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PARAMOUNT PICTURES
11 CORPORATION and CBS STUDIOS
INC.
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 PARAMOUNT PICTURES
CORPORATION, a Delaware
17 corporation; and CBS STUDIOS INC.,
a Delaware corporation,
18

19 Plaintiffs,

20 v.

21 AXANAR PRODUCTIONS, INC., a
California corporation; ALEC PETERS,
an individual, and DOES 1-20,
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23 Defendants.
24

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

**PLAINTIFFS' STATEMENT OF
GENUINE ISSUES IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

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

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

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1 Plaintiffs’ Paramount Pictures Corporation and CBS Studios Inc. submit this
 2 statement of genuine issues pursuant to Central District of California Local Rule
 3 56-2 in opposition to the motion for summary judgment herein filed by Defendants
 4 Axanar Productions, Inc. and Alec Peters.

5 Facts 1 through 50 below correspond to the facts and supporting evidence
 6 presented in the Statement of Uncontroverted Facts filed by the moving party.
 7 These facts are followed by additional material facts and supporting evidence.

8 **I. UNCONTROVERTED FACTS**

Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
11 1. Star Trek was originally conceived by 12 Gene Roddenberry, and debuted as a television 13 show in 1966. 14 <u>Supporting Evidence:</u> Plaintiffs’ First 15 Amended Complaint ECF No. 26 (“FAC”) 16 ¶ 13; Defendants’ Answer to Plaintiffs’ First 17 Amended Complaint, ECF No. 48 at 3, ¶ 13	Undisputed.
18 2. Plaintiffs allege that Defendants’ Works 19 infringe 40 specific Star Trek episodes and 11 20 movies. 21 <u>Supporting Evidence:</u> Declaration of Kelly 22 N. Oki, Nov. 16, 2016 (“Oki Decl.”), Ex. 1 23 (CBS Studios Inc.’s Amended Responses to 24 Interrogatories, Set One, Response to 25 Interrogatory Nos. 4-5); Oki Decl., Ex. 2 26 (Paramount Pictures Corporation’s Amended 27 Responses to Interrogatories, Set One, 28 Response to Interrogatory Nos. 4-5)	Disputed. This is a mischaracterization of the cited interrogatory responses, which state: “Additionally, Defendants have infringed Plaintiffs’ copyrighted characters, including Vulcans, Klingons, Starfleet Captains, Garth of Izar, Soval, Chang, the U.S.S. Enterprise, Klingon ships, and

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Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
	<p>Federation ships.” Oki Decl., Ex. 1 (CBS’ Response to Interrogatories Nos. 4-5.) Ex. 2, (Paramount’s Response to Interrogatories No. 4-5). In these responses, Plaintiffs also include infringement of novels and <i>Star Trek: The Role Playing Game – The Four Years War</i> and <i>Star Trek: The Role Playing Game – Return to Axanar</i>. Oki Decl., Ex. 1 (CBS’ Response to Interrogatories Nos. 4-5.) Ex. 2, (Paramount’s Response to Interrogatories No. 4-5).</p> <p>Defendants’ purported fact also fails to identify Plaintiffs’ responses to Interrogatory No. 2, regarding each Star Trek Copyrighted Work infringed by Prelude to Axanar and Interrogatory No. 3 regarding each Star Trek Copyrighted Work infringed by the “Vulcan Scene.” See Declaration of David Grossman (“Grossman Decl.”),</p>

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	<p>¶ 2, Exs. DDD and EEE (Paramount and CBS’ responses to Interrogatories Nos. 2 and 3).</p> <p>See generally the declaration of John Van Citters (“Van Citters Decl.”) for further details on Plaintiffs’ claims of infringement.</p>
<p>3. Plaintiffs do not purport to own in this lawsuit a copyright to the Star Trek universe, but rather own a limited number of copyrights to certain episodes and films.</p> <p><u>Supporting Evidence:</u> FAC, Appendix A ¶¶ 2-6</p>	<p>Disputed.</p> <p>The purported fact is not supported by Defendants’ citation to the FAC.</p> <p>Disputed that Plaintiffs own “limited” copyrights or that those copyrights are restricted to “certain episodes and films.” In addition to owning copyrights in episodes and films, Plaintiffs own the copyrights in books, reference guides, documentaries, characters and numerous other elements.</p> <p>Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex.</p>

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	<p>VV (copyright registrations for the Star Trek Motion Pictures); ¶ 94, Ex. WW (copyright registration for Garth of Izar novel); ¶ 95, Ex. XX (copyright registration for Strangers from the Sky); ¶ 96, Ex. YY (copyright registration for Infinity’s Prism). Van Citters Decl. ¶¶ 3- 14, Ex. BBB (copyright registration for The Four Years War), 64-65.</p>
<p>4. Of the 51 allegedly infringed works, to date, Plaintiffs have not produced a single copy of any of these episodes or films, though discovery is now closed.</p> <p><u>Supporting Evidence:</u> Oki Decl. ¶ 15</p>	<p>Undisputed that, pursuant to agreement, the parties did not exchange their copies of the Star Trek Copyrighted Works.</p> <p>On June 21, 2016, Plaintiffs met with counsel for Defendants, Erin Ranahan, and the parties agreed that Plaintiffs did not need to produce the Star Trek films and episodes and Ms. Ranahan stated that Mr. Peters would not be producing his copies of those works either. Ms. Ranahan stated that she believed that Mr. Peters</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>already had all of these works. The parties agreed that, if there were works Peters owned that were interlineated or commented on, those would be provided. Grossman Decl., ¶ 99.</p> <p>Defendants, therefore, never requested copies of these works as the parties had agreed they would not be exchanging them in discovery. Grossman Decl., ¶ 99.</p> <p>Furthermore, and consistent with Ms. Ranahan’s representation and stipulation at the meet and confer, Mr. Peters testified that [REDACTED].</p> <p>Grossman Decl., ¶ 99, Ex. A (Peters tr. at 40:10-15).</p>
<p>5. Plaintiffs do not allege that Defendants’ Works use any clips or otherwise copy the plot, dialogue, timeline, or central characters of any of Plaintiffs’ Works, but instead allege infringement of such elements such as clothing, shapes, words, colors, short phrases,</p>	<p>Disputed.</p> <p>The purported fact is not supported by admissible evidence. Moreover, Defendants’ purported fact is a mischaracterization as</p>

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<p>the Klingon language, and works derived from nature, third parties, and the public domain.</p> <p><u>Supporting Evidence:</u> FAC ¶¶ 46-47</p>	<p>Plaintiffs have alleged that the plot, dialogue, timeline and characters from Plaintiffs’ works have been infringed. <i>See</i> Declaration of John Van Citters Decl., ¶¶ 57-60.</p> <p>Defendants have copied “clips” from Plaintiffs by appropriating a screenshot from <i>Star Trek III</i> to create their “Vulcan Scene.” Van Citters Decl., ¶¶ 43, 48.</p> <p>Grossman Decl., ¶ 43, Ex. A (Peters tr. at 82:2-85:12); ¶ 44, Ex. B (Burnett tr. at 106:11-17). Dkt. No. 72-63, Ex. 20 (Vulcan Scene).</p> <p>Defendants also took the plot of their story from <i>the Original Series</i> episode <i>Whom Gods Destroy</i>, and from <i>The Four Years War</i> publication. Van Citters Decl., ¶ 14, Ex. AAA (<i>Four Years War</i>). 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, 2014 email from</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>Christian Gossett to Alec Peters).</p> <p>The characters taken by Defendants are “central” to Plaintiffs’ works, including Klingons, Vulcans, the U.S.S. Enterprise, Klingon ships, along with specific characters such as Soval the Vulcan Ambassador, Chang, the villain from <i>Star Trek VI</i>, and Garth of Izar, who was featured in <i>the Original Series</i>, and was also the subject of a standalone Star Trek novel. Van Citters Decl. ¶¶ 17-38.</p>
<p>6. While Plaintiffs do have copyright registrations to central Star Trek characters such as Spock and Captain Kirk, Defendants Works’ do not include those or any other characters to which Plaintiffs own separate copyrights.</p> <p><u>Supporting Evidence:</u> FAC, Appendix A ¶¶ 2-6</p>	<p>Disputed.</p> <p>Plaintiffs own the copyrights in the episodes that contain the characters such as Garth of Izar and Soval. Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series). Van Citters Decl. ¶¶ 3-8.</p> <p>Plaintiffs are not required to have</p>

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	<p>copyright registrations in characters in order to own the copyrights to those characters. <i>Anderson v. Stallone</i>, 1989 U.S. Dist. LEXIS 11109, Copy. L. Rep. (CCH) P22665 (C.D. Cal. Apr. 25, 1989).</p> <p>Further, as the Ninth Circuit recently held, characters depicted in an audiovisual work, with distinct, recognizable traits, are protectable. These characters include Klingons, Vulcans, Garth of Izar, Ambassador Soval, Klingon Commander Chang, and further include recognizable, distinct inanimate objects as well, including the U.S.S. Enterprise, Klingon battlecruisers, and Vulcan ships. <i>See DC Comics v. Towle</i>, 802 F.3d 1012, 1021 (9th Cir. 2015).</p>
<p>7. Defendant Alec Peters, a lifelong Star Trek fan, founded <i>Axanar</i> Productions along with a group of other Star Trek fans to</p>	<p>Disputed.</p> <p>Peters [REDACTED]</p>

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<p>celebrate their love of Star Trek by creating original stories which take place in the so-called Star Trek universe.</p> <p>Supporting Evidence: ECF No. 48, Counterclaim at 18, ¶ 11; Oki Decl., Ex. 13 (Deposition of Alec Peters (Oct. 19, 2016) (“Peters Tr., Vol. I”) at 81:5-12; 88:5-14); Declaration of Alec Peters, Nov. 16, 2016, (“Peters Decl.”), at ¶ 2</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 83, Ex. A (Peters tr. at 182:1-2; 60:6-61:2).</p> <p>Further, Axanar Productions was not created to celebrate Defendants’ love of Star Trek. Axanar Productions is [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>Grossman Decl., ¶ 74, Ex. A, Ex. SS (financial summary).</p> <p>Axanar Productions was also created [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. 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</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>8. Defendants’ first endeavor was the short film <i>Prelude</i>, which was to be followed by Defendants’ evolving non-commercial film project (the “Potential Fan Film”) tentatively titled <i>Axanar</i>.</p> <p>Supporting Evidence: Peters Decl., at ¶¶ 7-9; Peters Decl., Ex. 1</p>	<p>marketing plan).</p> <p>Undisputed that <i>Prelude</i> was released to the public.</p> <p>Disputed that Defendants planned to complete a “fan film” – Peters repeatedly stated that <i>Axanar</i> was not a fan film. Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-101:10), Ex. DD (Defendants’ Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the <i>Axanar</i> Facebook page), ¶ 53 (Peters tr. at 133:16-143:5; 134:10-143:5; 137:13-138:13; 138:21-140:2; 140:19-141:5; 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK (Peters</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>email to Doug Drexler).</p> <p>Disputed that Axanar was “non-commercial.”</p> <p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” and [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 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), ¶ 68, Ex. QQ (printout from</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>Axanarproductions.com).</p> <p>Defendants' business plan states [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan).</p> <p>Mr. Peters' collaborator and the director of Axanar, Rob Burnett, stated that he was creating Axanar in order to get more directing work, [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Grossman Dec., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-36:20); Ex. RR (Robert Meyer Burnett online posting).</p> <p>Peters created the Axanar Works in large part in order to showcase his own “producing” abilities, in the hopes that he would be hired by CBS ██████████ Grossman 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).</p> <p>Mr. Burnett, the editor of Prelude to Axanar, and director of the full length Axanar Film, also stated that he was creating the Axanar Works as a “spec commercial” in order to showcase his directing abilities in the hopes to obtain other jobs in Hollywood.</p> <p>Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex.</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>RR (Robert Meyer Burnett online posting).</p> <p>Peters intended [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p> <p>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).</p>
<p>9. Both <i>Prelude</i> and the Potential Fan Film were intended to tell the original story of Garth of Izar, an obscure character who made his lone television appearance in a 1969 episode from <i>Star Trek: The Original Series</i> titled <i>Whom Gods Destroy</i>.</p> <p>Supporting Evidence: ECF No. 48, Counterclaim at 19 ¶¶ 15-16; Oki Decl., Ex. 14 (CBS Studios Inc.’s Responses to Requests for Admission, Set One, Response to Request for Admission Nos. 21-22); Oki Decl., Ex. 15 (Paramount Pictures Corporation’s Responses to Requests for Admission, Set One, Response to Request for Admission Nos. 21-22); Oki</p>	<p>Disputed.</p> <p>Garth of Izar is not an obscure character. Garth of Izar was the central character in an episode of <i>The Original Series</i>, he was further discussed in <i>The Four Years War</i> publication as a heroic captain who helped the Federation in the Four Years War and the Battle of Axanar, and he is the titular subject of an entire standalone <i>Star Trek</i> novel. Van Citters Decl., ¶¶ 6, 11, 13, 14, Ex. AAA (<i>The Four Years</i></p>

