Cas	e 2:15-cv-09938-RGK-E Document 102-1 F #:6982	iled 12/05/16 Page 1 of 179 Page ID
1 2 3 4 5 6 7 8 9	LOEB & LOEB LLP DAVID GROSSMAN (SBN 211326) dgrossman@loeb.com JENNIFER JASON (SBN 274142) jjason@loeb.com 10100 Santa Monica Blvd., Suite 2200 Los Angeles, CA 90067 Telephone: 310.282.2000 Facsimile: 310.282.2200 LOEB & LOEB LLP JONATHAN ZAVIN (admitted <i>pro hac v</i> jzavin@loeb.com 345 Park Avenue New York, NY 10154 Telephone: 212.407.4000 Facsimile: 212.407.4990	ice)
10 11 12	Attorneys for Plaintiffs PARAMOUNT PICTURES CORPORATION and CBS STUDIOS INC.	
13	UNITED STATES	DISTRICT COURT
14	CENTRAL DISTRIC	CT OF CALIFORNIA
15		
16 17 18	PARAMOUNT PICTURES CORPORATION, a Delaware corporation; and CBS STUDIOS INC., a Delaware corporation,	Case No.: 2:15-cv-09938-RGK-E PLAINTIFFS' REPLY RE: DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF
19	Plaintiffs,	UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW
20	V.	AND ADDITIONAL MATERIAL FACTS IN OPPOSITION TO
21	AXANAR PRODUCTIONS, INC., a California corporation; ALEC PETERS,	PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
22	an individual, and DOES 1-20,	JUDGMENT
23	Defendants.	Date: December 19, 2016
24		Time 9:00 a.m. Dept.: 850
25		Discovery Cutoff: November 2, 2016
26 27		Pre-Trial Conference: January 9, 2017 Trial: January 31, 2017
28		
<b>o</b> tnership onal	10969556.1 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

Loeb & Loeb A Limited Liability Partnersh Including Professional Corporations Plaintiffs' Paramount Pictures Corporation and CBS Studios Inc. submit this
 statement of genuine issues pursuant to Central District of California Local Rule
 56-2 in opposition to the motion for summary judgment herein filed by Defendants
 Axanar Productions, Inc. and Alec Peters.

Facts 1 through 117 below correspond to the facts and supporting evidence
presented in the Statement of Uncontroverted Facts filed by the moving party.
These facts are followed by additional material facts and supporting evidence.

8

I.

#### RESPONSE TO PLAINTIFFS' STATEMENT OF UNCONTRO-VERTED FACTS

	9
1	0

10	"Undisputed" Facts	<b>Opposing Party's Responses</b>
11	1. Plaintiffs Paramount Pictures	Undisputed
12	Corporation ("Paramount") and CBS Studios	
13	Inc. ("CBS") (collectively, "Plaintiffs"), own	See Evidentiary Objections to Van
14	the copyrights to the Star Trek films and	Citters Decl.
15	television series.	
16	Declaration of David Grossman	PLAINTIFFS' REPLY:
17	("Grossman Decl."), ¶ 90, Ex. UU (copyright	The fact is undisputed.
18	registrations for the Star Trek Television	
19	Series), ¶ 91, Ex. VV (copyright registrations	
20	for the Star Trek Motion Pictures).	
21	Declaration of John Van Citters ("Van	
22	Citters Decl."), ¶¶ 8, 10.	
23	2. Plaintiff CBS owns the rights to <i>The</i>	Undisputed
24	Original Series, as well as to all of the	
25	subsequent Star Trek Television Series.	See Evidentiary Objections to Van
26	Van Citters Decl., ¶ 8.	Citters Decl.
27	Grossman Decl., ¶ 90, Ex. UU	
28		

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
(copyright registrations for the Star Trek	See also Evidentiary Objections to
Television Series).	Grossman Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
3. Paramount owns the copyrights in the	Undisputed
Star Trek Motion Pictures.	
Van Citters Decl. ¶ 10.	See Evidentiary Objections to Va
Grossman Decl., ¶ 91, Ex. VV	Citters Decl.
(copyright registrations for the Star Trek	
Motion Pictures).	See also Evidentiary Objections t
	Grossman Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
4. Paramount owns the copyright in the	Undisputed
novel entitled Garth of Izar.	
Van Citters Decl., ¶ 11.	See Evidentiary Objections to Va
Grossman Decl., ¶ 94, Ex. WW	Citters Decl.
(copyright registration for Garth of Izar	
novel), Ex. 21 (Garth of Izar novel).	See also Evidentiary Objections t
	Grossman Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
5. CBS owns the copyright in the novel	Undisputed

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2	entitled Strangers from the Sky.	
3	Van Citters Decl., ¶ 11.	See Evidentiary Objections to Van
4	Grossman Decl., ¶ 95, Ex. XX	Citters Decl.
5	(copyright registration for Strangers from the	
6 7	Sky).	See also Evidentiary Objections to
7		Grossman Decl.
8 9		
		PLAINTIFFS' REPLY:
10 11		The fact is undisputed.
11	6. CBS owns the copyright in the novel	Undisputed
12	entitled Infinity's Prism.	
13	Van Citters Decl., ¶ 11.	See Evidentiary Objections to Van
14	Grossman Decl., ¶ 95, Ex. YY	Citters Decl.
16	(copyright registration for Infinity's Prism).	
17		See also Evidentiary Objections to
18		Grossman Decl.
10		
20		PLAINTIFFS' REPLY:
21		The fact is undisputed.
22	7. The original Star Trek television series	Undisputed
23	("The Original Series") debuted in 1966, and	
24	ran for three seasons, until 1969.	See Evidentiary Objections to Van
25	Van Citters Decl., ¶ 5.	Citters Decl.
26	Grossman Decl., ¶ 92, Ex. 1 (The	
27	Original Series DVDs).	See also Evidentiary Objections to
28		Grossman Decl.
20		

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1 2	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
4		PLAINTIFFS' REPLY:
		The fact is undisputed.
5	8. In addition to <i>The Original Series</i> , there	Undisputed
6	have been five further Star Trek television	
7	series totaling more than 700 episodes	See Evidentiary Objections to Van
8	(collectively with The Original Series, the	Citters Decl.
9	"Star Trek Television Series").	
10	Van Citters Decl., ¶¶ 3, 4.	See also Evidentiary Objections to
11	Grossman Decl., ¶ 90, Ex. UU	Grossman Decl.
12	(copyright registrations for the Star Trek	
13	Television Series), ¶ 92, Exs. 1-5 (Star Trek	PLAINTIFFS' REPLY:
14	Television Series DVDs).	The fact is undisputed.
15	9. <i>The Original Series</i> chronicled the	Undisputed
16 17	adventures of the U.S.S. Enterprise (one of the	
17 18	ships of "Starfleet") and its crew as they	See Evidentiary Objections to Van
	traveled through space during the twenty-third	Citters Decl.
19 20	century, and featured numerous original and	
20 21	copyrightable elements, including but not	See also Evidentiary Objections to
21	limited to elements such as the plots of the	Grossman Decl.
22 23	episodes, mood, theme, characters, settings,	
	pace and numerous original and copyrightable	PLAINTIFFS' REPLY:
24 25	elements such as the Starship Enterprise	The fact is undisputed.
23 26	(Starfleet registry number NCC-1701),	
20 27	original and fictitious races and species,	
	including the Vulcan and Klingon races, the	
28		

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
United Federation of Planets (the	
"Federation"), and fictional weapons and	
technology.	
Van Citters Decl., ¶ 5.	
Grossman Decl., ¶ 92, Ex. 1 (The	
Original Series DVDs).	
10. In "Whom Gods Destroy," one of the	Undisputed
episodes of The Original Series, James T. Kirk	
(played by the actor William Shatner), the	See Evidentiary Objections to Va
Captain of the U.S.S. Enterprise, meets his	Citters Decl.
hero, Garth of Izar, a former starship captain.	
Van Citters Decl., ¶ 6.	See also Evidentiary Objections t
Grossman Decl., ¶ 92, Ex. 1 (The	Grossman Decl.
Original Series DVDs).	
	PLAINTIFFS' REPLY:
	The fact is undisputed.
11. In "Whom Gods Destroy," Kirk and	Undisputed
Garth discuss Garth's victory in the Battle of	
Axanar.	See Evidentiary Objections to Va
Van Citters Decl., ¶ 6.	Citters Decl.
Grossman Decl., ¶ 92, Ex. 1(The	
Original Series DVDs).	See also Evidentiary Objections t
	Grossman Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
12. The newest television series, <i>Star Trek:</i>	Undisputed
Discovery, will premiere in 2017.	
Van Citters Decl., ¶ 7.	See Evidentiary Objections to Va
	Citters Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
13. <i>Star Trek: Discovery</i> takes place ten	Undisputed
years before the events depicted in The	
Original Series.	See Evidentiary Objections to Va
Van Citters Decl., ¶ 7.	Citters Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
14. Plaintiffs have licensed numerous	Undisputed
derivative works, including books, games and	
merchandise. These works also include	See Evidentiary Objections to Va
reference guides, encyclopedias,	Citters Decl.
documentaries, behind the scenes books,	
dictionaries and "companions" to various	PLAINTIFFS' REPLY:
television series.	The fact is undisputed.
Van Citters Decl., ¶¶ 12, 64-65.	
15. Klingons are an alien race, from the	Undisputed
planet Qo'noS, who are portrayed as a serious	
and war-like species.	See Evidentiary Objections to Va
Van Citters Decl., ¶ 25.	Citters Decl.

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	PLAINTIFFS' REPLY:
	The fact is undisputed.
16. Klingons have distinctive visual	Undisputed
elements including large, protruding foreheads	
covered by symmetrical bumps and ridges,	See Evidentiary Objections to Var
dark hair and skin and facial hair and upward	Citters Decl.
sloping eyebrows.	
Van Citters Decl., ¶ 25.	PLAINTIFFS' REPLY:
	The fact is undisputed.
17. The Klingons were long-time enemies	Undisputed
of the Federation, and engaged in a number of	
military battles with Starfleet.	See Evidentiary Objections to Var
Van Citters Decl., ¶ 25.	Citters Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
18. Vulcans are an iconic species, owned by	Undisputed
Plaintiffs, first appearing in the form of Mr.	Chaisputed
Spock in <i>The Original Series</i> .	See Evidentiary Objections to Var
Van Citters Decl., ¶ 30.	Citters Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
19. Vulcans are depicted with their pointed	Undisputed
ears and upswept eyebrows, they are portrayed	

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"Undisputed" Facts	Opposing Party's Responses
as stern and eschew emotions for logic and	See Evidentiary Objections to Van
reason.	Citters Decl.
Van Citters Decl., ¶ 29.	
	PLAINTIFFS' REPLY:
	The fact is undisputed.
20. Vulcan men are usually depicted with	Undisputed
straight, dark (or gray) hair cut in a "bowl"	
style.	See Evidentiary Objections to Van
Van Citters Decl., ¶ 29.	Citters Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
21. Vulcans are part of the Federation, and	Undisputed
are portrayed as an advanced technological	
species.	See Evidentiary Objections to Van
Van Citters Decl., ¶ 29.	Citters Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
22. Ambassador Soval was first seen in the	Undisputed
Star Trek: Enterprise pilot episode "Broken	
Bow" in 2001, and was featured many times	See Evidentiary Objections to Van
throughout the Enterprise series such as in the	Citters Decl.
episode "The Expanse" from 2003.	
Van Citters Decl., ¶¶ 21, 45.	See also Evidentiary Objections to

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
Original Series DVDs).	
	PLAINTIFFS' REPLY:
	The fact is undisputed.
23. Soval is portrayed by actor Gary	Disputed. Gary Graham's makeup
Graham, who reprised his role as Ambassador	and hair as Soval in Defendants'
Soval in Defendants' infringing works, and	Works were different from that of
even wore virtually identical makeup and	the Soval who appeared in Plain-
costumes that he had in the Enterprise series,	tiffs' Works. The ears, while
rendering the portrayal of that character all but	pointed, were different from those
identical to that seen in Plaintiffs' works.	Gary Graham wore in "Enterprise
Van Citters Decl., ¶¶ 21-24, 45-46.	Gary Graham's costume was
	different in Prelude to Axanar, the
	Vulcan Scene, and in Plaintiffs'
	Works. While in <i>Prelude</i> , Gary
	Graham's robes were Chinese, in
	the Vulcan Scene, he wore
	Japanese-style robes over a
	business suit. These costumes
	were not identical to each other,
	much less to the one Soval wore i
	Plaintiffs' Works.
	Grossman Decl., ¶ 13, Ex. A
	(Peters Tr., Vol. II at 425:11-22)
	ECF No. 75-19, Peters Decl., Ex.
	(Prelude to Axanar at 45-:58, 2:32

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		45, 3:11-20, 3:49-58, 7:30-43,
3		9:30-43, 10:14-28)
4		ECF No. 75-19, Peters Decl., Ex. 2
5		(Vulcan Scene)
6		
7		See also Evidentiary Objections to
8		Van Citters Decl.
9		
10		PLAINTIFFS' REPLY:
11		This is a false "dispute."
12		
13		First, Gary Graham's hair and
14		makeup when he portrayed Soval
15		in the Axanar Works is the same as
16		when he portrayed Soval in the Star
17		Trek Copyrighted Works. See Van
18		Citters Decl., ¶¶ 21-24, 45-47.
19		(Dkt. 72-60).
20		The top image below is Soval from
21		The Vulcan Scene. See Van Citters
22		Decl., ¶ 43, Ex. 20 (Vulcan Scene
23		at 1:55) (Dkt. 72-60). The bottom
24		image below is Soval from
25		<i>Enterprise</i> . Grossman Decl., ¶ 93,
26		Ex. 5 ( <i>Enterprise</i> , Season One,
27		Episode 14, 0:53)(Dkt. 79-3).
28		
		PLAINTIFES' RESPONSE TO DEFENDANTS'

Case	se 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 12 of 179 Page ID #:6993	
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		
4		
5		N DARDA SY
6		
7		●         ▶         ●         1:51 / 3:02
8		
9		ENTERPRISE S1:E14 "Shadows of PJern"
10		
11		
12		
13		
14		
15		
16		Second, Gary Graham's pointy ears
17		when he portrayed Soval in the
18		Axanar Works are the same as
19		when he portrayed Soval in the Star
20		Trek Copyrighted Works. See Van
21		Citters Decl., ¶¶ 21-24, 45-47.
22		(Dkt. 72-60).
23		The top image below is Soval from
24		Prelude to Axanar. See Van
25		Citters Decl., ¶15, Ex. 19 ( <i>Prelude</i>
26		<i>to Axanar</i> at 1:12) (Dkt. 72-60).
27		The bottom image below is Soval
28		
	11	PLAINTIFFS' RESPONSE TO DEFENDANTS'

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	from Enterprise. Grossman Decl.,
	¶ 93, Ex. 5 (Enterprise, Season
	Two, Episode 1, at 5:14)(Dkt. 79-
	3).
	▶ ► ♦ ♦ 1.12 / 21.09 CC 🐙 🗖
	S2:E1 "Shockwave: Part 2"
	Third, the Soval costume in the
	Axanar Works was copied from th
	Star Trek Copyrighted Works. In
	all of the works, Soval is wearing
	Asian-style robes in a green, grey,
	and/or brown color palette that
	features distinctive gold lettering.
	The lettering on all versions of
	Soval's costumes is organized
	vertically. See Van Citters Decl., ¶

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4		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		21-24, 45-47. (Dkt. 72-60).
3		The top image below is Soval from
4		The Vulcan Scene. See Van Citters
5		Decl., ¶ 43, Ex. 20 (Vulcan Scene
6		at 1:42) (Dkt. 72-60). The bottom
7		image below is Soval from
8		Enterprise. See Grossman Decl., ¶
9		93, Ex. 5 (Enterprise, Season Four,
10		Episode 8, at 18:41) (Dkt. 79-3).
11		
12		
13		
14		
15		
16		
17		► ► <b>1:42 / 3:02</b>
18		STAR TREK: ENTERPRISE
19		S3:E8 "Twilight"
20		
21		
22		
23		
24		
25		
26		
27 28	24. Defendants' works incorporate	Undisputed that Garth of Izar is
∠o tnership	10969556.1	13 PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2	Plaintiffs' character, Garth of Izar.	incorporated, but disputed that
3	Van Citters Decl., ¶¶ 17-20.	Defendants have portrayed him in
4		the same way as Defendant, and
5		disputed that Plaintiffs have
6		copyright protection in Garth of
7		Izar.
8		
9		See Evidentiary Objections to Van
10		Citters Decl.
11		
12		PLAINTIFFS' REPLY:
13		This is a false "dispute."
14		Defendants do not cite any
15		evidence to contradict this
16		undisputed testimony.
17	25. Garth of Izar, like Captain Kirk, was a	Disputed. Garth of Izar was a Fleet
18	Starfleet Captain.	Captain, and thus closer to an
19	Van Citters Decl., ¶ 18.	Admiral, commanding many ships,
20		than a ship captain like Kirk.
21		
22		ECF Nos. 72-2, 79, Grossman
23		Decl., Ex. 1 (Whom Gods Destroy
24		at 32:20)
25		
26		See also Evidentiary Objections to
27		Van Citters Decl.
28		
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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		PLAINTIFFS' REPLY:
4		This is a false "dispute." The cited
5		evidence does not support the
6		claimed dispute. In addition, on
7		Kickstarter, Defendants explained
8		that Garth is: "Captain Kirk's hero
9		and the role model for a generation
10		of Starfleet officers. Garth charted
11		more planets than any other
12		Captain and was the hero of the
13		Battle of Axanar. His exploits are
14		required reading at Starfleet
15		Academy." Grossman Decl., ¶ 54,
16		Ex. HHH (Kickstarter fundraising
17		page) (Dkt. No. 88-1).
18	26. In The Original Series, Garth of Izar	Undisputed
19	was introduced and portrayed as a former	
20	starship captain whose exploits were "required	See Evidentiary Objections to Van
21	reading" at the Starfleet Academy due to his	Citters Decl.
22	heroic conduct during the Battle of Axanar.	
23	Van Citters Decl., ¶ 18.	PLAINTIFFS' REPLY:
24		The fact is undisputed.
25	27. In the episode that introduced Garth	Undisputed
26	(entitled "Whom Gods Destroy"), Captain	
27	Kirk finds Garth in an asylum after he had	See Evidentiary Objections to Van
28		
	100/005561	PLAINTIFFS' RESPONSE TO DEFENDANTS

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2	been declared criminally insane.	Citters Decl.
3	Van Citters Decl., ¶ 18.	
4		PLAINTIFFS' REPLY:
5		The fact is undisputed.
6	28. This character was further developed	Undisputed
/	and explored by Plaintiffs in the 2003 novel	
8	entitled "Garth of Izar."	See Evidentiary Objections to Van
9	Van Citters Decl., ¶ 18.	Citters Decl.
10		
11		PLAINTIFFS' REPLY:
12		The fact is undisputed.
13	29. Paramount has a licensed work called	Undisputed but immaterial, as
14	Star Trek: The Role Playing Game.	Plaintiffs have not alleged
15	Van Citters Decl., ¶ 12.	infringement of that work in this
16 17		action.
17		
18		ECF No. 75-3, Oki Decl., Ex. 1
19 20		(CBS Studios Inc.'s Amended
20		Responses to Interrogatories, Set
21		One, Response to Interrogatory
22		Nos. 4-9)
23		
24		ECF No. 75-4, Oki Decl., Ex. 2
25		(Paramount Pictures Corporations
26		Amended Responses to
27		Interrogatories, Set One, Response
28		
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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		to Interrogatory Nos. 4-9)
3		
4		ECF No. 26, FAC, Appendix A
5		¶¶ 2-6
6		
7		See Evidentiary Objections to Van
8		Citters Decl.
9		
10		PLAINTIFFS' REPLY:
11		This fact is undisputed and
12		Defendants misrepresent the
13		evidence. The cited evidence does
14		include Star Trek: The Role
15		Playing Game and its related
16		supplements as infringed works.
17		See Oki Declaration, Dkt. 75-3
18		(CBS' interrogatory responses) at
19 20		3:8-9 (items 15 and 16), 4:10-11
20		(items 14 and 15) and 7:16-21. See
21		also Dkt. 75-4 (Paramount's
22		interrogatory responses) at 3:8-9
23		(items 14 and 15), 4:11-12 (items
24 25		14 and 15), and 7:16-21.
	30. <i>Garth of Izar</i> 's military battles against	Undisputed
26 27	the Klingon Empire, including the Battle of	
27	Axanar, were explored by Paramount's	See Evidentiary Objections to Van
28		PLAINTIFFS' RESPONSE TO DEFENDANTS'

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
licensee, FASA, in Star Trek: The Role	Citters Decl.
Playing Game.	
Van Citters Decl., ¶ 19.	PLAINTIFFS' REPLY:
	The fact is undisputed.
31. The Four Years War supplement is a	Undisputed, but immaterial, as
guide that was used in connection with Star	Plaintiffs have not alleged
Trek: The Role Playing Game.	infringement of that work in this
Van Citters Decl., ¶ 13.	action
	ECF No. 75-3, Oki Decl., Ex. 1
	(CBS Studios Inc.'s Amended
	Responses to Interrogatories, Set
	One, Response to Interrogatory
	Nos. 4-9)
	ECF No. 75-4, Oki Decl., Ex. 2
	(Paramount Pictures Corporation
	Amended Responses to
	Interrogatories, Set One, Respons
	to Interrogatory Nos. 4-9)
	ECF No. 26, FAC, Appendix A
	¶¶ 2-6
	See Evidentiary Objections to Va
	Citters Decl.

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		PLAINTIFFS' REPLY:
4		This fact is undisputed and
5		Defendants misrepresent the
6		evidence. The cited evidence <b>does</b>
7		include <i>Star Trek: The Role</i>
8		Playing Game and its related
9		supplements as infringed works.
10		See Oki Decl., Dkt. 75-3 (CBS'
11		interrogatory responses) at 3:8-9
12		(items 15 and 16), 4:10-11 (items
13		14 and 15) and 7:16-21. See also
14		Dkt. 75-4 (Paramount's
15		interrogatory responses) at 3:8-9
16		(items 14 and 15), 4:11-12 (items
17		14 and 15), and 7:16-21.
18	32. The <i>Four Years War</i> supplement also	Disputed. The Battle of Axanar is
19	describes the Battle of Axanar (a related	discussed on only two pages of The
20	mission guide for the role-playing game was	Four Years War supplement. The
21	called "Return to Axanar"), and the military	Battle of Axanar discussed in The
22	campaigns of Federation Fleet Captain Garth	Four Years War supplement is
23	of Izar.	entirely different than the battle
24	Van Citters Decl., ¶¶ 13, 14, Ex. AAA	portrayed in Prelude to Axanar.
25	(The Four Years War supplement).	The Four Years War supplement
26		does not describe the military
27		campaigns of Garth of Izar. Garth
28		
		PLAINTIFFS' RESPONSE TO DEFENDANTS'

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		of Izar is only mentioned twice in
3		the supplement: once in a
4		discussion of the Battle of Axanar,
5		and in a one-sentence summary of
6		the Battle of Axanar in a timeline.
7		
8		ECF No. 72-60, Van Citters Decl.,
9		¶¶ 13, 14, Ex. AAA (The Four
10		Years War supplement at pp. 16,
11		35).
12		
13		See also Evidentiary Objections to
14		Van Citters Decl.
15		
16		PLAINTIFFS' REPLY:
17		This is a false "dispute." The Four
18		Years War Supplement is not a
19 20		narrative description of the
20		fictional Four Years War. Instead,
21		this document mimics a reference
22		library with articles sourced from
23		many different "authors." Of the
24 25		document's multiple sections, one
25 26		provides a history of the Four
26 27		Years War. The remaining
27 28		sections are reserved for
20		PLAINTIFES' RESPONSE TO DEFENDANTS'

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1     "Undisputed" Facts       2     ••••••••••••••••••••••••••••••••••••	Opposing Party's Responses
	background information such as
3	weapons technology, galactic
	politics, and military tactics.
5	
6	Within the narrative section of <i>The</i>
7	Four Years War, Garth of Izar is
8	the most prominent individual
9	mentioned and the Battle of Axana
0	is among the most important
1	engagements described. Overall,
2	Garth is mentioned by name more
3	often than any other character and
4	his exploits, which include two
5	separate battles around the planet
6	Axanar, are pivotal to turning the
7	tide of the war against the
8	Klingons. Defendants described,
9	and used, The Four Years War
0	Supplement as their "bible" in
1	creating Prelude to Axanar.
2	Grossman Decl., ¶ 14, Ex. C
3	(Gossett tr. at 48:10-50:10), Ex. I
4	(April 26, 2014 email from
5	Christian Gossett to Alec Peters).
6	
7	(Dkt. 79-3).
8	

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1		
	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		Contrary to Defendants' count,
3		Garth is mentioned in five sections
4		of the Four Years War Supplement,
5		including in three timeline entries.
6		Van Citters Decl., ¶¶ 13, 14, Ex.
7		AAA (The Four Years War
8		supplement) (Dkt. 72-60).
9	33. The copyright in The <i>Four Years War</i> is	Undisputed
10	owned by Paramount.	
11	Van Citters Decl., ¶ 14, Ex. AAA (The	See Evidentiary Objections to Van
12	Four Years War supplement), Ex. BBB	Citters Decl.
13	(copyright registration for The Four Years	
14	War).	PLAINTIFFS' REPLY:
15		The fact is undisputed.
16	34. The Four Years War was used as source	Undisputed that Defendants had a
17	material by Defendants in order to create their	copy of the Four Years War, but
18	Axanar Works.	disputed that it was used as source
19	Grossman Decl., ¶ 13, Ex. A (Peters tr.	material besides in a <i>de minimus</i>
20	at 38:22-41:17); ¶ 14, Ex. C (Gossett tr. at	way. Grossman Decl., ¶ 13, Ex. A
21	48:10-50:10), Ex. I (April 26, 2014 email from	(Peters tr. at 40:19-41:17)
22	Christian Gossett to Alec Peters).	
23		See Evidentiary Objections to Van
24		Citters Decl.
25		
26		See also Evidentiary Objections to
27		Grossman Decl.
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 22 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	PLAINTIFFS' REPLY:
	This fact should be deemed to be
	undisputed.
	Defendants' argument that <i>The</i>
	Four Years War was not used as
	source material ignores, and fails t
	refute, the testimony of <i>Prelude</i> 's
	director, Christian Gossett, that
	Peters used <i>The Four Years War</i>
	supplement as a "bible," or the
	email describing it as such.
35. Defendants admitted that they used The	Disputed. Defendants had a copy
<i>Four Years War</i> to create the Axanar Works.	of the <i>Four Years War</i> , but did not
Van Citters Decl., ¶ 14, Ex. AAA (Four	use to create Axanar Works beside
Years War).	in a <i>de minimus</i> way with respect
Grossman Decl., ¶ 13, Ex. A (Peters tr.	to the name of a planet. Grossman
at 38:22-41:17), ¶ 14, Ex. C (Gossett tr. at	Decl., ¶ 13, Ex. A (Peters tr. at
48:10-50:5), Ex. I (April 26, 2014 email from	40:19-41:17);
Christian Gossett to Alec Peters).	
	Grossman Decl., ¶ 13, Ex. A
	(Peters Tr. Vol. I at 41:8-17)
	See also Evidentiary Objections to
	Van Citters Decl.
	1
10969556.1 23	PLAINTIFFS' RESPONSE TO DEFENDAN OPPOSITION TO STATEMENT

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		See also Evidentiary Objections to
3		Grossman Decl.
4		
5		PLAINTIFFS' REPLY:
6		This fact should be deemed to be
7		undisputed.
8		Defendants' argument that The
9		Four Years War was not used as
10		source material ignores, and fails to
11		refute, the testimony of <i>Prelude's</i>
12		director, Christian Gossett, that
13		Peters used The Four Years War
14		supplement as a "bible," or the
15		email describing it as such.
16	36. Star Trek: Prelude to Axanar, is a	Undisputed
17	twenty-one minute film.	
18	Grossman Decl., ¶ 18, Ex. A (Peters tr.	See Evidentiary Objections to
19	at 34:10-12).	Grossman Decl.
20		
21		PLAINTIFFS' REPLY:
22		The fact is undisputed.
23	37. Star Trek: <i>Prelude to Axanar</i> was	Undisputed
24	funded on Kickstarter.	1
25	Grossman Decl., ¶ 18, Ex. A (Peters tr.	See Evidentiary Objections to
26	at 34:5-9).	Grossman Decl.
27		
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 24 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		PLAINTIFFS' REPLY:
3		The fact is undisputed.
4	38. Kickstarter is a crowdsourcing website	Undisputed
5	where parties can raise money to fund their	
6	projects.	See Evidentiary Objections to
7	Grossman Decl., ¶ 18, Ex. A (Peters tr.	Grossman Decl.
8	at 69:14-70:6).	
9		PLAINTIFFS' REPLY:
10		The fact is undisputed.
11	39. In exchange for donations on <i>Prelude to</i>	Disputed. The merchandise did not
12	Axanar, Defendants provided donors with	include any Star Trek marks and
13	perks that included various branded	was "Axanar" branded, not Star
14	merchandise.	Trek branded.
15	Grossman Decl., ¶ 69, Ex. D (Kingsbury	
16	tr. at 114:16-25).	Peters Decl., ¶ 11
17		
18		See also Evidentiary Objections to
19 20		Grossman Decl.
20		
21		PLAINTIFFS' REPLY:
22		This fact should be deemed
23		undisputed The fact does not state
24		that the merchandise was branded
25 26		with the name "Star Trek."
26	40. Prelude to Axanar was released on	Undisputed
27	YouTube in August of 2014.	
28		

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
Grossman Decl., ¶ 19, Ex. L (YouTube	See Evidentiary Objections to
page).	Grossman Decl.
	PLAINTIFFS' REPLY:
	The fact is undisputed.
41. Defendant Peters wrote the <i>Prelude to</i>	Disputed. Defendant Alec Peters
Axanar screenplay.	collaborated with Christian Gosse
Grossman Decl., ¶ 23, Ex. A (Peters tr.	in writing the screenplay for
at 57:1-58:25).	Prelude to Axanar.
	Peters Decl., ¶ 2
	ECF No. 75-19, Peters Decl., Ex.
	(Prelude to Axanar)
	See also Evidentiary Objections to
	Grossman Decl.
	PLAINTIFFS' REPLY:
	This is not a "dispute" of the state
	fact.
42. Star Trek: <i>Prelude to Axanar</i> features	Undisputed
Plaintiffs' character, Garth of Izar, and	
describes his military exploits during the war	See Evidentiary Objections to Var
between the Federation and the Klingon	Citters Decl.
Empire.	

