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PARAMOUNT PICTURES
11 CORPORATION and CBS STUDIOS
INC.
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
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16 PARAMOUNT PICTURES
CORPORATION, a Delaware
17 corporation; and CBS STUDIOS INC.,
a Delaware corporation,
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19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a
California corporation; ALEC PETERS,
an individual, and DOES 1-20,
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23 Defendants.
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Case No.: 2:15-cv-09938-RGK-E

**PLAINTIFFS' OBJECTIONS TO
DEFENDANTS' EVIDENCE
SUBMITTED IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

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

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

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1 Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (“Plaintiffs”)
 2 hereby submit the following Evidentiary Objections to the Declaration of Alec
 3 Peters (Doc. 90-10), the Declaration of Bill Hunt (Doc. 90) and the Declaration of
 4 Erin Ranahan (Doc. 90-1) filed by Defendants Axanar Productions, Inc. and Alec
 5 Peters (“Defendants”) in opposition to Plaintiffs’ Motion for Partial Summary
 6 Judgment.
 7

Defendants’ Evidence	Plaintiffs’ Evidentiary Objection
<u>Declaration of Alec Peters (Doc. 90-10)</u>	
11 Peters Decl. ¶ 4. “ <i>Prelude</i> was set in a unique 12 ‘mockumentary’ style never before used by 13 Plaintiffs.” 14 15 16	Fed. R. Evid. 401, 402, 403, 602, 701-703 Lacks foundation, irrelevant, improper lay opinion. <i>Prelude</i> speaks for itself.
17 Peters Decl. ¶ 4. “We also sought to create a first 18 war-like documentary Star Trek project with 19 <i>Prelude</i> , pulling source material from M*A*S*H 20 and Band of Brothers, and now potentially Axanar, 21 pulling from various sources including <i>Midway</i> , 22 <i>Patton</i> , <i>Saving Private Ryan</i> , <i>A Bridge Too Far</i> , 23 and <i>Tora, Tora, Tora.</i> ” 24 25	Fed. R. Evid. 401, 402, 403, 602, 701-703 Lacks foundation, irrelevant, improper lay opinion. <i>Prelude</i> speaks for itself. There is no evidence that any of the referenced works were copied in creating <i>Prelude</i> .
26 Peters Decl. ¶ 6. “Accordingly, we did not ‘take’ 27 main characters, sequence, themes, moods, or 28	Fed. R. Evid. 401, 402, 602, 701-703, 1002

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
dialogue from any official Star Trek episode, film or other work.”	Lacks foundation, improper opinion, best evidence rule. The Axanar Works speak for themselves.
Peters Decl. ¶ 6. “We did not seek to recreate scenes like many other fan films. The mood and themes of <i>Prelude</i> , and that were intended by <i>Axanar</i> , have never been seen before in any official Star Trek episode, film or other work.”	<u>Fed. R. Evid.</u> 401, 402, 602, 701-703, 1002 Lacks foundation, improper opinion, best evidence rule. The Axanar Works speak for themselves.
Peters Decl. ¶ 6. “For example, Defendants portrayed the character Garth of Izar in ways that explain what drove him mad and caused him to suffer what could now be described as post-traumatic stress disorder.”	<u>Fed. R. Evid.</u> 401, 402, 602, 701-703, 1002 Lacks foundation, best evidence rule. The Axanar Works speak for themselves and do not contain any satire or commentary on PTSD or any other subject.
Peters Decl. ¶ 9. “Furthermore, <i>Prelude</i> features	<u>Fed. R. Evid.</u> 401, 402, 602,