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<p>Decl., Ex. 12 (Deposition of J.J. Abrams, Nov. 9, 2016, (“Abrams Tr.”) at 14:22-15:3); Oki Decl., Ex. 11 (Deposition of Justin Yipin Lin, Nov. 7, 2016, (“Lin Tr.”) at 16:10-22); Peters Decl., Ex. 1</p>	<p>War supplement), 17- 19. Grossman Decl., ¶ 92, Ex. 1(The Original Series DVDs), ¶ 94, Ex. WW (copyright registration for Garth of Izar novel). Dkt. No. 72-63, Ex. 21 (Garth of Izar novel).</p> <p>Disputed to the extent Defendants assert that <i>Prelude</i> and Axanar tell a story based solely on Garth of Izar. Instead, those works describe and depict the history of <i>The Four Years War</i>, which was also the subject of <i>The Four Years War</i> publication. Van Citters Decl., ¶¶ 17-19.</p> <p>Exhibit 14 to the Oki declaration is not CBS’ responses to Requests for Admission Nos. 21-22. Rather, Exhibit 14 is Paramount’s responses to Requests for Admission Nos. 72-76.</p> <p>Exhibit 15 to the Oki declaration is not Paramount’s responses to</p>

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	<p>Requests for Admission Nos. 21-22. Rather, Exhibit 15 is CBS’ responses to Requests for Admission Nos. 51-55.</p> <p>Paramount and CBS’ responses to Requests for Admission Nos. 21-22, which are not in evidence, simply state that Garth of Izar is the subject of a television show and a novel, but not a motion picture.</p> <p>The testimony of Mssrs. Lin and Abrams do not support the stated fact, and their testimony does not constitute an evidentiary admission on the part of Plaintiffs as they are not Plaintiffs’ employees.</p>
<p>10. <i>Prelude</i> portrays (and the Potential Fan Film would portray) Garth of Izar in a new way not seen in any of Plaintiffs’ Works—specifically, as a war veteran with psychological issues resulting from his traumatic experiences during the Four Years War between the United Federation of Planets</p>	<p>Disputed.</p> <p><i>Prelude</i> speaks for itself. It does not portray Garth of Izar “as a war veteran with psychological issues resulting” from traumatic experiences fighting the Klingons.</p>

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<p>and the Klingon Empire.</p> <p>Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1); Oki Decl., Ex. 5 (Burnett Tr. at 192:2-15); Peters Decl., at ¶¶ 6-7; Peters Decl., Ex. 1</p>	<p>Instead, <i>Prelude</i> portrays Garth as a brilliant military strategist and hero. Further, Defendants have not cited to any pre-lawsuit evidence supporting this characterization or description of their work.</p>
<p>11. Star Trek, which promotes the ideals of tolerance, unity, inclusion, and peace, aired during the Vietnam War, before it was socially accepted to publicly examine issues such as Post-Traumatic Stress Disorder.</p> <p>Supporting Evidence: ECF No. 48, Counterclaim at 15, ¶ 6</p>	<p>Disputed.</p> <p>Lacks foundation and irrelevant. The cited authority (Defendants’ Counterclaim) does not support the stated fact and is not admissible evidence.</p>
<p>12. Defendants’ Works (made up of (i) an original twenty-minute “mockumentary” that has been available for free on YouTube since 2014), (ii) a three-minute scene (the “<i>Vulcan Scene</i>”), Defendants’ Potential Fan Film, and their creation of scripts for that project) are both social commentary and satire, in that they focus on and intend to expose the true horrors and consequences of war in ways the Plaintiffs’ Works did not.</p> <p>Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 87:13-88:1); Oki Decl.,</p>	<p>Disputed.</p> <p>The Axanar Works speak for themselves. They say nothing about the “horrors and consequences of war.”</p> <p>Defendants never claimed that the Axanar Works were a social commentary or satire prior to this lawsuit – and they are not.</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>Ex. 5 (Burnett Tr. at 192:2-15); Peters Decl., ¶ 7</p>	
<p>13. <i>Prelude</i> takes place in a time period previously unexplored by the Plaintiffs’ Works, and features an original plot and is shot in a narrative “mockumentary” style, featuring direct-to-camera interviews with characters, a style never before used by either Plaintiffs or in any other Star Trek fan fiction.</p> <p>Supporting Evidence: ECF No. 48, Counterclaim at 24-25, ¶¶ 30-31; Oki Decl., Ex. 13 (Peters Tr., Vol. I at 85:7-23); Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4); Peters Decl., Ex. 1</p>	<p>Disputed.</p> <p><i>Prelude</i> does not take place in a time frame that was previously unexplored, but rather two decades before <i>The Original Series</i>. Grossman Decl., ¶ 16, Ex. A (Peters tr. at 143:13-145:7), ¶ 17, Ex. B (Burnett tr. at 202:12-203:4); Van Citters Decl., ¶¶ 7, 39.</p> <p><i>Prelude</i> does not feature an original plot. The plot is taken from <i>The Four Years War</i> and “<i>Whom Gods Destroy</i>” of <i>The Original Series</i>. 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, 2014 email from Christian Gossett to Alec Peters). Van Citters Decl., ¶¶ 5-6, 13, 14, 19, 57.</p> <p><i>Prelude</i> is not an “interview” show</p>

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	<p>– it is a film that uses interspersed fictional interviews along with scripted, filmed dialogue and action sequences.</p>
<p>14. Defendants’ Works are low budget, intended to be distributed for free online, appeal to a relatively small audience of “Trekkies,” and have made no profit.</p> <p>Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 224:21-225:4)</p>	<p>Disputed.</p> <p>Defendants raised [REDACTED].</p> <p>Grossman Decl., ¶ 73, Ex. A (Peters tr. at 70:24-71:4).</p> <p>Further, [REDACTED].</p> <p>[REDACTED]. Grossman Decl., ¶ 73, Ex. A (Peters tr. at 192:3-193:21). This is not low budget, and is comparable to the cost of an hour long Star Trek television program produced by CBS. Van Citters Decl., ¶ 66.</p> <p>Peters wanted to create Star Trek content for Netflix. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>McIntosh and Alec Peters), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett).</p> <p>Peters attempted to trademark the word “Axanar” and [REDACTED].</p> <p>Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 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), ¶ 68, Ex. QQ (printout from Axanarproductions.com).</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>Defendants' business plan states [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan).</p> <p>Peters' collaborator and the director of Axanar, Rob Burnett, stated that he was creating Axanar in order to get more directing work, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Dec., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr.</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-36:20); Ex. RR (Robert Meyer Burnett online posting).</p> <p>Peters created the Axanar Works in large part in order to showcase his own “producing” abilities, in the hopes that he would be hired by CBS ██████████ Grossman 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).</p> <p>Mr. Burnett, the editor of Prelude to Axanar, and director of the full length Axanar Film, also stated that he was creating the Axanar Works as a “spec commercial” in order to showcase his directing abilities in the hopes to obtain other jobs in Hollywood.</p> <p>Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex. RR (Robert Meyer Burnett online posting).</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>Peters [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p> <p>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).</p> <p>Defendants [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); ¶ 67, Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com).</p>
<p>15. In August of 2014, Defendants released <i>Prelude</i> for free on YouTube.com.</p> <p>Supporting Evidence: ECF No. 48, Counterclaim, ¶ 16; Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:1-11, 85:7-23); Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8; 202:12-203:4); Peters Decl., ¶ 7</p>	<p>Undisputed.</p>
<p>16. In March of 2014, Defendants launched</p>	<p>Undisputed.</p>

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<p>a Kickstarter campaign to raise money for the Potential Fan Film.</p> <p>Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 239:20-23, 241:10-13); Peters Decl., ¶ 9</p>	
<p>17. Aside from the <i>Vulcan Scene</i> (released for free on YouTube.com in July 2015), which may or may not ultimately become part of the Potential Fan Film, no scenes from the Potential Fan Film have been filmed.</p> <p>Supporting Evidence: Peters Decl., ¶ 9; Oki Decl., Ex. 5 (Burnett Tr. at 174:3-10); Oki Decl., Ex. 6 (Hunt Tr. at 56:12-25)</p>	<p>Disputed.</p> <p>Earlier this year, Peters stated that, in addition to the Axanar Script, and the filmed Vulcan Scene, one third of the visual effects for the full length Axanar film had been completed in a special effects “reel.” Grossman Decl., ¶ 98. Defendants did not turn over this special effects reel. Grossman Decl., ¶98.</p>
<p>18. Of the six total characters portrayed in <i>Prelude</i>, four were developed entirely by Defendants.</p> <p>Supporting Evidence: Peters Decl., ¶ 8</p>	<p>Disputed.</p> <p>These characters were not “developed entirely by Defendants.” The referenced characters are Vulcans, Klingons and Starfleet Officers. They are depicted with costumes, makeup, hair and even logos and insignias</p>

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	<p>that are copied from Plaintiffs’ characters. Van Citters Decl., ¶¶ 5, 25-32.</p>
<p>19. As the <i>Vulcan Scene</i> and the Potential Fan Film are both intended to build off of the <i>Prelude</i> storyline, they also are set in the same unique timeframe.</p> <p>Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 43:9-14); Oki Decl., Ex. 6 (Hunt Tr. at 44:18-25); Oki Decl., Ex. 5 (Burnett Tr. At 104:11-105:17); Peters Decl., Ex. 2</p>	<p>Disputed.</p> <p>The timeframe of the Axanar Works is not unique. It is twenty years before <i>The Original Series</i> (which is several hundred years in the future) and it is a timeframe that was explored and discussed in <i>The Four Years War</i> publication, which was used by Defendants to create the Axanar Works.</p> <p>Van Citters Decl., ¶¶ 13-15, 19, 39, 60.</p> <p>Grossman Decl., ¶ 16, Ex. A (Peters tr. at 143:13-145:7), ¶ 35, Ex. V (blueprints for the soundstage at Paramount Studios that was used for Star Trek); ¶ 36, Ex. A (145:12-147:10), Ex. W (blueprints), ¶ 32, Ex. C (Gossett tr. at 47:22-48:6); ¶ 15, Ex. A (Peters tr. at 371:13-372:9), Ex. J (Mr. Gossett email exchange with</p>