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2	Van Citters Decl. ¶¶ 15, 17, Exhibit 19	See also Evidentiary Objections to
3	(Prelude to Axanar).	Grossman Decl.
4	Grossman Decl., ¶ 23, Ex. A (Peters tr.	
5	at 36:20-37:25; 46:18-48:1); ¶ 24, Ex. B	PLAINTIFFS' REPLY:
6 7	(Burnett tr. at 191:17-192:25).	The fact is undisputed.
7 8	43. <i>Prelude to Axanar</i> features the	Undisputed
0 9	Federation.	
	Van Citters Decl., ¶¶ 15, 37, 38 Exhibit	See Evidentiary Objections to Van
10 11	19 (Prelude to Axanar).	Citters Decl.
	Grossman Decl., ¶ 23, Ex. A (Peters tr.	
12 13	at 44:21-55:20, ¶ 24, Ex. B (Burnett tr. at	See also Evidentiary Objections to
13 14	107:6-15); ¶ 22, Ex. C (Gossett tr. at 67:5-	Grossman Decl.
14	70:23), Ex. N (brochure for Prelude to	
15	Axanar).	PLAINTIFFS' REPLY:
17		The fact is undisputed.
18	44. <i>Prelude to Axanar</i> features Klingons.	Disputed. Prelude to Axanar
19	Van Citters Decl., ¶¶ 15, 25-28, Exhibit	features only one Klingon, Kharn.
20	19 (Prelude to Axanar).	
	19 (Freiude to Axunur).	
	Grossman Decl., ¶ 23, Ex. A (Peters tr.	Peters Decl., ¶ 9
21		Peters Decl., ¶ 9
21 22	Grossman Decl., ¶ 23, Ex. A (Peters tr.	Peters Decl., ¶ 9 ECF No. 75-19, Peters Decl., Ex. 1
21 22 23	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20); ¶ 22, Ex. C (Gossett tr. at	
21 22 23 24	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to</i>	ECF No. 75-19, Peters Decl., Ex. 1
<ul> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ul>	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to</i>	ECF No. 75-19, Peters Decl., Ex. 1
<ul> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ul>	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to</i>	ECF No. 75-19, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> )
<ul> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ul>	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to</i>	ECF No. 75-19, Peters Decl., Ex. 1 ( <i>Prelude to Axanar</i> ) <i>See also</i> Evidentiary Objections to

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		See also Evidentiary Objections to
3		Grossman Decl.
4		
5		PLAINTIFFS' REPLY:
6		This is a false "dispute" because
7		the Klingon race is central to the
8		story of <i>Prelude</i> . There are several
9		references to Klingons in the
10		dialogue:
11		(1) "But it represents something
12		very different to the Klingon
13		Empire. Growing tired of
14		diplomacy, the [Klingon] high-
15		chancellor proclaims" Peters
16		Decl., Ex. 1, Prelude to Axanar)
17		(Dkt. No. 75-19) and Van Citters
18		Decl.,¶ 15, Ex. 19, Prelude to
19 20		Axanar at 1:00-:05 (Dkt. No. 72-
20		60).
21		(2) "Klingons were certain that
22		they could merely take anything
23		they wanted." (Id. at 2:33-36);
24		(3) "Unfortunately, the Klingons
25 26		were unconvinced the Federation
26		was any sort of match for them."
27		( <i>Id.</i> at 3:11-16);
28		

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		(4) "Yes, the Klingons were toying
3		with us. They were using a strategy
4		known to the Klingon people as
5		wuvHa'chu'wl'to'" (Id. at 4:31-
6		42).
7		In addition, Prelude has Klingon
8		ships. Van Citters Decl. ¶¶ 15, 35-
9		36, Exhibit 19 (Prelude to Axanar)
10		(Dkt. 72-60). Peters Decl., ¶ 10
11		(Dkt. 90-10).
12	45. <i>Prelude to Axanar</i> features Vulcans.	Disputed. Prelude to Axanar
13	Van Citters Decl. ¶¶ 15, 29-32, Exhibit	features only one Vulcan, Soval
14	19 (Prelude to Axanar).	
15	Grossman Decl., ¶ 23, Ex. A (Peters tr.	Peters Decl., ¶ 8
16	at 44:21-55:20).	2 11
17		ECF No. 75-19, Peters Decl., Ex. 1
18		(Prelude to Axanar)
19		(
20		See also Evidentiary Objections to
21		Van Citters Decl.
22		
23		See also Evidentiary Objections to
24		Grossman Decl.
25		Grossman Deer.
26		PLAINTIFFS' REPLY:
27		
28		This is a false "dispute" because
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 29 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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	"Undisputed" Facts	<b>Opposing Party's Responses</b>
		the Vulcan race is central to the
		story of Prelude. For example,
		there are several references to
		Vulcans in the dialogue:
		(1) "the job of preventing war
		and leading the peace delegations,
		fell to Vulcan." Peters Decl., Ex.
		1, Prelude to Axanar (Dkt. 75-19)
		and Van Citters Decl., ¶ 15, Ex. 19,
		(Prelude to Axanar) at 1:15-20
		(Dkt. 72-60).
		(2) Vulcan intelligence is, if I may
		say, unparalleled, but" (Id. at
		3:48-54).
		(3) "As for Vulcans,though we
		had limited our contribution to
		propulsion, environmental, and
		defensive technologies"
		( <i>Id.</i> at 10:14-23).
46.	Prelude to Axanar features Starfleet.	Disputed. "Starfleet" is a generic
	Van Citters Decl. ¶¶ 15, 33-34, Exhibit	term used in science fiction
19 ( <i>F</i>	Prelude to Axanar).	generally, and in Star Trek itself, to
	Grossman Decl., ¶ 23, Ex. A (Peters tr.	indicate space ships from different
at 44	:21-55:20).	races.
		Peters Decl., ¶ 7
1096955	6.1 30	PLAINTIFFS' RESPONSE TO DEFENDANTS OPPOSITION TO STATEMENT O

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	ECF Nos. 72-2, 79, Grossman
	Decl., Ex. 1 (Errand of Mercy at
	42:28)
	See also Evidentiary Objections to
	Van Citters Decl.
	See also Evidentiary Objections to
	Grossman Decl.
	PLAINTIFFS' REPLY:
	This fact should be deemed
	undisputed as Peters admitted that
	(Grossman
	Decl., ¶ 23, Ex. A (Peters tr. at
	44:21-55:20), ¶ 33, Ex. A (Peters
	tr. at 414:2-415:19), ¶ 37, Ex. A
	(Peters tr. at 373:10-375:16)(Dkt.
	(1 etens u. u. 575.10 575.10)(D.u. 79-3)).
	Further, there is no evidence to
	support the claim that "Starfleet" is
	or was a "generic" term used in
	other science fiction works.
47. <i>Prelude to Axanar</i> features Starflee	et Undisputed

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2	officers and commanders, including Garth of	
3	Izar.	See Evidentiary Objections to Van
4	Van Citters Decl. ¶¶ 15, 17-18, Exhibit	Citters Decl.
5	19 (Prelude to Axanar).	
6	Grossman Decl., ¶ 23, Ex. A (Peters tr.	See also Evidentiary Objections to
/	at 36:20-37:16; 414:2-415:19), ¶¶ 33, Ex. S	Grossman Decl.
8	(July 8, 2014 email from Alec Peters to	
9	Christian Gossett and Rocio Everett).	PLAINTIFFS' REPLY:
10		The fact is undisputed.
11	48. <i>Prelude to Axanar</i> features the character	Undisputed
12	Soval.	
13	Van Citters Decl. ¶¶ 15, 21-24, Exhibit	See Evidentiary Objections to Van
14	19 (Prelude to Axanar).	Citters Decl.
15		PLAINTIFFS' REPLY:
16 17		The fact is undisputed.
17	49. <i>Prelude to Axanar</i> features Klingon	Disputed. Prelude to Axanar
18	battlecruisers.	features different Klingon battle-
19 20	Van Citters Decl. ¶¶ 15, 35-36, Exhibit	cruisers from those seen in
20 21	19 (Prelude to Axanar).	Plaintiffs' Works. The battle-
		cruisers featured in Prelude to
22		Axanar are original designs created
23		by Axanar VFX coordinator Tobias
24		Richter.
25 26		
20 27		Peters Decl., ¶ 10
27		
	10969556.1 32	PLAINTIFFS' RESPONSE TO DEFENDANTS'
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1     32       202828-10048	OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		See also Evidentiary Objections to
3		Van Citters Decl.
4		
5		PLAINTIFFS' REPLY:
6		This is a false "dispute."
7		The works speak for themselves,
8		and Defendants clearly used
9		Klingon battlecruisers in the
10		Axanar Works. Defendants' cited
11		evidence, Peters' declaration, in
12		fact concedes that <i>Prelude</i> features
13		Klingon Battlecruisers. (Dkt. 90-
14		10, ¶ 10).
15	50. Defendants have created substantially	Disputed. The representation of
16	similar representations of Klingons, and in	Kharn, the only Klingon featured in
17	doing so have copied the makeup, hair,	Prelude to Axanar, is not
18		
19	costumes, weaponry and accessories worn by	substantially similar to the
20	those species.	Klingons seen in Plaintiffs' Works.
21	Van Citters Decl. ¶¶ 15, 25-28, Exhibit	Klingons did not even have a
22	19 (Prelude to Axanar).	consistent appearance across
23	Grossman Decl., ¶¶ 30, 31 Ex. B	Plaintiffs' Works, appearing as
24	(Burnett tr. at 202:21-203:25; 215:4-216:9);	little more than actors wearing
25	¶ 26, Ex. A (Peters tr. at 82:6-85:12), ¶ 45	brown makeup to darken their skin
26	(Peters tr. at 44:21-55:20); ¶ 41, Ex. A (Peters	in Star Trek: The Original Series,
20	tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at	and appearing as characters with
27	page 3 for use of Bat'leth and page 30 for use	large head ridges, and big, dog-like
20		

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
of Mek'leth).	teeth in later television episodes
	and motion pictures.
	Peters Decl., ¶ 9
	Grossman Decl., ¶ 13, Ex. A
	(Peters Tr., Vol. II at 360:12-
	361:11)
	ECF No. 75-19, Peters Decl., Ex.
	(Prelude to Axanar)
	See also Evidentiary Objections to
	Van Citters Decl.
	See also Evidentiary Objections to
	Grossman Decl.
	PLAINTIFFS' REPLY:
	This is a false "dispute." Mr. Pete
	testified that
	PLAINTIFFS' RESPONSE TO DEFENDAN
10969556.1 202828-10048	34 OPPOSITION TO STATEMENT UNCONTROVERTED FA

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations Ш Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 36 of 179 Page ID #:7017

"Undisputed" Facts	Opposing Party's Responses
	. (Grossman Dec.
	¶ 23, Ex. A (Peters tr. 46:18-48:1)
	(Dkt. 79-3). Mr. Burnett also
	testified
	Grossman
	Decl., ¶ 30, Ex. B (Burnett tr. at
	203:17-19) (Dkt. 79-3).
51. Defendants have created substantially	Disputed. The one Vulcan
similar representations of Vulcans, and in	appearing in Defendants' Works
doing so have copied the makeup, hair,	substantially different: his hair,
costumes, and accessories worn by those	age, and costume are different from
species.	any Vulcan seen in Plaintiffs'
Grossman Decl., ¶ 26, Ex. A (Peters tr.	Works.
at 82:6-85:12); Grossman Decl., ¶ 23, Ex. A	
(Peters tr. at 44:21-55:20).	Peters Decl., ¶ 8
	Grossman Decl., ¶ 13, Ex. A
	(Peters Tr., Vol. II at 360:12-
	361:11)
	ECF No. 75-19, Peters Decl., Ex.
	(Prelude to Axanar)

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	See also Evidentiary Objections to
	Van Citters Decl.
	See also Evidentiary Objections to
	Grossman Decl.
	PLAINTIFFS' REPLY:
	This fact should be deemed
	admitted.
	Defendants do not dispute that
	Peters conceded that he
	intentionally copied elements suc
	as the character Soval, Vulcans, t
	planet Vulcan, Vulcan architectur
	and the Vulcan council to create a
	Star Trek film. Grossman Decl.,
	26, Ex. A (Peters tr. at 82:6-85:12
	(Dkt. 79-3) (UMF 77). Defendan
	also do not dispute that Peters
	admitted that he directed Vulcan
	writing to be placed on the costur
	of Vulcan Ambassador Soval.
	Grossman Decl., ¶ 25, Ex. A
	(Peters tr. at 319:8-323:10), Ex. C
	(March 17, 2014 email from Alec

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		Peters to Christian Gossett and
3		Hamilton Cox) (Dkt. 79-3) (UMF
4		53).
5		
6		Moreover, Defendants' portrayal of
7		Soval is the same as Soval in the
8		Star Trek Copyrighted Works,
9		including his hair, makeup, ears,
10		and costume.
11		See Van Citters Decl., ¶¶ 21-24,
12		45-47. (Dkt. 72-60).
13	52. Mr. Peters also admitted that	Disputed.
14		
15		Peters Decl., ¶¶ 8-9
16		
17	Grossman Decl., ¶ 26, Ex. A (Peters tr.	Grossman Decl., ¶ 13, Ex. A
18	at 82:6-85:12); ¶ 23, Ex. A (Peters tr. at 44:21-	(Peters Tr., Vol. II at 360:12-
19	55:20).	361:11)
20		
21		ECF No. 75-19, Peters Decl., Ex. 1
22		(Prelude to Axanar)
23		
24		See also Evidentiary Objections to
25		Grossman Decl.
26		
27		PLAINTIFFS' REPLY:
28	L	
Loeb & Loeb A Linited Liability Partnership Including Professional Corporations	10969556.1 37 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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2 <b>"Undisputed" Fa</b>	cts Opposing Party's Responses
	This fact should be deemed
3	undisputed.
	Peters' testimony is quoted in the
	stated fact and nothing in Peters'
	declaration can, or does, contradic
	his sworn deposition testimony.
	Grossman Decl., ¶ 26, Ex. A
	(Peters tr. at 82:6-85:12); ¶ 23, Ex
	A (Peters tr. at 44:21-55:20) (Dkt.
	79-3).
53. Mr. Peters admitted that	ne Undisputed
	See Evidentiary Objections to
Grossman Decl., ¶ 25, Ex	x. A (Peters tr. Grossman Decl.
at 319:8-323:10), Ex. O (March	17, 2014
email from Alec Peters to Chris	tian Gossett <b>PLAINTIFFS' REPLY</b> :
and Hamilton Cox).	The fact is undisputed.
54. Mr. Peters stated "I am th	he keeper of the Undisputed
faith with fans. They love that a	bout us. Our
faithfulness to the universe."	See Evidentiary Objections to
Grossman Decl., ¶ 34, Ex	
at 471:25-475:1), Ex. U (March	
from Alec Peters to Christian G	
	The fact is undisputed.
55. Mr. Peters testified that	Undisputed

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	See Evidentiary Objections to
	Grossman Decl.
Grossman Decl., ¶ 34, Ex. A (Peters tr.	PLAINTIFFS' REPLY:
at 420:13-421:19; 471:25-475:1), Ex. T (July	The fact is undisputed.
15, 2014 email from Christian Gossett to Alec	
Peters); Ex. U (March 7, 2015 email from Alec	
Peters to Christian Gossett); ¶ 27, Ex. A	
(Peters tr. at 347:4-348:10), Ex. P (email	
exchange between Mr. Peters and Mr.	
Gossett); ¶ 47, Ex. A (Peters tr. at 456:24-	
458:18), Ex. BB (Peters email exchange), ¶ 28,	
Ex. A(Peters tr. at 376:16-377:11), ¶ 38, Ex. A	
(Peters tr. at 377:17-378:13), Ex. Y (email	
exchange), ¶ 37, Ex. A (Peters tr. at 373:10-	
375:16), Ex. X (Peters email exchange).	
56. The director of <i>Prelude to Axanar</i>	Disputed. Calls for a legal
testified that Prelude to Axanar is an	conclusion, fails to consider fair
infringing work.	use, and is based on a fundamenta
Grossman Decl., ¶ 21, Ex. C (Gossett tr.	misunderstanding of copyright lav
at 185:25-186:8).	as he also testified that more
	original elements make it more
	infringing, which is incorrect.
	Also, Mr. Gossett has a personal
	vendetta against Mr. Peters and is
	no longer associated with Axanar
10969556.1 39	PLAINTIFFS' RESPONSE TO DEFENDAN OPPOSITION TO STATEMEN

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		so his credibility on these issues at
3		the very least creates yet another
4		factual dispute.
5		
6		Ranahan Decl., ¶ 5, Ex. E (Gossett
7		Tr. at 124:7-14, 139:5-140:18,
8		187:25-188:7)
9		
10		Peters Decl., ¶¶ 22-23
11		
12		See also Evidentiary Objections to
13		Grossman Decl.
14		
15		PLAINTIFFS' REPLY:
16		This is a false "dispute."
17		Mr. Gossett testified that he
18		believed that Prelude was
19		infringing in response to a question
20		by Defendants' counsel.
21		Defendants cannot dispute Mr.
22		Gossett's testimony on the basis
23		that he supposedly "dislikes"
24		Peters. Peters Decl., ¶ 22 (Dkt. 90-
25		10).
26	57. Prior to the filing of this lawsuit,	Disputed. Defendants still do not
27	Axanar, Defendants drafted a final shooting	have a "final shooting script" for
28		

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2	script.	the unmade Potential Fan Film.
3	Grossman Decl., ¶ 41, Ex. A (Peters tr.	
4	at 77:5-9), Ex. AA (script).	Grossman Decl., ¶ 13, Ex. A
5		(Peters Tr., Vol. I at 77:5-9)
6		
7		ECF. No. 75-8, Oki Decl., Ex. 6
8		(Hunt Tr. at 49:10-50:24)
9		
10		See also Evidentiary Objections to
11		Grossman Decl.
12		
13		PLAINTIFFS' REPLY:
14		This is a false "dispute." This fact
15		is based on Mr. Peters' sworn
16		deposition testimony.
17		Mr. Peters testified that,
18		
19		
20		
21		
22		
23		Grossman Decl., ¶41, Ex. A
24		(Peters tr. at 77:5-9), Ex. AA
25		(script) (Dkt. 79-3).
26		
27		Mr. Hunt's testimony cited by
28		
eb	10969556.1 41	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF
artnership sional s	202828-10048	UNCONTROVERTED FACTS

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		Defendants does not contradict
3		Peters' testimony and therefore
4		does not create an issue of fact.
5	58. In 2015, Defendants released one scene	Undisputed
6	from the full-length film, which they call the	
7	"Vulcan Scene."	See Evidentiary Objections to Van
8	Van Citters Decl., ¶ 43, Exhibit 20	Citters Decl.
9	(Vulcan Scene).	
10	Grossman Decl., ¶ 43, Ex. A (Peters tr.	See also Evidentiary Objections to
11	at 79:11-17).	Grossman Decl.
12		
13		PLAINTIFFS' REPLY:
14		The fact is undisputed.
15	59. The Vulcan Scene features Vulcans.	Undisputed
16	Van Citters Decl., ¶ 43, Exhibit 20	
17	(Vulcan Scene); ¶ 47.	See Evidentiary Objections to Van
18	Grossman Decl., ¶ 43, Ex. A (Peters tr.	Citters Decl.
19	at 425:11-426:3; 77:5-9); Ex. AA (script at	
20	pages 21-23).	See also Evidentiary Objections to
21		Grossman Decl.
22		
23		PLAINTIFFS' REPLY:
24		The fact is undisputed.
25	60. The Vulcan Scene features the character	Undisputed
26	Soval.	
27	Van Citters Decl., ¶ 43, Exhibit 20	See Evidentiary Objections to Van
28		
	10969556.1 42	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF
rship al	10969556.1     42       202828-10048	UNCONTROVERTED FACTS

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>	
2	(Vulcan Scene); ¶¶ 45-46.	Citters Decl.	
3	Grossman Decl., ¶ 41, Ex. A (Peters tr.		
4	at 77:5-9), Ex. AA (script at pages 21-23).	See also Evidentiary Objections to	
5		Grossman Decl.	
6			
7		PLAINTIFFS' REPLY:	
8 9		The fact is undisputed.	
	61. The Vulcan Scene features the planet	Undisputed	
10 11	Vulcan.		
11	Van Citters Decl., ¶ 43, Exhibit 20	See Evidentiary Objections to Van	
12	(Vulcan Scene); ¶¶ 48, 49.	Citters Decl.	
13	Grossman Decl., ¶ 41, Ex. A (Peters tr.		
14	at 77:5-9), Ex. AA (script at pages 21-23);	See also Evidentiary Objections to	
16	¶ 44, Ex. N (Burnett tr. at 103:13-18).	Grossman Decl.	
17			
18		PLAINTIFFS' REPLY:	
19		The fact is undisputed.	
20	62. The shot of planet Vulcan in the Vulcan	Disputed. The shot of planet	
20	Scene was copied from Star Trek III: The	Vulcan in the Vulcan Scene was	
21	Search for Spock.	not copied from Star Trek III: The	
22	Van Citters Decl., ¶ 43, Exhibit 20	Search for Spock.	
23	(Vulcan Scene); ¶ 48.		
24 25	Grossman Decl., ¶ 43, Ex. A (Peters tr.	Grossman Decl., ¶ 13, Ex. A	
23 26	at 82:2-85:12); ¶ 44, Ex. B (Burnett tr. at	(Peters Tr., Vol. I at 84:9-11)	
20 27	106:11-17).		
27		See also Evidentiary Objections to	
-0		PLAINTIFFS' RESPONSE TO DEFENDANTS'	
		PLAINTIFFS' RESPONSE TO DEFENDANTS'	

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	Van Citters Decl.
	See also Evidentiary Objections to
	Grossman Decl.
	PLAINTIFFS' REPLY:
	This fact should be deemed
	undisputed. Peters' own sworn
	deposition testimony confirms th
	fact, and his subsequently-filed
	declaration cannot create a factua
	dispute.
	In the testimony that Defendants
	cite, Peters states:
	Grossman Decl., ¶ 13, Ex. A
	(Peters tr. at 84:9-11) (Dkt. 79-3)
	Defendants' cited evidence does
	not support their assertion that
	"[t]he shot of planet Vulcan in th
	Vulcan Scene was not copied from
	Star Trek III: The Search for
	Spock." Rather, all of the eviden
	shows that Defendants did copy

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"Undisputed" Facts	S Opposing Party's Responses
	that Star Trek work.
63. The Vulcan Scene features	Vulcan Undisputed
ships.	
Van Citters Decl., ¶ 43, Ext	nibit 20See Evidentiary Objections to Value
(Vulcan Scene); ¶50.	Citters Decl.
Grossman Decl., ¶ 43 Ex. A	A (Peters tr.
at 82:2-85:12).	See also Evidentiary Objections
	Grossman Decl.
	<b>PLAINTIFFS' REPLY</b> :
	The fact is undisputed.
64. Defendant Alec Peters hims	self Disputed. A "locked" script sim
announced, on August 15, 2015, t	hat he had means that writers do not add set
completed the "fully revised and l	ocked script" scenes or characters before
which he referred to as "the best S	Star Trek shooting begins. Mr. Peters did
movie script ever!"	refer to it as "the best Star Trek
Grossman Decl., ¶ 40, Ex. 2	Z (Facebook movie script ever!" He was
post).	expressly restating a comment by
	someone else.
	ECF No. 75-19, Peters Decl., ¶ 1
	ECF Nos. 75-22, 77-8, 77-9, Pet
	Decl., Ex. 3 (July 1, 2016 Axana
	Script)

UNCONTROVERTED FACTS

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		See also Evidentiary Objections to
3		Grossman Decl.
4		
5		PLAINTIFFS' REPLY:
6		This fact should be deemed
7		undisputed.
8		The cited evidence is hearsay, lack
9		foundation, and most importantly,
10		does not contradict the fact that
11		Peters made the announcement on
12		Facebook.
3	65. The Axanar Script features	Undisputed
14		
15	Grossman Decl., ¶ 41, Ex. A (Peters tr.	See Evidentiary Objections to
16	at 77:5-9), ¶ 42, Ex. AA (Axanar Script at	Grossman Decl.
17	page 8), ¶ 22, Ex. C (Gossett tr. at 112:14-	
18	113:8).	PLAINTIFFS' REPLY:
19		The fact is undisputed.
20	66. The Axanar Script features	Undisputed
21		1
22	Grossman Decl., ¶ 41, Ex. A (Peters tr.	See Evidentiary Objections to
23	at 77:5-9), $\P$ 42, Ex. AA (Axanar Script at	Grossman Decl.
24	page 21).	Grossman Deen.
25	puge 21).	PLAINTIFFS' REPLY:
26		The fact is undisputed.
27	67 The Avener Seriet features	-
28	67. The Axanar Script features	Undisputed
		PLAINTIFFS' RESPONSE TO DEFENDANT

