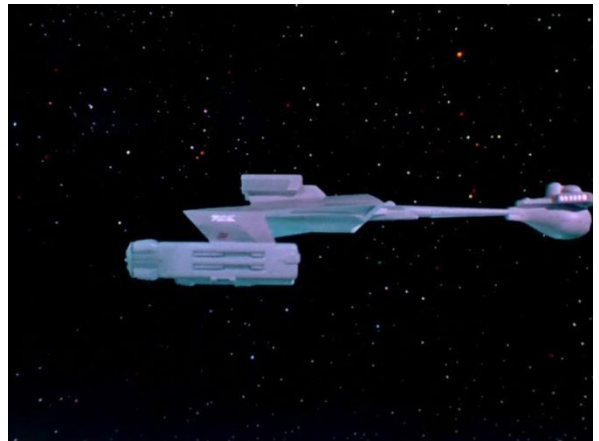
35. *Prelude to Axanar* features Klingon battlecruisers, which were copied from the Star Trek Copyrighted Works.

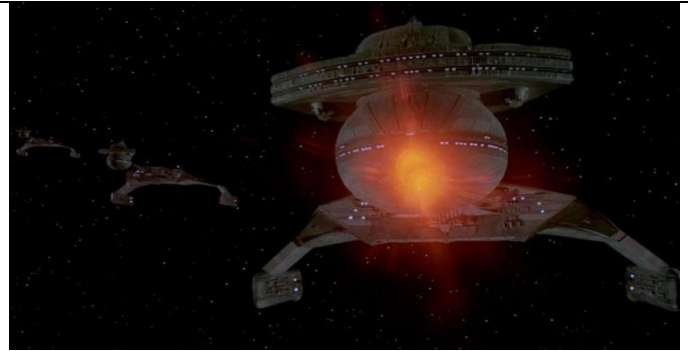
36. In the chart below, the images on the left side are from *Prelude to Axanar* and the images on the right side are from the Star Trek Copyrighted Works. The Klingon battlecruiser first appeared in *The Original Series* episode “Elaan of Troyius” in 1968 (Reg. No. RE-740-930, LP-44-379) (top image on the right side of the chart) and was used as one of two recognizable Klingon ships in all Star Trek Copyrighted Works thereafter. They also played a large role in *Star Trek–The Motion Picture* in 1979 (bottom two images on the right side of the chart).

**Klingon Battlecruiser in *Prelude to Axanar***



**Klingon Battlecruiser in Star Trek**





### The Federation

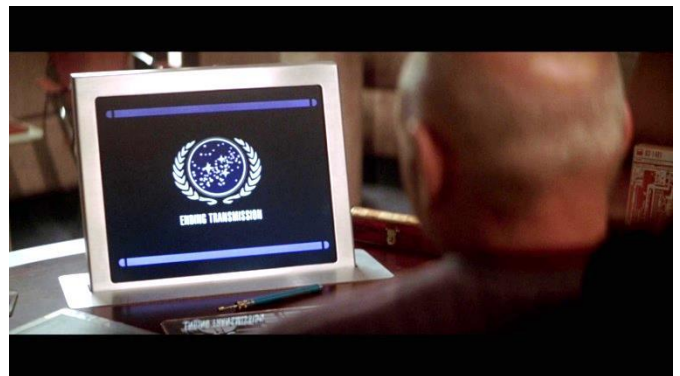
37. *Prelude to Axanar* features the Federation. The Federation is an interstellar alliance of several planetary governments, and was first mentioned by that name in *The Original Series* episode “A Taste of Armageddon” in 1967 (Reg. No. PA-58-302). It is referenced throughout the Star Trek Copyrighted Works.

38. The plot of *Prelude to Axanar* contains the Federation, and it also copies the logo of the Federation from Star Trek. In the chart below, the image on the left side is from *Prelude to Axanar* and the image on the right is from *Star Trek Nemesis* in 2002. This logo also appeared on *The Next Generation* episode “The Naked Now” in 1987 (Reg. No. PA-348-302).