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	<p>Mr. Peters) ¶ 17, Ex. B (Burnett tr. at 202:12-203:4). Van Citters Decl., ¶¶ 13, 14, Ex. AAA (The Four Years War supplement), Ex. BBB (copyright registration for The Four Years War). 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, 2014 email from Christian Gossett to Alec Peters). Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p>
<p>20. The three minute <i>Vulcan Scene</i> features two characters, one of which is completely original, as well as Defendants’ own dialogue. Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 43:9-14, 85:7-23); Peters Decl., ¶ 10; Oki Decl., Ex. 5 (Burnett Tr. at 22:8-23:8, 202:12-203:4); Oki Decl., Ex. 6 (Hunt Tr. At 44:18-25); Peters Decl., Ex. 2</p>	<p>Disputed. Defendants’ Vulcan characters are not “original.” Vulcans are a fictional species created by Plaintiffs and portrayed in the Star Trek Copyrighted Works. The Vulcans in Defendants’ Vulcan Scene are depicted wearing Vulcan robes, on the planet Vulcan, with Vulcan architecture in the background. Van Citters Decl. ¶¶ 43-53.</p>
<p>21. As a war mockumentary, <i>Prelude</i> was</p>	<p>Disputed.</p>

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<p>largely inspired by works such as “M*A*S*H,” “Band of Brothers,” “Babylon 5,” “The Pacific” and “The Civil War.”</p> <p>Supporting Evidence: Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18); Oki Decl., Ex. 6 (Hunt Tr. at 51:8-16); Oki Decl., Ex. 13 (Peters Tr., Vol. I at 57:19-58:4); Peters Decl., Ex. 1</p>	<p><i>Prelude</i> speaks for itself and does not include any characters or copyrighted elements from the cited works. Further, Plaintiffs specifically asked for Defendants’ source documents used to create the Axanar Works (other than the Star Trek films and television episodes which the parties agreed did not need to be exchanged) and Defendants did not turn over any of these claimed sources.</p> <p>Grossman Decl., ¶ 99.</p> <p>Defendants advertised <i>Prelude</i> 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).</p> <p>Grossman Decl., ¶ 34, Ex. A (Peters tr. at 471:25-474:20), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett).</p>

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	<p>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).</p> <p>Grossman Decl., ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13, 2014 email exchange between Alec Peters, Tobias Richter, and Christian Gossett).</p> <p>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).</p> <p>Grossman Decl., ¶ 12, Ex. C (Gossett tr. at 32:7-34:16), Ex. H (November 13, 2013 email exchange between Alec Peters and Christian Gossett), Ex. A (Peters tr. at 359:18-361:11).</p>
<p>22. Mr. Peters modeled his performance of Garth of Izar after the veterans depicted in “Band of Brothers,” the HBO war documentary mini-series.</p> <p>Supporting Evidence: Peters Decl., ¶ 7</p>	<p>Disputed and irrelevant.</p> <p><i>Prelude</i> speaks for itself. Mr. Peters was not portraying anyone from an HBO series, he portrayed</p>

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	<p>Plaintiffs’ character, Garth of Izar.</p>
<p>23. The Potential Fan Film was also intended to borrow from war film sources, including “The Longest Day,” “Patton,” and “The Hunt for Red October.”</p> <p>Supporting Evidence: Oki Decl., Ex. 5 (Burnett Tr. at 22:15-23:18); Peters Decl., ¶ 9</p>	<p>Disputed.</p> <p>Axanar was not a “fan film” and, prior to the filing of this lawsuit, Mr. Peters repeatedly rejected the implication, often explicitly, that he was involved in a “fan film.”</p> <p>Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-101:10), Ex. DD (Defendants’ Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5; 134:10-143:5; 137:13-138:13; 138:21-140:2; 140:19-141:5; 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK (Peters</p>

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	<p>email to Doug Drexler).</p> <p>The Axanar Script is not similar to any of these war films and there is no evidence to support this purported fact. The Axanar Script, [REDACTED] [REDACTED] [REDACTED].</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at pages 8, 21), ¶ 22, Ex. C (Gossett tr. at 112:14-113:8), ¶ 45, Ex. A (Peters tr. at 44:21-55:20; 362:9-363:13); ¶ 46, Ex. B (Burnett tr. at 194:9-195:16; 195:18-23). Van Citters Decl., ¶¶ 15-62.</p>
<p>24. While the Potential Fan Film is unfinished, and its scripts still in flux, the most recent draft script featured 50 original characters (of a total 57 characters). <u>Supporting Evidence:</u> Peters Decl., ¶ 15</p>	<p>Disputed.</p> <p>The Axanar Works are not a “fan film” and Peters denied, prior to this lawsuit, that the Axanar Works were properly characterized as such. Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC</p>

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	<p>(Indiegogo fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-101:10), Ex. DD (Defendants’ Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5; 134:10-143:5; 137:13-138:13; 138:21-140:2; 140:19-141:5; 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK (Peters email to Doug Drexler).</p> <p>The Axanar Script [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (script).</p> <p>Irrelevant to the extent Defendants claim to have altered the Axanar</p>

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	<p>Script after the filing of suit.</p> <p>Disputed that the Axanar Script contains “original” characters. The referenced characters are Klingons, Vulcans, and Starfleet officers and personnel. Van Citters Decl., ¶ 59.</p>
<p>25. At the Motion to Dismiss stage of these proceedings, this Court relied on the truth of Plaintiffs’ allegation that as of August 2015, there was a “fully revised and locked” script for the Potential Fan Film.</p> <p>Supporting Evidence: FAC ¶ 36; ECF No. 54 (Order re Defendants’ Motion to Dismiss) at 5, 7</p>	<p>Disputed.</p> <p>The Court noted that the particular cited allegation was supported by specific facts, including Mr. Peters’ own public posting that he had created a “fully revised and locked script.” Grossman Decl., ¶ 40, Ex. Z.</p>
<p>26. As has been shown through discovery, Defendants used “locked script” as a term of art meaning that no new sets, scenes or characters will be added to a script, and is used to aid in budgeting purposes.</p> <p>Supporting Evidence: Oki Decl., Ex. 6 (Hunt Tr. at 47:19-48:6); Peters Decl., ¶ 13, Peters Decl., Ex. 3</p>	<p>Disputed.</p> <p>Peters testified that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (script).</p>

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<p>27. Many scripts have been created since the unfinished August 2015 script, all using varying degrees of the Star Trek Universe. Supporting Evidence: Peters Decl., ¶ 13, Peters Decl., Ex. 3</p>	<p>Disputed. It is irrelevant whether Peters modified the script after the lawsuit.</p>
<p>28. Defendants are not currently committed to using any of the existing scripts in the Potential Fan Film, and have not decided what format, length and substance the Potential Fan Film will take, though are considering whether to make more mockumentary style works. Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 74:10-23); Peters Decl., ¶¶ 13-14; Oki Decl., Ex. 6 (Hunt Tr. at 49:18-50:5); Oki Decl., Ex. 5 (Burnett Tr. at 88:7-18, 97:11-98:7)</p>	<p>Disputed. Defendants’ post-lawsuit revisions and “considerations” are irrelevant.</p>
<p>29. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Supporting Evidence: Oki Decl., Ex. 3 (Report of Christian Tregillis) at ¶¶ 7-12, 34-35; ECF No. 72-63</p>	<p>Disputed, to the extent that Plaintiffs’ Star Trek Copyrighted Works are distributed in other markets as well, such as cable distribution, print, etc. Further, Plaintiffs object to the statements of Mr. Tregillis as hearsay. There is no declaration from Mr. Tregillis.</p>

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	<p>Further, Plaintiffs timely subpoenaed Mr. Tregillis for deposition, <u>prior</u> to the filing of Defendants’ Motion for Summary Judgment. Defendants’ counsel refused to make Mr. Tregillis 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 any of Defendants’ experts available for deposition. Thereafter, Defendants submitted the Tregillis report as an exhibit to Ms. Oki’s declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition.</p> <p>His testimony, if not excluded as hearsay, should be excluded for failure to make him available pursuant to a timely-served</p>

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	<p>subpoena.</p>
<p>30. Defendants’ Works are not intended to be commercialized, and Defendants have no ambitions of competing against Plaintiffs’ Works in movie theaters, on television, over premium streaming services, or to otherwise sell their Works for profit.</p> <p>Supporting Evidence: Oki Decl., Ex. 13 (Peters Tr., Vol. I at 225:5-6); Oki Decl., Ex. 4 (Report of Henry Jenkins) at 4</p>	<p>Disputed.</p> <p>Peters stated: “But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?” Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page).</p> <p>Plaintiffs’ Star Trek Copyrighted Works are distributed via cable. Van Citters Decl., ¶ 11.</p> <p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” [REDACTED]</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 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), ¶ 68, Ex. QQ (printout from Axanarproductions.com).</p> <p>Defendants' business plan states</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 67, Ex. PP</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>(Axanar marketing plan).</p> <p>Peters’ collaborator and the director of Axanar, Rob Burnett, stated that he was creating Axanar in order to get more directing work, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Dec., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-36:20); Ex. RR (Robert Meyer Burnett online posting).</p> <p>Peters created the Axanar Works in large part in order to showcase his own “producing” abilities, in the hopes that he would be hired by</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>CBS ██████████ Grossman 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).</p> <p>Mr. Burnett, the editor of Prelude to Axanar, and director of the full length Axanar Film, also stated that he was creating the Axanar Works as a “spec commercial” in order to showcase his directing abilities in the hopes to obtain other jobs in Hollywood.</p> <p>Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex. RR (Robert Meyer Burnett online posting).</p> <p>Peters ██████████ ██████████ ██████████ ██████████.</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex. B (Burnett tr. at 151:2-153:12),</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>¶ 67, Ex. PP (Axanar marketing plan).</p> <p>Defendants [REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); ¶ 67, Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com).</p>
<p>31. Plaintiffs’ most recent feature film, <i>Star Trek Beyond</i>, had a production budget of \$185 million and has grossed over \$350 million worldwide since its July 22, 2016 release.</p> <p><u>Supporting Evidence:</u> Oki Decl., Ex. 3 (Report of Christian Tregillis) at ¶ 10</p>	<p>Objection, irrelevant and hearsay. Plaintiffs object to the statements of Mr. Tregillis as hearsay. There is no declaration from Mr. Tregillis.</p> <p>Further, Plaintiffs subpoenaed Mr. Tregillis for deposition, <u>prior</u> to the filing of Defendants’ Motion for Summary Judgment. Defendants’ counsel refused to make Mr. Tregillis 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</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>making any of Defendants’ experts available for deposition.</p> <p>Thereafter, Defendants submitted the Tregillis report as an exhibit to Ms. Oki’s declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants).</p> <p>His testimony, if not excluded as hearsay, should be excluded for failure to make him available pursuant to a timely-served subpoena.</p>
<p>32. Plaintiffs’ Works are budgeted and produced for appeal to the general public worldwide, offering the type of production, special effects, talent, and other qualities that result in extensive profits.</p> <p><u>Supporting Evidence:</u> Oki Decl., Ex. 3 (Report of Christian Tregillis) at ¶ 10</p>	<p>Disputed and irrelevant.</p> <p>Plaintiffs object to statements of Mr. Tregillis as hearsay. There is no declaration from Mr. Tregillis.</p> <p>Further, Plaintiffs timely subpoenaed Mr. Tregillis for</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>deposition, <u>prior</u> to the filing of Defendants' Motion for Summary Judgment. Defendants' counsel refused to make Mr. Tregillis 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 any of Defendants' experts available for deposition. Thereafter, Defendants submitted the Tregillis report as an exhibit to Ms. Oki's declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants). His testimony, if not excluded as hearsay, should be excluded for failure to make him available pursuant to a timely-served subpoena. Further, there is no evidence that the assertion is true</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>of all of Plaintiffs works, or that all of Plaintiffs’ works are similar in this regard. Specifically, the one hour episodes of the last Star Trek television series were budgeted at approximately \$2.2 million to \$2.4 million, the same range as Axanar’s budget, particularly if Peters was to raise more funds to complete Axanar. Van Citters Decl., ¶ 66.</p>
<p>33. [REDACTED] [REDACTED] [REDACTED]. Supporting Evidence: Oki Decl., Ex. 10 (Deposition of Dan O’Rourke, Sept. 30, 2016 (“O’Rourke Tr.”) at 99:15-100:2); Oki Decl., Ex. 9 (Deposition of John Van Citters, Sept. 28, 2016 (“Van Citters Tr.”) at 160:13-15</p>	<p>Undisputed that Plaintiffs did not serve a takedown notice. Instead, Plaintiffs filed this lawsuit, and requested the court to enjoin the distribution of the Axanar Works.</p>
<p>34. [REDACTED] [REDACTED] [REDACTED]. Supporting Evidence: Oki Decl., Ex. 14 (CBS Studios Inc.’s Responses to Requests for Admission, Set Two, Response to Request for</p>	<p>Disputed. This is a mischaracterization of Plaintiffs’ interrogatory responses and deposition testimony which extensively discuss the harm to Plaintiffs from the unchecked</p>