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3	Grossman Decl., ¶ 41, Ex. A (Peters tr.	See Evidentiary Objections to
4	at 77:5-9), ¶ 42, Ex. AA (Axanar Script at	Grossman Decl.
5	page 8), ¶ 45, Ex. A (Peters tr. at 362:9-	
6	363:13); ¶ 46, Ex. B (Burnett tr. at 195:18-23).	PLAINTIFFS' REPLY:
7		The fact is undisputed.
8	68. Klingon Commander Chang was the	Undisputed
9	villain featured in Star Trek VI: The	
10	Undiscovered Country.	See Evidentiary Objections to
11	Grossman Decl., ¶ 45, Ex. A (Peters tr.	Grossman Decl.
12	at 44:21-55:20; 362:9-363:13).	
13		PLAINTIFFS' REPLY:
14		The fact is undisputed.
15	69.	Disputed. Of the 57 characters that
16 17		appear in the most recent script of
17		the unmade Potential Fan Film,
18		there are only seven characters that
19 20	Grossman Decl., ¶ 41, Ex. A (Peters tr.	have appeared previously in
20	at 77:5-9, ¶ 42, Ex. AA (Axanar Script), ¶ 46,	Plaintiffs' Works. All seven of
21	Ex. B (Burnett tr. at 194:9-195:16).	those characters played minor
22		roles.
23		
24		ECF Nos. 72-30, 79, Grossman
25 26		Decl., Ex. AA (Nov. 26, 2015
26		Axanar Script)
27		
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 47 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1		
2	"Undisputed" Facts	<b>Opposing Party's Responses</b>
3		Peters Decl., ¶ 29
4		ECF No. 75-19, Peters Decl., Ex.
5		(Prelude to Axanar)
6		
7		See also Evidentiary Objections to
8		Grossman Decl.
9		
0		PLAINTIFFS' REPLY:
1		The Axanar Script does not contain
2		50 "original" characters. The
3		referenced characters are Klingon
4		Vulcans, and Starfleet officers and
5		personnel. Van Citters Decl., ¶ 59
6		(Dkt. 72-60). Grossman Decl.,
7		¶ 42, Ex. AA (Axanar Script) (Dk
8		79-3).
	Axanar Script features the	Undisputed
0 character,		
1		See Evidentiary Objections to
2		Grossman Decl.
	sman Decl., ¶ 45, Ex. A (Peters	str.
	(3:13); ¶ 93, Ex. 11 (Star Trek V	/I: <b>PLAINTIFFS' REPLY</b> :
	red Country DVD).	The fact is undisputed.
	Axanar	Undisputed
7		
8		

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1	
"Undisputed" Facts	<b>Opposing Party's Responses</b>
	See Evidentiary Objections to Van
	Citters Decl.
	See also Evidentiary Objections to
	Grossman Decl.
Van Citters Decl., ¶ 15, Ex. 19 ( <i>Prelude</i>	
to Axanar).	PLAINTIFFS' REPLY:
Grossman Decl., ¶ 42, Ex. AA (Axanar	The fact is undisputed.
Script).	
72. Defendants also took characters,	Disputed. Defendants did not
sequence, themes, mood, dialogue, and	"take" characters, sequence,
settings from the Star Trek Copyrighted	themes, moods, or dialogue from
Works.	Plaintiffs' Works. None of the
Van Citters Decl., ¶¶ 15-62.	settings in <i>Prelude to Axanar</i> is the
	same as any setting used in
	Plaintiffs' Works. As for the
	Vulcan Scene, Defendants used
	only one setting that was similar t
	one that had appeared in Plaintiffs
	Works.
	ECF Nos. 72-30, 79, Grossman
	Decl., Ex. AA (Nov. 26, 2015
	Axanar Script)
	Peters Decl., ¶ 6
10969556.1 49	PLAINTIFFS' RESPONSE TO DEFENDAN OPPOSITION TO STATEMENT

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	ECF No. 75-19, Peters Decl., Ex.
	(Prelude to Axanar)
	See also Evidentiary Objections t
	Van Citters Decl.
	PLAINTIFFS' REPLY:
	This is a false "dispute," and the
	Axanar Works speak for
	themselves.
	The Axanar Works contain and
	copy settings such as the planets
	Vulcan and Qo'noS, and bridges
	Federation and Klingon ships,
	along with specific characters,
	dialogue and themes from
	Plaintiffs. Moreover, Peters
	testified that
	Grossman Decl., Ex
	A (Peters tr. at 55:6-9) (Dkt. 79-3
73. Defendants expressly set out to create an	Undisputed
authentic and "independent Star Trek film"	

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sponses
ns to
ns to Van

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2	"Undisputed" Facts	<b>Opposing Party's Responses</b>
3	o Axanar); ¶ 39.	PLAINTIFFS' REPLY:
4		The fact is undisputed.
5	5. Defendants set out to create a motion	Undisputed
6 p	icture "prequel" to The Original Series.	
7	Grossman Decl., ¶ 16, Ex. A(Peters tr.	See Evidentiary Objections to Van
	t 143:13-145:7), ¶ 35, Ex. V (blueprints for	Citters Decl.
°∥ tł	he soundstage at Paramount Studios that was	
u	sed for Star Trek); ¶ 36, Ex. A (145:12-	PLAINTIFFS' REPLY:
	47:10), Ex. W (blueprints from the set of The	The fact is undisputed.
	Next Generation), ¶ 32, Ex. C (Gossett tr. at	
	7:22-48:6); ¶ 15, Ex. A (Peters tr. at 371:13-	
	72:9), Ex. J (Mr. Gossett email exchange	
	with Mr. Peters) ¶ 17, Ex. B (Burnett tr. at	
	.02:12-203:4).	
	6. The element of stardates was first used	Disputed. Defendants' system of
	n the second pilot of The Original Series	stardates is merely the year
8	Where No Man Has Gone Before" in 1966	followed by a decimal point and a
9    (l	Reg. No. PA-58-303), and was subsequently	number to indicate the month.
	sed in The Next Generation, Deep Space	Defendants do not know how
	Nine, Voyager, and every Star Trek Motion	Stardates were measured in
	Picture.	Plaintiffs' Works, as Plaintiffs have
3	Van Citters Decl., ¶ 39.	never provided a formula.
4    5		
5		Peters Decl., ¶ 7
6		
7		ECF No. 75-19, Peters Decl., Ex. 1
.8	0969556.1 52	PLAINTIFFS' RESPONSE TO DEFENDANT OPPOSITION TO STATEMENT (

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		(Prelude to Axanar)
3		
4		See also Evidentiary Objections to
5		Van Citters Decl.
6		
7		PLAINTIFFS' REPLY:
8		This is a false "dispute."
9		The cited evidence does not
10		contradict the stated fact.
11		Peters testified
12		
13		
14 15		Grossman Decl, Ex. A (Peters tr. at
15		52:22-24) (Dkt. 79-3).
10		Peters also testified two other times
17		that
19		
20		. Grossman Decl, Ex. A
20		(Peters tr. at 54:5-12; 54:12-55:6)
21		(Dkt. 79-3).
23	77. Defendant Peters conceded that	Undisputed
24		
25		See Evidentiary Objections to
26		Grossman Decl.
27		
28	Grossman Decl., ¶ 26, Ex. A (Peters	tr. <b>PLAINTIFFS' REPLY</b> :
<b>reb</b> Partnership ssional ns	10969556.1 53 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

#### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 55 of 179 Page ID #:7036

"Undisputed" Facts	<b>Opposing Party's Responses</b>
at 82:6-85:12).	The fact is undisputed.
78. The sequence of events of Defendants'	Disputed that the sequence of
works is taken from the Star Trek Copyrighted	events is taken from the Star Trek
Works – the events depicted and discussed	Copyrighted Works, as the
therein take place in and around the Battle of	sequence of events and timing is
Axanar, as described both in The Original	original.
Series and in greater detail in The Four Years	
War.	Van Citters Decl., ¶ 15, Ex. 19
Van Citters Decl., ¶ 60.	(Prelude to Axanar); ¶ 39.
	See Evidentiary Objections to Va
	Citters Decl.
	PLAINTIFFS' REPLY:
	This is a false "dispute," and
	Prelude speaks for itself and is
	explicitly based on the Four Year
	War and the Battle of Axanar,
	which were described in The
	Original Series, and were also
	discussed in the Four Years War
	supplement. Van Citters Decl.,
	5-6, ¶ 14, Ex. AAA (Four Years
	War), ¶ 15, Ex. 19, (Prelude to
	Axanar)(Dkt. 72-60), ¶¶ 18, 19.
	Grossman Decl., ¶ 13, Ex. A

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1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		(Peters tr. at 38:22-41:17), ¶ 14,
3		Ex. C (Gossett tr. at 48:10-50:5),
4		Ex. I (April 26, 2014 email from
5		Christian Gossett to Alec Peters)
6		(Dkt. 79-3).
7		
8		Defendants admit that Prelude was
9		a prequel to The Original Series.
10		(UMF 75). Grossman Decl., ¶ 16,
11		Ex. A(Peters tr. at 143:13-145:7),
12		¶ 35, Ex. V (blueprints for the
13		soundstage at Paramount Studios
14		that was used for Star Trek); ¶ 36,
15		Ex. A (145:12- 147:10), Ex. W
16		(blueprints), ¶ 32, Ex. C (Gossett
17		tr. at 47:22-48:6); ¶ 15, Ex. A
18		(Peters tr. at 371:13-372:9), Ex. J
19		(Mr. Gossett email exchange with
20		Mr. Peters) ¶ 17, Ex. B (Burnett tr.
21		at 202:12-203:4) (Dkt. 79-3).
22	79. Defendants' works take place in the	Undisputed that the works are set
23	same settings as the Star Trek Copyrighted	in the same universe, but disputed
24	Works as they are set in alien star systems	to the extent the time frame,
25	created by Plaintiffs, on spaceships belonging	aesthetics and other elements are
26	to the United Federation of Planets, on	the same Van Citters Decl., ¶ 15,
27	Klingon battlecruisers fighting for the Klingon	Ex. 19 (Prelude to Axanar); ¶ 39.
28		

55

#### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 57 of 179 Page ID #:7038

1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2	Empire, and on planets such as Qo'noS,	
3	Vulcan and Axanar.	See Evidentiary Objections to Van
4	Van Citters Decl., ¶ 62.	Citters Decl.
5		
6 7		PLAINTIFFS' REPLY:
7		This fact is undisputed, Prelude
8		speaks for itself and the cited
9 10		evidence does not contradict the
10		stated fact.
11	80. Defendants' works use the protected	Disputed that any used by
12	characters embodied by the U.S.S. Enterprise	Defendants is "protected" which
13	and Klingon starships.	calls for a legal conclusion
14 15	Van Citters Decl., ¶ 59.	
15 16		See Evidentiary Objections to Van
16 17		Citters Decl.
17		
10 19		PLAINTIFFS' REPLY:
20		This fact should be deemed
20		undisputed.
21		Defendants do not cite to any
22		evidence to refute the fact that they
23 24		copied the U.S.S. Enterprise and
24 25		Klingon starships.
23 26	81. Defendants appropriated the mood and	Disputed. The mood and themes of
20	theme from the Star Trek Copyrighted Works,	Prelude to Axanar and Axanar
27	attempting to recreate the drama between the	have never been seen in Plaintiffs'
20		PLAINTIFFS' RESPONSE TO DEFENDANTS'

#### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 58 of 179 Page ID #:7039

		1
$\begin{bmatrix} 1\\ 2 \end{bmatrix}$	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2	Federation and the Klingon Empire in a	Works.
3	military space drama.	
4	Van Citters Decl., ¶¶ 55, 56.	Peters Decl., ¶ 6
5		
6		ECF No. 75-19 Peters Decl., Ex. 1
7		(Prelude to Axanar)
8		
9		See also Evidentiary Objections to
10		Van Citters Decl.
11		
12		PLAINTIFFS' REPLY:
13		This is a false "dispute," and
14		Prelude speaks for itself.
15		
16		Moreover, Peters testified
17		
18		
19		Grossman
20		Decl., Ex. A (Peters tr. at 55:6-9)
21		(Dkt. 79-3).
22	82. The second Star Trek motion picture,	Undisputed
23	The Wrath of Khan, was a derivative work that	
24	expanded upon one of the episodes of <i>The</i>	See Evidentiary Objections to Van
25	Original Series which featured a villain named	Citters Decl.
26	Khan.	
27	Van Citters Decl., ¶ 20.	PLAINTIFFS' REPLY:
28	L · · ·	1
,	10969556 1 57	PLAINTIFFS' RESPONSE TO DEFENDANTS'

## Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 59 of 179 Page ID #:7040

1		
2	"Undisputed" Facts	<b>Opposing Party's Responses</b>
		The fact is undisputed.
3	83. Defendants raised	Undisputed that Defendants have
4		raised over a million dollars from
5	Grossman Decl., ¶ 73, Ex. A (Peters tr.	Axanar donors
6	at 70:24-71:4).	
7		See Evidentiary Objections to
8		Grossman Decl.
9		
10		PLAINTIFFS' REPLY:
11		The fact is undisputed. Defendants
12		do not offer any evidence in
13		support of their claim that the
14		money raised was not from Star
15		Trek fans.
16	84. Defendants spent	Undisputed that Defendants have
17		spent over a million dollars from
18	Grossman Decl., ¶ 73, Ex. A (Peters tr.	Axanar donors to create Prelude
19	at 190:19-191:24).	and Axanar
20		
21		See Evidentiary Objections to
22		Grossman Decl.
23		
24		PLAINTIFFS' REPLY:
25		The fact is undisputed. Defendants
26		do not offer any evidence in
27		support of their claim that the
28	L	
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 58 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 60 of 179 Page ID #:7041

1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		money raised was not from Star
3		Trek fans.
4	85. Mr. Peters	Disputed.
5		
6	Grossman Decl., ¶ 74, Ex. A(Peters tr.	·
7	at 189:2-23), Ex. SS (financial summary at	
8	AX031122-AX031129).	Peters Decl., ¶ 2, Ex. 2 (Second
9		Financial Summary, AX035571-
10		AX035736)
11		
12		Peters Decl., ¶¶ 14-15
13 14		
14		See also Evidentiary Objections to
15		Grossman Decl.
17		
18		PLAINTIFFS' REPLY:
19		This is a false "dispute."
20		Peters' testimony, and the original
21		financial ledger produced establish
22		the stated fact and none of the
23		evidence cited by Peters refutes
24		this fact.
25		The evidence shows
26		
27		
28		
hership	10969556.1 <b>59</b> 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS OPPOSITION TO STATEMENT O UNCONTROVERTED FACT

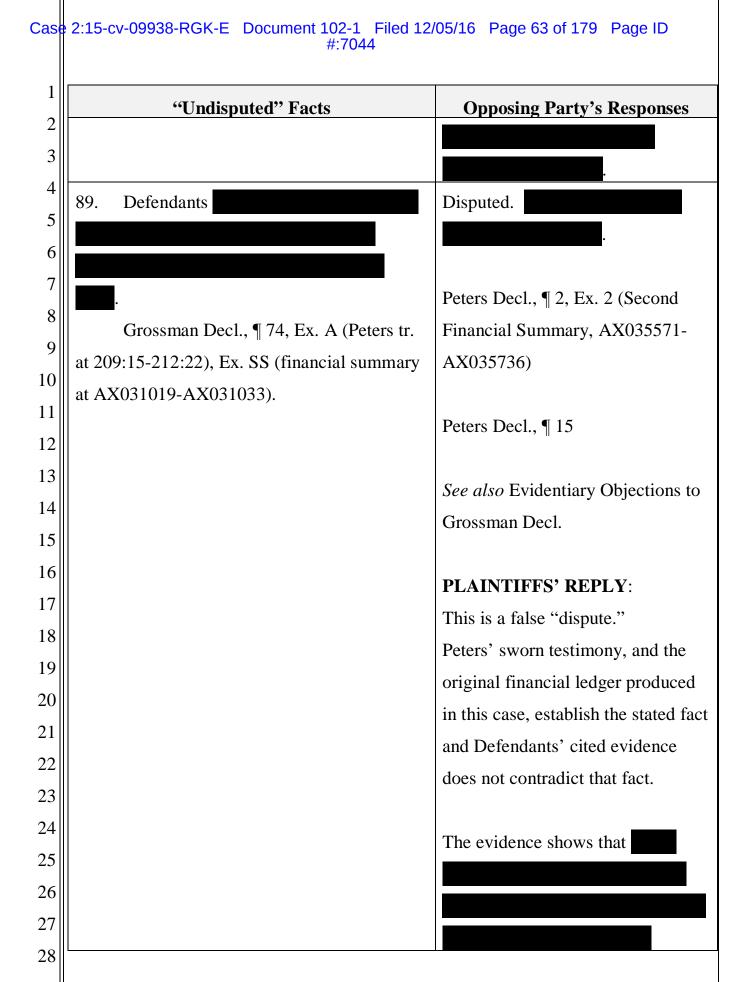
Loeb & Loeb A Limited Liability Partnersh Including Professional Corporations

## Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 61 of 179 Page ID #:7042

1		
1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		
4		
5		
6		
7		,
8		is irrelevant and an attempt to
9		mislead the court and the public.
10		Grossman Decl., ¶ 75, Ex. A
11		(Peters tr. at 394:20-396:7; 398:24-
12		399:10; 401:7-403:5), ¶ 76 (Dkt.
13		79-3). See also Peters Decl., ¶ 19
14		
15		(Dkt. 90-
16		10).
17	86. Defendants	Undisputed
18		
19	Grossman Decl., ¶ 61, Ex. B (Burnett	See Evidentiary Objections to
20	tr.at 61:24-62:11); ¶ 74, Ex. A (Peters tr. at	Grossman Decl.
21	122:21-25), Ex. SS (financial summary at	
22	AX030960, AX030959, AX031046,	PLAINTIFFS' REPLY:
23	AX031128).	The fact is undisputed.
24	87. Defendants	Undisputed
25		
26	Grossman Decl., ¶ 61, Ex. B (Burnett	See Evidentiary Objections to
27	tr.at 62:12-18; 93:23-25; 140:21-141:3); ¶ 70	Grossman Decl.
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 60 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

## Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 62 of 179 Page ID #:7043

	"Undisputed" Facts	<b>Opposing Party's Responses</b>
	gsbury tr. at 39:22-41:9); ¶ 74, Ex. SS	
	ncial summary at AX030958-AX030964).	PLAINTIFFS' REPLY:
4		The fact is undisputed.
5 88.	Defendants	
6    7		
8		
9		
0		
1		
2	Grossman Decl., ¶ 74, Ex. A (Peters tr.	
$\begin{bmatrix} 2 \\ 3 \end{bmatrix}$ at 65	:7-18; 193:22-194:18), Ex. SS (financial	
3     sumi 4	nary at AX031058-AX031059).	·
5	Grossman Decl., ¶ 63, Ex. A (Peters tr.	
at 35	3:8-13; 487:21-488:8; 225:12-227:20),	Grossman Decl., ¶ 13, Ex. A
Ex. 1	NN (lease).	(Peters Tr., Vol. II at 487:21-488:8)
	Grossman Decl., ¶ 62, Ex. C (Gossett tr.	
	:11-36:7).	See also Evidentiary Objections to
		Grossman Decl.
2		PLAINTIFFS' REPLY:
3		This is a false "dispute." There is
4		no evidence to support Defendants'
5		claim that
6		
7		
8		
1096955		PLAINTIFFS' RESPONSE TO DEFENDANTS OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS



PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

Loeb & Loeb

A Limited Liability Partnership

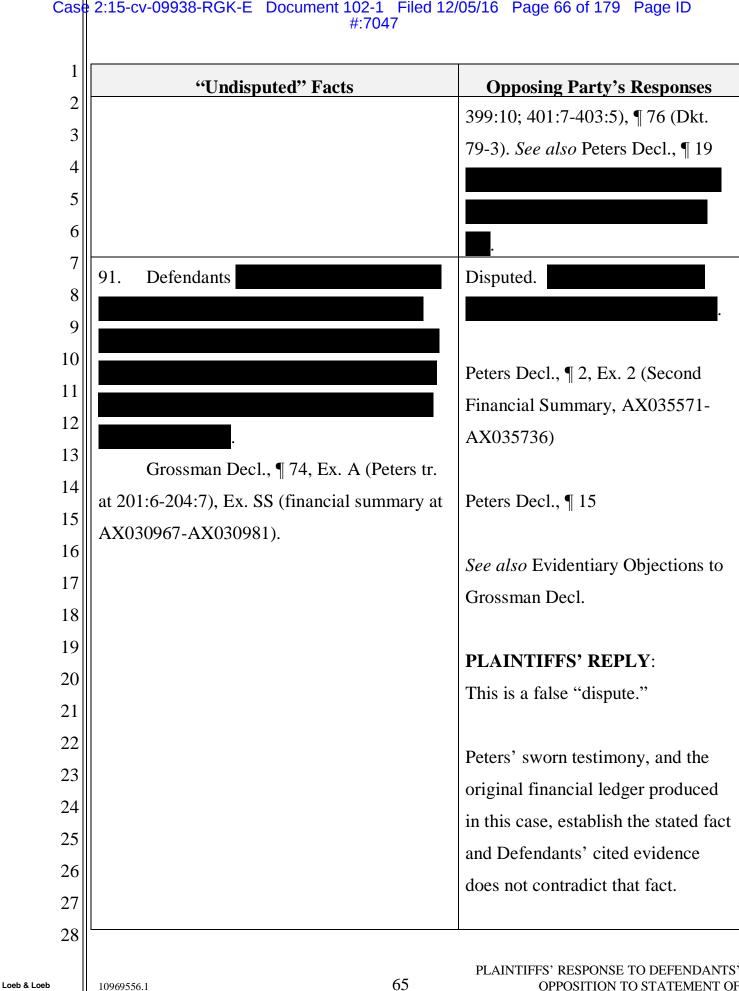
Including Professional Corporations

## Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 64 of 179 Page ID #:7045

1		
l	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		
4		
5		
6		
7		
8		,
9		is irrelevant and an attempt to
10		mislead the court and the public.
11		Grossman Decl., ¶ 75, Ex. A
12		(Peters tr. at 394:20-396:7; 398:24-
13		399:10; 401:7-403:5), ¶ 76 (Dkt.
14		79-3). See also Peters Decl., ¶ 19
15		
16		(Dkt. 90-
17		10).
18	90. Defendants	Disputed.
19		
20		
21		Peters Decl., ¶ 2, Ex. 2 (Second
22		Financial Summary, AX035571-
23		AX035736)
24		,
25	Grossman Decl., ¶ 74, Ex. A (Peters tr.	Peters Decl., at ¶ 15
26	at 195:21-198:1; 213:5-10), Ex. SS (financial	
27	summary at AX031051-AX031055).	See also Evidentiary Objections to
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 63 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

#### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 65 of 179 Page ID #:7046

1	"Undisputed" Facts		<b>Opposing Party's Responses</b>
2			Grossman Decl.
3			
4			PLAINTIFFS' REPLY:
5			This is a false "dispute."
6			
7			Peters' sworn testimony, and the
8			original financial ledger produced
9			in this case, establish the stated fact
10			and Defendants' cited evidence
11 12			does not contradict that fact.
12			
13			The evidence shows that
14			
15			
17			
17			
19			
20			
20			
22			
23			
24			,
25			is irrelevant and an attempt to
26			mislead the court and the public.
27			Grossman Decl., ¶ 75, Ex. A
28			(Peters tr. at 394:20-396:7; 398:24-
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 202828-10048	64	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS



A Limited Liability Partnership

Including Professional

Corporations

#### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 67 of 179 Page ID #:7048 1 "Undisputed" Facts **Opposing Party's Responses** 2 The evidence shows that 3 4 5 6 7 8 9 10 11 12 13 is irrelevant and an attempt to 14 mislead the court and the public. 15 Grossman Decl., ¶ 75, Ex. A 16 (Peters tr. at 394:20-396:7; 398:24-17

Loeb & Loeb Limited Liability Partnership Including Professional Corporations

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92.

girlfriend in 2014.

(Peters tr.at 197:12-15).

Ms. Kingsbury was Mr. Peters'

tr.at 15:21-24; 18:7-11; 141:4-15); ¶ 71, Ex. A

Grossman Decl., ¶ 72, Ex. D (Kingsbury

399:10; 401:7-403:5), ¶ 76 (Dkt.

79-3). See also Peters Decl., ¶ 19

See Evidentiary Objections to

**PLAINTIFFS' REPLY:** 

10).

Undisputed

Grossman Decl.