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
<p>only one Klingon, Kharn. The representation of Kharn is not substantially similar to the Klingons seen in any official Star Trek episode, film or other work.”</p>	<p>701-703 Lacks foundation, irrelevant, improper lay opinion.</p> <p>Mr. Peters testified [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p> <p>(Grossman Dec., ¶ 23, Ex. A, Peters tr. 46:18-48:1.)(Dkt. 79-3.)</p>
<p>Peters Decl. ¶ 9. “Klingons did not even have a consistent appearance across any official Star Trek episode, film or other work, appearing as little more than actors wearing brown make-up to darken their skin in <i>Star Trek: The Original Series</i>, and appearing as characters with large head ridges, and big, dog-like teeth in later television episodes and motion pictures.”</p>	<p><u>Fed. R. Evid.</u> 401, 402, 602, 701-703 Lacks foundation, improper opinion.</p>
<p>Peters Decl. ¶ 10. “Additionally, neither the U.S.S. Enterprise nor the Klingon starships of Star</p>	<p><u>Fed. R. Evid.</u> 401, 402, 602, 701-703</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	<p>the undisputed evidence of [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>The evidence shows that</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 75, Ex. A (Peters tr. at 394:20-396:7; 398:24-399:10; 401:7-403:5), ¶ 76. (Dkt. 79-3.)</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
<p>Peters Decl. ¶ 15. [REDACTED]</p> <p>[REDACTED]</p>	<p>Fed. R. Evid. 401, 402, 403, 602, 701-703</p> <p>Lacks foundation, irrelevant, improper lay opinion.</p> <p>““The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.”” <i>Yeager v. Bowlin</i>, 693 F.3d 1076, 1080(9th Cir. 2012).</p> <p>Peters’ declaration contradicts the undisputed evidence of [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>The evidence shows that</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 75, Ex. A (Peters tr. at 394:20-396:7; 398:24-399:10; 401:7-403:5), ¶ 76. (Dkt. 79-3.)</p>
<p>Peters Decl. ¶ 15. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Fed. R. Evid. 401, 402, 403, 602, 701-703</p> <p>Lacks foundation, irrelevant, improper lay opinion.</p> <p>““The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.”” <i>Yeager v.</i></p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	401:7-403:5), ¶ 76. (Dkt. 79-3.)
<p>Peters Decl. ¶ 17. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Fed. R. Evid. 401, 402, 602, 802</p> <p>Lacks foundation, hearsay.</p>
<p>Peters Decl. ¶ 18. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Fed. R. Evid. 401, 402, 602, 802</p> <p>Lacks foundation, hearsay.</p>
<p>Peters Decl. ¶ 21. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Fed. R. Evid. 401, 402</p> <p>Irrelevant.</p> <p>““The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.”” <i>Yeager v. Bowlin</i>, 693 F.3d 1076, 1080(9th Cir. 2012).</p> <p>Peters’ declaration contradicts the undisputed evidence [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>This statement is contradicted by the evidence, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] (Grossman Decl., Ex. SS (Dkt. 79-3)) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 63, Ex. A (Peters tr. at 353:8-13; 487:21-488:8; 225:12-227:20) (Dkt. 79-3.)</p>
<p>Peters Decl. ¶ 26.d. “A true and correct copy of an Axanar Productions Press Release stating that ‘[t]wo major players in the universe of Star Trek fan films’ planned to collaborate, and stressing that it was ‘important to work with other productions and share the spotlight with the entire fan film community,’ is attached hereto as Exhibit 6. This document is publicly available on</p>	<p><u>Fed. R. Evid.</u> 401, 402, 802, 1002</p> <p>Irrelevant, Hearsay, Best evidence.</p>