#### **United Federation of Planets logo in *Prelude to Axanar***



#### **United Federation of Planets logo in Star Trek**





**Other Aspects of Prelude to Axanar That Copy Star Trek**

39. *Prelude to Axanar* takes place in 2241.03 to 2245.1, which is twenty-one years before *The Original Series* episode “Where No Man Has Gone Before.” That pilot episode was the first to use the element of “stardates.” Stardates were subsequently used in *The Next Generation*, *Deep Space Nine*, *Voyager*, and every Star Trek Motion Picture.

40. *Prelude to Axanar* uses dialogue that is copied from Star Trek, including (1) beaming up/transporters, (2) warp drive, and (3) Starfleet. First, the element of beaming is first mentioned in the second pilot of *The Original Series* “Where No Man Has Gone Before” and is subsequently used or explored in every Star Trek Television Series and Star Trek Motion Picture thereafter. The “Transporter Room” is a room on Starfleet spaceships that includes a transporter platform, which is used to transport (or “beam”) Starfleet personnel to other ships or planets. Second, warp drive is the main propulsion system for most starships that are capable of faster-than-light travel. The element of warp drive is first mentioned in the second pilot of *The Original Series* “Where No Man Has Gone Before” and is a fixed element for ships in every Star Trek Television Series and Star Trek Motion Picture, including *Star Trek—The Motion Picture*. Third, Starfleet is a branch of the United Federation of Planets assigned to the exploration of space and the resulting scientific, diplomatic and defensive duties. It is referenced in many Star Trek Television Series and Star Trek Motion Pictures, such as *Enterprise* episode “Broken Bow” in 2001.

41. *Prelude to Axanar* features the Klingon language. Klingonese or Klingon, the native language of the planet Qo’noS, was first spoken in *Star Trek—The Motion Picture* in 1979. It was used in several works moving forward, including *Star Trek III The Search for Spock*.



42. The dialogue of *Prelude to Axanar* contains references to Andorians, Tellarites, and Romulans, all of which are fictional species from Star Trek. First, Andorians are humanoid Federation members from the planet Andoria. Andorians first appeared in the episodes “Journey to Babel” (Reg. No. RE-714-288, LP-50-341) and “Whom Gods Destroy” from *The Original Series*. They also appeared in several Star Trek Motion Pictures and were featured extensively in *Enterprise*. Second, Tellarites are a humanoid species distinguished by a porcine-like snout, stout build, deep set eyes and a characteristically irascible disposition. The first appearance of Tellarites was in *The Original Series* episode “Journey to Babel” in 1967. They also appeared in several *Enterprise* episodes, such as “Bounty” in 2003 (Reg. No. PA-1-205-603) and “United” in 2005 (Reg. No. PA-1-257-201). Third, Romulans are a species from the planets Romulus and Remus. The Romulan Empire and Romulans first appeared in *The Original Series* episode “Balance of Terror” in 1966 (Reg. No. PA-58-310).

### **THE VULCAN SCENE**

43. I have reviewed Defendants’ “Vulcan Scene” of *Axanar*.

44. The Vulcan Scene copies many elements from the Star Trek Copyrighted Works, as set forth below.

### **Soval**

45. The Vulcan Scene features the character of Soval. Soval was first seen in the *Enterprise* pilot episode “Broken Bow” in 2001, and many times throughout the *Enterprise* series such as in the episode “The Expanse” from 2003.

46. In the chart below, the image on the left is from the Vulcan Scene, and the image on the right is from *Enterprise*. In both the Vulcan Scene and the Star Trek Copyrighted Works, the character Soval has gray hair that is in a bowl cut with bangs, and has distinctive black eyebrows. In both the Vulcan Scene and the Star Trek Copyrighted Works, Soval wears a gray sweater with a gold robe over it, and a green sash with ancient Vulcan script. The Soval costume from the Vulcan Scene

copies the Vulcan robes seen in *Star Trek–The Motion Picture* (1979) and in later  
Star Trek Copyrighted Works. The robe with the stylized ancient Vulcan script on  
green drape is taken from the Star Trek Copyrighted Works.