(Dkt. 90-

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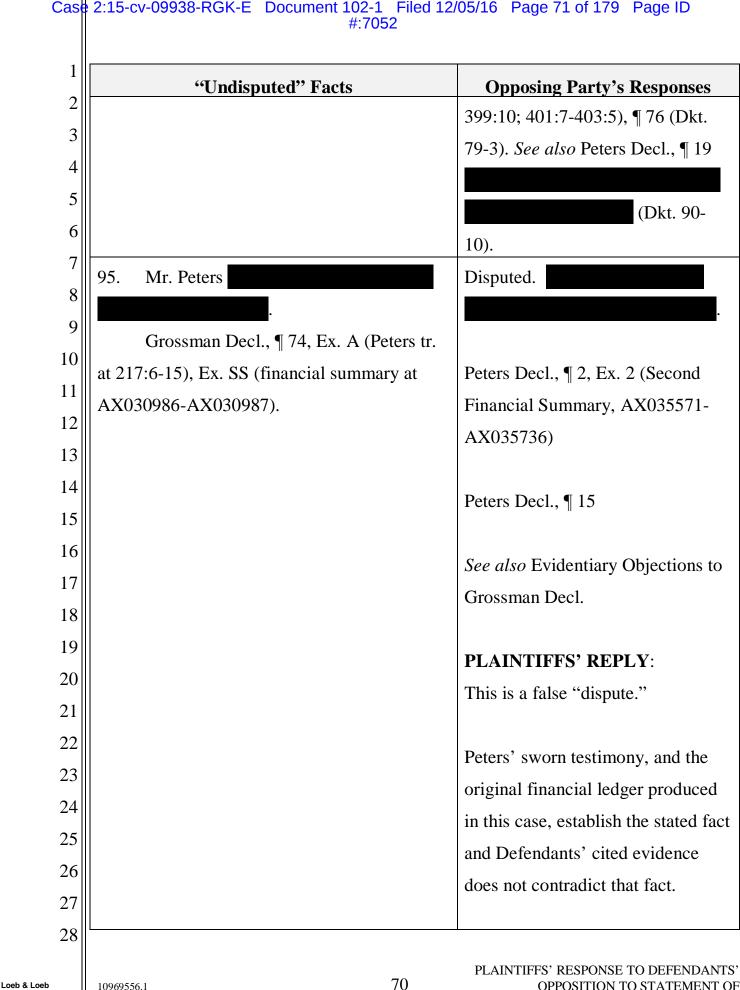
"Undisputed" Facts	<b>Opposing Party's Responses</b>
	The fact is undisputed.
93. Mr. Peters	Disputed.
Grossman Decl., ¶ 74, Ex. A (Peters tr.	Peters Decl., ¶ 2, Ex. 2 (Second
at 204:11-16, 205:3-16), Ex. SS (financial	Financial Summary, AX035571-
summary at AX030985-AX030986).	AX035736)
	Peters Decl., ¶ 15
	See also Evidentiary Objections
	Grossman Decl.
	PLAINTIFFS' REPLY:
	This is a false "dispute."
	Peters' sworn testimony, and the
	original financial ledger produce
	in this case, establish the stated f
	and Defendants' cited evidence
	does not contradict that fact.
	The evidence shows that
	PLAINTIFFS' RESPONSE TO DEFENDA
10969556.1 <b>67</b> 202828-10048	OPPOSITION TO STATEMEN UNCONTROVERTED FA

## Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 69 of 179 Page ID #:7050

1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		
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6		
7		
8		
9		is irrelevant and an attempt to
10		
11		mislead the court and the public.
12		Grossman Decl., ¶ 75, Ex. A
13		(Peters tr. at 394:20-396:7; 398:24-
14		399:10; 401:7-403:5), ¶ 76 (Dkt.
15		79-3). See also Peters Decl., ¶ 19
16		
17		(Dkt. 90-
18		10).
19	94. Mr. Peters	Disputed.
20		·
20	Grossman Decl., ¶ 74, Ex. A (Peters tr.	
21	at 203:25-204:1); Ex. SS (financial summary	Peters Decl., ¶ 2, Ex. 2 (Second
22	at AX030981-AX030983).	Financial Summary, AX035571-
		AX035736)
24		
25		Peters Decl., ¶ 15
26		
27		See also Evidentiary Objections to
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 <b>68</b> 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

#### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 70 of 179 Page ID #:7051

1	"Undisputed" Facts		<b>Opposing Party's Responses</b>
2		(	Grossman Decl.
3			
4		I	PLAINTIFFS' REPLY:
5		]	This is a false "dispute."
6			
7		I	Peters' sworn testimony, and the
8		C	original financial ledger produced
9		i	n this case, establish the stated fact
10		а	and Defendants' cited evidence
11		Ċ	loes not contradict that fact.
12			
13		]	The evidence shows that
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			,
24		i	s irrelevant and an attempt to
25 26		r	nislead the court and the public.
26 27		(	Grossman Decl., ¶ 75, Ex. A
27		(	Peters tr. at 394:20-396:7; 398:24-
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 202828-10048	69	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS



Including Professional

Corporations

# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 72 of 179 Page ID #:7053

1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		The evidence shows that
3		
4		
5		
6 7		
8		
9		
10		
11		
12		
13		is irrelevant and an attempt to
14		mislead the court and the public.
15		Grossman Decl., ¶ 75, Ex. A
16		(Peters tr. at 394:20-396:7; 398:24-
17		399:10; 401:7-403:5), ¶ 76 (Dkt.
18		79-3). See also Peters Decl., ¶ 19
19 20		
20 21		(Dkt. 90-
21		10).
22	96. Mr. Peters	Disputed.
24		
25		
26	Grossman Decl., ¶ 74, Ex. A (Peters tr.	Peters Decl., ¶ 2, Ex. 2 (Second
27	at 205:14-16), Ex. SS (financial summary at AX030967-AX030987).	Financial Summary, AX035571- AX035736)
28	AAUJUJU/-AAUJUJ0/).	AAUJJ130)
		PLAINTIFFS' RESPONSE TO DEFENDANTS'

# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 73 of 179 Page ID #:7054

ers Decl., ¶ 15
·
also Evidentiary Objections
ssman Decl.
AINTIFFS' REPLY:
s is a false "dispute."
ers' sworn testimony, and the
ginal financial ledger produced
his case, establish the stated fa
Defendants' cited evidence
s not contradict that fact.
e evidence shows that

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations

OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 74 of 179 Page ID #:7055

1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		is irrelevant and an attempt to
3		mislead the court and the public.
4		Grossman Decl., ¶ 75, Ex. A
5		(Peters tr. at 394:20-396:7; 398:24-
6		399:10; 401:7-403:5), ¶ 76 (Dkt.
7		79-3). See also Peters Decl., ¶ 19
8		
9		(Dkt. 90-
10		10).
11	97. Defendants	Disputed.
12		
13		
14	Grossman Decl., ¶ 74, Ex. A (Peters tr.	
15	at 205:20-207:9), Ex. SS (financial summary	
16	at AX031098-AX031110).	
17		
18		See also Evidentiary Objections to
19		Grossman Decl.
20		
21		PLAINTIFFS' REPLY:
22		This is a false "dispute." The
23		evidence shows that Defendants
24		used donor funds
25		Defendants do not cite any
26		evidence to dispute the stated fact.
27	98. Mr. Peters	Disputed.
28		
		PLAINTIFFS' RESPONSE TO DEFENDANTS

# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 75 of 179 Page ID #:7056

1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3	Grossman Decl., ¶ 74, Ex. A (Peters tr.	
4	at 207:10-12), Ex. SS (financial summary at	
5	AX031098).	Peters Decl., ¶ 2, Ex. 2 (Second
6		Financial Summary, AX035571-
7		AX035736)
8		
9		Peters Decl., ¶ 15
10		
11		See also Evidentiary Objections to
12		Grossman Decl.
13		
14		PLAINTIFFS' REPLY:
15		This is a false "dispute."
16		
17		Peters' sworn testimony, and the
18		original financial ledger produced
19		in this case, establish the stated fact
20		and Defendants' cited evidence
21		does not contradict that fact.
22		
23		The evidence shows that
24		
25 26		
26		
27		
28		
<b>eb</b> artnership	10969556.1 74	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF
sional s	202828-10048	UNCONTROVERTED FACTS

# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 76 of 179 Page ID #:7057

1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		
4		
5		
6		
7		
8		is irrelevant and an attempt to
9		mislead the court and the public.
10		Grossman Decl., ¶ 75, Ex. A
11		(Peters tr. at 394:20-396:7; 398:24-
12		399:10; 401:7-403:5), ¶ 76 (Dkt.
13		79-3). See also Peters Decl., ¶ 19
14		
15		(Dkt. 90-
16		10).
17	99. Mr. Peters	Disputed.
18		
19	Grossman Decl., ¶ 74, Ex. A (Peters tr.	
20	at 208:2-16), Ex. SS (financial summary at	
21	AX031009-AX031010).	Peters Decl., ¶ 2, Ex. 2 (Second
22		Financial Summary, AX035571-
23		AX035736)
24		
25		Peters Decl., ¶ 15
26		
27		See also Evidentiary Objections to
28	۱L	
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 <b>75</b> 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

## Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 77 of 179 Page ID #:7058

1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		Grossman Decl.
3		
4		PLAINTIFFS' REPLY:
5		This is a false "dispute."
6		
7		Peters' sworn testimony, and the
8		original financial ledger produced
9		in this case, establish the stated fact
10		and Defendants' cited evidence
11		does not contradict that fact.
12		
13		The evidence shows
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		is irrelevant and an attempt to
25		mislead the court and the public.
26		Grossman Decl., ¶ 75, Ex. A
27		(Peters tr. at 394:20-396:7; 398:24-
28		(1 Cicis II. al 394.20-370.1, 370.24-
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 202828-10048	76 PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 78 of 179 Page ID #:7059

1		
2	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		399:10; 401:7-403:5), ¶ 76 (Dkt.
		79-3). See also Peters Decl., ¶ 19
4		
5		(Dkt. 90-
6		10).
/	100. In raising money for the Axanar Works,	Undisputed
8	Mr. Peters stated, "Axanar is the first fully-	
9	professional, independent Star Trek film.	See Evidentiary Objections to
10	While some may call it a 'fan film' as we are	Grossman Decl.
11	not licensed by CBS, Axanar has professionals	
12	working in front and behind the camera, with a	PLAINTIFFS' REPLY:
13	fully-professional crewmany of whom have	The fact is undisputed.
14	worked on Star Trek itselfwho ensure	
15	Axanar will be the quality of Star Trek that all	
16	fans want to see."	
17	Grossman Decl., ¶ 48, Ex. A (Peters tr.	
18	at 92:19-94:1); Ex. CC (Indiegogo site).	
19	101. Defendants	Undisputed
20		
21		See Evidentiary Objections to
22		Grossman Decl.
23		
24		PLAINTIFFS' REPLY:
25	Grossman Decl., ¶ 39, Ex. B (Burnett tr.	The fact is undisputed.
26	at 55:4-14, 58:10-22,59:11-22).	
27	102. Peters repeatedly referenced the Axanar	Undisputed
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 77 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS OPPOSITION TO STATEMENT O UNCONTROVERTED FACT

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1			
	"Undisputed" Facts	<b>Opposing Party's Responses</b>	
2 3	Works as a professional production.		
	Grossman Decl., ¶ 52, Ex. A (Peters tr.	See Evidentiary Objections to	
4	at 91:11-92:7), Ex. GG (statement made by	Grossman Decl.	
5	Alec Peters in an interview), ¶ 48, Ex. A		
6	(Peters tr. at 92:19-94:1), Ex. CC (Indiegogo	PLAINTIFFS' REPLY:	
7	fundraising page), ¶ 54, Ex. A (Peters tr. at	The fact is undisputed.	
8	97:14-98:22), Ex. HH (screenshot from		
9	Defendants' Kickstarter fundraising page),		
10	¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex.		
11	DD (Defendants' Indiegogo fundraising page),		
12	¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex.		
13	EE (Facebook post by Alec Peters), ¶ 51, Ex.		
14	A (Peters tr. at 109:16-110:2), Ex. FF (Post on		
15	the Axanar Facebook page), ¶ 53 (Peters tr. at		
16	133:16-143:5, 134:10-143:5, 135:11-136:2,		
17	137:13-19-138:13, 138:21-140:2, 140:19-		
18	141:3,141:16-142:22), Ex. ZZ (transcript of		
19 20	podcasts), ¶ 1, Ex. A (Peters tr. at 170:22-		
20	171:3), Ex. G (printout from		
21	Axanarproductions.com), ¶ 56, Ex. A Peters tr.		
22	at 124:8-127:15), Ex. JJ (press kit).		
23	103. Peters repeatedly stated that his	Disputed. There were many	
24	production was not to be called a "fan film."	instances in which Defendants did	
25 26	Grossman Decl., ¶ 48, Ex. A (Peters tr.	call their works "fan films." The	
26	at 92:19-94:1), Ex. CC (Indiegogo fundraising	distinction between "fan films" and	
27	page), ¶ 49, Ex. A (Peters tr. at 99:10-101:10),	"professional" films was made only	
28			

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
Ex. DD (Defendants' Indiegogo fundraising	to distinguish the quality of
page), ¶ 50, Ex. A (Peters tr. at 108:6- 109:12),	Defendants' Works.
Ex. EE (Facebook post by Alec Peters), ¶ 51,	
Ex. A (Peters tr. at 109:16-110:2), Ex. FF	Peters Decl., ¶ 26, Ex. 6 (Press
(Post on the Axanar Facebook page), ¶ 53	Release)
(Peters tr. at 133:16-143:5, 134:10-143:5,	
137:13-19 -138:13, 138:21-140:2,140:19-	Peters Decl., ¶ 26, Ex. 12 (Emails
141:5, 141:16-142:22), Ex. ZZ (transcript of	between Alec Peters and Morgen
podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-	Schneider, AX030370-AX03037
107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at	
349:18-24), Ex. KK (Peters email to Doug	Peters Decl., ¶ 27, Ex. 13 (Axana
Drexler).	Facebook Post, AX035850)
	Peters Decl., ¶ 27, Ex. 14 (Axana
	Tweet, AX035927)
	Peters Decl., ¶ 26, Ex. 11 (Star
	Trek Fan Film Flyer, PL0000106
	Peters Decl., ¶ 26, Ex. 9 (Axanar
	Blog Post, PL0005718-
	PL0005720)
	Peters Decl., ¶ 26, Ex. 10 (Axana
	Blog Post, PL0005973-
	PL0005989)

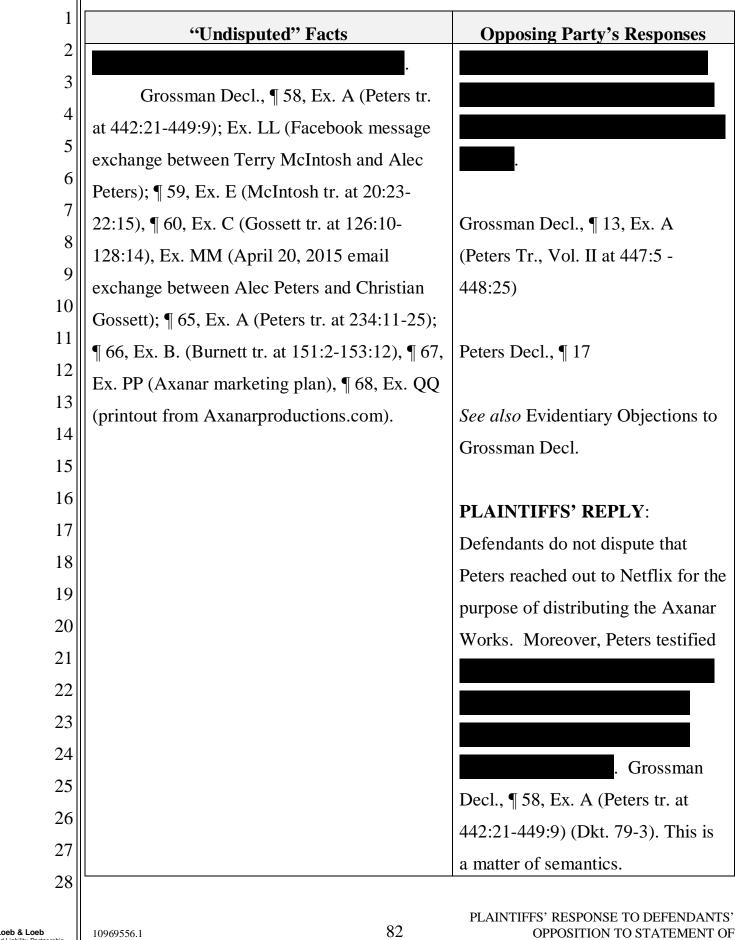
## Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 81 of 179 Page ID #:7062

"Undisputed" Facts	<b>Opposing Party's Responses</b>
	Peters Decl., ¶ 26, Ex. 8 (Axanar
	Facebook Post, PL0008222)
	Peters Decl., ¶ 28, Ex. 16 (Email
	from Marian Cordry to Holly
	Amos and John Van Citters,
	PL0008689)
	Peters Decl., ¶ 26, Ex. 7 (Axanar
	Facebook Post, PL0011822)
	Peters Decl., ¶ 28, Ex. 15 (Email
	among Bill Burke, John Van
	Citters, and Leslie Ryan,
	PL0012814- PL0012816)
	Peters Decl., ¶ 26, Ex. 5 (Email
	from Marian Cordry to John Var
	Citters, PL0013502- PL0013503
	Peters Decl., ¶ 26, Ex. 4 (Peters
	Facebook Post, PL0013517)
	Peters Decl., ¶ 13, Ex. 1 (Axanar
	Annual Report, Revised, 2015,

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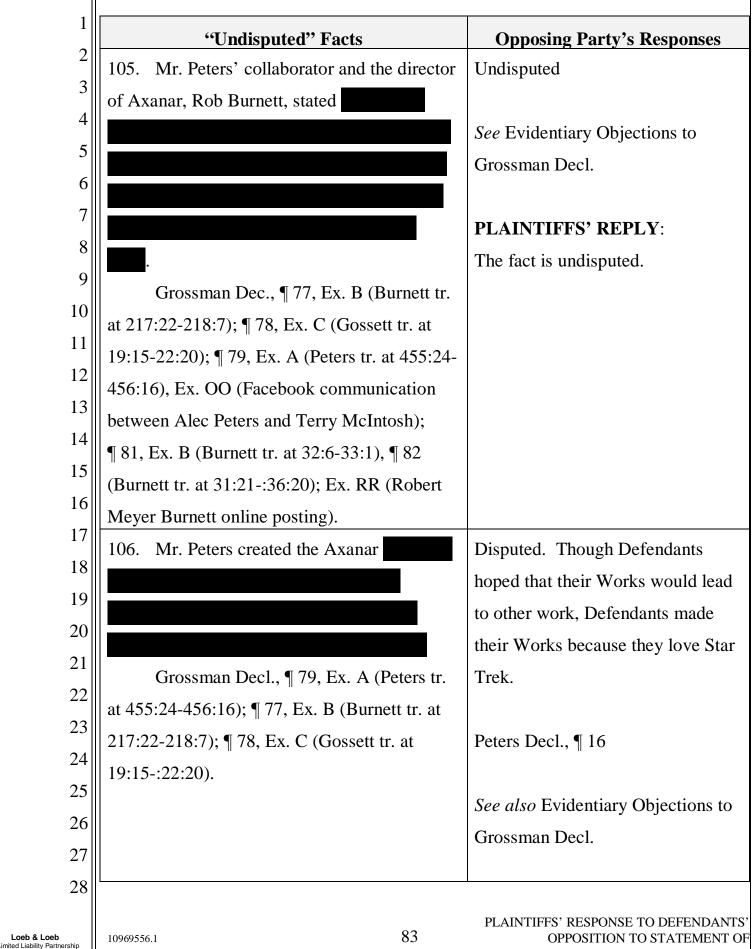
1 2 1 2	disputed" Facts	<b>Opposing Party's Responses</b>
3		PL0013763-PL0013785)
4		Peters Decl., ¶ 26, Ex. 3 (Emails
5		between Alec Peters and Mallory
5		Levitt, PL0013787-PL0013788)
7		
8		Ranahan Decl., ¶ 5, Ex. E (Gosset
9		Tr. at 175:17-18)
)		
1		See also Evidentiary Objections to
2		Grossman Decl.
3		
4		PLAINTIFFS' REPLY:
5		This is a false "dispute." The fact
5		that Peters may have at some poin
7		stated or implied that Axanar was
8		fan film (particularly after the
9		lawsuit was filed or in emails to
)		CBS) does not mean that he did not
		advertise repeatedly assert that his
2		production was not to be called a
3		fan film.
	npted to meet with Netflix to	Disputed.
	er of Star Trek productions,	
	emark the word "Axanar" and	
7		

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nited Liability Partnership Including Professional Corporations

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202828-10048

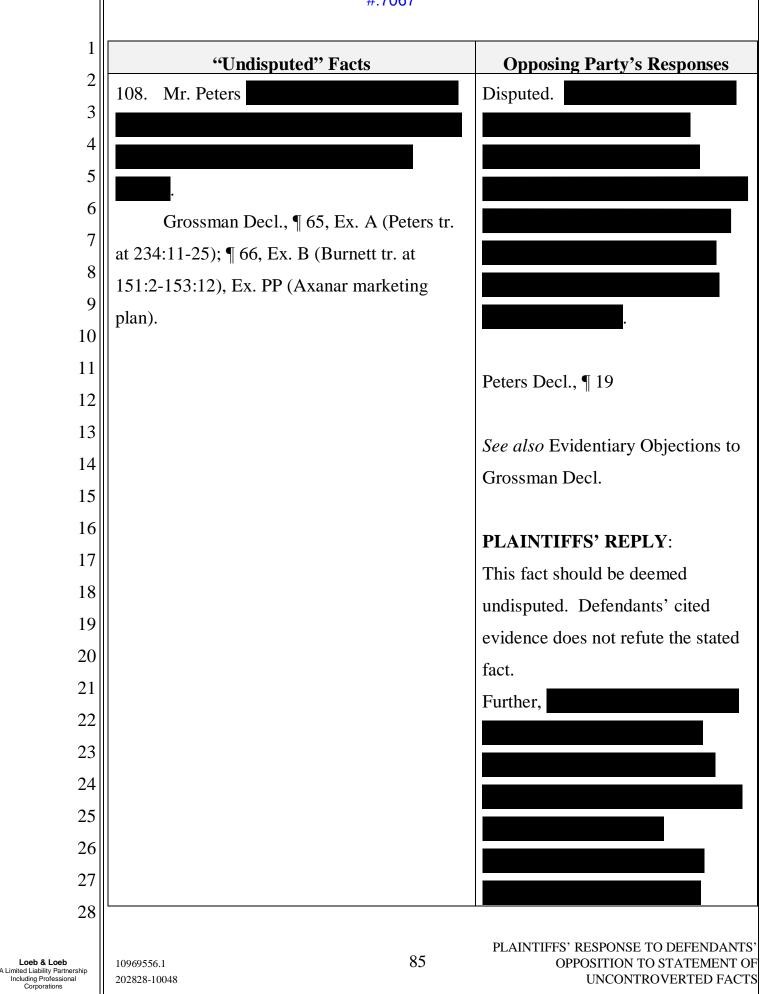
Including Professional

Corporations

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	PLAINTIFFS' REPLY:
	This fact should be deemed
	undisputed as Defendants' cited
	evidence does not refute the stated
	fact.
	Further, Plaintiffs' fact states that
	Peters created the Axanar Works
	large part
107. Mr. Burnett, the editor of <i>Prelude to</i>	Undisputed
Axanar, and director of the full length Axanar	
Film, also stated	See Evidentiary Objections to
	Grossman Decl.
	PLAINTIFFS' REPLY:
Grossman Decl., ¶ 82, Ex. B (Burnett tr.	The fact is undisputed.
at 31:21-36:20), Ex. RR (Robert Meyer	L
Burnett online posting).	

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		
4		Mr. Gossett testified that Mr.
5		Peters "repeatedly" described to
6		him the concept that he was
7		interested in creating alternative
8		ways for fans to view Star Trek,
9		and a document produced by
10		Defendants states:
11		
12		
13		
14		Grossman Reply Decl., ¶ 4,
15		Ex. C (Gossett tr. at 115:24 -
16		117:7), Ex. MMM (Axanar
17		document).
18	109. Defendants	Disputed.
19		
20	Grossman Decl., ¶ 64, Ex. B (Burnett	
21	tr.at 142:14-148:8); Ex. PP (Axanar marketing	
22	plan); Ex. QQ (printout from	Peters Decl., ¶¶ 11-15
23	Axanarproductions.com).	
24		See also Evidentiary Objections to
25		Grossman Decl.
26		
27		PLAINTIFFS' REPLY:
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 <b>86</b> 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	This is a false "dispute." Peters'
	self-serving testimony in response
	to Plaintiffs' Motion for Partial
	Summary Judgment, which
	contradicts documents produced b
	Defendants, is insufficient to creat
	an issue of fact.
110. Peters stated: "But Axanar is not just an	Disputed. This statement is taken
independent Star Trek film; it is the beginning	out of context. This statement wa
of a whole new way that fans can get the	made to address how fans watch
content they want, by funding it themselves.	science fiction shows the enjoy, ne
Why dump hundreds or thousands of dollars a	how to stop fans from watching
year on 400 cable channels, when what you	Plaintiffs' Works.
really want is a few good sci-fi shows?"	
Grossman Decl., ¶ 49, Ex. A (Peters tr.	See also Evidentiary Objections to
at 99:10-100:15), Ex. DD (Axanar Indiegogo	Grossman Decl.
fundraising page).	
	PLAINTIFFS' REPLY:
	This fact should be deemed
	undisputed. Defendants have not
	cited any evidence to refute the
	stated fact.
	Further, the document speaks for
	itself.
	Mr. Gossett testified that Mr.

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"Undisputed" Facts	<b>Opposing Party's Responses</b>
	Peters "repeatedly" described to
	him the concept that he was
	interested in creating alternative
	ways for fans to view Star Trek,
	and a document produced by
	Defendants states:
	Grossman Reply Decl., ¶
	Ex. C (Gossett tr. at 115:24 -
	117:7), Ex. MMM (Axanar
	document).
111. The continued production and	Disputed. Neither Plaintiffs nor
distribution of the Axanar Works would cause	Defendants know of any fans wh
irreparable harm to the market for Star Trek	have stated that they would decli
Copyrighted Works because Star Trek fans	to watch Plaintiffs' Works becau
will view the Axanar Works (and donate for	they watched Defendants' Work
the production of future works) instead of	
paying to view the Star Trek Copyrighted	Peters Decl., ¶ 31
Works.	
Van Citters Decl., ¶ 63.	ECF No. 75-16, Oki Decl., Ex. 1
	(Paramount Pictures Corporation
	Responses to Requests for
	Admission, Set Two, Response t
	Request for Admission Nos. 72-7

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1		
2	"Undisputed" Facts	<b>Opposing Party's Responses</b>
3		
4		ECF No. 75-17, Oki Decl., Ex. 15
5		(CBS Studios Inc.'s Responses to
6		Requests for Admission, Set Two,
7		Response to Request for Admission
8		Nos. 72-73)
9		
10		ECF Nos. 75-5, 77-3, Oki Decl.,
11		Ex. 3 (Tregillis Report, ¶¶ 58-62)
12		
12		ECF Nos. 75-11, 77-4, Oki Decl.,
13		Ex. 9 (Van Citters Tr. at 94:8-95:7,
15		119:19-124:18)
16		
17		ECF Nos. 75-12, 77-5, Oki Decl.,
18		Ex. 10, O'Rourke Tr. at 60:22-
19		61:5; 63:8-16
20		
21		See also Evidentiary Objections to
22		Van Citters Decl.
23		
24		PLAINTIFFS' REPLY:
25		This fact should be deemed
26		undisputed as Defendants do not
27		cite to any evidence to refute the
28		stated fact.
_0		PLAINTIFFS' RESPONSE TO DEFENDANTS'

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		Further, this is a
3		mischaracterization of Plaintiffs'
4		interrogatory responses and
5		deposition testimony, which
6		extensively discuss the harm to
7		Plaintiffs from the unchecked
8		creation of unauthorized derivative
9		works.
10		
11		Mr. Gossett testified that Mr.
12		Peters "repeatedly" described to
13		him the concept that he was
14		interested in creating alternative
15		ways for fans to view Star Trek,
16		and a document produced by
17		Defendants states:
18		
19		
20		
21		Grossman Reply Decl., ¶ 4,
22		Ex. C (Gossett tr. at 115:24 -
23		117:7), Ex. MMM (Axanar
24		document).
25	112. Peters was in charge of Axanar	Undisputed
26	Productions' conduct and was responsible for	
27	the infringing conduct of Axanar Productions.	See Evidentiary Objections to
28		
	00	PLAINTIFFS' RESPONSE TO DEFENDANTS'

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"Undisputed" Facts	8	<b>Opposing Party's Responses</b>
Grossman Decl., ¶ 86, Ex. (	C (Gossett tr.	Grossman Decl.
at 38:6-16; 161:14-23; 162:9-163:	14);¶ 84,	
Ex. A (Peters tr. at 55:21-58:9; 78	:9¬80:10),	PLAINTIFFS' REPLY:
¶ 87, Ex. E (McIntosh tr. at 52:12-	-20).	The fact is undisputed.
113. Peters is the president of Ax	xanar	Undisputed
Productions.		
Grossman Decl., ¶ 83, Ex. A	A (Peters tr.	See Evidentiary Objections to
at 182:1-2).		Grossman Decl.
		PLAINTIFFS' REPLY:
		The fact is undisputed.
114. Peters was responsible for r	nany of the	Undisputed
creative decisions on the Axanar	Works.	
Grossman Decl., ¶ 85, Ex. I	B (Burnett tr.	See Evidentiary Objections to
at 201:19-202:11); ¶ 86, Ex. C (G	ossett tr. at	Grossman Decl.
38:6-16; 161:14-23; 162:9-163:14	-).	
		PLAINTIFFS' REPLY:
		The fact is undisputed.
115. Peters supervised and contr	olled Axanar	Undisputed
Productions.		
Grossman Decl., ¶ 83, Ex. 4	A (Peters tr.	See Evidentiary Objections to
at 60:6-61:2), ¶ 87, Ex. E (McInto	osh tr. at	Grossman Decl.
52:12-20).		
		PLAINTIFFS' REPLY:
		The fact is undisputed.