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Defendants’ Evidence	Plaintiffs’ Evidentiary Objection
axanarproductions.com.”	
<p>Peters Decl. ¶ 26.j. “A true and correct copy of an email I sent to Morgen Schneider stating that, ‘[m]y experience and a great team of people, is what has made Axanar the most successful and best Star Trek fan film project of all time,’ is attached hereto as Exhibit 12. This document, marked as ‘Confidential,’ was produced with Bates Number AX030370.”</p>	<p><u>Fed. R. Evid.</u> 401, 402, 802, 1002 Irrelevant, hearsay.</p>
<p>Peters Decl. ¶ 29. “Given various delays and constantly-evolving plot changes, we still do not even have a ‘final shooting script’ for <i>Axanar</i>. A true and correct copy of the script at issue, revision 7.7 of the script for the unmade <i>Axanar</i>, dated November 26, 2016, was attached to the Grossman Decl. (Dkt. 72-2), filed on November 16, 2016, as Exhibit M.”</p>	<p><u>Fed. R. Evid.</u> 401, 402, 602 Lacks foundation, irrelevant, improper lay opinion, Best evidence. Defendants’ post-lawsuit revisions are irrelevant.</p>
<p>Peters Decl. ¶ 29. “Of the 57 characters that appear in the most recent script of the unmade <i>Axanar</i>, there are only seven characters that have appeared previously in any official Star Trek episode, film or other work. All seven of those characters played minor roles.”</p>	<p><u>Fed. R. Evid.</u> 401, 402, 403, 602, 701-703, 1002 Lacks foundation, irrelevant, improper lay opinion, Best evidence. Defendants’ post-lawsuit revisions are irrelevant.</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	<p>The characters portrayed are not "original," they are Vulcans, Klingons and Starfleet Officers from the Star Trek universe.</p>
<u>Declaration of Bill Hunt (Doc. 90)</u>	
<p>Hunt Decl. ¶ 2. "There are [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]"</p>	<p><u>Fed. R. Evid.</u> 401, 402, 1002 Irrelevant, Best evidence. The document speaks for itself. Defendants' post-lawsuit revisions are irrelevant.</p>
<p>Hunt Decl. ¶ 3. [REDACTED] [REDACTED] are among the material differences between the November 26 script and the July 1 script."</p>	<p><u>Fed. R. Evid.</u> 401, 402, 1002 Irrelevant, Best evidence. The document speaks for itself. Defendants' post-lawsuit revisions are irrelevant.</p>
<p>Hunt Decl. ¶ 4. "Additionally, [REDACTED] [REDACTED] [REDACTED] [REDACTED]"</p>	<p><u>Fed. R. Evid.</u> 401, 402, 403, 602, 701-703, 1002 Lacks foundation, irrelevant, improper lay opinion, best evidence.</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	<p>Defendants' post-lawsuit revisions and "considerations" are irrelevant.</p> <p>The characters portrayed are not "original," they are Klingons from the Star Trek universe.</p>
<p>Hunt Decl. ¶ 9. "The July 1 script also features   </p>	<p><u>Fed. R. Evid.</u> 401, 402, 1002 Irrelevant, Best evidence. The document speaks for itself.</p> <p>Defendants' post-lawsuit revisions are irrelevant.</p>
<p>Hunt Decl. ¶ 13. "Given the addition of two new characters,    </p>	<p><u>Fed. R. Evid.</u> 401, 402, 1002 Irrelevant, Best evidence. The document speaks for itself.</p> <p>Defendants' post-lawsuit revisions are irrelevant.</p>
<p>Hunt Decl. ¶ 14. "As far as previously established characters or material in Plaintiffs' works is concerned, there is nothing new in the July 1 script that was not also present in all other previous drafts."</p>	<p><u>Fed. R. Evid.</u> 401, 402, 1002 Irrelevant, Best evidence. The document speaks for itself.</p> <p>Defendants' post-lawsuit</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	revisions are irrelevant.
<u>Declaration of Erin Ranahan (Doc. 90-1)</u>	
<p>Ranahan Decl. ¶ 7. “Plaintiffs’ counsel did not meet and confer with us pursuant to Local Rule 7-3 with respect to seeking injunctive relief in connection with their motion for partial summary judgment. A true and correct copy of my correspondence with Plaintiffs’ counsel regarding the matter is attached hereto as Exhibit G.”</p>	<p><u>Fed. R. Evid.</u> 401, 402 Irrelevant.</p> <p>A meet and confer regarding the Parties’ motions for summary judgment was held on November 2 and November 7, 2016. Grossman Decl., ¶ 2 (Dkt. 79-3). At that time the substance of the Parties’ motions were discussed. Since there was no agreement on liability, and Defendants would not agree to cease production of Axanar, a specific discussion of remedies, including injunctive relief was irrelevant and futile. Further, there is no prejudice to Defendants, and Ms. Ranahan cannot point to any prejudice. Courts do not</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	<p>require parties to meet and confer on all arguments as long as there is no evidence of the moving party's bad faith and no prejudice to the nonmoving party.</p> <p><i>See Del Amo v. Baccash</i>, No. CV 07-663-PSG, 2008 U.S. Dist. LEXIS 110489, at *7 (C.D. Cal. Sep. 16, 2008) (“Thus, based on the pleadings, the parties met and conferred regarding at least two of the arguments in Defendants’ motion. More importantly, though, there is no evidence of bad faith on the part of Defendants. For these reasons, the Court is willing to excuse Defendants’ failure to meet and confer on every substantive issue they raised in their motion.”); <i>Mitsubishi Elec. Corp. v.</i></p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	<p><i>Sceptre, Inc.</i>, No. 2:14-cv-04994-ODW(AJWx), 2015 U.S. Dist. LEXIS 65502, at *4-5 (C.D. Cal. May 18, 2015) (“Defendant argues that during the January 27, 2015 meet and confer Plaintiffs (1) failed to provide further details besides boilerplate objections regarding the basis for the motion, and (2) did not provide specific examples of alleged deficiencies. (Opp'n 3.) In this case, Plaintiffs identified the rules that Defendant had not complied with and their intent to move to strike each instance in which a claim chart was not provided....Notwithstanding, the Court does not find that Defendant was prejudiced in any way by the purported lack of specificity during the meet and confer. <i>See Jauregui v.</i></p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	<p><i>Nationstar Mortgage LLC</i>, No. EDCV 15-00382-VAP, 2015 U.S. Dist. LEXIS 60148, 2015 WL 2154148, at *2 (C.D. Cal. May 7, 2015) (“Courts can, in their discretion, refuse to consider a motion for failing to comply with Local Rule 7-3. Generally, courts exercise this discretion when the failure to meet and confer prejudiced opposing counsel.’”).</p>
<p>Ranahan Decl. ¶ 8. “Exhibit H to my declaration is a true and correct copy of Wikipedia definition of ‘mockumentary’ as of November 28, 2016.”</p>	<p><u>Fed. R. Evid.</u> 401, 402, 602 Lacks foundation, irrelevant, hearsay.</p> <p>Ms. Ranahan submits this hearsay exhibit to argue, in the Opposition Brief, that a “mockumentary” is sometimes defined as a parody. Her client, however, testified that [REDACTED]. [REDACTED]. Grossman Reply</p>

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Defendants' Evidence	Plaintiffs' Evidentiary Objection
	Decl., ¶ 3, Ex. A (Peters tr. at 34:13-35:16).

Dated: December 5, 2016

LOEB & LOEB LLP
JONATHAN ZAVIN
DAVID GROSSMAN
JENNIFER JASON

By: /s/ David Grossman
David Grossman
Attorneys for Plaintiffs
PARAMOUNT PICTURES
CORPORATION and CBS STUDIOS
INC.