1 2	Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
3 4 5 6 7 8 9 10 11 12 13 14 15 16	Admission Nos. 72-73); Oki Decl., Ex. 15 (Paramount Pictures Corporation’s Responses to Requests for Admission, Set Two, Response to Request for Admission Nos. 72-73); Oki Decl., Ex. 1 (CBS Studios Inc.’s Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9); Oki Decl., Ex. 2 (Paramount Pictures Corporations Amended Responses to Interrogatories, Set One, Response to Interrogatory Nos. 4-9); Oki Decl., Ex. 3 (Report of Christian Tregillis) at ¶ 58-62; Oki Decl., Ex. 9 (Van Citters Tr. at 94:8-95:7, 119:19-124:18); Oki Decl., Ex. 10 (O’Rourke Tr. at 60:22-61:5; 63:8-16)	creation of unauthorized derivative works.
17 18 19 20 21 22 23	35. [REDACTED] [REDACTED] [REDACTED]. Supporting Evidence: Oki Decl., Ex. 9 (Van Citters Tr. at 52:14-18, 54:9-23, 119:19-124:18); Oki Decl., Ex. 10 (O’Rourke Tr. at 60:22-61:5; 63:8-16)	Disputed. Plaintiffs did concern themselves with <i>Prelude</i> , and considered it an infringing work. Grossman Decl., ¶ 97, Ex. CCC (Van Citters and O’Rourke testimony).
24 25 26 27 28	36. [REDACTED] [REDACTED] [REDACTED] [REDACTED].	Disputed. There is no admissible evidence to support the stated fact.

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>Supporting Evidence: Declaration of Jonathan Lane, Nov. 15, 2016 (“Lane Decl.”), Ex. 1; Oki Decl., Ex. 4 (Report of Henry Jenkins) at 2; Declaration of Reece Watkins, Nov. 15, 2016 (“Watkins Decl.”), Ex. 1; Oki Decl., Ex. 3 (Report of Christian Tregillis) ¶ 63; Oki Decl., Ex. 9 (Van Citters Tr. at 137:5-21); Oki Decl., Ex. 8 (Deposition of Elizabeth Kalodner (“Kalodner Tr.”), Oct. 13, 2016 at 33:22-42:17); Oki Decl., Ex. 7 (Deposition of Bill Burke, Nov. 3, 2016 (“Burke Tr.”) at 40:5-45:7; Oki Decl., Ex. 16</p>	<p>The unsworn statements by Jonathan Lane, Henry Jenkins, and Christian Tregillis are hearsay, as is Exhibit 1 to the Watkins declaration. There are no declaration from Mr. Tregillis or Mr. Jenkins.</p> <p>The cited testimony from John Van Citters, Elizabeth Kalodner, and Bill Burke does not provide that there is increased and continued enthusiasm for Plaintiffs’ works due to the Axanar Works.</p> <p>Exhibit 16 is simply an article about the licensed tour of a replica of the set from <i>The Original Series</i>.</p> <p>Further, Plaintiffs timely subpoenaed Mr. Jenkins for deposition, <u>prior</u> to the filing of Defendants’ Motion for Summary Judgment. Defendants’ counsel refused to make Mr. Jenkins</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>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 any of Defendants’ experts available for deposition. Thereafter, Defendants submitted the Jenkins report as an exhibit to Ms. Oki’s declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants). His testimony, if not excluded as hearsay, should be excluded for failure to make him available pursuant to a timely-served subpoena.</p>
<p>37. Star Trek fans have produced and disseminated fan fiction for over 50 years, without complaint, and rather with encouragement from Plaintiffs.</p> <p>Supporting Evidence: Oki Decl., Ex. 3</p>	<p>Disputed.</p> <p>This is inaccurate and irrelevant.</p> <p>The unsworn statements of</p>

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<p>(Report of Christian Tregillis) at ¶¶ 10-12; Lane Decl., Ex. 1 at 1</p>	<p>Christian Tregillis and Jonathan Lane are hearsay.</p> <p>Plaintiffs have filed suit in the past against infringers of their Star Trek works. See, e.g. <i>Paramount Pictures Corp. v. Carol Publ’g Group</i>, 11 F. Supp. 2d 329 (S.D.N.Y. 1998).</p> <p>Moreover, whether or not Plaintiffs have filed suit before is irrelevant. See <i>id.</i> 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 allege that Paramount’s failure to commence litigation against <u>other</u> potentially infringing books estops them from bringing this action. Extending the doctrine of estoppel so that a defendant may rely on a plaintiff’s conduct toward another party is both unsupported by law</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>and pernicious as a matter of policy.”).</p> <p>There is no sworn declaration from Mr. Tregillis and, although Plaintiffs timely subpoenaed Mr. Tregillis for deposition, <u>prior</u> to the filing of Defendants’ Motion for Summary Judgment, Defendants’ counsel refused to make Mr. Tregillis 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 any of Defendants’ experts available for deposition.</p> <p>Thereafter, Defendants submitted the Tregillis report as an exhibit to Ms. Oki’s declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for</p>







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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>Defendants).</p> <p>His testimony, if not excluded as hearsay, should be excluded for failure to make him available pursuant to a timely-served subpoena.</p>
<p>38. Plaintiffs have benefitted from the unpaid and often unacknowledged labor of fans, who have helped to maintain engagement in the Plaintiffs’ Works during leaner years in Plaintiffs’ cycle of production.</p> <p><u>Supporting Evidence:</u> Oki Decl., Ex. 4 (Report of Henry Jenkins) at 8</p>	<p>Disputed.</p> <p>The statements of Henry Jenkins are hearsay and lack foundation.</p> <p>Further, Plaintiffs timely 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 any of Defendants’ experts available for deposition. Thereafter, Defendants submitted the Jenkins</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>report as an exhibit to Ms. Oki’s declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants). His testimony, if not excluded as hearsay, should be excluded for failure to make him available pursuant to a timely-served subpoena.</p>
<p>39. <i>Prelude</i> had a production budget of \$125,000.00, and was posted on YouTube.com to be viewed for free, with no profit to Defendants. <u>Supporting Evidence:</u> Peters Decl., ¶ 7</p>	<p>Disputed.</p> <p>The Axanar Works are commercial works for profit.</p> <p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” and [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 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), ¶ 68, Ex. QQ (printout from Axanarproductions.com).</p> <p>Defendants’ business plan states      </p> <p>Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan).</p> <p>Peters’ collaborator and the</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>director of Axanar, Rob Burnett, stated that he was creating Axanar in order to get more directing work, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Dec., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-36:20); Ex. RR (Robert Meyer Burnett online posting).</p> <p>Peters created the Axanar Works in large part in order to showcase his own “producing” abilities, in the hopes that he would be hired by CBS [REDACTED] Grossman Decl., ¶ 79, Ex. A (Peters tr. at 455:24-456:16); ¶ 77, Ex. B</p>

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Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
	<p>(Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20).</p> <p>Mr. Burnett, the editor of Prelude to Axanar, and director of the full length Axanar Film, also stated that he was creating the Axanar Works as a “spec commercial” in order to showcase his directing abilities in the hopes to obtain other jobs in Hollywood.</p> <p>Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex. RR (Robert Meyer Burnett online posting).</p> <p>Peters [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p> <p>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).</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>Defendants [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); ¶ 67, Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com).</p>
<p>40. [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Supporting Evidence: Oki Decl., Ex. 9 (Van Citters Tr. at 119:19-124:18); Oki Decl., Ex. 10 (O’Rourke Tr. at 60:22-61:5; 63:8-16)</p>	<p>Disputed.</p> <p>Peters stated: “But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?” Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page).</p> <p>Plaintiffs’ Star Trek Copyrighted Works are distributed via cable. Van Citters Decl., ¶ 11.</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” and [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 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), ¶ 68, Ex. QQ (printout from Axanarproductions.com).</p> <p>Defendants’ business plan states [REDACTED]</p>

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	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan).</p> <p>Mr. Peters’ collaborator and the director of Axanar, Rob Burnett, stated that he was creating Axanar in order to get more directing work, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Dec., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-36:20); Ex. RR (Robert</p>