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1	"Undisputed" Facts	<b>Opposing Party's Responses</b>
2		
3		See Evidentiary Objections to
4	Grossman Decl., ¶ 88, Ex. A (Peters tr.	Grossman Decl.
5	at 9:21-23; 21:18-25).	
6 7		PLAINTIFFS' REPLY:
7		The fact is undisputed.
8 9	117. In the years prior to Peters' creation of	Undisputed
	the Axanar Works, Peters sent several emails	
10 11	to CBS to report third parties whom Peters	See Evidentiary Objections to
11	believed were using Plaintiffs' intellectual	Grossman Decl.
12	property without authorization.	
13	Grossman Decl., ¶ 89, Ex. TT (Peters	PLAINTIFFS' REPLY:
14	emails to CBS).	The fact is undisputed.
15		
16		
16 17	II. <u>STATEMENT OF ADDITIONAL MA</u>	TERIAL FACTS
16 17 18		TERIAL FACTS Plaintiffs' Response
17	Material Fact and Supporting Evidence	
17 18	Material Fact and Supporting Evidence	Plaintiffs' Response
17 18 19	Material Fact and Supporting Evidence51. Prelude to Axanar was inspired by	Plaintiffs' Response
17 18 19 20	Material Fact and Supporting Evidence51.Prelude to Axanar was inspired bynumerous different sources.	Plaintiffs' Response Disputed.
17 18 19 20 21	Material Fact and Supporting Evidence51. Prelude to Axanar was inspired bynumerous different sources.ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	Plaintiffs' Response         Disputed.         Prelude speaks for itself and does
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>	Material Fact and Supporting Evidence51. Prelude to Axanar was inspired bynumerous different sources.ECF No. 75-7, Oki Decl., Ex. 5 (BurnettTr. at 22:15-23:18)	Plaintiffs' Response         Disputed.         Prelude speaks for itself and does         not include any characters or
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	Material Fact and Supporting Evidence51. Prelude to Axanar was inspired bynumerous different sources.ECF No. 75-7, Oki Decl., Ex. 5 (BurnettTr. at 22:15-23:18)ECF No. 75-7, Oki Decl., Ex. 6 (Hunt	Plaintiffs' Response         Disputed.       Disputed.         Prelude speaks for itself and does       not include any characters or         copyrighted elements from works       Copyrighted elements from works
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	Material Fact and Supporting Evidence51. Prelude to Axanar was inspired bynumerous different sources.ECF No. 75-7, Oki Decl., Ex. 5 (BurnettTr. at 22:15-23:18)ECF No. 75-7, Oki Decl., Ex. 6 (HuntTr. at 51:8-16)	Plaintiffs' Response         Disputed.       Disputed.         Prelude speaks for itself and does       not include any characters or         copyrighted elements from works       other than Star Trek. Further,
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	Material Fact and Supporting Evidence51. Prelude to Axanar was inspired bynumerous different sources.ECF No. 75-7, Oki Decl., Ex. 5 (BurnettTr. at 22:15-23:18)ECF No. 75-7, Oki Decl., Ex. 6 (HuntTr. at 51:8-16)ECF No. 75-7, Oki Decl., Ex. 13 (Peters	Plaintiffs' Response         Disputed.         Prelude speaks for itself and does         not include any characters or         copyrighted elements from works         other than Star Trek. Further,         Plaintiffs specifically asked in
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	Material Fact and Supporting Evidence51. Prelude to Axanar was inspired bynumerous different sources.ECF No. 75-7, Oki Decl., Ex. 5 (BurnettTr. at 22:15-23:18)ECF No. 75-7, Oki Decl., Ex. 6 (HuntTr. at 51:8-16)ECF No. 75-7, Oki Decl., Ex. 13 (PetersTr., Vol. I at 57:19-58:4)ECF No. 75-20, Peters Decl., Ex. 1	Plaintiffs' ResponseDisputed.Prelude speaks for itself and doesnot include any characters orcopyrighted elements from worksother than Star Trek. Further,Plaintiffs specifically asked indiscovery for Defendants' source

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Material Fact and Supporting Evidence	Plaintiffs' Response
ECF No. 75-19, Peters Decl., ¶ 9	Trek films and television episodes
	which the parties agreed did not
	need to be exchanged) and
	Defendants did not turn over any o
	these claimed sources. Grossman
	Decl., ¶ 99 (Dkt. 88-1).
	Defendants advertised Prelude as
	an independent Star Trek film, not
	as a war movie. Grossman Decl.,
	¶ 54, Ex. A (Peters tr. at 97:14-
	98:22), Ex. HH (screenshot from
	Defendants' Kickstarter
	fundraising page).
	Grossman Decl., ¶ 34, Ex. A
	(Peters tr. at 471:25-474:20), Ex. U
	(March 7, 2015 email from Alec
	Peters to Christian Gossett).
	Grossman Decl., ¶ 29, Ex. C
	(Gossett tr. at 36:11-37:8), Ex. R
	(March 24, 2013 email from Sean
	Tourangeau to Christian Gossett
	and Alec Peters).
	Grossman Decl., ¶ 38, Ex. C
	(Gossett tr. at 92:14-93:13), Ex. Y
	(April 13, 2014 email exchange

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Material Fact and Supporting Evidence	Plaintiffs' Response
	between Alec Peters, Tobias
	Richter, and Christian Gossett).
	Grossman Decl., ¶ 10, Ex. C
	(Gossett tr. at 30:7-31:13, Ex. F
	(January 4, 2011 email from Alec
	Peters to Christian Gossett), Ex. A
	(Peters tr. at 332:15-334:4).
	Grossman Decl., ¶ 12, Ex. C
	(Gossett tr. at 32:7-34:16), Ex. H
	(November 13, 2013 email
	exchange between Alec Peters an
	Christian Gossett), Ex. A (Peters
	at 359:18-361:11) (Dkt. 79-3).
52. <i>The Vulcan Scene</i> was inspired by	Disputed.
numerous different sources.	
ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	The Vulcan Scene speaks for itse
Tr. at 22:15-23:18)	and does not include any characte
ECF No. 75-7, Oki Decl., Ex. 6 (Hunt	or copyrighted elements from the
Tr. at 51:8-16)	cited works. Further, Plaintiffs
ECF No. 75-7, Oki Decl., Ex. 13 (Peters	specifically asked for Defendants
Tr., Vol. I at 57:19-58:4)	source documents used to create
ECF No. 75-20, Peters Decl., Ex. 1	the Axanar Works (other than the
(Prelude to Axanar)	Star Trek films and television
ECF No. 75-19, Peters Decl., ¶ 9	episodes which the parties agreed
	did not need to be exchanged) and
	Defendants did not turn over any

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		these claimed sources. Grossman
3		Decl., ¶ 99 (Dkt. 88-1).
4		
5	53. The <i>Axanar</i> scripts were inspired by	Disputed.
6 7	numerous different sources.	
7	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	The Axanar script speaks for itself
8	Tr. at 22:15-23:18)	and does not include any characters
9	ECF No. 75-7, Oki Decl., Ex. 6 (Hunt	or copyrighted elements from the
0	Tr. at 51:8-16)	cited works. Further, Plaintiffs
1	ECF No. 75-7, Oki Decl., Ex. 13 (Peters	specifically asked for Defendants'
2	Tr., Vol. I at 57:19-58:4)	source documents used to create
3	ECF No. 75-20, Peters Decl., Ex. 1	the Axanar Works (other than the
4	(Prelude to Axanar)	Star Trek films and television
15	ECF No. 75-19, Peters Decl., ¶ 9	episodes which the parties agreed
l6 l7		did not need to be exchanged) and
18		Defendants did not turn over any of
		these claimed sources. Grossman
.9 20		Decl., ¶ 99 (Dkt. 88-1).
21		
22	54. Plaintiffs conceded that they failed	Irrelevant and Disputed that
3	entirely to meet and confer pursuant to Local	Plaintiffs failed to meet and confer
.3	Rule 7-3 with respect to seeking injunctive	(or conceded so).
.4 25	relief.	
26	Ranahan Decl., ¶ 7, Ex. G	Courts do not require parties to
20 27	(Correspondence with Plaintiffs' Counsel)	meet and confer on all arguments
28		as long as though is no evidence of
0		PLAINTIFFS' RESPONSE TO DEFENDANTS

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1		
1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		the moving party's bad faith and no
3		prejudice to the nonmoving party.
4		
5		See Del Amo v. Baccash, No. CV
6		07-663-PSG, 2008 U.S. Dist.
7		LEXIS 110489, at *7 (C.D. Cal.
8		Sep. 16, 2008) ("Thus, based on
9		the pleadings, the parties met and
10		conferred regarding at least two of
11		the arguments in Defendants'
12		motion. More importantly, though,
13		there is no evidence of bad faith on
14		the part of Defendants. For these
15		reasons, the Court is willing to
16		excuse Defendants' failure to meet
17		and confer on every substantive
18		issue they raised in their motion.");
19		Mitsubishi Elec. Corp. v. Sceptre,
20		Inc., No. 2:14-cv-04994-
21		ODW(AJWx), 2015 U.S. Dist.
22		LEXIS 65502, at *4-5 (C.D. Cal.
23		May 18, 2015) ("Defendant argues
24		that during the January 27, 2015
25 25		meet and confer Plaintiffs (1) failed
26		to provide further details besides
27		boilerplate objections regarding the
28		

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		basis for the motion, and (2) did
3		not provide specific examples of
4		alleged deficiencies. (Opp'n 3.) In
5		this case, Plaintiffs identified the
6		rules that Defendant had not
7		complied with and their intent to
8		move to strike each instance in
9		which a claim chart was not
10		providedNotwithstanding, the
11		Court does not find that Defendant
12		was prejudiced in any way by the
13		purported lack of specificity during
14		the meet and confer."
15	55. The Court denied Plaintiffs' Ex parte	The language of the Court's order
16	application with respect to the adequacy of	is undisputed and irrelevant.
17	Defendants' document collection.	
18	ECF No. 68, Order Denying Plaintiffs'	
19	Ex Parte Application ("Except as expressly	
20	stated herein, [Plaintiffs' Ex Parte Application]	
21	is denied. The Discovery Cut-Off Date is	
22	November 2, 2016. See Minute Order, filed	
23	May 9, 2016. Notwithstanding the issues	
24	Plaintiffs have raised regarding the adequacy of	
25	Defendants' document productionsthe Court	
26	will not require at this late date the effective	
27	recommencement of document searches,	
28		

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2	reviews, and productions.").	
3	56. Plaintiffs have not named the supplement	Disputed.
4	to Star Trek: The Role Playing Game, titled,	
5	"The Four Years War" as an allegedly	Defendants misrepresent the
6	infringed work.	evidence. The cited evidence,
7	ECF No. 75-3, Oki Decl., Ex. 1 (CBS	Plaintiffs' Amended Interrogatory
8	Studios Inc.'s Amended Responses to	Responses, does include Star Trek:
9	Interrogatories, Set One, Response to	The Role Playing Game – The Four
10	Interrogatory Nos. 4-9)	Years War.
11	ECF No. 75-4, Oki Decl., Ex. 2	See Dkt. 75-3 (CBS' interrogatory
12	(Paramount Pictures Corporations Amended	responses) at 3:8 (item 15), 4:10
13	Responses to Interrogatories, Set One,	(item 14), and 7:16-21. See also
14	Response to Interrogatory Nos. 4-9)	Dkt. 75-4 (Paramount's
15	ECF No. 26, FAC, Appendix A ¶¶ 2-6	interrogatory responses) at 3:8
16		(item 14), 4:11 (item 14), and 7:16-
17 10		21.
18 10	57. The U.S.S. Enterprise makes a cameo	Undisputed that the U.S.S.
19 20	appearance in Defendants' Works.	Enterprise is featured in the Axanar
20 21	Ranahan Decl., ¶ 4, Ex. D (Burnett Tr. at	Works.
21	24:25-25:10)	
22	ECF No. 75-20, Peters Decl., Ex. 1	Disputed as to the characterization
23 24	(Prelude to Axanar at 17:24)	of the appearance of the U.S.S.
24 25	ECF Nos. 75-5, 77-8, 77-9, Peters Decl.,	Enterprise as a "cameo." The
25 26	Ex. 3 (July 1, 2016 Axanar Script, pp. 57, 72,	Axanar Works speak for
26 27	109, 112, 119, 120)	themselves.
27	ECF Nos. 72-30, 79, Grossman Decl.,	
28		

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Material Fact and Supporting Evidence	Plaintiffs' Response
Ex. AA (Nov. 26, 2015 Axanar Script, pp. 52,	
65, 98, 99, 110, 111)	
58. <i>Prelude to Axanar</i> features an original	Disputed.
plot never before used in Plaintiffs' Works.	
ECF No. 48, Counterclaim at 24-25,	The Counterclaim is not evidence.
¶¶ 30-31	
ECF No. 75-15, Oki Decl., Ex. 13	Prelude does not feature an
(Peters Tr., Vol. I at 85:7-23)	original plot. The plot is taken
ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	from The Four Years War
Tr. at 22:8-23:8; 202:12-203:4)	publication and the episode
ECF No. 75-20, Peters Decl., Ex. 1	"Whom Gods Destroy" of The
(Prelude to Axanar)	Original Series. Grossman Decl.,
	¶ 13, Ex. A (Peters tr. at 38:22-
	41:17); ¶ 14, Ex. C (Gossett tr. at
	48:10-50:10), Ex. I (April 26, 201-
	email from Christian Gossett to
	Alec Peters) (Dkt. 79-3). Van
	Citters Decl., ¶¶ 5-6, 13, 14, 19, 5
	(Dkt. 72-60).
59. <i>The Vulcan Scene</i> features an original	Disputed.
plot never before used in Plaintiffs' Works.	
ECF No. 48, Counterclaim at 24-25,	The Counterclaim is not evidence.
¶¶ 30-31	
ECF No. 75-15, Oki Decl., Ex. 13	The Vulcan Scene does not feature
(Peters Tr., Vol. I at 85:7-23)	an original plot. The plot of the
ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	Axanar feature, of which the

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1		
	Material Fact and Supporting Evidence	Plaintiffs' Response
2	Tr. at 22:8-23:8; 202:12-203:4)	Vulcan Scene is a part, is taken
3	ECF No. 75-20, Peters Decl., Ex. 1	from The Four Years War
4	(Prelude to Axanar)	publication and the episode
5		"Whom Gods Destroy" of The
6		Original Series. Grossman Decl., ¶
7		13, Ex. A (Peters tr. at 38:22-
8		41:17); ¶ 14, Ex. C (Gossett tr. at
9		48:10-50:10), Ex. I (April 26, 2014
10		email from Christian Gossett to
11		Alec Peters) (Dkt. 79-3). Van
12		Citters Decl., ¶¶ 5-6, 13, 14, 19, 57
13		(Dkt. 72-60).
14		
15		The Vulcan Scene features a
16		speech by the character Soval
17		about the nature of the human race.
18		This speech is linguistically
19		similar, and thematically identical,
20		to a speech given by the same
21		character in the <i>Star Trek</i> :
22		<i>Enterprise</i> episode, "The Forge."
23		Grossman Decl., ¶ 93, Ex. 5
24		( <i>Enterprise</i> Season 4, Episode 7,
25		2:47-4:35) (Dkt. 79-3).
26	60. The <i>Axanar</i> scripts feature an original	Disputed.
27	plot never before used in Plaintiffs' Works.	Disputou.
28		

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2	ECF No. 48, Counterclaim at 24-25,	The Counterclaim is not evidence.
3	¶¶ 30-31	
4	ECF No. 75-15, Oki Decl., Ex. 13	The Axanar scripts do not feature
5	(Peters Tr., Vol. I at 85:7-23)	an original plot. The plot and
6	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	sequence of events is taken from
7	Tr. at 22:8-23:8; 202:12-203:4)	The Four Years War publication
8	ECF No. 75-20, Peters Decl., Ex. 1	and the episode "Whom Gods
9	(Prelude to Axanar)	Destroy" of The Original Series.
10		Grossman Decl., ¶ 13, Ex. A
11		(Peters tr. at 38:22-41:17); ¶ 14,
12		Ex. C (Gossett tr. at 48:10-50:10),
13		Ex. I (April 26, 2014 email from
14		Christian Gossett to Alec Peters)
15		(Dkt. 79-3). Van Citters Decl., ¶¶
16		5-6, 13, 14, 19, 57 (Dkt. 72-60)
17	61. <i>Prelude to Axanar</i> features 4 original	Disputed.
18	characters.	
19 20	ECF No. 75-19, Peters Decl., ¶ 8	These characters were not
20	ECF No. 75-20, Peters Decl., Ex. 1	"developed entirely by
21	(Prelude to Axanar)	Defendants." The referenced
22		characters are Vulcans, Klingons
23		and Starfleet Officers. They are
24		depicted with costumes, makeup,
25 25		hair and even logos and insignias
26		that are copied from Plaintiffs'
27		characters. Van Citters Decl., ¶¶ 5,
28 b rtnership	10969556.1 101	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF
ional	202828-10048	UNCONTROVERTED FACTS

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		25-32 (Dkt. 72-60).
3	62. The Vulcan Scene features 1 original	Disputed.
4	character.	
5	ECF No. 75-19, Peters Decl., ¶ 10	Defendants' Vulcan characters are
6	ECF No. 75-21, Peters Decl., Ex. 2	not "original." Vulcans are a
7	(Vulcan Scene)	fictional species created by
8		Plaintiffs and portrayed in the Star
9		Trek Copyrighted Works. The
10		Vulcans in Defendants' Vulcan
11		Scene are depicted wearing Vulcan
12		robes, on the planet Vulcan, with
13		Vulcan architecture in the
14		background. Van Citters Decl. ¶¶
15		43-53 (Dkt. 72-60). Grossman
16		Decl., ¶ 42, Ex. AA (Axanar
17		Script) (Dkt. 79-3).
18	63. The Axanar scripts feature 50 original	Disputed.
19	characters.	
20	ECF No. 75-19, Peters Decl., ¶ 15	The Axanar scripts do not contain
21		50 "original" characters. The
22		referenced characters are Klingons,
23		Vulcans, and Starfleet officers and
24		personnel. Van Citters Decl., ¶ 59
25		(Dkt. 72-60). Grossman Decl.,
26		¶ 42, Ex. AA (Axanar Script) (Dkt.
27		79-3).
28		
Loeb & Loeb imited Liability Partnership Including Professional Corporations	10969556.1 102 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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Material Fact and Supporting Evidence	Plaintiffs' Response
64. <i>Prelude to Axanar</i> features an original	Disputed and irrelevant.
"mockumentary" style never before used by	
Plaintiffs.	The style of <i>Prelude</i> is directly
ECF No. 48, Counterclaim at 24-25,	taken from the Star Trek
¶¶ 30-31	Copyrighted Works, and involves a
ECF No. 75-15, Oki Decl., Ex. 13	science fiction action adventure
(Peters Tr., Vol. I at 85:7-23)	pitting the Federation, and its
ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	spaceships, against the Klingon
Tr. at 22:8-23:8; 202:12-203:4)	Empire, and its battlecruisers. Van
ECF No. 75-20, Peters Decl., Ex. 1	Citters Decl.,¶¶ 18 -20, 35-36, 55 -
(Prelude to Axanar)	62 (Dkt. 72-60).
	Prelude speaks for itself and does
	not use a "mockumentary" style.
	Prelude does not satirize or parody
	any Star Trek television show or
	movie. Grossman Decl., ¶ 13, Ex.
	A (Peters tr. at 35:9-16) (Dkt. 79-
	3). Instead, <i>Prelude</i> uses a
	documentary style to tell a fictional
	narrative story taken from The
	Four Years War publication and
	the episode "Whom Gods Destroy"
	of The Original Series. Grossman
	Decl., ¶ 13, Ex. A (Peters tr. at
	38:22-41:17); ¶ 14, Ex. C (Gossett

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Material Fact and Supporting Evidence	Plaintiffs' Response
	tr. at 48:10-50:10), Ex. I (April 26
	2014 email from Christian Gossett
	to Alec Peters) (Dkt. 79-3). Van
	Citters Decl., ¶¶ 5-6, 13, 14, 19, 57
	(Dkt. 72-60).
	Furthermore, the narrative structure
	of Prelude has previously been
	used in Star Trek. In the Star Trek
	Deep Space Nine episode "Trials
	and Tribble-ations," the primary
	narrative is exposed through an
	interview of the main protagonist,
	interspersed with scenes of the
	events described. Grossman Decl
	¶ 93, Ex. 3 (Star Trek: Deep Space
	Nine, Season 5, Episode 6) (Dkt.
	79-3).
65. <i>The Vulcan Scene</i> features an original	Disputed.
"mockumentary" style never before used by	
Plaintiffs.	The cited evidence does not
ECF No. 48, Counterclaim at 24-25,	support the stated fact. The Vulca
¶¶ 30-31	Scene is not a mockumentary style
ECF No. 75-15, Oki Decl., Ex. 13	Van Citters Decl., ¶ 43, Exhibit 20
(Peters Tr., Vol. I at 85:7-23)	(Vulcan Scene)(Dtk 72-60).
ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	

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Material Fact and Supporting Evidence	Plaintiffs' Response
Tr. at 22:8-23:8; 202:12-203:4)	The Counterclaim is not evidence
ECF No. 75-21, Peters Decl., Ex. 2,	
Vulcan Scene	
66. The <i>Axanar</i> scripts feature an original	Disputed.
"mockumentary" style never before used by	
Plaintiffs.	The cited evidence does not
ECF No. 48, Counterclaim at 24-25,	support the stated fact.
¶¶ 30-31	The Axanar Script is not a
ECF No. 75-15, Oki Decl., Ex. 13	mockumentary style. Grossman
(Peters Tr., Vol. I at 85:7-23)	Decl., ¶ 42, Ex. AA (Axanar
ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	Script) (Dkt 79-3).
Tr. at 22:8-23:8; 202:12-203:4)	
ECF No. 75-20, Peters Decl., Ex. 1	The Counterclaim is not evidence
(Prelude to Axanar)	
67. <i>Prelude</i> portrays Garth of Izar in a new	Disputed.
way not seen in any of Plaintiffs' Works—	
specifically, as a war veteran with	Prelude speaks for itself. It does
psychological issues resulting from his	not portray Garth of Izar "as a wa
traumatic experiences during the Four Years	veteran with psychological issues
War between the United Federation of Planets	resulting" from traumatic
and the Klingon Empire.	experiences fighting the Klingons
ECF No. 75-15, Oki Decl., Ex. 13	
(Peters Tr., Vol. I at 87:13-88:1)	Instead, Prelude portrays Garth as
ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	a brilliant military strategist and
Tr. at 192:2-15)	hero. Further, Defendants have n
ECF No. 75-19, Peters Decl., ¶¶ 6-7	cited to any pre-lawsuit evidence

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Material Fact and Supporting Evidence	Plaintiffs' Response
ECF No. 75-20, Peters Decl., Ex. 1	supporting this characterization
(Prelude to Axanar)	description of their work.
	See Van Citters Decl., ¶15, Ex.
	(Prelude to Axanar)(Dkt 72-60)
68.	Disputed.
	The Axanar Script speaks for its
	It does not portray Garth of Izar
ECF No. 75-15, Oki Decl., Ex. 13	
(Peters Tr., Vol. I at 87:13-88:1)	Instead, the Axanar Script portra
ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	Garth as a brilliant military
Tr. at 192:2-15)	strategist and hero. Grossman
ECF No. 75-19, Peters Decl., ¶¶ 6-7	Decl., ¶ 42, Ex. AA (Axanar
ECF No. 75-20, Peters Decl., Ex. 1	Script) (Dkt 79-3). Further,
(Prelude to Axanar)	Defendants have not cited to any
	pre-lawsuit evidence supporting
	this characterization or description
	of their work.
69. Mr. Peters modeled his performance of	Disputed and irrelevant.
Garth of Izar after the veterans depicted in	
"Band of Brothers," the HBO war documentary	Prelude speaks for itself. Mr.
mini-series.	Peters was not portraying anyon

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Material Fact and Supporting Evidence	Plaintiffs' Response
ECF No. 75-19, Peters Decl., ¶ 7	from an HBO series, he portrayed
	Plaintiffs' character, Garth of Izar.
	See Van Citters Decl., ¶15, Ex. 19
	(Prelude to Axanar)(Dkt 72-60).
70. Many scripts have been created since the	Disputed and irrelevant.
unfinished August 2015 script, all using	
varying degrees of the Star Trek Universe.	It is irrelevant whether Defendants
ECF No. 75-19, Peters Decl., ¶ 13	altered their script after the lawsui
ECF Nos. 75-22, 77-8, 77-9, Peters	was filed. Further, Defendants
Decl., Ex. 3 (July 1, 2016 Axanar Script)	testified
	Grossman Decl., ¶ 41, Ex. A
	(Peters tr. at 77:5-9), ¶ 42, Ex. AA
	(script).
71.	Disputed and irrelevant.
·	The Axanar Script speaks for itsel
Hunt decl., ¶ 2	Defendants' changes to the script
	after this lawsuit was filed are
	irrelevant. Grossman Decl., ¶ 42,
	Ex. AA (Axanar Script) (Dkt 79-3
72. Defendants are not currently committed	Disputed.
to using any of the existing scripts in the	
Potential Fan Film, and have not decided what	Defendants' post-lawsuit revision

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1		
	Material Fact and Supporting Evidence	Plaintiffs' Response
2	format, length and substance the Potential Fan	and "considerations" are irrelevant.
	Film will take, though are considering whether	
1	to make more mockumentary style works.	
5	ECF No. 75-15, Oki Decl., Ex. 13	
5 7	(Peters Tr., Vol. I at 74:10-23)	
	ECF No. 75-19, Peters Decl., ¶¶ 13-14	
3	ECF No. 75-8, Oki Decl., Ex. 6 (Hunt	
	Tr. at 49:18-50:5)	
	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	
	Tr. at 88:7-18, 97:11-98:7)	
	73. Defendants' Works are both social	Disputed.
	commentary and satire, in that they focus on	
	and intend to expose the true horrors and	The Axanar Works speak for
	consequences of war in ways the Plaintiffs'	themselves. They say nothing
	Works did not.	about the "horrors and
	ECF No. 75-15, Oki Decl., Ex. 13	consequences of war."
	(Peters Tr., Vol. I at 87:13-88:1)	
	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	Defendants never claimed that the
	Tr. at 192:2-15)	Axanar Works were a social
	ECF No. 75-19, Peters Decl., ¶ 7	commentary or satire prior to this
		lawsuit – and they are not.
	74. A mockumentary is defined by	Disputed.
	Wikipedia as a "parody."	
	("Mockumentary" Wikipedia Page)	The cited evidence is inadmissible
7	Ranahan Decl. ¶ 8. Ex. H.	hearsay.
3		

Loeb & Loeb A Limited Liability Partnership Including Professional Corporations Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 110 of 179 Page ID #:7091

Μ	aterial Fact and Supporting Evidence	Plaintiffs' Response
		The Wikipedia page attached to
		Ms. Ranahan's declaration states
		that "a mockumentaryis a type of
		film or television show in which
		fictional events are presented in
		documentary style to create a
		parody."
		The implication that Prelude is a
		"parody" is false, is contradicted b
		the work itself, and
		Grossman Reply Decl., ¶ 3, Ex. A
		(Peters tr. at 34:13-35:16).
75.	Prelude was distributed for free online.	Undisputed.
	ECF No. 48, Counterclaim, ¶ 16	
	ECF No. 75-15, Oki Decl., Ex. 13	
(Pete	rs Tr., Vol. I at 57:1-11, 85:7-23)	
	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	
Tr. a	t 22:8-23:8; 202:12-203:4)	
	ECF No. 75-19, Peters Decl., ¶ 7	
76.	<i>The Vulcan Scene</i> was distributed for	Undisputed.
	online.	
1100	ECF No. 75-19, Peters Decl., ¶ 9	
	ECF No. 75-7, Oki Decl., Ex. 5 (Burnett	
Tr a	t 174:3-10)	

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	Material Fact and Supporting Evidence	Plaintiffs' Response
2	ECF No. 75-8, Oki Decl., Ex. 6 (Hunt	
3	Tr. at 56:12-25)	
4	77. Plaintiffs attempt to present evidence on	Disputed.
5	substantial similarity through a fact witness,	
6	John Van Citters.	Mr. Van Citters' declaration relates
7	Plaintiffs' Expert Witness Disclosure,	to the various elements from the
8	Nov. 2, 2016	Axanar Works that were taken
9		from Plaintiffs' Star Trek
10		Copyrighted Works.
1		Further, Mr. Van Citters was
2		designated as a non-retained
3		expert, pursuant to Federal Rule of
l4		Civil Procedure 26(a)(2)(C) as he
5		is a party employee with
5		specialized knowledge but
		Defendants declined to notice or
8		take his deposition.
9	78. John Van Citters was never designated to	Disputed.
0	testify about substantial similarity until after	
1	the close of discovery.	Mr. Van Citters was designated as
2	Plaintiffs' Rule 26 Initial Disclosures,	a non-retained expert, pursuant to
3	May 2, 2016	Federal Rule of Civil Procedure
4	Plaintiffs' Expert Witness Disclosure,	26(a)(2)(C) on the subject of the
5	Nov. 2, 2016	various elements taken from
6		Plaintiffs' works, but Defendants
27		declined to take his deposition on
28	10969556.1 110 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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Material Fact and Supporting Evidence	Plaintiffs' Response
	that subject.
79. Plaintiffs' counsel objected to questions	Disputed.
about the Complaint during John Van Citters's	
fact deposition.	The testimony cited does not
Ranahan Decl., ¶ 3, Ex. C (Van Citters	support Defendants' claim. Mr.
Tr. at 17:24-19:4, 21:21-24:13, 53:11-54:5,	Van Citters testified as a person
73:2-74:16; 78:14-80:12)	most knowledgeable on numerous
	subjects, and the only instructions
	not to answer related to Mr. Van
	Citters' communications with
	counsel regarding the drafting of
	the Complaint – but he was
	explicitly permitted to address
	questions regarding elements taken
	from Plaintiffs' works. See,
	Ranahan Decl, ¶ 3, Ex. C ,78:14-
	80:12 ("You're free to obviously
	ask him about the substance of the
	chart"). (While Ms. Ranahan
	cites to this testimony, she left out
	page 79. Page 79 is attached to the
	Reply Declaration of David
	Grossman as Exhibit CCC).
	Mr. Van Citters was later
	designated as a non-retained
10969556 1 111	PLAINTIFFS' RESPONSE TO DEFENDANTS