**Soval in the Vulcan Scene**



**Soval in Star Trek**



**Vulcans**

47. The Vulcan Scene features the Vulcan race. In the chart below, the  
image on the left side is from the Vulcan Scene and the image on the right side is  
from *Enterprise* episode “Kir’shara” in 2004 (Reg. No. PA-1-257-200), showing the  
same types of Vulcan costumes, robes, and script portrayed by Defendants.

**Vulcans in the Vulcan Scene with  
pointy ears, distinctive eyebrows, and  
robes with script**



**Vulcans in Star Trek with pointy ears,  
distinctive eyebrows, and robes with  
script**



48. In the chart below, the image on the left is from the Vulcan Scene and  
the image on the right is from *Star Trek III The Search for Spock* in 1982. Both

images feature the planet Vulcan, the home planet of the Vulcans. Defendants’ portrayal of the planet Vulcan copies Star Trek’s silhouette of Mt. Seleya, a sacred mountain, along the left side, with a red dusty sunset along the right side.

**Planet Vulcan in the Vulcan Scene**



**Planet Vulcan in Star Trek**



49. In the chart below, the image on the left is from the Vulcan Scene and the image on the right is from *Enterprise* “Kir’shara” in 2004. Both images show Vulcan architecture. Defendants’ portrayal of the Vulcan architecture copies Star Trek’s pointy buildings and beige color scheme.

**Vulcan architecture in the Vulcan Scene**



**Vulcan architecture in Star Trek**



50. In the chart below, the image on the left is from the Vulcan Scene and the image on the right is from *Enterprise* “Kir’shara” in 2004. Both images show

Vulcan ships. Defendants’ portrayal of the Vulcan ship copies Star Trek’s design of a ship within a florescent blue ring.

#### **Vulcan Ships in the Vulcan Scene**



#### **Vulcan Ships in Star Trek**



D’Kyr-class Vulcan ships first appeared in *Enterprise* episode “Shockwave, Part II” in 2002 (Reg. No. PA-1-134-204).

### **Klingons**

51. The Vulcan Scene discusses the Klingon race. Plaintiffs’ Klingon characters have made many appearances on Star Trek Television Series and Star Trek Motion Pictures.

### **Other Aspects of the Vulcan Scene That Copy Star Trek**

52. The plot points and dialogue of the Vulcan Scene contain several elements that copy the Star Trek Copyrighted Works including: (1) the teachings of Surak, (2) the Vulcan Council, and (3) the Federation. First, Surak is first seen in *The Original Series* episode “The Savage Curtain” in 1969 (Reg. No. RE-769-425, LP-44-372). The “teachings of Surak” are a (fictitious) collection of writings by the legendary Vulcan philosopher Surak. They are referenced in *Enterprise* episode “Two Days and Two Nights” in 2002 (Reg. No. PA-1-102-974). Second, the Vulcan council is seen in *Enterprise* episode “Kir’shara” in 2004, and *Star Trek* (the 2009 film). Third, virtually every Star Trek episode, game, book, and comic mentions the Federation or the United Federation of Planets.



53. The mood and theme of the Vulcan Scene is a science fiction action adventure, as is the mood and theme of the Star Trek Copyrighted Works. The mood and theme of Star Trek as a science fiction action adventure first appeared in *The Original Series* episode “The Cage,” and has appeared in all subsequent episodes of *The Original Series* and other derivative Star Trek Copyrighted Works.

**Similarity Of The Works**

54. Based on my expertise in Star Trek and having reviewed the Axanar Works, I have conducted an analysis as set forth below and have concluded that the Axanar Works copied numerous elements from the Star Trek Copyrighted Works, and are nearly identical in some cases.