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	<p>Meyer Burnett online posting).</p> <p>Mr. Peters created the Axanar Works in large part in order to showcase his own “producing” abilities, in the hopes that he would be hired by CBS [REDACTED] [REDACTED] Grossman 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).</p> <p>Mr. Burnett, the editor of Prelude to Axanar, and director of the full length Axanar Film, also stated that he was creating the Axanar Works as a “spec commercial” in order to showcase his directing abilities in the hopes to obtain other jobs in Hollywood.</p> <p>Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex. RR (Robert Meyer Burnett online posting).</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>Mr. Peters [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. 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).</p> <p>Defendants [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); ¶ 67, Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com). Grossman Decl., ¶ 97, Ex. CCC (Van Citters and O’Rourke testimony).</p>
<p>41. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p>	<p>Disputed.</p> <p>The report of Christian Tregillis lacks foundation and is hearsay.</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>Supporting Evidence: Oki Decl., Ex. 3 (Report of Christian Tregillis) at ¶¶ 10-12; Oki Decl., Ex. 12 (Abrams Tr. at 42:7-11); Oki Decl., Ex. 9 (Van Citters Tr. at 119:19-124:18); Oki Decl., Ex. 10 (O’Rourke Tr. at 60:22-61:5; 63:8-16)</p>	<p>The testimony cited does not support the purported “fact.”</p> <p>Peters stated: “But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?” Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page).</p> <p>Plaintiffs’ Star Trek Copyrighted Works are distributed via cable. Van Citters Decl., ¶ 11.</p> <p>Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” and</p> <div style="background-color: black; width: 100%; height: 1.2em; margin-top: 5px;"></div>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 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), ¶ 68, Ex. QQ (printout from Axanarproductions.com).</p> <p>Defendants’ business plan states</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 67, Ex. PP</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>(Axanar marketing plan).</p> <p>Mr. Peters' collaborator and the director of Axanar, Rob Burnett, stated that he was creating Axanar in order to get more directing work, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Dec., ¶ 77, Ex. B (Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-36:20); Ex. RR (Robert Meyer Burnett online posting).</p> <p>Mr. Peters created the Axanar Works in large part in order to showcase his own "producing" abilities, in the hopes that he would</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
	<p>be hired by CBS [REDACTED]</p> <p>[REDACTED] Grossman 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).</p> <p>Mr. Burnett, the editor of Prelude to Axanar, and director of the full length Axanar Film, also stated that he was creating the Axanar Works as a “spec commercial” in order to showcase his directing abilities in the hopes to obtain other jobs in Hollywood.</p> <p>Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex. RR (Robert Meyer Burnett online posting).</p> <p>Peters [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Grossman Decl., ¶ 65, Ex. A (Peters tr. at 234:11-25); ¶ 66, Ex.</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>B (Burnett tr. at 151:2-153:12), ¶ 67, Ex. PP (Axanar marketing plan).</p> <p>Defendants [REDACTED] [REDACTED] [REDACTED]. Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); ¶ 67, Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com).</p> <p>Grossman Decl., ¶ 97, Ex. CCC (Van Citters and O’Rourke testimony).</p>
<p>42. [REDACTED] [REDACTED] [REDACTED].</p> <p>Supporting Evidence: Oki Decl., Ex. 9 (Van Citters Tr. at 119:19-124:18); Oki Decl., Ex. 10 (O’Rourke Tr. at 60:22-61:5; 63:8-16)</p>	<p>Disputed.</p> <p>This is not a fact; it is argument.</p> <p>Defendants’ work is not, and was not intended to be, a “fan film.” Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-101:10), Ex. DD (Defendants’ Indiegogo</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5; 134:10-143:5; 137:13-138:13; 138:21-140:2; 140:19-141:5; 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK (Peters email to Doug Drexler).</p> <p>The evidence does not support Defendants’ purported “fact,” and the commercial nature of Defendants’ work, and the potential harm to Plaintiffs, are discussed at length in the Van Citters and O’Rourke depositions and Plaintiffs’ interrogatory responses. Oki Decl., Exs. 1-2; Grossman Decl., ¶ 97, Ex. CCC (Van Citters and O’Rourke</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>43. There were approximately 12 more scripts prepared after the August 2015 Facebook post proclaiming a “fully revised and locked” script, including new scripts that were prepared after this litigation commenced.</p> <p>Supporting Evidence: Peters Decl., ¶ 13; Peters Decl., Ex. 3</p>	<p>testimony).</p> <p>Disputed.</p> <p>It is irrelevant whether Defendants worked on their script since the lawsuit was filed. Further, Defendants testified [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]. Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (script).</p>
<p>44. Though Defendants halted plans for any filming and temporarily stopped working on the project altogether after Plaintiffs filed suit, Defendants resumed drafting scripts when it was publicly announced that this lawsuit was “going away.”</p> <p>Supporting Evidence: Oki Decl., Ex. 5 (Burnett Tr. at 174:3-10); Oki Decl., Ex. 6 (Hunt Tr. at 56:12-25); Oki Decl., Ex. 12 (Abrams Tr. at 20:23-21:13)</p>	<p>Disputed.</p> <p>It is irrelevant whether Defendants worked on their script since the lawsuit was filed.</p>
<p>45. In March 2016, Justin Lin, the director of the most recent <i>Star Trek</i> motion picture, <i>Star Trek Beyond</i>, publicly commented on this case, stating: “[t]his is getting ridiculous! I</p>	<p>Undisputed.</p>

<p>1 Moving Party’s Alleged 2 Uncontroverted Facts</p>	<p>Response to Opposition</p>
<p>3 support the fans. Trek belongs to all of us.” 4 Supporting Evidence: Oki Decl., Ex. 11 (Lin 5 Tr. at 17:11-23); ECF No. 48, Counterclaim 6 ¶¶ 21-22</p>	
<p>7 46. In May 2015, J.J. Abrams, who directed 8 and/or produced the three most recent Star 9 Trek movies, publicly stated that he and Justin 10 Lin “realized this [case] was not an appropriate 11 way to deal with the fans.” 12 Supporting Evidence: Oki Decl., Ex. 12 13 (Abrams Tr. at 20:23-21:13); ECF No. 48, 14 Counterclaim ¶¶ 21-22</p>	<p>Undisputed.</p>
<p>15 47. In May 2015, J.J. Abrams stated that 16 “fans should be celebrating [Star Trek]. Fans 17 of Star Trek are part of this world. So [Justin] 18 went to the studio and pushed them to stop this 19 lawsuit and now, within the next few weeks, it 20 will be announced this is going away, and that 21 fans would be able to continue working on 22 their project.” 23 Supporting Evidence: Oki Decl., Ex. 12 24 (Abrams Tr. at 20:23-21:13); ECF No. 48, 25 Counterclaim ¶¶ 21-22</p>	<p>Undisputed.</p>
<p>26 48. In the 1976 book <i>Star Trek: The New</i> 27 <i>Voyages</i>, Mr. Roddenberry stated in the 28 Foreword that he “realized that there is no</p>	<p>Disputed and irrelevant. The purported fact is not supported</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>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].”</p> <p>Supporting Evidence: ECF No. 48, Counterclaim at 15-17, ¶ 7; ECF No. 49, Answer to Counterclaim at 1-2, ¶ 7</p>	<p>by the cited authority as the Counterclaim and the Answer are not evidence. Further, in 1976 the only “fan films” that existed were a few homemade 8 mm movies, with no means of widespread distribution such as YouTube.</p>
<p>49. Since Mr. Roddenberry’s statement, a substantial number of films have been created by fans without any complaint by Plaintiffs, some using characters from the Star Trek Works and exact replicas of Star Trek movie sets.</p> <p>Supporting Evidence: Lane Decl., Ex. 1 at 26; Oki Decl., Ex. 4 (Report of Henry Jenkins)</p>	<p>Disputed. Irrelevant.</p> <p>The statements of Mr. Lane and Mr. Jenkins are unsworn hearsay.</p> <p>Further, Plaintiffs timely 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 any of Defendants’ experts available for deposition. Thereafter, Defendants submitted the Jenkins</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>report as an exhibit to Ms. Oki’s declaration, and yet still refused to make him available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants). His testimony, if not excluded as hearsay, should be excluded for failure to make him available pursuant to a timely-served subpoena.</p>
<p>50. For over 50 years, Plaintiffs have tolerated, and even encouraged a community of fandom and fan fiction surrounding Star Trek.</p> <p>Supporting Evidence: Oki Decl., Ex. 4 (Report of Henry Jenkins) at 3; Oki Decl., Ex. 11 (Lin Tr. at 40:18-41:18); Oki Decl., Ex. 3 (Report of Christian Tregillis) ¶¶ 24, 63; Oki Decl., Ex. 9 (Van Citters Tr. at 62:1-25, 137:5-21); Oki Decl., Ex. 8 (Kalodner Tr. at 33:22-42:17), Oki Decl., Ex. 7 (Burke Tr. at 40:5-45:7); Oki Decl., Ex. 16</p>	<p>Disputed.</p> <p>This is inaccurate and irrelevant and the statements of Mr. Jenkins and Mr. Tregillis lack foundation and constitute hearsay.</p> <p>Plaintiffs have filed suit in the past against infringers of their Star Trek works. See, e.g. <i>Paramount Pictures Corp. v. Carol Publ’g Group</i>, 11 F. Supp. 2d 329 (S.D.N.Y. 1998).</p>

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	<p>Moreover, whether or not Plaintiffs have filed suit before is irrelevant. <i>See id.</i> 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 allege that Paramount’s failure to commence litigation against <u>other</u> potentially infringing books estops them from bringing this action. Extending the doctrine of estoppel 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.”).</p> <p>Further, Plaintiffs timely subpoenaed Mr. Tregillis and Mr. Jenkins for depositions, <u>prior</u> to the filing of Defendants’ Motion for Summary Judgment. Defendants’ counsel refused to make these</p>

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	<p>designated experts 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 any of Defendants’ experts available for deposition. Thereafter, Defendants submitted these reports as exhibits to Ms. Oki’s declaration, and yet still refused to make them available for deposition on the subpoenaed date, or at any time prior to the deadline to file this Opposition. Grossman Decl., ¶ 100, Ex. JJJ (email exchange with counsel for Defendants).</p> <p>The testimony of Tregillis and Jenkins, if not excluded as hearsay, should be excluded for failure to make them available pursuant to a timely-served subpoena.</p>

Plaintiffs also submit the following additional, uncontroverted material facts and supporting evidence.

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>51. Plaintiffs Paramount Pictures Corporation (“Paramount”) and CBS Studios Inc. (“CBS”) (collectively, “Plaintiffs”), own the copyrights to the Star Trek films and television series.</p>	<p>Declaration of David Grossman (“Grossman Decl.”), ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures). Declaration of John Van Citters (“Van Citters Decl.”), ¶¶ 8, 10.</p>
<p>52. Plaintiff CBS owns the rights to <i>The Original Series</i>, as well as to all of the subsequent Star Trek Television Series.</p>	<p>Van Citters Decl., ¶ 8. Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series).</p>
<p>53. Paramount owns the copyrights in the Star Trek Motion Pictures.</p>	<p>Van Citters Decl. ¶ 10. Grossman Decl., ¶ 91, Ex. VV (copyright registrations for the Star Trek Motion Pictures).</p>
<p>54. Paramount owns the copyright in the novel entitled <i>Garth of Izar</i>.</p>	<p>Van Citters Decl., ¶ 11. Grossman Decl., ¶ 94, Ex. WW (copyright registration for <i>Garth of Izar</i> novel). Dkt. No. 72-63, Ex. 21 (<i>Garth of Izar</i> novel).</p>
<p>55. CBS owns the copyright in the novel entitled <i>Strangers from the Sky</i>.</p>	<p>Van Citters Decl., ¶ 11. Grossman Decl., ¶ 95, Ex. XX (copyright registration for <i>Strangers from the Sky</i>).</p>