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1		
1	Material Fact and Supporting Evidence	Plaintiffs' Response
2 3		expert, pursuant to Federal Rule of
		Civil Procedure $26(a)(2)(C)$ on the
4		subject of the various elements
5		taken from Plaintiffs' works, but
6		Defendants declined to take his
7		deposition on that subject.
8	80. After John Von Citters's deposition was	Disputed.
9	completed and discovery closed, Plaintiffs	
10	attempted to designate Mr. Van Citters as an	Mr. Van Citters was designated as
11	expert, though the so-called "expert" designa-	a non-retained expert, pursuant to
12	tion contained no report at all or any of the	Federal Rule of Civil Procedure
13	other requirements of an expert report under	26(a)(2)(C) on the subject of the
14	Rule 26, and was served after the expert	various elements taken from
15	disclosure deadline.	Plaintiffs' works. Mr. Van Citters
16	Plaintiffs' Rule 26 Initial Disclosures,	is not required to provide an expert
17	May 2, 2016	report.
18	Plaintiffs' Expert Witness Disclosure,	
19 20	Nov. 2, 2016	
20	(Defendants' Evidentiary Objections to	
21	the Declaration of John Van Citters in Support	
22	of Plaintiffs' Motion for Partial Summary	
23	Judgment)	
24 25	81. By Plaintiffs' own admission, the only	Undisputed that Plaintiffs are
25	references to a character named Garth of Izar in	asserting that Garth of Izar
26	the entire Star Trek oeuvre is one lone	appeared in the episode "Whom
27	appearance in the Original Series, the subject	Gods Destroy" in The Original
28		

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1		
2	Material Fact and Supporting Evidence	Plaintiffs' Response
2	of a minor licensed novel, and a reference in	Series, in the novel entitled "Garth
4	one of a large number of supplements to a role-	of Izar," and in <i>The Four Years</i>
	playing game from the 1980s, which is not at	War Supplement.
5	issue in this action.	Disputed that these are the only
6	ECF No. 72, Plaintiffs' Motion for	appearances of Garth of Izar in all
7	Partial Summary Judgment, pp. 8-9	Star Trek works that exist.
8		
9		Disputed that The Four Years War
10		Supplement is not at issue in this
11		action. See Dkt. 75-3 (CBS'
12		interrogatory responses) at 3:8-9
13		(items 15 and 16), 4:10-11 (items
14		14 and 15), and 7:16-21. See also
15		Dkt. 75-4 (Paramount's
16		interrogatory responses) at 3:8-9
17		(items 14 and 15), 4:11-12 (items
18		14 and 15), and 7:16-21.
19		
20		Disputed as to Defendants'
21		characterization of a "minor"
22		licensed novel. The novel Garth of
23		Izar speaks for itself.
24	82. Plaintiffs have sought federal copyright	Undisputed that Plaintiffs own the
25	protection for characters central to the Star	copyrights to several Star Trek
26	Trek universe.	television series, movies, and
27	ECF No. 26, FAC, Appendix A ¶¶ 2-6	books, which contain several
28		·
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Material Fact and Supporting Evidence	Plaintiffs' Response
2 3	characters.
4	
5	Grossman Decl., ¶ 90, Ex. UU
	(copyright registrations for the Sta
	Trek Television Series), ¶ 91, Ex.
7	VV (copyright registrations for the
8	Star Trek Motion Pictures), ¶ 94,
9	Ex. WW (copyright registration fo
0	Garth of Izar novel); ¶ 95, Ex. XX
	(copyright registration for
2	Strangers from the Sky); ¶ 96, Ex.
3	YY (copyright registration for
4	Infinity's Prism)(Dkt. 79-3). Van
5	Citters Decl. ¶¶ 3- 14, Ex. BBB
5	(copyright registration for The For
7	Years War), 64-65 (Dkt. 72-60).
8	
9	Plaintiffs are not required to have
	copyright registrations in
1	characters in order to own the
2	copyrights to those characters.
3	Anderson v. Stallone, 1989 U.S.
4	Dist. LEXIS 11109, Copy. L. Rep
5	(CCH) P22665 (C.D. Cal. Apr. 25
5	(een) 122005 (e.b. ear. ripi. 25 1989).
7	
8	

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1		
	Material Fact and Supporting Evidence	Plaintiffs' Response
2		Further, as the Ninth Circuit
3		recently held, characters depicted
4		in an audiovisual work, with
5		distinct, recognizable traits, are
6		protectable. These characters
7		include Klingons, Vulcans, Garth
8		of Izar, Ambassador Soval,
9		Klingon Commander Chang, and
10		further include recognizable,
11		distinct inanimate objects as well,
12		including the U.S.S. Enterprise,
13		Klingon battlecruisers, and Vulcan
14		ships. See DC Comics v. Towle,
15		802 F.3d 1012, 1021 (9th Cir.
16		2015).
17	83. Plaintiffs have sought copyright	Undisputed that Plaintiffs own the
18	protection for Captain Kirk.	copyrights to several Star Trek
19	ECF No. 26, FAC, Appendix A ¶¶ 2-6	television series, movies, and
20		books, which contain Captain Kirk.
21		
22		Grossman Decl., ¶ 90, Ex. UU
23		(copyright registrations for the Star
24		Trek Television Series), ¶ 91, Ex.
25		VV (copyright registrations for the
26		Star Trek Motion Pictures), ¶ 94,
27		Ex. WW (copyright registration for
28 <b>b</b> trinership ional	10969556.1 115 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1		
1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		Garth of Izar novel); ¶ 95, Ex. XX
3		(copyright registration for
4		Strangers from the Sky); ¶ 96, Ex.
5		YY (copyright registration for
6		Infinity's Prism) (Dkt. 79-3). Van
7		Citters Decl. ¶¶ 3- 14, Ex. BBB
8		(copyright registration for The Four
9		Years War), 64-65 (Dkt. 72-60).
10		
11		Plaintiffs are not required to have
12		copyright registrations in
13		characters in order to own the
14		copyrights to those characters.
15		Anderson v. Stallone, 1989 U.S.
16		Dist. LEXIS 11109, Copy. L. Rep.
17		(CCH) P22665 (C.D. Cal. Apr. 25,
18		1989); see also DC Comics v.
19		Towle, 802 F.3d 1012, 1021 (9th
20		Cir. 2015).
21	84. Plaintiffs have sought copyright	Undisputed that Plaintiffs own the
22	protection for Spock.	copyrights to several Star Trek
23	ECF No. 26, FAC, Appendix A ¶¶ 2-6	television series, movies, and
24		books, which contain Spock.
25		
26		Grossman Decl., ¶ 90, Ex. UU
27		(copyright registrations for the Star
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 116 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		Trek Television Series), ¶ 91, Ex.
3		VV (copyright registrations for the
4		Star Trek Motion Pictures), ¶ 94,
5		Ex. WW (copyright registration for
6		Garth of Izar novel); ¶ 95, Ex. XX
7		(copyright registration for
8		Strangers from the Sky); ¶ 96, Ex.
9		YY (copyright registration for
10		Infinity's Prism) (Dkt. 79-3). Van
11		Citters Decl. ¶¶ 3- 14, Ex. BBB
12		(copyright registration for The Four
13		Years War), 64-65 (Dkt. 72-60).
14		
15		Plaintiffs are not required to have
16		copyright registrations in
17		characters in order to own the
18		copyrights to those characters.
19		Anderson v. Stallone, 1989 U.S.
20		Dist. LEXIS 11109, Copy. L. Rep.
21		(CCH) P22665 (C.D. Cal. Apr. 25,
22		1989); see also DC Comics v.
23		Towle, 802 F.3d 1012, 1021 (9th
24		Cir. 2015).
25	85. Plaintiffs have not sought federal	Disputed. Plaintiffs own the
26	copyright protection for the character Garth of	copyrights to several Star Trek
27 28	Izar.	television series, movies, and

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1		
2	Material Fact and Supporting Evidence	Plaintiffs' Response
3		books, and own the characters in
		those works, including Garth of
4		Izar.
5		
6		Grossman Decl., ¶ 90, Ex. UU
7		(copyright registrations for the Star
8		Trek Television Series), ¶ 91, Ex.
9		VV (copyright registrations for the
10		Star Trek Motion Pictures), ¶ 94,
11		Ex. WW (copyright registration for
12		Garth of Izar novel); ¶ 95, Ex. XX
13		(copyright registration for
14		Strangers from the Sky); ¶ 96, Ex.
15		YY (copyright registration for
16		Infinity's Prism) (Dkt. 79-3). Van
17		Citters Decl. ¶¶ 3- 14, Ex. BBB
18		(copyright registration for The Four
19		Years War), 64-65 (Dkt. 72-60).
20		
21		Plaintiffs are not required to have
22		copyright registrations in
23		characters in order to own the
24		copyrights to those characters.
25		Anderson v. Stallone, 1989 U.S.
26		Dist. LEXIS 11109, Copy. L. Rep.
27		(CCH) P22665 (C.D. Cal. Apr. 25,
28		( (
		PLAINTIFFS' RESPONSE TO DEFENDANTS'

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		1989); see also DC Comics v.
3		Towle, 802 F.3d 1012, 1021 (9th
4		Cir. 2015).
5	86. Plaintiffs have not sought federal	Disputed. Plaintiffs own the
6	copyright protection for the character	copyrights to several Star Trek
7	Ambassador Soval.	television series, movies, and
8		books, some of which include
9		Soval.
10		
11		Grossman Decl., ¶ 90, Ex. UU
12		(copyright registrations for the Star
13		Trek Television Series), ¶ 91, Ex.
14		VV (copyright registrations for the
15		Star Trek Motion Pictures), ¶ 94,
16		Ex. WW (copyright registration for
17		Garth of Izar novel); ¶ 95, Ex. XX
18		(copyright registration for
19		Strangers from the Sky); ¶ 96, Ex.
20		YY (copyright registration for
21		Infinity's Prism) (Dkt. 79-3). Van
22		Citters Decl. ¶¶ 3- 14, Ex. BBB
23		(copyright registration for The Four
24		Years War), 64-65 (Dkt. 72-60).
25		
26		Plaintiffs are not required to have
27		copyright registrations in
28		
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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		characters in order to own the
3		copyrights to those characters.
4		Anderson v. Stallone, 1989 U.S.
5		Dist. LEXIS 11109, Copy. L. Rep.
6		(CCH) P22665 (C.D. Cal. Apr. 25,
7		1989); see also DC Comics v.
8		Towle, 802 F.3d 1012, 1021 (9th
9		Cir. 2015).
10 11 12 13 14 15 16 17 18 19 20 21	(Abrams Tr. at 14:22-15:3) ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11	Undisputed and irrelevant. Undisputed and irrelevant.
<ul> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> </ul>	<ul> <li>(Lin Tr. at 16:10-22)</li> <li>89. J.J. Abrams, the producer and/or director of recent Star Trek films, in his deposition stated that he would consider Spock a character that is central to Star Trek.</li> <li>ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12</li> <li>(Abrams Tr. at 14:22-15:3)</li> </ul>	Disputed. The cited testimony does not relate to Spock. Moreover, any testimony as to Mr. Abrams' opinion as to the central

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		characters of <i>The Original Series</i> is
3		irrelevant.
4	90. J.J. Abrams, the producer and/or director	Disputed.
5	of recent Star Trek films, in his deposition	
6	stated that he would consider Bones a character	The cited testimony does not relate
7	that is central to Star Trek.	to Bones.
8	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	
9	(Abrams Tr. at 14:22-15:3)	Moreover, any testimony as to Mr.
10		Abrams' opinion as to the central
11		characters of The Original Series is
12		irrelevant.
13	91. J.J. Abrams, the producer and/or director	Disputed.
14	of recent Star Trek films, in his deposition	
15	stated that he would consider Uhura a character	The cited testimony does not relate
16 17	that is central to Star Trek.	to Uhura.
17	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	
18 19	(Abrams Tr. at 14:22-15:3)	Moreover, any testimony as to Mr.
19 20		Abrams' opinion as to the central
20 21		characters of The Original Series is
21 22		irrelevant.
22	92. J.J. Abrams, the producer and/or director	Disputed.
23 24	of recent Star Trek films, in his deposition	
24 25	stated that he would consider Zulu a character	There is no character named
23 26	that is central to Star Trek.	"Zulu" – Defendants appear to
20 27	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	intend to refer to George Takei's
27	(Abrams Tr. at 14:22-15:3)	character, "Sulu," but the cited
20		

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		testimony does not relate to Sulu.
3		
4		Moreover, any testimony as to Mr.
5		Abrams' opinion as to the central
6		characters of The Original Series is
7		irrelevant.
8	93. J.J. Abrams, the producer and/or director	Disputed.
9	of recent Star Trek films, in his deposition	
0	stated that he would consider Chekov a	The cited testimony does not relate
11	character that is central to Star Trek.	to Chekov.
12	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	
13	(Abrams Tr. at 14:22-15:3)	Moreover, any testimony as to Mr.
14		Abrams' opinion as to the central
15		characters of The Original Series is
16		irrelevant.
17	94. J.J. Abrams, the producer and/or director	Disputed.
18	of recent Star Trek films, in his deposition	
19	stated that he would consider Scotty a character	The cited testimony does not relate
20	that is central to Star Trek.	to Scotty.
21	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	
22	(Abrams Tr. at 14:22-15:3)	Moreover, any testimony as to Mr.
23		Abrams' opinion as to the central
24		characters of The Original Series is
25		irrelevant.
26	95. J.J. Abrams, the producer and/or director	Undisputed and irrelevant.
27	of recent Star Trek films, in his deposition	
28		
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1 <b>N</b>	Iaterial Fact and Supporting Evidence	Plaintiffs' Response
	ed that he would not consider Garth of Izar	Any testimony as to Mr. Abrams'
	ntral character.	opinion as to the central characters
4	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	of The Original Series is irrelevant.
	rams Tr. at 14:22-15:3)	
6 7 96.	In his deposition testimony, 30(b)(6)	Disputed.
/ desi	gnee for CBS,	
		The evidence cited does not
9		support the "fact." Mr. Van Citters
10	Ranahan Decl., ¶ 3, Ex. C (Van Citters	testified that
	at 124:24-125:16)	
12		
13		
14		
15		
16		Ranahan
17		Decl., ¶ 3, Ex. C (Van Citters tr. at
18		124:24-125:20) (Dkt. 90-1).
19		
20 97.	In his deposition testimony, 30(b)(6)	Disputed.
	gnee for Paramount,	
22		The evidence cited does not
23		support the "fact." Mr. O'Rourke
24	Ranahan Decl., ¶ 6, Ex. F (O'Rourke Tr.	testified that
	06:14-21)	
26		
27		
28		
rship al 20282	556.1 123 8-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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Material Fact and Supporting Evidence	Plaintiffs' Response
98. The only concrete references to a	Disputed.
character named Ambassador Soval in the	
entire Star Trek oeuvre is a 2001 pilot episode	Defendants do not provide any
of the television series Enterprise and a few	evidence for their purported fact.
other brief appearances.	
ECF No. 72, Plaintiffs' Motion for	The character Soval appears in th
Partial Summary Judgment, pp. 8-9	numerous Enterprise episodes:
	"Broken Bow" (S1 E1)
	"Shadows of P'Jem" (S1 E15)
	"Shockwave, Part II" (S2 E1)
	"Cease Fire" (S2 E15)
	"The Expanse" (S2 E26)
	"Twilight" (S3 E8)
	"Home" (S4 E3)
	"The Forge" (S4 E7)
	"Awakening" (S4 E8)
	"Kir'Shara" (S4 E9)
	"Terra Prime" (S4 E21).
	See Grossman Decl., ¶ 92, Ex. 5
	(Enterprise DVDs)(Dkt. 79-3).
99. Defendants did not profit from the	Disputed.
creation of <i>Prelude to Axanar</i> .	
ECF No. 75-15, Oki Decl., Ex. 13	Peters
(Peters Tr., Vol. I at 224:21-225:4)	

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		
3		. Grossman
4		Decl., ¶ 74, Ex. A (Peters tr. at
5		189:2-23; 122:21-25; 65:7-18;
6		193:22-194:18; 209:15-212:22;
7		195:21-198:1; 213:5-10; 201:6-
8		204:7; 204:11-16; 205:3-16;
9		203:25-204:1; 217:6-15; 205:14-
10		16; 205:20-207:9; 207:10-12;
11		208:2-16) (Dkt. 79-3).
12		Defendants raised
13		
14		Grossman Decl., ¶ 73, Ex. A
15		(Peters tr. at 70:24-71:4) (Dkt. 79-
16		3).
17		Further, to complete the Axanar
18		film, Defendants intend
19		
20		. Grossman Decl.,
21		¶ 73, Ex. A (Peters tr. at 192:3-
22		193:21) (Dkt. 88-1).
23		
24		Defendants' business plan states
25		
26		
27		
28		
<b>eb</b> artnership ssional is	10969556.1 125 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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Material Fact and Suppor	ting Evidence Plaintiffs' Response
	Grossman
	Decl., ¶ 67, Ex. PP (Axanar
	marketing plan) (Dkt. 79-3).
	Peters created the Axanar Works
	large part in order to
	Grossma
	Decl., ¶ 79, Ex. A (Peters tr. at
	455:24-456:16); ¶ 77, Ex. B
	(Burnett tr. at 217:22-218:7); ¶ 78
	Ex. C (Gossett tr. at 19:15-22:20)
	(Dkt. 79-3).
	Peters intended to
	Grossman Decl., ¶ 65, Ex. A
	(Peters tr. at 234:11-25); ¶ 66, Ex
	B (Burnett tr. at 151:2-153:12),
	¶ 67, Ex. PP (Axanar marketing
	plan) (Dkt. 79-3).
	Paul, (2 au , 7 5).

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1		
2	Material Fact and Supporting Eviden	ce Plaintiffs' Response
2	100. Defendants did not profit from the	Disputed.
	creation of The Vulcan Scene.	
4	ECF No. 75-15, Oki Decl., Ex. 13	Peters
5	(Peters Tr., Vol. I at 224:21-225:4)	
6 7		
8		. Grossman
9		Decl., ¶ 74, Ex. A (Peters tr. at
10		189:2-23; 122:21-25; 65:7-18;
11		193:22-194:18; 209:15-212:22;
12		195:21-198:1; 213:5-10; 201:6-
13		204:7; 204:11-16; 205:3-16;
14		203:25-204:1; 217:6-15; 205:14-
15		16; 205:20-207:9; 207:10-12;
16		208:2-16) (Dkt. 79-3).
17		
18		Defendants' business plan states
19		
20		
21		
22		
23		
24		Grossman
25		Decl., ¶ 67, Ex. PP (Axanar
26		marketing plan) (Dkt. 79-3).
27		
28		
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1	Material Fact and Supporting Evi	dence	Plaintiffs' Response
2			Peters created the Axanar Works in
3			
4			
5			
6			Grossman
7			Decl., ¶ 79, Ex. A (Peters tr. at
8			455:24-456:16); ¶ 77, Ex. B
9			(Burnett tr. at 217:22-218:7); ¶ 78,
10			Ex. C (Gossett tr. at 19:15-22:20)
11			(Dkt. 79-3).
12			
13 14			Peters intended
14			
13 16			
10			·
17			Grossman Decl., ¶ 65, Ex. A
10			(Peters tr. at 234:11-25); ¶ 66, Ex.
20			B (Burnett tr. at 151:2-153:12),
20			¶ 67, Ex. PP (Axanar marketing
21			plan) (Dkt. 79-3).
23			
24	101. Defendants did not profit from the	ne	Disputed.
25	creation of the Axanar scripts.		
26	ECF No. 75-15, Oki Decl., Ex. 1	.3	Peters
27	(Peters Tr., Vol. I at 224:21-225:4)		
28			
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 202828-10048	128	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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Material Fact and Supporting Evidence	Plaintiffs' Response
	. Grossman
	Decl., ¶ 74, Ex. A (Peters tr. at
	189:2-23; 122:21-25; 65:7-18;
	193:22-194:18; 209:15-212:22;
	195:21-198:1; 213:5-10; 201:6-
	204:7; 204:11-16; 205:3-16;
	203:25-204:1; 217:6-15; 205:14
	16; 205:20-207:9; 207:10-12;
	208:2-16) (Dkt. 79-3).
	Peters attempted to trademark t
	word "Axanar" and
	Grossman Decl., ¶ 58, Ex. A
	(Peters tr. at 442:21-449:9); Ex.
	(Facebook message exchange
	between Terry McIntosh and A
	Peters); ¶ 59, Ex. E (McIntosh
	at 20:23-22:15), ¶ 60, Ex. C
	(Gossett tr. at $126:10-128:14$ ), I
	MM (April 20, 2015 email
	exchange between Alec Peters
	Christian Gossett); ¶ 65, Ex. A
	(Peters tr. at 234:11-25); ¶ 66, H

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1	Material Fact and Supporting Evide	ence Plaintiffs' Response
2		B. (Burnett tr. at 151:2-153:12),
3		¶ 67, Ex. PP (Axanar marketing
4		plan), ¶ 68, Ex. QQ (printout from
5		Axanarproductions.com)(Dkt. 79-
6		3).
7		
8		Defendants' business plan states
9		
10		
11		
12		
13		
14		Grossman
15		Decl., ¶ 67, Ex. PP (Axanar
16		marketing plan) (Dkt. 79-3).
17		
18		Peters created the Axanar
19		
20		
21		
22		Grossman
23		Decl., ¶ 79, Ex. A (Peters tr. at
24		455:24-456:16); ¶ 77, Ex. B
25		(Burnett tr. at 217:22-218:7); ¶ 78,
26		Ex. C (Gossett tr. at 19:15-
27		22:20)(Dkt. 79-3).
28		22.20/(2.10. / ) 0).
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1 Material Fa	act and Supporting Evidence	Plaintiffs' Response
2		
3		Peters intended
4		
5		
6		
7		Grossman Decl., ¶ 65, Ex. A
8		(Peters tr. at 234:11-25); ¶ 66, Ex.
)		B (Burnett tr. at 151:2-153:12),
)		¶ 67, Ex. PP (Axanar marketing
1		plan) (Dkt. 79-3).
	no evidence that the free	Disputed.
3 YouTube.com	presentations of Prelude	
compete with,	substitute for, or have any	Peters stated: "But Axanar is not
impact whatsoe	ever on Plaintiffs' multimillion	just an independent Star Trek film;
dollar internation	onal entertainment enterprise.	it is the beginning of a whole new
ECF Nos	s. 75-11, 77-4, Oki Decl., Ex. 9	way that fans can get the content
(Van Citters Tr	r. at 119:19-124:18)	they want, by funding it
)	s. 75-12, 77-5, Oki Decl., Ex. 10	themselves. Why dump hundreds
) (O'Rourke Tr.	at 60:22-61:5; 63:8-16)	or thousands of dollars a year on
	, ,	400 cable channels, when what you
2		really want is a few good sci-fi
3		shows?" Grossman Decl., ¶ 49, Ex
1		A (Peters tr. at 99:10-100:15), Ex.
5		DD (Axanar Indiegogo fundraising
5		page) (Dkt. 79-3).
7		puge) (DAL. 1)-3).
8		
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_		
1	Material Fact and Supporting Evidence	ce Plaintiffs' Response
2		Plaintiffs' Star Trek Copyrighted
3		Works are distributed via cable.
4		Van Citters Decl., ¶ 11 (Dkt. 88-
5		70).
6		
7		Mr. Gossett testified that Mr.
8		Peters "repeatedly" described to
9		him the concept that he was
10		interested in creating alternative
11		ways for fans to view Star Trek,
12		and a document produced by
13		Defendants states:
14		
15		
16		
17		Grossman Reply Decl., ¶ 4,
18		Ex. C (Gossett tr. at 115:24 -
19		117:7), Ex. MMM (Axanar
20		document).
21		
22		Peters attempted to meet with
23		Netflix to become a producer of
24		Star Trek productions, attempted to
25		trademark the word "Axanar" and
26		
27		
28		
e <b>b</b> rtnership sional	10969556.1 132 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 134 of 179 Page ID #:7115

1		
2	Material Fact and Supporting Evidence	Plaintiffs' Response
3		. Grossman
		Decl., ¶ 58, Ex. A (Peters tr. at
4		442:21-449:9); Ex. LL (Facebook
5		message exchange between Terry
6		McIntosh and Alec Peters); ¶ 59,
7		Ex. E (McIntosh tr. at 20:23-
8		22:15), ¶ 60, Ex. C (Gossett tr. at
9		126:10-128:14), Ex. MM (April 20,
10		2015 email exchange between Alec
11		Peters and Christian Gossett);
12		¶ 65, Ex. A (Peters tr. at 234:11-
13		25); ¶ 66, Ex. B. (Burnett tr. at
14		151:2-153:12), ¶ 67, Ex. PP
15		(Axanar marketing plan), ¶ 68, Ex.
16		QQ (printout from
17		Axanarproductions.com)(Dkt. 79-
18		3).
19		
20		Defendants' business plan states
21		
22		
23		
24		
25		
26		Grossman
27		Decl., ¶ 67, Ex. PP (Axanar
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 133 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1	Material Fact and Supporting Evidence	Plaintiffs' Response	
2		marketing plan) (Dkt. 79-3).	
3		Mr. Peters	
4			
5			
6			
7		. Grossman Decl., ¶ 65, Ex.	
8		A (Peters tr. at 234:11-25); ¶ 66,	
9		Ex. B (Burnett tr. at 151:2-153:12),	
10		¶ 67, Ex. PP (Axanar marketing	
11		plan) (Dkt. 79-3).	
12	103. There is no evidence that the unfinished	Disputed.	
13	Potential Fan Film script, or any of the prior		
14	drafts of the script, competes with, acts as a	The report of Christian Tregillis	
15	substitute for, or has any impact whatsoever on	lacks foundation and is hearsay.	
16	Plaintiffs' Star Trek franchise.		
17	ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3	The testimony cited does not	
18	(Tregillis Report at ¶¶ 10-12)	support the purported "fact."	
19	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12		
20	(Abrams Tr. at 42:7-11)	Peters stated: "But Axanar is not	
21	ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9	just an independent Star Trek film;	
22	(Van Citters Tr. at 119:19-124:18)	it is the beginning of a whole new	
23	ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10	way that fans can get the content	
24	(O'Rourke Tr. at 60:22-61:5; 63:8-16)	they want, by funding it	
25		themselves. Why dump hundreds	
26		or thousands of dollars a year on	
27		400 cable channels, when what you	
28			
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 134 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS	

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Material Fact and Supporting Evidence	Plaintiffs' Response
	really want is a few good sci-fi
	shows?" Grossman Decl., ¶ 49, B
	A (Peters tr. at 99:10-100:15), Ex
	DD (Axanar Indiegogo fundraisi
	page) (Dkt. 79-3).
	Plaintiffs' Star Trek Copyrighted
	Works are distributed via cable.
	Van Citters Decl., ¶ 11 (Dkt. 88-
	70).
	Mr. Gossett testified that Mr.
	Peters "repeatedly" described to
	him the concept that he was
	interested in creating alternative
	ways for fans to view Star Trek,
	and a document produced by
	Defendants states:
	Grossman Reply Decl.,
	Ex. C (Gossett tr. at 115:24 -
	117:7), Ex. MMM (Axanar
	document).
	-

### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 137 of 179 Page ID #:7118