55. **Theme.** Defendants used the theme from the Star Trek Copyrighted Works, attempting to recreate the drama between the Federation and the Klingon Empire in a military space drama. Overall, the theme of the Star Trek Copyrighted Works is that they are science fiction action adventures that discuss the idea of human exploration, tolerance, and the battle between good and evil. This theme first appeared in *The Original Series* episode “The Cage,” and has appeared in all subsequent episodes of *The Original Series* and other derivative Star Trek Copyrighted Works. The Axanar Works have the same theme.

56. **Mood.** Defendants use the same mood as the Star Trek Copyrighted Works, copying the dramatic, war-time military mood with occasional light dialogue.

57. **Plot.** The plot of the Axanar Works is taken directly from an episode of *The Original Series* that described the military exploits of Garth of Izar at the Battle of Axanar, and Defendants also took their story from the copyrighted licensed *Star Trek: The Role Playing Game* supplement called “*The Four Years War.*” *The Original Series* focused on the officers of the Federation and their adventures and battles. In the “Whom Gods Destroy” episode of *The Original Series*, James T. Kirk, the Captain of the U.S.S. Enterprise, meets his hero, Garth of Izar, a former



1 Starship captain. In that episode, Kirk and Garth discuss Garth's victory in the  
2 Battle of Axanar. Likewise, the plot of the Axanar Works involve Garth's victory at  
3 the Battle of Axanar, and includes the Vulcan race, the Klingon race, the Federation,  
4 the history of the Federation, and the same weapons and technology. The Axanar  
5 Works take place twenty-one years before the events of "Where No Man Has Gone  
6 Before," the first episode of Star Trek that features Captain Kirk.

7 58. **Dialogue.** There are several elements of dialogue in the Axanar Works  
8 that have been copied from the Star Trek Copyrighted Works. As discussed above,  
9 these include the dialogue of "beaming up" or "transporters," "warp drive,"  
10 Klingonese or Klingon, the native language of Qo'noS, "stardates," "Starfleet," and  
11 the "Federation" (sometimes referred to as the United Federation of Planets").  
12 Defendants also refer to "phasers" which are fictional weapons used by Starfleet  
13 personnel in the Star Trek universe. Phasers first appeared in the second pilot  
14 episode of *The Original Series* "Where No Man Has Gone Before," and appear  
15 throughout subsequent Star Trek Television Series and Star Trek Motion Pictures.  
16 The Axanar Works adopt the dialogue of beaming up, transporters, warp drive,  
17 Klingonese/Klingon, Stardate, Starfleet, United Federation of Planets, and phasers.

18 59. **Characters.** The Axanar Works use many of the same characters as the  
19 Star Trek Copyrighted Works. First, in the Star Trek Copyrighted Works, Garth of  
20 Izar is Captain Kirk's hero who prevailed in the Battle of Axanar. That same  
21 character is included in the Axanar Works. Garth of Izar has also appeared in the  
22 copyrighted novels: *Garth of Izar*, *Strangers from the Sky*, and *Infinity's Prism*.  
23 Second, in the Star Trek Copyrighted Works, Soval is a Vulcan ambassador. In the  
24 Axanar Works, Soval is a Vulcan ambassador. In both the Axanar Works and the  
25 Star Trek Copyrighted Works, the character Soval has gray hair that is in a bowl cut  
26 with bangs, and has distinctive black eyebrows. In both the Axanar Works and the  
27 Star Trek Copyrighted Works, Soval wears a gray sweater with a gold robe over it,  
28 and a green sash with Vulcan script. The Soval costume from the Axanar Works

1 copies the Vulcan robes seen in *Star Trek—The Motion Picture* (1979) and in later  
2 *Star Trek* Copyrighted Works. Third, in the *Star Trek* Copyrighted Works, John  
3 Gill is a historian. John Gill is a character from *The Original Series* episode  
4 “Patterns of Force” in 1968 (Reg. No. RE-740-926, LP-44-375). In the Axanar  
5 Works, John Gill is a narrator. Fourth, the Axanar Works depict Vulcans and  
6 Klingons, and discuss Andorians, Tellarites and Romulans.