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<p>56. CBS owns the copyright in the novel entitled <i>Infinity’s Prism</i>.</p>	<p>Van Citters Decl., ¶ 11. Grossman Decl., ¶ 96, Ex. YY (copyright registration for <i>Infinity’s Prism</i>).</p>
<p>57. The original Star Trek television series (“<i>The Original Series</i>”) debuted in 1966, and ran for three seasons, until 1969.</p>	<p>Van Citters Decl., ¶ 5. Grossman Decl., ¶ 92, Ex. 1 (<i>The Original Series</i> DVDs).</p>
<p>58. In addition to <i>The Original Series</i>, there have been five further Star Trek television series totaling more than 700 episodes (collectively with <i>The Original Series</i>, the “Star Trek Television Series”).</p>	<p>Van Citters Decl., ¶¶ 3, 4. Grossman Decl., ¶ 90, Ex. UU (copyright registrations for the Star Trek Television Series), ¶ 92, Exs. 1-5 (Star Trek Television Series DVDs).</p>
<p>59. <i>The Original Series</i> chronicled the adventures of the U.S.S. Enterprise (one of the ships of “Starfleet”) and its crew as they traveled through space during the twenty-third century, and featured numerous original and copyrightable elements, including but not limited to elements such as the plots of the episodes, mood, theme, characters, settings, pace and numerous original and copyrightable elements such as the Starship Enterprise</p>	<p>Van Citters Decl., ¶ 5. Grossman Decl., ¶ 92, Ex. 1 (<i>The Original Series</i> DVDs).</p>

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<p>(Starfleet registry number NCC-1701), original and fictitious races and species, including the Vulcan and Klingon races, the United Federation of Planets (the “Federation”), and fictional weapons and technology.</p>	
<p>60. In “Whom Gods Destroy,” one of the episodes of <i>The Original Series</i>, James T. Kirk (played by the actor William Shatner), the Captain of the U.S.S. Enterprise, meets his hero, Garth of Izar, a former starship captain.</p>	<p>Van Citters Decl., ¶ 6. Grossman Decl., ¶ 92, Ex. 1(<i>The Original Series</i> DVDs).</p>
<p>61. In “Whom Gods Destroy,” Kirk and Garth discuss Garth’s victory in the Battle of Axanar.</p>	<p>Van Citters Decl., ¶ 6. Grossman Decl., ¶ 92, Ex. 1(<i>The Original Series</i> DVDs).</p>
<p>62. The newest television series, <i>Star Trek: Discovery</i>, will premiere in 2017.</p>	<p>Van Citters Decl., ¶ 7.</p>
<p>63. <i>Star Trek: Discovery</i> takes place ten years before the events depicted in <i>The Original Series</i>.</p>	<p>Van Citters Decl., ¶ 7.</p>
<p>64. Plaintiffs have licensed numerous derivative works, including books, games and merchandise. These works also include reference guides, encyclopedias, documentaries, behind the scenes books,</p>	<p>Van Citters Decl., ¶¶ 12, 64-65.</p>

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<p>dictionaries and “companions” to various television series.</p>	
<p>65. Klingons are an alien race, from the planet Qo’noS, who are portrayed as a serious and war-like species.</p>	<p>Van Citters Decl., ¶ 25.</p>
<p>66. Klingons have distinctive visual elements including large, protruding foreheads covered by symmetrical bumps and ridges, dark hair and skin and facial hair and upward sloping eyebrows.</p>	<p>Van Citters Decl., ¶ 25.</p>
<p>67. The Klingons were long-time enemies of the Federation, and engaged in a number of military battles with Starfleet.</p>	<p>Van Citters Decl., ¶ 25.</p>
<p>68. Vulcans are an iconic species, owned by Plaintiffs, first appearing in the form of Mr. Spock in <i>The Original Series</i>.</p>	<p>Van Citters Decl., ¶ 30.</p>
<p>69. Vulcans are depicted with their pointed ears and upswept eyebrows, they are portrayed as stern and eschew emotions for logic and reason.</p>	<p>Van Citters Decl., ¶ 29.</p>
<p>70. Vulcan men are usually depicted with straight, dark (or gray) hair cut in a “bowl” style.</p>	<p>Van Citters Decl., ¶ 29.</p>
<p>71. Vulcans are part of the Federation, and are portrayed as an advanced technological</p>	<p>Van Citters Decl., ¶ 29.</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>species.</p>	
<p>72. Ambassador Soval was first seen in the <i>Star Trek: Enterprise</i> pilot episode “Broken Bow” in 2001, and was featured many times throughout the <i>Enterprise</i> series such as in the episode “The Expanse” from 2003.</p>	<p>Van Citters Decl., ¶¶ 21, 45. Grossman Decl., ¶ 92, Ex. 5 (<i>The Enterprise</i> DVDs).</p>
<p>73. Soval is portrayed by actor Gary Graham, who reprised his role as Ambassador Soval in Defendants’ infringing works, and even wore virtually identical makeup and costumes that he had in the <i>Enterprise</i> series, rendering the portrayal of that character all but identical to that seen in Plaintiffs’ works.</p>	<p>Van Citters Decl., ¶¶ 21-24, 45-46.</p>
<p>74. Defendants’ works incorporate Plaintiffs’ character, Garth of Izar.</p>	<p>Van Citters Decl., ¶¶ 17-20.</p>
<p>75. Garth of Izar, like Captain Kirk, was a Starfleet Captain.</p>	<p>Van Citters Decl., ¶ 18.</p>
<p>76. In <i>The Original Series</i>, Garth of Izar was introduced and portrayed as a former starship captain whose exploits were “required reading” at the Starfleet Academy due to his heroic conduct during the Battle of Axanar.</p>	<p>Van Citters Decl., ¶ 18.</p>
<p>77. In the episode that introduced Garth (entitled “Whom Gods Destroy”), Captain Kirk finds Garth in an asylum after he had</p>	<p>Van Citters Decl., ¶ 18.</p>

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<p>been declared criminally insane.</p>	
<p>78. This character was further developed and explored by Plaintiffs in the 2003 novel entitled “Garth of Izar.”</p>	<p>Van Citters Decl., ¶ 18.</p>
<p>79. Paramount has a licensed work called <i>Star Trek: The Role Playing Game</i>.</p>	<p>Van Citters Decl., ¶ 12.</p>
<p>80. Garth of Izar’s military battles against the Klingon Empire, including the Battle of Axanar, were explored by Paramount’s licensee, FASA, in <i>Star Trek: The Role Playing Game</i>.</p>	<p>Van Citters Decl., ¶ 19.</p>
<p>81. <i>The Four Years War</i> supplement is a guide that was used in connection with <i>Star Trek: The Role Playing Game</i>.</p>	<p>Van Citters Decl., ¶ 13.</p>
<p>82. The <i>Four Years War</i> supplement also describes the Battle of Axanar (a related mission guide for the role-playing game was called “Return to Axanar”), and the military campaigns of Federation Fleet Captain Garth of Izar.</p>	<p>Van Citters Decl., ¶¶ 13, 14, Ex. AAA (<i>The Four Years War</i> supplement).</p>
<p>83. The copyright in <i>The Four Years War</i> is owned by Paramount.</p>	<p>Van Citters Decl., ¶ 14, Ex. AAA (<i>The Four Years War</i> supplement), Ex. BBB (copyright registration for <i>The Four Years War</i>).</p>
<p>84. <i>The Four Years War</i> was used as source</p>	<p>Grossman Decl., ¶ 13, Ex. A</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>material by Defendants in order to create their Axanar Works.</p>	<p>(Peters tr. at 38:22-41:17); ¶ 14, Ex. C (Gossett tr. at 48:10-50:10), Ex. I (April 26, 2014 email from Christian Gossett to Alec Peters).</p>
<p>85. Defendants admitted that they used <i>The Four Years War</i> to create the Axanar Works.</p>	<p>Van Citters Decl., ¶ 14, Ex. AAA (<i>Four Years War</i>).</p> <p>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, 2014 email from Christian Gossett to Alec Peters).</p>
<p>86. <i>Star Trek: Prelude to Axanar</i>, is a twenty-one minute film.</p>	<p>Grossman Decl., ¶ 18, Ex. A (Peters tr. at 34:10-12).</p>
<p>87. <i>Star Trek: Prelude to Axanar</i> was funded on Kickstarter.</p>	<p>Grossman Decl., ¶ 18, Ex. A (Peters tr. at 34:5-9).</p>
<p>88. Kickstarter is a crowdsourcing website where parties can raise money to fund their projects.</p>	<p>Grossman Decl., ¶ 18, Ex. A (Peters tr. at 69:14-70:6).</p>
<p>89. In exchange for donations on <i>Prelude to Axanar</i>, Defendants provided donors with perks that included various branded merchandise.</p>	<p>Grossman Decl., ¶ 69, Ex. D (Kingsbury tr. at 114:16-24).</p>
<p>90. <i>Prelude to Axanar</i> was released on YouTube in August of 2014.</p>	<p>Grossman Decl., ¶ 19, Ex. L (YouTube page).</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>91. Defendant Peters wrote the <i>Prelude to Axanar</i> screenplay.</p>	<p>Grossman Decl., ¶ 23, Ex. A (Peters tr. at 57:1-58:25).</p>
<p>92. <i>Star Trek: Prelude to Axanar</i> features Plaintiffs’ character, Garth of Izar, and describes his military exploits during the war between the Federation and the Klingon Empire.</p>	<p>Van Citters Decl. ¶¶ 15, 17. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 23, Ex. A (Peters tr. at 36:20-37:25; 46:18-48:1); ¶ 24, Ex. B (Burnett tr. at 191:17-192:25).</p>
<p>93. <i>Prelude to Axanar</i> features the Federation.</p>	<p>Van Citters Decl., ¶¶ 15, 37, 38. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>), ¶ 23, Ex. A (Peters tr. at 44:21-55:20 , ¶ 24, Ex. B (Burnett tr. at 107:6-15); ¶ 22, Ex. C (Gossett tr. at 67:5-70:23), Ex. N (brochure for <i>Prelude to Axanar</i>).</p>
<p>94. <i>Prelude to Axanar</i> features Klingons.</p>	<p>Van Citters Decl., ¶¶ 15, 25-28. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 20, Ex. M</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>(illustrated script for <i>Prelude</i>), ¶ 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 Axanar</i>).</p>
<p>95. <i>Prelude to Axanar</i> features Vulcans.</p>	<p>Van Citters Decl. ¶¶ 15, 29-32. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>), ¶ 23, Ex. A (Peters tr. at 44:21-55:20).</p>
<p>96. <i>Prelude to Axanar</i> features Starfleet.</p>	<p>Van Citters Decl. ¶¶ 15, 33-34. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>), ¶ 23, Ex. A (Peters tr. at 44:21-55:20).</p>
<p>97. <i>Prelude to Axanar</i> features Starfleet officers and commanders, including Garth of Izar.</p>	<p>Van Citters Decl. ¶¶ 15, 17-18. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p>

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	<p>Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>), ¶ 23, Ex. A (Peters tr. at 36:20-37:16; 414:2-415:19), ¶ 33, Ex. S (July 8, 2014 email from Alec Peters to Christian Gossett and Rocio Everett).</p>
<p>98. <i>Prelude to Axanar</i> features the character Soval.</p>	<p>Van Citters Decl. ¶¶ 15, 21-24. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>).</p>
<p>99. <i>Prelude to Axanar</i> features Klingon battlecruisers.</p>	<p>Van Citters Decl. ¶¶ 15, 35-36. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>).</p>
<p>100. Defendants have created substantially similar representations of Klingons, and in doing so have copied the makeup, hair, costumes, weaponry and accessories worn by those species.</p>	<p>Van Citters Decl., ¶¶ 15, 25-28. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>),</p>