1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		Peters attempted to meet with
3		Netflix to become a producer of
4		Star Trek productions, attempted to
5		trademark the word "Axanar" and
6		
7		
8		. Grossman
9		Decl., ¶ 58, Ex. A (Peters tr. at
10		442:21-449:9); Ex. LL (Facebook
11		message exchange between Terry
12		McIntosh and Alec Peters); ¶ 59,
13		Ex. E (McIntosh tr. at 20:23-
14		22:15), ¶ 60, Ex. C (Gossett tr. at
15		126:10-128:14), Ex. MM (April 20,
16		2015 email exchange between Alec
17		Peters and Christian Gossett);
18		¶ 65, Ex. A (Peters tr. at 234:11-
19		25); ¶ 66, Ex. B. (Burnett tr. at
20		151:2-153:12), ¶ 67, Ex. PP
21		(Axanar marketing plan), ¶ 68, Ex.
22		QQ (printout from
23		Axanarproductions.com) (Dkt. 79-
24		3).
25		
26		Defendants' business plan states
27		
28		
<b>b</b> rtnership ional	10969556.1 136 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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## Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 138 of 179 Page ID #:7119

Material Fact and Supporting Evidence	Plaintiffs' Response
	Grossman
	Decl., ¶ 67, Ex. PP (Axanar
	marketing plan) (Dkt. 79-3).
	Peters
	Grossman Decl., ¶ 65, Ex. A
	(Peters tr. at 234:11-25); ¶ 66, H
	B (Burnett tr. at 151:2-153:12),
	¶ 67, Ex. PP (Axanar marketing
	plan)(Dkt. 79-3).
104. There is no evidence that the unfinished	Disputed.
Potential Fan Film script, or any of the prior	
drafts of the script, competes with, acts as a	The report of Christian Tregillis
substitute for, or has any impact whatsoever on	lacks foundation and is hearsay
Plaintiffs' Star Trek franchise.	
ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3	The testimony cited does not
(Tregillis Report at ¶¶ 10-12)	support the purported "fact."
ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	
(Abrams Tr. at 42:7-11)	Peters stated: "But Axanar is no
ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9	just an independent Star Trek fi

### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 139 of 179 Page ID #:7120

1	Material Fact and Supporting Evidence	Plaintiffs' Response	
2	(Van Citters Tr. at 119:19-124:18)	it is the beginning of a whole new	
3	ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10	way that fans can get the content	
4	(O'Rourke Tr. at 60:22-61:5; 63:8-16)	they want, by funding it	
5		themselves. Why dump hundreds	
6		or thousands of dollars a year on	
7		400 cable channels, when what you	
8		really want is a few good sci-fi	
9		shows?" Grossman Decl., ¶ 49, Ex.	
10		A (Peters tr. at 99:10-100:15), Ex.	
11		DD (Axanar Indiegogo fundraising	
12		page)(Dkt. 79-3).	
13			
14		Plaintiffs' Star Trek Copyrighted	
15		Works are distributed via cable.	
16		Van Citters Decl., ¶ 11 (Dkt. 88-	
17		70).	
18			
19		Mr. Gossett testified that Mr.	
20		Peters "repeatedly" described to	
21		him the concept that he was	
22		interested in creating alternative	
23		ways for fans to view Star Trek,	
24		and a document produced by	
25		Defendants states:	
26			
27			
28			
• <b>b</b> rtnership	10969556.1 138	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF	

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### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 140 of 179 Page ID #:7121

	Material Fact and Supporting Evidence	Plaintiffs' Response
2		
3		Grossman Reply Decl., ¶ 4,
4		Ex. C (Gossett tr. at 115:24 -
5		117:7), Ex. MMM (Axanar
6		document).
7		
8		Peters attempted to meet with
9		Netflix to become a producer of
10		Star Trek productions, attempted to
11		trademark the word "Axanar" and
12		
13		
14		. Grossman
15		Decl., ¶ 58, Ex. A (Peters tr. at
16		442:21-449:9); Ex. LL (Facebook
17		message exchange between Terry
18		McIntosh and Alec Peters); ¶ 59,
19		Ex. E (McIntosh tr. at 20:23-
20		22:15), ¶ 60, Ex. C (Gossett tr. at
21		126:10-128:14), Ex. MM (April 20,
22		2015 email exchange between Alec
23		Peters and Christian Gossett);
24		¶ 65, Ex. A (Peters tr. at 234:11-
25		25); ¶ 66, Ex. B. (Burnett tr. at
26		151:2-153:12), ¶ 67, Ex. PP
27		(Axanar marketing plan), $\P$ 68, Ex.
28		
	10969556.1 139	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF

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Material Fact and Supporting Evidence	Plaintiffs' Response
	QQ (printout from
	Axanarproductions.com)(Dkt. 79-
	3).
	Defendants' business plan states
	Grossman
	Decl., ¶ 67, Ex. PP (Axanar
	marketing plan)(Dkt. 79-3).
	Peters
	Grossman Decl., ¶ 65, Ex. A
	(Peters tr. at 234:11-25); ¶ 66, Ex
	B (Burnett tr. at 151:2-153:12),
	¶ 67, Ex. PP (Axanar marketing
	plan)(Dkt. 79-3).
105. Defendants have not earned any income	Disputed.
or profit from any use of their studio.	
Peters Decl., ¶¶ 11-15	Peters

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]	Material Fact and Supporting Eviden	ce Plaintiffs' Response
		. Grossman
		Decl., ¶ 74, Ex. A (Peters tr. at
		189:2-23; 122:21-25; 65:7-18;
		193:22-194:18; 209:15-212:22;
		195:21-198:1; 213:5-10; 201:6-
		204:7; 204:11-16; 205:3-16;
		203:25-204:1; 217:6-15; 205:14
		16; 205:20-207:9; 207:10-12;
		208:2-16) (Dkt. 79-3).
		Defendants' business plan state
		Grossman
		Decl., ¶ 67, Ex. PP (Axanar
		marketing plan) (Dkt. 79-3).
		Peters
	1 4 1	PLAINTIFFS' RESPONSE TO DEFEND
	069556.1 141 2828-10048	OPPOSITION TO STATEME UNCONTROVERTED

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Material Fact and Supporting Evidence	Plaintiffs' Response
	Grossman Decl., ¶ 65, Ex. A
	(Peters tr. at 234:11-25); ¶ 66, Ex.
	B (Burnett tr. at 151:2-153:12),
	¶ 67, Ex. PP (Axanar marketing
	plan) (Dkt. 79-3).
106. Defendants' Works are not intended to	Disputed.
be commercialized, and Defendants have no	
ambitions of competing against Plaintiffs'	Peters stated: "But Axanar is not
Works in movie theaters, on television, over	just an independent Star Trek film
premium streaming services, or to otherwise	it is the beginning of a whole new
sell their Works for profit.	way that fans can get the content
ECF No. 75-15, Oki Decl., Ex. 13	they want, by funding it
(Peters Tr., Vol. I at 225:5-6)	themselves. Why dump hundreds
ECF Nos. 75-6, Oki Decl., Ex. 4	or thousands of dollars a year on
(Jenkins Report) at 4	400 cable channels, when what yo
	really want is a few good sci-fi
	shows?" Grossman Decl., ¶ 49, E
	A (Peters tr. at 99:10-100:15), Ex
	DD (Axanar Indiegogo fundraisin
	page) (Dkt. 79-3).
	Plaintiffs' Star Trek Copyrighted
	Works are distributed via cable.
	Van Citters Decl., ¶ 11(Dkt. 88-
	70).

### Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 144 of 179 Page ID #:7125

1	Material Fact and Supporting Eviden	ce Plaintiffs' Response
2		
3		Peters attempted to meet with
4		Netflix to become a producer of
5		Star Trek productions, attempted to
6		trademark the word "Axanar"
7		
8		
9		. Grossman
10		Decl., ¶ 58, Ex. A (Peters tr. at
11		442:21-449:9); Ex. LL (Facebook
12		message exchange between Terry
13		McIntosh and Alec Peters); ¶ 59,
14		Ex. E (McIntosh tr. at 20:23-
15		22:15), ¶ 60, Ex. C (Gossett tr. at
16		126:10-128:14), Ex. MM (April 20,
17		2015 email exchange between Alec
18		Peters and Christian Gossett);
19		¶ 65, Ex. A (Peters tr. at 234:11-
20		25); ¶ 66, Ex. B. (Burnett tr. at
21		151:2-153:12), ¶ 67, Ex. PP
22		(Axanar marketing plan), ¶ 68, Ex.
23		QQ (printout from
24		Axanarproductions.com)(Dkt. 79-
25		3).
26		
27		Defendants' business plan states
28		
eb artnership sional	10969556.1 143 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1	Material Fact and Supporting Evi	dence	Plaintiffs' Response
2			
3			
4			
5			
6			
7			Grossman
8			Decl., ¶ 67, Ex. PP (Axanar
9			marketing plan)(Dkt. 79-3).
10			
11			Peters
12			
13			
14			
15			Grossman
16			Decl., ¶ 79, Ex. A (Peters tr. at
17			455:24-456:16); ¶ 77, Ex. B
18			(Burnett tr. at 217:22-218:7); ¶ 78,
19			Ex. C (Gossett tr. at 19:15-
20			22:20)(Dkt. 79-3).
21			22.20)(DKt. 77 5).
22			Peters
23			
24			
25			
26			
27			Grossman Decl., $\P$ 65, Ex. A
28			(Peters tr. at 234:11-25); ¶ 66, Ex.
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 202828-10048	144	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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Material Fact and Supporting Evidence	Plaintiffs' Response
	B (Burnett tr. at 151:2-153:12),
	¶ 67, Ex. PP (Axanar marketing
	plan)(Dkt. 79-3).
	Defendants
	. Grossman Decl., ¶ 64, Ex
	B (Burnett tr. at 142:14-148:8);
	¶ 67, Ex. PP (Axanar marketing
	plan); Ex. QQ (printout from
	Axanarproductions.com) (Dkt. 79-
	3).
107. Defendants' Works are low budget,	Disputed.
intended to be distributed for free online,	
appeal to a relatively small audience of	Defendants
"Trekkies," and have made no profit.	·
ECF No. 75-15, Oki Decl., Ex. 13	Grossman Decl., ¶ 73, Ex. A
(Peters Tr., Vol. I at 224:21-225:4)	(Peters tr. at 70:24-71:4)(Dkt. 79-
	3).
	Further, to complete the Axanar
	film, Defendants
	. Grossman Decl.,
	¶ 73, Ex. A (Peters tr. at 192:3-
	193:21)(Dkt. 88-1). This is not low
	budget, and is comparable to the
10969556.1 145	PLAINTIFFS' RESPONSE TO DEFENDAN OPPOSITION TO STATEMENT UNCONTROVERTED FAC

# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 147 of 179 Page ID #:7128

	Material Fact and Supporting	<b>v</b> Evidence	Plaintiffs' Response
	Material Pact and Supporting	g Evidence	cost of an hour long Star Trek
			television program produced by
			CBS. Van Citters Decl., ¶ 66 (Dkt
			88-70).
			,
			Peters
			. Grossman
			Decl., ¶ 74, Ex. A (Peters tr. at
			189:2-23; 122:21-25; 65:7-18;
			193:22-194:18; 209:15-212:22;
			195:21-198:1; 213:5-10; 201:6-
			204:7; 204:11-16; 205:3-16;
			203:25-204:1; 217:6-15; 205:14-
			16; 205:20-207:9; 207:10-12;
			208:2-16) (Dkt. 79-3).
			Defendants' business plan states
r			Defendants business plan states
			Grossman
			Grossman
	1969556.1 12828-10048	146	PLAINTIFFS' RESPONSE TO DEFENDAN OPPOSITION TO STATEMENT UNCONTROVERTED FA

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1		
1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		Decl., ¶ 67, Ex. PP (Axanar
3		marketing plan)(Dkt. 79-3).
4		
5		Peters
6		
7		
8		
9		Grossman Decl., ¶ 65, Ex. A
10		(Peters tr. at 234:11-25); ¶ 66, Ex.
11		B (Burnett tr. at 151:2-153:12),
12		¶ 67, Ex. PP (Axanar marketing
13		plan)(Dkt. 79-3).
14	108. Gene Roddenberry encouraged the	Disputed and irrelevant.
15	creation of fan fiction.	
16	ECF No. 48, Counterclaim at 15-17, ¶ 7	The Counterclaim is not evidence.
17	ECF No. 49, Answer to Counterclaim at	
18	1-2,¶7	
19	109. Mr. Roddenberry was honored that fans	Disputed and irrelevant.
20	were passionate enough about Star Trek that	
21	they were inspired to create their own fan	The Counterclaim is not evidence.
22	works to celebrate it.	
23	ECF No. 48, Counterclaim at 15-17, ¶ 7	
24	ECF No. 49, Answer to Counterclaim at	
25 26	1-2,¶7	
26 27	110. In the 1976 book Star Trek: The New	Undisputed and irrelevant.
27	Voyages, Mr. Roddenberry stated in the	
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 147 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 149 of 179 Page ID #:7130

Material Fact and Supporting Evidence	Plaintiffs' Response
Foreword that he "realized that there is no	
more profound way in which people could	
express what Star Trek has meant to them than	
by creating their own very personal Star Trek	
[fan fiction]."	
ECF No. 48, Counterclaim at 15-17, ¶ 7	
ECF No. 49, Answer to Counterclaim at	
1-2, ¶ 7	
111. Since Mr. Roddenberry's statement, a	Disputed. Irrelevant.
substantial number of films have been created	
by fans without any complaint by Plaintiffs,	The cited evidence does not
some using characters from Plaintiffs' Works	support the stated fact as the
and exact replicas of Star Trek movie sets.	statements of Mr. Lane and Mr.
ECF No. 75-26, Lane Decl., Ex. 1	Jenkins are unsworn hearsay.
(Executive Summary at 26)	
ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins	Further, Plaintiffs timely
Report at 3)	subpoenaed Mr. Jenkins for
	deposition, <u>prior</u> to the filing of
	Defendants' Motion for Summary
	Judgment. Defendants' counsel
	refused to make Mr. Jenkins
	available for deposition on the
	grounds that the "fact discovery"
	deadline had passed (prior to the
	service of any expert reports) and
	stated that she was not making an

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1		Plaintiffs' Response
2	Material Fact and Supporting Evidence	
3		of Defendants' experts available
4		for deposition. Thereafter,
5		Defendants submitted the Jenkins
6		report as an exhibit to Ms. Oki's
7		declaration, and yet still refused to
8		make him available for deposition
9		on the subpoenaed date, or at any
10		time prior to the deadline to file the
10		Opposition to Defendants' Motion
		for Summary Judgment. Grossman
12		Decl., ¶ 100, Ex. JJJ (email
13		exchange with counsel for
14		Defendants) (Dkt. 88-1).
15		His testimony, if not excluded as
16		hearsay and lacking in foundation
17		under Daubert, should be excluded
18		for failure to make him available
19		pursuant to a timely-served
20		subpoena.
21	112. For over 50 years, Plaintiffs have	Disputed.
22	tolerated, and even encouraged a community of	
23	fandom and fan fiction surrounding Star Trek.	This is inaccurate and irrelevant
24	ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins	and the statements of Mr. Jenkins
25	Report at 3)	and Mr. Tregillis lack foundation
26	ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11	and constitute hearsay.
27	(Lin Tr. at 40:18-41:18)	
28	(Lini 11. ut 10.10 11.10)	

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Material Fact and Supporting Evidence	Plaintiffs' Response
ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3	Plaintiffs have filed suit in the pas
(Tregillis Report at ¶¶ 24, 63)	against infringers of their Star Tre
ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9	works. See, e.g. Paramount
(Van Citters Tr. at 62:1-25, 137:5-21)	Pictures Corp. v. Carol Publ'g
ECF No. 75-10, Oki Decl., Ex. 8	Group, 11 F. Supp. 2d 329
(Kalodner Tr. at 33:22-42:17)	(S.D.N.Y. 1998).
ECF No. 75-9, Oki Decl., Ex. 7 (Burke	
Tr. at 40:5-45:7)	Moreover, whether or not Plaintif
ECF No. 75-18, Oki Decl, Ex. 16	have filed suit before is irrelevant
(StarTrek.com Article)	See id. at 337 (Court rejected
	defenses of abandonment and
	estoppel asserted by a defendant
	who created a work that infringed
	on the Star Trek copyrights,
	holding: "Defendants instead alle
	that Paramount's failure to
	commence litigation against other
	potentially infringing books estop
	them from bringing this action.
	Extending the doctrine of estoppe
	so that a defendant may rely on a
	plaintiff's conduct toward another
	party is both unsupported by law
	and pernicious as a matter of
	policy.").

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		Further, Plaintiffs timely
3		subpoenaed Mr. Tregillis and Mr.
4		Jenkins for depositions, prior to the
5		filing of Defendants' Motion for
6		Summary Judgment. Defendants'
7		counsel refused to make these
8		designated experts available for
9		deposition, on the grounds that the
10		"fact discovery" deadline had
11		passed (prior to the service of any
12		expert reports) and stated that she
13		was not making any of Defendants'
14		experts available for deposition.
15		Thereafter, Defendants submitted
16		these reports as exhibits to Ms.
17		Oki's declaration, and yet still
18		refused to make them available for
19 20		deposition on the subpoenaed date,
20		or at any time prior to the deadline
21		to file Plaintiffs' Opposition to
22		Defendants' Motion for Summary
23		Judgment. Grossman Decl., ¶ 100,
24		Ex. JJJ (email exchange with
25 26		counsel for Defendants) (Dkt. 88-
26 27		1).
27		
28		PLAINTIFFS' RESPONSE TO DEFENDANTS

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		The testimony of Tregillis and
3		Jenkins, if not excluded as hearsay,
4		should be excluded for failure to
5		make them available pursuant to a
6		timely-served subpoena.
7	113. Mr. Peters understood from his volunteer	Disputed.
8	relationship with Plaintiff CBS and his	
9	extensive communications seeking guidance on	Peters' self-serving hearsay
10	his projects, that as long as Defendants' Works	regarding his subjective
11	stayed "non-commercial"—which he believed	"understanding" is irrelevant.
12	they had because he was not charging anyone	
13 14	to view them—Plaintiffs would tolerate	Whether or not Plaintiffs have filed
14 15	Defendants' Works like the rest of the fan	suit against other creators of fan
15 16	fiction celebrating their love for Star Trek.	fiction before is irrelevant. See,
10	ECF No. 75-19, Peters Decl, ¶ 11	e.g. Paramount Pictures Corp. v.
17		Carol Publ'g Group, 11 F. Supp.
10		2d 329 (S.D.N.Y. 1998).
20		
20		Moreover, Plaintiffs have filed suit
22		in the past against infringers of
23		their Star Trek works. See id.
24		
25		The Axanar Works are
26		commercial. Grossman Decl.,
27		¶ 73, Ex. A (Peters tr. at 70:24-
28		71:4)(Dkt. 79-3).
		PLAINTIFFS' RESPONSE TO DEFENDANTS'

# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 154 of 179 Page ID #:7135

2	Material Fact and Supporting Evid	lence Plaintiffs' Response
3		
Ļ		Peters attempted to trademark the
5		word "Axanar"
5		
7		
		Grossman Decl., ¶ 58, Ex. A
3		(Peters tr. at 442:21-449:9); Ex. LL
		(Facebook message exchange
		between Terry McIntosh and Alec
-		Peters); ¶ 59, Ex. E (McIntosh tr.
2		at 20:23-22:15), ¶ 60, Ex. C
3		(Gossett tr. at 126:10-128:14), Ex.
L		MM (April 20, 2015 email
5		exchange between Alec Peters and
5		Christian Gossett); ¶ 65, Ex. A
7		(Peters tr. at 234:11-25); ¶ 66, Ex.
3		B. (Burnett tr. at 151:2-153:12),
)		¶ 67, Ex. PP (Axanar marketing
)		plan), ¶ 68, Ex. QQ (printout from
_		Axanarproductions.com) (Dkt. 79-
2		3).
3		
ŀ		Defendants' business plan states
i		
5		
7		
3		
		PLAINTIFFS' RESPONSE TO DEFENDANT
	269556.1 2828-10048	153 OPPOSITION TO STATEMENT UNCONTROVERTED FAC

# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 155 of 179 Page ID #:7136

1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		
3		
4		Grossman
5		Decl., ¶ 67, Ex. PP (Axanar
6		marketing plan) (Dkt. 79-3).
7		Peters
8		
9		
10		
11		Grossman Decl., ¶ 65, Ex. A
12		(Peters tr. at 234:11-25); ¶ 66, Ex.
13		B (Burnett tr. at 151:2-153:12),
14		¶ 67, Ex. PP (Axanar marketing
15		plan)(Dkt. 79-3).
16		
17		Defendants
18		
19		. Grossman Decl., ¶ 64, Ex.
20		B (Burnett tr. at 142:14-148:8);
21		¶ 67, Ex. PP (Axanar marketing
22		plan); Ex. QQ (printout from
23		Axanarproductions.com) (Dkt. 79-
24		3).
25	114. Plaintiffs have enjoyed promotional	Disputed.
26	value as a result of the works of fan fiction.	
27	ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins	The unsworn statements by Henry
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 154 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 156 of 179 Page ID #:7137

1		
	Material Fact and Supporting Evidence	Plaintiffs' Response
2	Report at 3)	Jenkins, and Christian Tregillis are
3	ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11	hearsay, as is Exhibit 1 to the
4	(Lin Tr. at 40:18-41:18)	Watkins declaration. There are no
5	ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3	declaration from Mr. Tregillis or
6	(Tregillis Report, ¶¶ 24, 63)	Mr. Jenkins.
7	ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9	
8	(Van Citters Tr. at 62:1-25, 137:5-21)	The cited testimony from John Van
9	ECF No. 75-10, Oki Decl., Ex. 8	Citters, Elizabeth Kalodner, Bill
10	(Kalodner Tr. at 33:22-42:17)	Burke, and Justin Lin does not
11	ECF No. 75-9, Oki Decl., Ex. 7 (Burke	provide that Plaintiffs have enjoyed
12	Tr. at 40:5-45:7)	promotional value as a result of the
13	ECF No. 75-18, Oki Decl, Ex. 16	works of fan fiction.
14	(StarTrek.com Article)	
15		Exhibit 16 is simply an article
16		about the licensed tour of a replica
17		of the set from The Original Series.
18		
19		Further, Plaintiffs timely
20		subpoenaed Mr. Jenkins and Mr.
21		Tregillis for deposition, prior to the
22		filing of Defendants' Motion for
23		Summary Judgment. Defendants'
24		counsel refused to make Mr.
25		Jenkins and Mr. Tregillis available
26		for deposition on the grounds that
27		the "fact discovery" deadline had
28		
		PLAINTIFFS' RESPONSE TO DEFENDANTS'

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1		
2	Material Fact and Supporting Evidence	Plaintiffs' Response
2		passed (prior to the service of any
		expert reports) and stated that she
4		was not making any of Defendants'
5		experts available for deposition.
6		Thereafter, Defendants submitted
7		the Jenkins report and the Tregillis
8		report as exhibits to Ms. Oki's
9		declaration, and yet still refused to
10		make them available for deposition
11		on the subpoenaed date, or at any
12		time prior to the deadline to file the
13		Opposition to Defendants' Motion
14		for Summary Judgment. Grossman
15		Decl., ¶ 100, Ex. JJJ (email
16		exchange with counsel for
17		Defendants) (Dkt. 88-1).
18		Their testimony, if not excluded as
19		hearsay and lacking in foundation,
20		should be excluded for failure to
21		make them available pursuant to a
22		timely-served subpoena.
23	115 Defendents continued to promote and	
24	115. Defendants continued to promote and	Disputed.
25	consume all of Plaintiffs' official works, and	
26	Defendants' Works and other fan films	The unsworn statements by Henry
27	increased the buzz and purchase of official	Jenkins, and Christian Tregillis are
28	merchandise.	hearsay, as is Exhibit 1 to the
∠0		

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Material Fact and Supporting Evidence	Plaintiffs' Response
ECF No. 75-6, Oki Decl., Ex. 4 (Jenkins	Watkins declaration. There are no
Report at 3)	declaration from Mr. Tregillis or
ECF Nos. 75-13, 77-6, Oki Decl., Ex. 11	Mr. Jenkins.
(Lin Tr. at 40:18-41:18)	
ECF Nos. 75-5, 77-3, Oki Decl., Ex. 3	The cited testimony from John Van
(Tregillis Report at ¶¶ 24, 63)	Citters, Elizabeth Kalodner, Bill
ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9	Burke, and Justin Lin does not
(Van Citters Tr. at 62:1-25, 137:5-21)	provide that Defendants' Works
ECF No. 75-10, Oki Decl., Ex. 8	and other fan films increased the
(Kalodner Tr. at 33:22-42:17)	buzz and purchase of official
ECF No. 75-9, Oki Decl., Ex. 7 (Burke	merchandise, nor does it support
Γr. at 40:5-45:7)	the claim that Defendants
ECF No. 75-18, Oki Decl, Ex. 16	continued to promote and consume
(StarTrek.com Article)	all of Plaintiffs' official works.
ECF No. 75-29, Watkins Decl., Ex. 1	
(Facebook Post)	Exhibit 16 is simply an article
ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	about the licensed tour of a replica
(Abrams Tr., Ex. 310 (Tweets))	of the set from <i>The Original Series</i> .
	Exhibit 310 is not attached to the
	Oki declaration. Further, Plaintiffs
	timely subpoenaed Mr. Jenkins and
	Mr. Tregillis for deposition, prior
	to the filing of Defendants' Motion
	for Summary Judgment.
	Defendants' counsel refused to
109695561 157	PLAINTIFFS' RESPONSE TO DEFENDANTS

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		make Mr. Jenkins and Mr. Tregillis
3		available for deposition on the
4		grounds that the "fact discovery"
5		deadline had passed (prior to the
6		service of any expert reports) and
7		stated that she was not making any
8		of Defendants' experts available
9		for deposition. Thereafter,
10		Defendants submitted the Jenkins
11		report and the Tregillis report as
12		exhibits to Ms. Oki's declaration,
13		and yet still refused to make them
14		available for deposition on the
15		subpoenaed date, or at any time
16		prior to the deadline to file the
17		Opposition to Defendants' Motion
18		for Summary Judgment. Grossman
19		Decl., ¶ 100, Ex. JJJ (email
20		exchange with counsel for
21		Defendants) (Dkt. 88-1).
22		Their testimony, if not excluded as
23		hearsay, should be excluded for
24		failure to make them available
25		pursuant to a timely-served
26		subpoena.
27	116. Plaintiffs' have not asked Defendants to	Undisputed that Plaintiffs did not
28		
b	10969556.1 158	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF

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# Case 2:15-cv-09938-RGK-E Document 102-1 Filed 12/05/16 Page 160 of 179 Page ID #:7141

Material Fact and Supporting Evidence	Plaintiffs' Response
remove either Prelude or the Vulcan Scene	serve a takedown notice. Instead,
from its website.	Plaintiffs filed this lawsuit, and
ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10	requested the court to enjoin the
(O'Rourke Tr. at 99:15-100:2)	distribution of the Axanar Works.
ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9	
(Van Citters Tr. at 160:13-15)	
117.	Disputed.
·	Plaintiffs did concern themselves
ECF Nos. 75-11, 77-4, Oki Decl., Ex. 9	with <i>Prelude</i> , and considered it an
(Van Citters Tr. at 52:14-18, 54:9-23, 119:19-	infringing work. Grossman Decl.,
124:18)	¶ 97, Ex. CCC (Van Citters and
ECF Nos. 75-12, 77-5, Oki Decl., Ex. 10	O'Rourke testimony)(Dkt. 79-3).
(O'Rourke Tr. at 60:22-61:5; 63:8-16)	
118. Defendants went to great lengths to	Disputed.
make sure their works fell within the tolerated	
realm of fan fiction as Defendants understood it	The cited evidence is hearsay, lack
at the time.	foundation and does not support
Peters Decl., ¶ 20	the purported "fact."
119. There has been no agreed to definition of	Undisputed that Plaintiffs objected
what a "fan film" is in this case.	to Defendants using "fan films" as
Ranahan Decl., ¶ 2, Ex. A (CBS Studios	a term in their Requests for
Inc.'s Responses to Requests for Production,	Production without defining the
Set One, Response to Request Nos. 14, 17, 18,	term.
24, 25)	
Ranahan Decl., ¶ 2, Ex. A (Paramount	The Joint Stipulation and