7       60. **Sequence of Events.** The sequence of events of the Axanar Works is  
8 taken from the *Star Trek* Copyrighted Works – the events depicted and discussed  
9 therein take place in and around the Battle of Axanar, as described both in *The*  
10 *Original Series* and in greater detail in *The Four Years War*. The Axanar Works  
11 take place in 2241.03 to 2245.1, which is twenty-one years before *The Original*  
12 *Series* episode “Where No Man Has Gone Before.”

13       61. **Pace.** Both the Axanar Works and the *Star Trek* Copyrighted Works  
14 move at a slow pace, other than the accelerated pace of the action scenes.

15       62. **Setting.** The Axanar Works take place in the same settings as the *Star*  
16 *Trek* Copyrighted Works as they are set in alien star systems created by Plaintiffs,  
17 on spaceships belonging to the United Federation of Planets, on Klingon  
18 battlecruisers fighting for the Klingon Empire, and on planets such as Qo’noS,  
19 Vulcan and Axanar. First, the *Star Trek* Copyrighted Works feature “Axanar,”  
20 which is first mentioned in *The Original Series* episode “Court Martial” in 1967  
21 (Reg. No. PA-58-293) and plays a large role in *The Original Series* episode “Whom  
22 Gods Destroy.” The Axanar Works also feature Axanar. Second, the *Star Trek*  
23 Copyrighted Works feature Archanis IV, which was first mentioned in *The Original*  
24 *Series* episode “Day of the Dove” in 1968 (Reg. No. RE-740-931, LP-44-380). The  
25 Axanar Works also feature Archanis IV. Third, the *Star Trek* Copyrighted Works  
26 feature Qo’noS, which is the Klingon home planet. It is seen for the first time in  
27 *The Next Generation* episode “Sins of the Father” in 1990 (Reg. No. PA-501-111).  
28 It subsequently played a large role in *Star Trek VI—The Undiscovered Country* and

1 several works afterwards. The Axanar Works also feature Qo'noS. Fourth, the Star  
2 Trek Copyrighted Works feature many other planets. Nausicaa is first mentioned in  
3 *Enterprise* episode "Fortunate Son" in 2001. Rigel is first mentioned in the first  
4 pilot of *The Original Series* "The Cage," the footage of which was reused in "The  
5 Menagerie Parts I & II" in 1966 (Reg. Nos. PA-58-294, PA-58-295). Nausicaans as  
6 a race come first from *The Next Generation* episode "Samaritan Snare" in 1989  
7 (Reg. No. PA-430-993). Andoria is first mentioned and seen in *Enterprise* episode  
8 "The Aenar" in 2005. Tellar Prime is first mentioned in *Enterprise* episode "Babel  
9 One" in 2005 (Reg. No. PA-1-257-199). The planet Vulcan is first mentioned and  
10 seen in *The Original Series* episode "Amok Time" in 1968 (having been referred to  
11 as "Vulcanis" in the second pilot episode "Where No Man Has Gone Before").  
12 Terra (Earth) is first mentioned and seen in *The Original Series* episode "Tomorrow  
13 is Yesterday" in 1967 (Reg. No. PA-58-300). These planets are referenced  
14 throughout subsequent Star Trek Television Series and Star Trek Motion Pictures.  
15 The Axanar Works also feature Nausicaa, Andoria, Tellar Prime, Andoria, and  
16 Terra. Fourth, the Star Trek Copyrighted Works feature spacedocks (or drydocks),  
17 which were first mentioned in *The Original Series* episode "The Doomsday  
18 Machine" in 1967 (Reg. No. RE-714-257, LP-44-258). The Axanar Works also  
19 feature spacedocks, and contain an image of the U.S.S. Enterprise in a spacedock  
20 that looks nearly identical to an image found in *Star Trek— The Motion Picture* in  
21 1979 (Defendants' depiction even includes a shuttle-type vessel from the Star Trek  
22 Copyrighted Works called a cargo management unit or "workbee"). Fifth, the Star  
23 Trek Copyrighted Works feature the U.S.S. Enterprise (NCC-1701), which is first  
24 seen in the first and second pilot episodes of *The Original Series*, "The Cage" and  
25 "Where No Man Has Gone Before." Sixth, the Star Trek Copyrighted Works  
26 feature the Klingon battlecruiser, which first appeared in *The Original Series*  
27 episode "Elaan of Troyius" in 1968 and was used as one of two recognizable  
28 Klingon ships in all works thereafter. They also played a large role in *Star Trek—*