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	<p>¶¶ 30, 31 Ex. B (Burnett tr. at 202:21-203:25; 215:4-216:9); ¶ 26, Ex. A (Peters tr. at 82:6-85:12), ¶ 45 (Peters tr. at 44:21-55:20); ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 3 for use of Bat’leth and page 30 for use of Mek’leth).</p>
<p>101. Defendants have created substantially similar representations of Vulcans, and in doing so have copied the makeup, hair, costumes, and accessories worn by those species.</p>	<p>Van Citters Decl., ¶¶ 15, 29-32. Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 20, Ex. M (illustrated script for <i>Prelude</i>), ¶ 26, Ex. A (Peters tr. at 82:6-85:12); Grossman Decl., ¶ 23, Ex. A (Peters tr. at 44:21-55:20).</p>
<p>102. Mr. Peters also admitted that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p>	<p>Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12); ¶ 23, Ex. A (Peters tr. at 44:21-55:20).</p>
<p>103. Mr. Peters admitted that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p>	<p>Grossman Decl., ¶ 25, Ex. A (Peters tr. at 319:8-323:10), Ex. O (March 17, 2014 email from Alec Peters to Christian Gossett and</p>

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Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
	Hamilton Cox).
104. Mr. Peters stated “I am the keeper of the faith with fans. They love that about us. Our faithfulness to the universe.”	Grossman Decl., ¶ 34, Ex. A (Peters tr. at 471:25-475:1), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett).
105. Mr. Peters testified that [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Grossman Decl., ¶ 34, Ex. A (Peters tr. at 420:13-421:19; 471:25-475:1), Ex. T (July 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).
106. The director of <i>Prelude to Axanar</i> testified that <i>Prelude to Axanar</i> is an	Grossman Decl., ¶ 21, Ex. C (Gossett tr. at 185:25-186:8).

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<p>infringing work.</p>	
<p>107. Prior to the filing of this lawsuit, Axanar, Defendants drafted a final shooting script. Peters testified that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED].</p>	<p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (script).</p>
<p>108. In 2015, Defendants released one scene from the full-length film, which they call the “Vulcan Scene.”</p>	<p>Dkt. No. 72-63, Ex. 20 (Vulcan Scene).</p> <p>Grossman Decl., ¶ 43, Ex. A (Peters tr. at 79:11-17).</p>
<p>109. The Vulcan Scene features Vulcans.</p>	<p>Van Citters Decl., ¶¶ 43, 47. Dkt. No. 72-63, Ex. 20 (Vulcan Scene).</p> <p>Grossman Decl., ¶ 43, Ex. A (Peters tr. at 425:11-426:3; 77:5-9); ¶ 42, Ex. AA (script at pages 21-23).</p>
<p>110. The Vulcan Scene features the character Soval.</p>	<p>Van Citters Decl., ¶¶ 43, 45-46. Dkt. No. 72-63, Ex. 20 (Vulcan Scene).</p> <p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA</p>

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Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
	(script at pages 21-23).
111. The Vulcan Scene features the planet Vulcan.	Van Citters Decl., ¶¶ 43, 48, 49. Dkt. No. 72-63, Ex. 20 (Vulcan Scene). Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (script at pages 21-23); ¶ 44, Ex. N (Burnett tr. at 103:13-18).
112. The shot of planet Vulcan in the Vulcan Scene was copied from <i>Star Trek III: The Search for Spock</i> .	Van Citters Decl., ¶¶ 43, 48. Dkt. No. 72-63, Ex. 20 (Vulcan Scene). Grossman Decl., ¶ 43, Ex. A (Peters tr. at 82:2-85:12); ¶ 44, Ex. B (Burnett tr. at 106:11-17).
113. The Vulcan Scene features Vulcan ships.	Van Citters Decl., ¶¶ 43, 50. Dkt. No. 72-63, Ex. 20 (Vulcan Scene). Grossman Decl., ¶ 43 Ex. A (Peters tr. at 82:2-85:12).
114. Defendant Alec Peters himself announced, on August 15, 2015, that he had completed the “fully revised and locked script”	Grossman Decl., ¶ 40, Ex. Z (Facebook post).

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<p>which he referred to as “the best Star Trek movie script ever!”</p>	
<p>115. The Axanar Script features [REDACTED].</p>	<p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 8), ¶ 22, Ex. C (Gossett tr. at 112:14-113:8).</p>
<p>116. The Axanar Script features [REDACTED].</p>	<p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 21).</p>
<p>117. The Axanar Script features [REDACTED].</p>	<p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9), ¶ 42, Ex. AA (Axanar Script at page 8), ¶ 45, Ex. A (Peters tr. at 362:9-363:13); ¶ 46, Ex. B (Burnett tr. at 195:18-23).</p>
<p>118. Klingon Commander Chang was the villain featured in <i>Star Trek VI: The Undiscovered Country</i>.</p>	<p>Grossman Decl., ¶ 45, Ex. A (Peters tr. at 44:21-55:20; 362:9-363:13).</p>
<p>119. [REDACTED].</p>	<p>Grossman Decl., ¶ 41, Ex. A (Peters tr. at 77:5-9, ¶ 42, Ex. AA (Axanar Script), ¶ 46, Ex. B (Burnett tr. at 194:9-195:16).</p>
<p>120. The Axanar Script features [REDACTED].</p>	<p>Grossman Decl., ¶ 45, Ex. A (Peters tr. at 362:9-363:13); ¶ 93, Ex. 11 (<i>Star Trek VI</i>:</p>

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Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
<p>121. The Axanar Script [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><i>Undiscovered Country</i> DVD)</p> <p>Dkt. No. 72-63, Ex. 19 (<i>Prelude to Axanar</i>).</p> <p>Grossman Decl., ¶ 42, Ex. AA (Axanar Script).</p>
<p>122. Defendants also took characters, sequence, themes, mood, dialogue, and settings from the Star Trek Copyrighted Works.</p>	<p>Van Citters Decl., ¶¶ 15-62.</p>
<p>123. The Axanar Script [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Van Citters Decl., ¶ 58.</p> <p>Grossman Decl., ¶ 42, Ex. AA (Axanar Script).</p>
<p>124. Defendants expressly set out to create an authentic and “independent Star Trek film” that stayed true to Star Trek canon [REDACTED]</p> <p>[REDACTED]</p>	<p>Grossman Decl., ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants’ Kickstarter fundraising page).</p> <p>Grossman Decl., ¶ 34, Ex. A (Peters tr. at 471:25-474:20), Ex. U (March 7, 2015 email from Alec Peters to Christian Gossett).</p>

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	<p>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).</p> <p>Grossman Decl., ¶ 38, Ex. C (Gossett tr. at 92:14-93:13), Ex. Y (April 13, 2014 email exchange between Alec Peters, Tobias Richter, and Christian Gossett).</p> <p>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).</p> <p>Grossman Decl., ¶ 12, Ex. C (Gossett tr. at 32:7-34:16), Ex. H (November 13, 2013 email exchange between Alec Peters and Christian Gossett), Ex. A (Peters tr. at 359:18-361:11).</p>
<p>125. Defendants have set the Axanar Works in 2241.03 to 2245.1, which is twenty-one</p>	<p>Van Citters Decl., ¶¶ 15, 39. Dkt. No. 72-63, Ex. 19 (<i>Prelude to</i></p>

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<p>years before <i>The Original Series</i> episode “Where No Man Has Gone Before.”</p>	<p><i>Axanar</i>).</p>
<p>126. Defendants set out to create a motion picture “prequel” to <i>The Original Series</i>.</p>	<p>Grossman Decl., ¶ 16, Ex. A (Peters tr. at 143:13-145:7), ¶ 35, Ex. V (blueprints for the soundstage at Paramount Studios that was used for Star Trek); ¶ 36, Ex. A (145:12-147:10), Ex. W (blueprints), ¶ 32, Ex. C (Gossett tr. at 47:22-48:6); ¶ 15, Ex. A (Peters tr. at 371:13-372:9), Ex. J (Mr. Gossett email exchange with Mr. Peters) ¶ 17, Ex. B (Burnett tr. at 202:12-203:4).</p>
<p>127. The element of stardates was first used in the second pilot of <i>The Original Series</i> “Where No Man Has Gone Before” in 1966 (Reg. No. PA-58-303), and was subsequently used in <i>The Next Generation</i>, <i>Deep Space Nine</i>, <i>Voyager</i>, and every Star Trek Motion Picture.</p>	<p>Van Citters Decl., ¶ 39.</p>
<p>128. Defendant Peters conceded that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Grossman Decl., ¶ 26, Ex. A (Peters tr. at 82:6-85:12).</p>

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
<p>[REDACTED]</p>	
<p>129. The sequence of events of Defendants' works is taken from the Star Trek Copyrighted Works – the events depicted and discussed therein take place in and around the Battle of Axanar, as described both in <i>The Original Series</i> and in greater detail in <i>The Four Years War</i>.</p>	<p>Van Citters Decl., ¶ 60.</p>
<p>130. Defendants' works take place in the same settings as the Star Trek Copyrighted Works as they are set in alien star systems created by Plaintiffs, on spaceships belonging to the United Federation of Planets, on Klingon battlecruisers fighting for the Klingon Empire, and on planets such as Qo'noS, Vulcan and Axanar.</p>	<p>Van Citters Decl., ¶ 62.</p>
<p>131. Defendants' works use the protected characters embodied by the U.S.S. Enterprise and Klingon starships.</p>	<p>Van Citters Decl., ¶¶ 5, 33-36, 59, 62.</p>
<p>132. Defendants appropriated the mood and theme from the Star Trek Copyrighted Works, attempting to recreate the drama between the Federation and the Klingon Empire in a military space drama.</p>	<p>Van Citters Decl., ¶¶ 55, 56.</p>
<p>133. The second Star Trek motion picture,</p>	<p>Van Citters Decl., ¶ 20.</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p><i>The Wrath of Khan</i>, was a derivative work that expanded upon one of the episodes of <i>The Original Series</i> which featured a villain named Khan.</p>	
<p>134. Defendants raised [REDACTED].</p>	<p>Grossman Decl., ¶ 73, Ex. A (Peters tr. at 70:24-71:4).</p>
<p>135. Defendants spent [REDACTED].</p>	<p>Grossman Decl., ¶ 73, Ex. A (Peters tr. at 190:19-191:24).</p>
<p>136. Mr. Peters [REDACTED].</p>	<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 189:2-23), Ex. SS (financial summary at AX031122-AX031129).</p>
<p>137. Defendants [REDACTED].</p>	<p>Grossman Decl., ¶ 61, Ex. B (Burnett tr. at 61:24-62:11); ¶ 74, Ex. A (Peters tr. at 122:21-25), Ex. SS (financial summary at AX030960, AX030959, AX031046, AX031128).</p>
<p>138. Defendants [REDACTED].</p>	<p>Grossman Decl., ¶ 61, Ex. B (Burnett tr. at 62:12-18; 93:23-25; 140:21-141:3); ¶ 70 (Kingsbury tr. at 39:22-41:9); ¶ 74, Ex. SS (financial summary at AX030958-AX030964).</p>
<p>139. Defendants [REDACTED].</p>	<p>Grossman Decl., ¶ 74, Ex. A</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>[REDACTED]</p>	<p>(Peters tr. at 65:7-18; 193:22-194:18), Ex. SS (financial summary at AX031058-AX031059).</p> <p>Grossman Decl., ¶ 63, Ex. A (Peters tr. at 353:8-13; 487:21-488:8; 225:12-227:20), Ex. NN (lease).</p> <p>Grossman Decl., ¶ 62, Ex. C (Gossett tr. at 35:11-36:7). Oki Decl., Exs. 1-2 (Plaintiffs’ interrogatory responses).</p>
<p>140. Defendants [REDACTED]</p>	<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 209:15-212:22), Ex. SS (financial summary at AX031019-AX031033).</p>
<p>141. Defendants [REDACTED]</p>	<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 195:21-198:1; 213:5-10), Ex. SS (financial summary at AX031051-AX031055).</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>142. Defendants [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p>	<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 201:6-204:7), Ex. SS (financial summary at AX030967-AX030981).</p>
<p>143. Ms. Kingsbury [REDACTED] [REDACTED].</p>	<p>Grossman Decl., ¶ 72, Ex. D (Kingsbury tr. at 15:21-24; 18:7-11; 141:4-15); ¶ 71, Ex. A (Peters tr. at 197:12-15).</p>
<p>144. Mr. Peters [REDACTED] [REDACTED] [REDACTED].</p>	<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 204:11-16, 205:3-16), Ex. SS (financial summary at AX030985-AX030986).</p>
<p>145. Mr. Peters [REDACTED] [REDACTED].</p>	<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 203:25-204:1); Ex. SS (financial summary at AX030981-AX030983).</p>
<p>146. Mr. Peters [REDACTED] [REDACTED].</p>	<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 217:6-15), Ex. SS (financial summary at AX030986-AX030987).</p>
<p>147. Mr. Peters [REDACTED] [REDACTED] [REDACTED].</p>	<p>Grossman Decl., ¶ 74, Ex. A (Peters tr. at 205:14-16), Ex. SS (financial summary at AX030967-</p>