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2	Pictures Corporations Responses to Requests	Defendants' Supplemental
3	for Production, Set One, Response to Request	Memorandum are not evidence.
4	Nos. 14, 17, 18, 24, 25)	The Joint Stipulation and
5	Joint Stipulation Regarding Defendants'	Defendants' Supplemental
6	Motion to Compel Discovery from Plaintiffs,	Memorandum simply reflect that
7	Response to Request Nos. 14, 17, 18, 24, 25	Plaintiffs objected to Defendants
8	Defendants' Supplemental Memorandum	using "fan films" as a term in their
9 0	in Support of Defendants' Motion to Compel	Requests for Production without
	Discovery, p. 4	defining the term.
1 2	120. Plaintiffs did not attempt to communi-	Disputed and irrelevant.
2	cate the meaning of a "fan film" to fans until	
_	after this lawsuit was initiated.	Exhibit 12 to the Oki Declaration
4	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	does not contain Abrams tr. at
6	(Abrams Tr. at 34:13-21, Ex. 312 (Fan Film	34:13-21 and Abrams' testimony is
7	Guidelines))	not an admission of either of
' 8		Plaintiffs.
9		
0		Exhibit 312 was not submitted to
1		the Court by Defendants and is not
2		in evidence.
3	121. Plaintiffs released fan film guidelines	Undisputed.
4	after this lawsuit was initiated.	
5	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	
26	(Abrams Tr. at 34:13-21, Ex. 312 (Fan Film	
27	Guidelines))	
28	122. Plaintiffs attempted to define the term	Disputed.
.0		

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1 2	Material Fact and Supporting Evidence	Plaintiffs' Response
	"fan film" as an amateur pursuit without a	
5	professional look in the fan film guidelines	Exhibit 12 to the Oki Declaration
-	released after this lawsuit was initiated.	does not contain Abrams tr. at
	ECF Nos. 75-14, 77-7, Oki Decl., Ex. 12	34:13-21 and Abrams' statements
	(Abrams Tr. at 34:13-21, Ex. 312 (Fan Film	are not an admission by either
	Guidelines))	Plaintiff.
		Exhibit 312 was not submitted to
		the Court by Defendants and is not
		in evidence.
	123. Plaintiffs complain extensively about the	Undisputed that Plaintiffs have
	use of the phrase "Star Trek," though that use	filed suit for copyright
	is not at issue in this case, as it is not a	infringement and not trademark
	trademark action.	infringement. The First Amended
	ECF No. 26, FAC	Complaint speaks for itself.
	124. The Court has previously characterized	Undisputed that the Court stated in
	Plaintiffs' references to allegedly infringing	its Order denying Defendants'
	elements as attempted demonstrations of	Motion to Dismiss:
	similarity rather than individual claims to	"Plaintiffs define the Star Trek
	copyright protection.	Copyrighted Works as including
	ECF No. 43, Order on Defendant's	both the motion pictures and
	Motion to Dismiss, p. 4, ¶ 4	television series, providing the
		copyright registration numbers for
Ι		the first episode of each television
		series and for each motion picture.
		To demonstrate substantial
	10969556.1 161	PLAINTIFFS' RESPONSE TO DEFENDANTS OPPOSITION TO STATEMENT C

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1		
2	Material Fact and Supporting Evidence	Plaintiffs' Response
-3		similarity, Plaintiffs describe
4		individual infringing elements in
		the Complaint. (FAC ¶¶ 46-47,
5		ECF No. 26.) However, Plaintiffs
6		do not claim that these individual
7		infringing elements are subject to
8		copyright protection – these
9		elements are included in the
10		Complaint to demonstrate the
11		similarities between the Star Trek
12		Copyrighted Works and the Axanar
13		Works. Rather, Plaintiffs'
14		copyright infringement claims are
15		solely based on the Star Trek
16		Copyrighted Works as defined in
17		the Complaint."
18	125. The simple costumes Plaintiffs have	Disputed.
19	identified in Defendants' Works (e.g., "gold	
20	shirt" and "cowl neck") are not independently	This is not a fact, but constitutes
21	protectable.	legal argument.
22	ECF No. 26, FAC ¶ 46 at 17-19	Further, the FAC is not evidence.
23	ECF No. 33, Defendants' Reply in	Defendants' Reply in Support of
24	Support of Motion to Dismiss, p. 3	Motion to Dismiss is not evidence.
25	· · · · · · · · · · · · · · · · · · ·	
26	126. Plaintiffs assert that "Defendants have	Disputed.
27	copied and adopted dialogue" from the Star	
28	espred and adopted dialogue from the Star	
		PLAINTIFFS' RESPONSE TO DEFENDANTS'

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1		
2	Material Fact and Supporting Evidence	Plaintiffs' Response
	Trek Works but have not identified any specific	Plaintiffs' Opposition to
3	dialogue that Defendants allegedly copied.	Defendants' Motion to Dismiss is
4	ECF No. 31, Plaintiffs' Opposition to	not evidence. Defendants' Reply
5	Defendants' Motion to Dismiss, pp. 14-15	in Support of Motion to Dismiss is
6	ECF No. 33, Defendants' Reply in	not evidence.
7	Support of Motion to Dismiss, p. 3	Plaintiffs have cited numerous
8		examples of dialogue used by
9		Defendants, copied from Plaintiffs'
10		works, including phasers, photon
11		torpedoes, dilithium crystals, warp
12		drive, transporters, beaming up, the
13		Federation, the Teachings of Surak,
14		etc. Van Citters Decl.,¶ 15, Ex. 19,
15		(Prelude to Axanar), ¶ 43, Ex. 20
16		(Vulcan Scene at 1:42) (Dkt. 72-
17		60). Grossman Decl., ¶ 42, Ex. AA
18		(Axanar Script) (Dkt. 79-3). Van
19 20		Citters Decl., ¶¶ 40-42, 52, 58
20		(Dkt. 72-60).
21	127. Dialogue like "beaming up" is only	Disputed and argumentative.
22	protected by copyright if it is connected to	
23	other protectable elements like characters.	This is not a purported "fact" but is
24	ECF No. 31, Plaintiffs' Opposition to	improper legal argument.
25 26	Defendants' Motion to Dismiss, p. 14	Plaintiffs' Opposition to
26	ECF No. 33, Defendants' Reply in	Defendants' Motion to Dismiss is
27	Support of Motion to Dismiss, p. 4	not evidence. Defendants' Reply in
28		

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2 3 4	Material Fact and Supporting Evidence	Plaintiffs' Response
		Support of Motion to Dismiss is
4		not evidence.
5	128. Elements from the public domain are not	Disputed, irrelevant and
6	copyrightable.	argumentative.
7	ECF No. 33, Defendants' Reply in	
8	Support of Motion to Dismiss, p. 4	This is not a purported "fact" but is
9	Support of Motion to Distinss, p. 1	improper legal argument.
10		Defendants' Reply in Support of
11		Motion to Dismiss is not evidence.
12		Wotion to Dismiss is not evidence.
13	129. Elements from nature are not	Disputed, irrelevant and
14	copyrightable.	argumentative.
15	ECF No. 33, Defendants' Reply in	
16	Support of Motion to Dismiss, p. 4	This is not a purported "fact" but is
17	Support of Motion to Distinss, p. 1	improper legal argument
18		Defendants' Reply in Support of
19		Motion to Dismiss is not evidence.
20		
21	130. Transporters and warp drive, which	Disputed.
22	existed in science fiction long before the	There is no evidence to support the
23	creation of Star Trek, are not uniquely	stated fact, and the evidence,
24	implemented in the Plaintiffs' Works.	instead, shows that these elements
25	ECF No. 33, Defendants' Reply in	were copied from Plaintiffs' works.
26	Support of Motion to Dismiss, p. 4	Van Citters Decl., ¶¶ 40, 58 (Dkt.
27	11 ···································	72-60).
28		,

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2	Material Fact and Supporting Evidence	Defendants' Reply in Support of
3		Motion to Dismiss is not evidence.
4		
5	131. The Federation logo in Star Trek is	Undisputed (and irrelevant) that the
6	adapted from the United Nations flag.	Federation logo is similar to the
7	ECF No. 26, FAC ¶ 46, p. 27	United Nations logo.
8	ECF No. 29, Defendants' Motion to	
9	Dismiss, p. 8	
10	ECF No. 30, Defendants' Request for	
11	Judicial Notice, Ex. K (Flag of the	
12	United Federation of Planets, as	
13	compared to the Flag of the United Nations)	
14	ECF No. 33, Defendants' Reply in	
15	Support of Motion to Dismiss, p. 4	
16	132. The triangular medals on Star Trek	Disputed.
17	uniforms have been used by military, religious,	
18	and other organizations throughout history.	The cited evidence does not
19 20	ECF No. 26, FAC ¶ 46, p. 18	support the stated fact.
20 21	ECF No. 29, Defendants' Motion to	
21	Dismiss, p. 8	The FAC is not evidence.
22	ECF No. 30, Defendants' Request for	Defendants' Motion to Dismiss is
23 24	Judicial Notice, Ex. G (William T.R. Marvin,	not evidence, nor is their Request
24 25	The Medals of the Masonic Fraternity:	for Judicial Notice. Defendants'
	Described and Illustrated)	Reply in Support of Motion to
26 27	ECF No. 33, Defendants' Reply in	Dismiss is not evidence.
	Support of Motion to Dismiss, p. 4	
27 28		Dismiss is not evidence.

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1		
1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		The Court did not take judicial
3		notice of any of the items requested
4		in Defendants' Request for Judicial
5		Notice in Support of their Motion
6		to Dismiss. See Dkt. 43, fn 1
7		("Defendants' Request for Judicial
8		Notice relates to this point. (Def.s'
9		Request for Judicial Notice, ECF
10		No. 30.) Because the Court finds it
11		unnecessary to determine whether
12		each individual element is entitled
13		to copyright protection
14		individually, the Court finds it
15		unnecessary to take judicial notice
16		of the requested facts at this
17		time.").
18	133. Nausicaa is the name of a planet in Star	Disputed and irrelevant.
19	Trek and is also a character in Homer's	
20	Odyssey.	The FAC is not evidence.
21	ECF No. 26, FAC ¶ 46, p. 20	Defendants' Motion to Dismiss is
22	ECF No. 29, Defendants' Motion to	not evidence, nor is their Request
23	Dismiss, p. 8	for Judicial Notice.
24	ECF No. 30, Defendants' Request for	
25	Judicial Notice, Ex. H (Homer, The Odyssey of	The Court did not take judicial
26	Homer)	notice of any of the items requested
27		in Defendants' Request for Judicial
28		<u> </u>
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 166 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1		
1	Material Fact and Supporting Evidence	Plaintiffs' Response
2		Notice in Support of their Motion
3		to Dismiss. See Dkt. 43, fn 1
4		("Defendants' Request for Judicial
5		Notice relates to this point. (Def.s'
6		Request for Judicial Notice, ECF
7		No. 30.) Because the Court finds it
8		unnecessary to determine whether
9		each individual element is entitled
10		to copyright protection
11		individually, the Court finds it
12		unnecessary to take judicial notice
13		of the requested facts at this
14		time.").
15	134. Rigel is the name of a planet in Star Trek	Disputed and irrelevant.
16	and is also the name of a first-magnitude star in	
17	the constellation Orion.	The FAC is not evidence.
18	ECF No. 26, FAC ¶ 46, p. 20	Defendants' Motion to Dismiss is
19	ECF No. 29, Defendants' Motion to	not evidence, nor is their Request
20	Dismiss, p. 8	for Judicial Notice.
21	ECF No. 30, Defendants' Request for	
22	Judicial Notice, Ex. I ("Rigel," Merriam	The Court did not take judicial
23	Webster Dictionary)	notice of any of the items requested
24		in Defendants' Request for Judicial
25		Notice in Support of their Motion
26		to Dismiss. See Dkt. 43, fn 1
27		("Defendants' Request for Judicial
28		
Loeb & Loeb A Limited Liability Partnership Including Professional Corporations	10969556.1 167 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS

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1	Material Fact and Supporting Evidence	Plaintiffs' Response			
2		Notice relates to this point. (Def.s'			
3		Request for Judicial Notice, ECF			
1		No. 30.) Because the Court finds it			
5		unnecessary to determine whether			
,		each individual element is entitled			
		to copyright protection			
		individually, the Court finds it			
		unnecessary to take judicial notice			
		of the requested facts at this			
		time.").			
	135. Terra is the name of a planet in Star Trek	Disputed and irrelevant.			
	and is also the Latin word for "Land."				
	ECF No. 26, FAC ¶ 46, p. 20	The FAC is not evidence.			
	ECF No. 29, Defendants' Motion to	Defendants' Motion to Dismiss is			
	Dismiss, p. 8	not evidence, nor is their Request			
	ECF No. 30, Defendants' Request for	for Judicial Notice.			
	Judicial Notice, Ex. J ("Terra," Merriam				
	Webster Dictionary)	The Court did not take judicial			
		notice of any of the items requested			
		in Defendants' Request for Judicial			
		Notice in Support of their Motion			
		to Dismiss. See Dkt. 43, fn 1			
		("Defendants' Request for Judicial			
		Notice relates to this point. (Def.s'			
		Request for Judicial Notice, ECF			
		No. 30.) Because the Court finds it			
3	10969556.1 168 202828-10048	PLAINTIFFS' RESPONSE TO DEFENDANTS' OPPOSITION TO STATEMENT OF UNCONTROVERTED FACTS			

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1	Material Fact and Supporting Evidence	Plaintiffs' Response				
2		unnecessary to determine whether				
3		each individual element is entitled				
4		to copyright protection				
5		individually, the Court finds it				
6		unnecessary to take judicial notice				
7		of the requested facts at this				
8		time.").				
9	136. Transporters have existed in science	Disputed.				
10	fiction since 1877.					
11	ECF No. 26, FAC ¶ 46, p. 31	The cited evidence does not				
12	ECF No. 29, Defendants' Motion to	support the stated fact and either				
13	Dismiss, p. 8	consists of prior pleadings filed in				
14	ECF No. 30, Defendants' Request for	this case or hearsay.				
15	Judicial Notice, Ex. L ("Teleportation,"					
16	Merriam Webster Dictionary)	The First Amended Complaint is				
17		not evidence. Defendants' Motion				
18		to Dismiss is not evidence, nor is				
19 20		their Request for Judicial Notice.				
20						
21		The Court did not take judicial				
22		notice of any of the items requested				
23		in Defendants' Request for Judicial				
24		Notice in Support of their Motion				
25 25		to Dismiss. See Dkt. 43, fn 1				
26	137. Warp drive has existed in science fiction	Disputed.				
27	since as early as 1945.					
28						

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	Material Fact and Supporting Evidence	Plaintiffs' Response
	ECF No. 26, FAC ¶ 46, p. 31	The cited evidence does not
	ECF No. 29, Defendants' Motion to	support the stated fact and either
	Dismiss, p. 8	consists of prior pleadings filed in
	ECF No. 30, Defendants' Request for	this case or hearsay.
	Judicial Notice, Ex. M (Sten Odenwald, "Who	
	Invented Faster Than Light Travel?")	The First Amended Complaint is
		not evidence. Defendants' Motion
		to Dismiss is not evidence, nor is
		their Request for Judicial Notice.
		The Court did not take judicial
		notice of any of the items requested
		in Defendants' Request for Judicial
		Notice in Support of their Motion
,		to Dismiss. See Dkt. 43, fn 1.
	138. Federation is the general word to	Disputed and irrelevant.
	describe "a country formed by separate states	
1	that have given certain powers to a central	The cited evidence does not
	government while keeping control over local	support the stated fact and either
	matters" commonly used in science fiction and	consists of prior pleadings filed in
	is inspired by the United Nations.	this case or hearsay.
	ECF No. 26, FAC ¶ 46, p. 32	
	ECF No. 29, Defendants' Motion to	
	Dismiss, pp. 8-9	
,	ECF No. 30, Defendants' Request for	
3	Judicial Notice, Ex. N ("Federation," Merriam	

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Material Fact and Supporting Evidence	Plaintiffs' Response
Webster Dictionary)	
139. Phasers are known as Heat-Ray	Disputed and irrelevant.
weapons, which have existed in science fiction	The cited evidence does not
since H.G. Wells' War of the Worlds in 1898.	support the stated fact and either
ECF No. 26, FAC ¶ 46, p. 32	consists of prior pleadings filed in
ECF No. 29, Defendants' Motion to	this case or hearsay.
Dismiss, p. 9	
ECF No. 30, Defendants' Request for	
Judicial Notice, Ex. O ("H.G. Wells, War of the	
Worlds)	
140. "Bridge" is a naval term for a ship's	Disputed and irrelevant.
command center whose first usage predates the	
12th century.	The cited evidence does not
ECF No. 26, FAC at ¶ 66(b)	support the stated fact and either
ECF No. 29, Defendants' Motion to	consists of prior pleadings filed in
Dismiss, pp. 8-9	this case or hearsay.
ECF No. 30, Defendants' Request for	
Judicial Notice, Ex. P ("Bridge," Merriam	
Webster Dictionary)	
141. Species with "pointy ears" have	Disputed and irrelevant.
appeared in many fictional fantasy works	
depicting imaginary humanoid species	The cited evidence does not
predating Star Trek, including vampires, elves,	support the stated fact and either
fairies, and werewolves.	consists of prior pleadings filed ir
ECF No. 29, Defendants' Motion to	this case or hearsay.
Dismiss, p. 8	

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Material Fact and Suppor	ting Evidence	Plaintiffs' Response
ECF No. 30, Defendants	s' Request for	Defendants did not copy Vulcans
Judicial Notice, Ex. D (Nosfer	atu)	from vampires or elves – they
ECF No. 30, Defendants	s' Request for	admitted to copying, intentionally,
Judicial Notice, Ex. E ("Elf," /	Merriam Webster	Plaintiffs' fictional Vulcan
Dictionary)		characters.
142. In Roman mythology, V	ulcan is the god	Disputed and irrelevant.
of fire and metalworking. The	e first known use	
of "Vulcan" was in 1513.		The cited evidence does not
ECF No. 29, Defendants	s' Motion to	support the stated fact and either
Dismiss, p. 8		consists of prior pleadings filed in
ECF No. 30, Defendants	s' Request for	this case or hearsay.
Judicial Notice, Ex. F ("Vulca	n," <i>Merriam</i>	
Webster Dictionary)		Defendants did not copy Vulcans
		from Roman mythology – they
		admitted to copying, intentionally
		Plaintiffs' fictional Vulcan
		characters.
143. "Pointy ears" are not ori	iginal to Vulcans.	Disputed and irrelevant.
ECF No. 33, Defendants	s' Reply in	
Support of Motion to Dismiss,	p. 4	Defendants' Reply in Support of
		their Motion to Dismiss is not
		evidence.
144. The Klingon language, I	like all	Disputed.
languages, is a "system" used	to generate	
expressions of various creative	e ideas.	Defendants' Reply in Support of
ECF No. 33, Defendants	s' Renly in	their Motion to Dismiss is not

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Material Fact and Supporting Evidence	Plaintiffs' Response
Support of Motion to Dismiss, p. 5	evidence.
145. A particular expression of language may	Disputed and argumentative.
be copyrightable, but the language itself is not.	This is a legal conclusion and not a
ECF No. 33, Defendants' Reply in	purported fact.
Support of Motion to Dismiss, p. 5	Defendants' Reply in Support of
	their Motion to Dismiss is not
	evidence.
146. Fans of Star Trek regularly use Klingon	Disputed and irrelevant.
to express their own creative ideas.	The cited evidence does not
ECF No. 33, Defendants' Reply in	support the stated fact.
Support of Motion to Dismiss, p. 5	Defendants' Reply in Support of
	their Motion to Dismiss is not
	evidence.
147. Plaintiffs claim that Defendants have	Undisputed.
infringed Plaintiffs' works by using starships,	
spacedocks, beaming up, transporters, warp	
drive, phasers, stardates, Starfleet, triangular	
medals on uniforms, and a federation of	
planets.	
ECF No. 26, FAC ¶ 46 at 19, 22, 25-26,	
32	
148. Starships, spacedocks, beaming up,	Disputed.
transporters, warp drive, phasers, stardates,	The cited evidence does not
Starfleet, triangular medals on uniforms, and	support the stated fact.
federations of planets are staples of the science	Defendants' Reply in Support of
fiction genre.	their Motion to Dismiss is not

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Material Fact and Supporting Evidence	Plaintiffs' Response
ECF No. 33, Defendants' Reply in	evidence.
Support of Motion to Dismiss, p. 6	
149. Copyright protection is available for	Disputed and argumentative. This
characters that are especially distinctive.	is not a complete statement of the
ECF No. 31, Plaintiffs' Opposition to	law, and is not a "fact;" it is a
Defendants' Motion to Dismiss, p. 19	purported legal conclusion.
150. Director Christian Gosset was inspired	Disputed and irrelevant.
by Saving Private Ryan when he envisioned the	
Klingon Wars as portrayed by Prelude to	The evidence cited is hearsay and
Axanar.	does not support the proffered fact.
ECF Nos. 72-17, 79, Grossman Decl.,	
Ex. N ( <i>Prelude to Axanar</i> Promotional	
Material)	
151. <i>Prelude to Axanar</i> is a History Channel-	Disputed.
style special.	
ECF Nos. 72-17, 79, Grossman Decl.,	Prelude speaks for itself. Peters
Ex. N ( <i>Prelude to Axanar</i> Promotional	Decl., Ex. 1, Prelude to Axanar
Material)	(Dkt. 75-19) and Van Citters
	Decl.,¶ 15, Ex. 19, Prelude to
	Axanar (Dkt. 72-60).
152. <i>Prelude to Axanar</i> was promoted as	Disputed.
showing Star Trek in a way that had never been	
seen before.	Defendants set out to create an
ECF No. 26, FAC p. 7, ¶ 29	authentic, professional Star Trek
ECF Nos. 72-17, 79, Grossman Decl.,	work.

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1	Material Fact and Supporting Evidence	Plaintiffs' Response
2	Material)	73, which states "Defendants
3	ECF Nos. 72-37, Grossman Decl., Ex.	expressly set out to create an
4	HH (Kickstarter Fundraising Page)	authentic and "independent Star
5		Trek film" that stated true to Star
6		Trek canon down to 'excruciating
7		details."
8		Grossman Decl., ¶ 54, Ex. A
9		(Peters tr. at 97:14-98:22), Ex. HH
10		(screenshot from Defendants'
11		Kickstarter fundraising page); ¶ 34,
12		Ex. A (Peters tr. at 471:25-474:20),
13		Ex. U (March 7, 2015 email from
14		Alec Peters to Christian Gossett); ¶
15		29, Ex. C (Gossett tr. at 36:11-
16		37:8), Ex. R (March 24, 2013 email
17		from Sean Tourangeau to Christian
18		Gossett and Alec Peters); ¶ 38, Ex.
19		C (Gossett tr. at 92:14-93:13), Ex.
20		Y (April 13, 2014 email exchange
21		between Alec Peters, Tobias
22		Richter, and Christian Gossett); ¶
23		10, Ex. C (Gossett tr. at 30:7-31:13,
24		Ex. F (January 4, 2011 email from
25		Alec Peters to Christian Gossett),
26		Ex. A (Peters tr. at 332:15¬334:4);
27		¶ 12, Ex. C (Gossett tr. at
28		PLAINTIFFS' RESPONSE TO DEFENDANTS'

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Material Fact and Supporting Evidence	Plaintiffs' Response
	32:7¬34:16), Ex. H (November 13)
	2013 email exchange between Alex
	Peters and Christian Gossett), Ex.
	A (Peters tr. at 359:18-361:11)
	(Dkt. 79-3).
153. The Four Years War was never depicted	Undisputed that the war itself was
in any Star Trek television episode.	not depicted in any Star Trek
ECF Nos. 72-17, 79, Grossman Decl.,	television episode, but the events of
Ex. N (Prelude to Axanar Promotional	the Four Years War, and Garth of
Material)	Izar's military exploits at the Battl
	of Axanar, were described in the
	episode Whom Gods Destroy. Van
	Citters Decl., ¶ 6 (Dkt. 72-60).
154. The Four Years War was never depicted	Undisputed.
in any Star Trek feature film.	
ECF Nos. 72-17, 79, Grossman Decl.,	
Ex. N (Prelude to Axanar Promotional	
Material)	
155. Alec Peters was convinced to write a	Disputed.
screenplay for obscure Star Trek character	
Garth of Izar by fan film legend James Cawley	Defendants rely on hearsay and
after Cawley invited Peters to portray Garth of	there is no sworn testimony, nor
Izar in 2010.	admissible evidence, on that point.
ECF Nos. 72-17, 79, Grossman Decl.,	

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1	Material Fact and Supporting Evidence	Plaintiffs' Response			
2	Ex. N (Prelude to Axanar Promotional	Prelude speaks for itself. Peters			
3	Material)	Decl., Ex. 1, Prelude to Axanar			
4		(Dkt. 75-19) and Van Citters			
5		Decl.,¶ 15, Ex. 19, Prelude to			
6		Axanar (Dkt. 72-60).			
7					
8		Garth of Izar is not an "obscure"			
9		character and was featured in the			
10		"Whom Gods Destroy" episode of			
11		The Original Series, was the			
12		subject of a novel, and was also			
13		featured in The Four Years War			
14		supplement. Van Citters Decl., ¶¶			
15		6, 13, 14, Ex. AAA (The Four			
16		Years War supplement) (Dkt. 72-			
17		60). Grossman Decl., ¶ 92, Ex. 1			
18		(The Original Series DVDs)(Dkt.			
19		79-3).			
20	156. The M*A*S*H episode that inspired	Disputed.			
21	Alec Peters in his creation of Prelude to				
22	Axanar, titled, "The Interview," was shot like	Defendants rely on hearsay and			
23	newsreel footage that gave an intimate look at	there is no sworn testimony, nor			
24	the characters feelings on the war.	admissible evidence, on that point.			
25	ECF Nos. 72-17, 79, Grossman Decl.,				
26	Ex. N (Prelude to Axanar Promotional	Prelude speaks for itself. Peters			
27	Material)	Decl., Ex. 1, Prelude to Axanar			
28					

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	Material Fact and Supporting Ev	vidence	Plaintiffs' Response
2			(Dkt. 75-19) and Van Citters
3 4			Decl.,¶ 15, Ex. 19, Prelude to
			Axanar (Dkt. 72-60).
5	157. The interweaving of interviews	with	Disputed.
6 7	veterans of World War II in Band of B	Brothers	
	inspired Alec Peters in his creation of	Prelude	The cited evidence is hearsay and
	to Axanar.		there is no sworn testimony, nor
9	ECF Nos. 72-17, 79, Grossman	Decl.,	admissible evidence, to support the
0	Ex. N (Prelude to Axanar Promotiona	1	stated fact.
1	Material)		
2	158. Prelude to Axanar is dedicated	to the	Undisputed that the evidence cited
3	vision of Gene Roddenberry.		says that Prelude is dedicated to
4	ECF Nos. 72-17, 79, Grossman	Decl.,	"Gene Roddenberry's vision and
5	Ex. N (Prelude to Axanar Promotiona	ıl	the universe he created."
5	Material)		
7			
•	Dated: December 5, 2016		LOEB LLP
		DAVID (	IAN ZAVIN GROSSMAN
)		JENNIFE	ER JASON
		By:/s/D	avid Grossman
r		David Attor	<i>avid Grossman</i> d Grossman neys for Plaintiffs
3		PAR COR	neys for Plaintiffs AMOUNT PICTURES PORATION and CBS STUDIOS
24		INC.	
25			
26			
27			
8			
	10969556.1 202828-10048	178	PLAINTIFFS' RESPONSE TO DEFENDANTS OPPOSITION TO STATEMENT O UNCONTROVERTED FACT