1 *The Motion Picture* in 1979. The Axanar Works use a ship that looks nearly  
2 identical to the Klingon battlecruiser. Eighth, the Star Trek Copyrighted Works  
3 feature Starfleet ships that use design elements from ships like the U.S.S. Kelvin  
4 from *Star Trek* (2009) and Miranda-class ships such as the U.S.S. Reliant from *Star*  
5 *Trek II–The Wrath of Khan*. Ninth, the Star Trek Copyrighted Works feature  
6 Federation ships such as the U.S.S. Titan from the novel *Star Trek Titan: Sword of*  
7 *Damocles* and the U.S.S. Centaur. Tenth, Defendants’ portrayal of the planet  
8 Vulcan copies Star Trek’s silhouette of Mt. Seleya, a sacred mountain, along the left  
9 side, with a red dusty sunset along the right side, taken from *Star Trek III The*  
10 *Search for Spock* in 1982. The Axanar Works also copy the Vulcan architecture,  
11 with its pointy buildings and beige color scheme, as seen in *Enterprise* episode  
12 “Kir’shara” in 2004.

13 **Plaintiffs’ Works**

14 63. I have reviewed documents turned over by Christian Gossett, the  
15 director of *Star Trek: Prelude to Axanar* and Terry McIntosh, the chief Technical  
16 Officer for Axanar Productions, which show that Mr. Peters attempted to meet with  
17 Netflix and Amazon regarding his work as a producer for Axanar Productions. See  
18 **Exhibits LL and MM** attached to the declaration of David Grossman. Based on the  
19 evidence I have reviewed, Mr. Peters was exploring methods by which he could  
20 distribute high-quality Star Trek content, without a license, in order to enable him to  
21 continue to profit from Plaintiffs’ intellectual property. The unrestricted and  
22 widespread conduct of the sort engaged in by the Defendants in this case would  
23 result in a substantially adverse impact on the market for Plaintiffs’ products.

24 64. Plaintiffs have already created and licensed derivative works that  
25 include the characters used by Defendants. These works include the published  
26 novel, *Garth of Izar*, as well as the licensed works *The Four Years War* and *Return*  
27 *To Axanar* which were included as part of *Star Trek: The Role Playing Game*. For  
28 fifty years, Plaintiffs have continuously used the intellectual property and characters


1 from *The Original Series* to create new, authorized derivative works. These works  
2 include encyclopedias, television series, feature films, and novels.

3 65. These licensed derivative works are not limited to scripted fictional  
4 series and films. In fact, Plaintiffs have licensed and created numerous reference  
5 works, behind the scenes books, and documentaries. These works include *The Star*  
6 *Trek Encyclopedia*, *The Star Trek Chronology*, *The Star Trek Book*, *Star Trek The*  
7 *Visual Dictionary*, *The Art of Star Trek*, *Star Trek Costumes*, *The Making of Star*  
8 *Trek*, *Star Trek Stellar Cartography*, *Federation: The First 150 Years*, *Star Trek*  
9 *Action*, and documentaries including *Trekkies*, and *Trekkies 2*.

10 66. The average cost to make a one hour episode in the final season of *Star*  
11 *Trek: Enterprise* (Plaintiffs' most recent Star Trek Television Series) was between  
12 \$2.2 million and \$2.4 million.

13  
14 I declare under penalty of perjury under the laws of the United States of  
15 America that the foregoing is true and correct.

16 Executed on November 27, 2016, at Los Angeles, California

17  
18  
19   
20 John Van Citters