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Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
	AX030987).
148. Defendants [REDACTED] [REDACTED] [REDACTED]	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 205:20-207:9), Ex. SS (financial summary at AX031098-AX031110).
149. Mr. Peters [REDACTED] [REDACTED].	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 207:10-12), Ex. SS (financial summary at AX031098).
150. Mr. Peters [REDACTED] [REDACTED].	Grossman Decl., ¶ 74, Ex. A (Peters tr. at 208:2-16), Ex. SS (financial summary at AX031009-AX031010).
151. In raising money for the Axanar Works, Mr. Peters stated, “ Axanar is the first fully-professional, independent Star Trek film. While some may call it a ‘fan film’ as we are not licensed by CBS, Axanar has professionals working in front and behind the camera, with a fully-professional crew--many of whom have worked on Star Trek itself--who ensure Axanar will be the quality of Star Trek that all fans want to see.”	Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1); Ex. CC (Indiegogo site).
152. On the Kickstarter page for Axanar, Mr. Peters also stated, “ Axanar is the independent Star Trek film which proves that a feature-	Grossman Decl., ¶ 54, Ex HHH.

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>quality Star Trek film can be made on a small budget...Axanar takes place 21 years before the events of “Where no Man Has Gone Before”. It tells the story of Garth of Izar, the legendary Starfleet captain who is Captain Kirk’s hero and the role model for a generation of Starfleet officers. Garth charted more planets than any other Captain and was the hero of the Battle of Axanar. His exploits are required reading at Starfleet Academy. This is the story of Garth and his crew during the Four Years War, the war with the Klingon Empire that almost tore the Federation apart...” The Kickstarter page also states “This is Star Trek.”</p>	
<p>153. Defendants [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p>	<p>Grossman Decl., ¶ 39, Ex. B (Burnett tr. at 55:4-14, 58:10-22,59:11-22), ¶ 28, Ex. Q (April 2014 email), Ex. A (Peters tr. at 376:16-377:11), Ex. C (Gossett tr. at 50:14-52:21).</p>
<p>154. Peters repeatedly referenced the Axanar Works as a professional production.</p>	<p>Grossman Decl., ¶ 52, Ex. A (Peters tr. at 91:11-92:7), Ex. GG (statement made by Alec Peters in an interview), ¶ 48, Ex. A (Peters</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 54, Ex. A (Peters tr. at 97:14-98:22), Ex. HH (screenshot from Defendants’ Kickstarter fundraising page), ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Defendants’ Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5; 134:10-143:5; 135:11-136:2; 137:13-138:13; 138:21-140:2; 140:19-141:3; 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 11, Ex. A (Peters tr. at 170:22-171:3), Ex. G (printout from Axanarproductions.com), ¶ 56, Ex. A Peters tr. at 124:8-127:15), Ex. JJ (press kit).</p>
<p>155. Peters repeatedly stated that his production was not to be called a “fan film.”</p>	<p>Grossman Decl., ¶ 48, Ex. A (Peters tr. at 92:19-94:1), Ex. CC (Indiegogo fundraising page), ¶ 49,</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
	<p>Ex. A (Peters tr. at 99:10-101:10), Ex. DD (Defendants’ Indiegogo fundraising page), ¶ 50, Ex. A (Peters tr. at 108:6-109:12), Ex. EE (Facebook post by Alec Peters), ¶ 51, Ex. A (Peters tr. at 109:16-110:2), Ex. FF (Post on the Axanar Facebook page), ¶ 53 (Peters tr. at 133:16-143:5; 134:10-143:5; 137:13-138:13; 138:21-140:2; 140:19-141:5; 141:16-142:22), Ex. ZZ (transcript of podcasts), ¶ 55, Ex. A (Peters tr. at 106:6-107:7), Ex. II (tweet) ¶ 57, Ex. A (Peters tr. at 349:18-24), Ex. KK (Peters email to Doug Drexler).</p>
<p>156. Peters stated on Reddit, “This is no fan film, this is a professional production and something the Axanar Team knows how to do.”</p>	<p>Grossman Decl., ¶ 52, Ex. III, Ex. A (Peters tr. at 114:6-116:19).</p>
<p>157. Peters stated in a podcast, “[<i>Prelude</i>] is not a fan film. They are going to see a fully professional production that’s going to change the way people view Star Trek.”</p>	<p>Grossman Decl., ¶ 53, Ex. ZZ (transcript of podcasts), Ex. A (Peters tr. at 137:13-19).</p>
<p>158. Peters stated in a podcast, “these are</p>	<p>Grossman Decl., ¶ 53, Ex. ZZ</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>positions you find on professional productions. And we pride ourselves on being that, <u>and not being a fan film.</u>”</p>	<p>(transcript of podcasts), Ex. A (Peters tr. at 142:10-14).</p>
<p>159. Peters attempted to meet with Netflix to become a producer of Star Trek productions, attempted to trademark the word “Axanar” and [REDACTED].</p>	<p>Grossman Decl., ¶ 58, Ex. A (Peters tr. at 442:21-449:9); Ex. LL (Facebook message exchange between Terry McIntosh and Alec Peters); ¶ 59, Ex. E (McIntosh tr. at 20:23-22:15), ¶ 60, Ex. C (Gossett tr. at 126:10-128:14), Ex. MM (April 20, 2015 email exchange between Alec Peters and Christian Gossett); ¶ 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), ¶ 68, Ex. QQ (printout from Axanarproductions.com).</p>
<p>160. Defendants’ business plan states [REDACTED]</p>	<p>Grossman Decl., ¶ 67, Ex. PP (Axanar marketing plan).</p>
<p>161. Mr. Peters’ collaborator and the director</p>	<p>Grossman Dec., ¶ 77, Ex. B</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>of Axanar, Rob Burnett, stated [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p>	<p>(Burnett tr. at 217:22-218:7); ¶ 78, Ex. C (Gossett tr. at 19:15-22:20); ¶ 79, Ex. A (Peters tr. at 455:24-456:16), Ex. OO (Facebook communication between Alec Peters and Terry McIntosh); ¶ 81, Ex. B (Burnett tr. at 32:6-33:1), ¶ 82 (Burnett tr. at 31:21-36:20); Ex. RR (Robert Meyer Burnett online posting).</p>
<p>162. Mr. Peters created the Axanar Works [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>Grossman 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).</p>
<p>163. Mr. Burnett, the editor of <i>Prelude to Axanar</i>, and director of the full length Axanar Film, also stated [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p>	<p>Grossman Decl., ¶ 82, Ex. B (Burnett tr. at 31:21-36:20), Ex. RR (Robert Meyer Burnett online posting).</p>
<p>164. Mr. Peters [REDACTED] [REDACTED] [REDACTED] [REDACTED].</p>	<p>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</p>

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<p style="text-align: center;">Moving Party’s Alleged Uncontroverted Facts</p>	<p style="text-align: center;">Response to Opposition</p>
<p>165. In a post on Axanarproductions.com, Defendants stated: “The Axanar team is happy to announce that we have signed a lease on 16,000sf warehouse in Valencia, CA. The new home of Axanar Productions will be called ‘Ares Studios’....We intend to turn this warehouse and office space into a fully functional sound stage. This will allow us to not only make ‘Axanar’ but other Star Trek projects after Axanar and other Sci-Fi projects.</p>	<p>plan). Grossman Decl., ¶ 67, Ex. QQ (printout from Axanarproductions.com).</p>
<p>166. Defendants [REDACTED].</p>	<p>Grossman Decl., ¶ 64, Ex. B (Burnett tr. at 142:14-148:8); ¶ 67, Ex. PP (Axanar marketing plan); Ex. QQ (printout from Axanarproductions.com).</p>
<p>167. Peters stated: “But Axanar is not just an independent Star Trek film; it is the beginning of a whole new way that fans can get the content they want, by funding it themselves. Why dump hundreds or thousands of dollars a year on 400 cable channels, when what you really want is a few good sci-fi shows?”</p>	<p>Grossman Decl., ¶ 49, Ex. A (Peters tr. at 99:10-100:15), Ex. DD (Axanar Indiegogo fundraising page).</p>
<p>168. The Star Trek Copyrighted Works are distributed via cable, among other channels of</p>	<p>Van Citters Decl., ¶ 11.</p>

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<p>distribution.</p>	
<p>169. Mr. Peters stated in a press kit, “Axanar is a ground-breaking independent film that proves the idea that a studio doesn’t need millions of dollars to produce a sci-fi feature with big-budget production values.”).</p>	<p>Grossman Decl., ¶ 56, Ex. JJ (press kit), Ex. A (Peters tr. at 124:8-127:15).</p>
<p>170. The continued production and distribution of the Axanar Works would cause irreparable harm to the market for Star Trek Copyrighted Works because Star Trek fans will view the Axanar Works (and donate for the production of future works) instead of paying to view the Star Trek Copyrighted Works.</p>	<p>Van Citters Decl., ¶ 63.</p>
<p>171. Peters was in charge of Axanar Productions’ conduct and was responsible for the infringing conduct of Axanar Productions.</p>	<p>Grossman Decl., ¶ 86, Ex. C (Gossett tr. 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), Ex. B (Burnett tr. at 94:16-95:4), Ex. FFF (email exchange), ¶ 87, Ex. E (McIntosh tr. at 52:12-20).</p>
<p>172. Peters is the president of Axanar Productions.</p>	<p>Grossman Decl., ¶ 83, Ex. A (Peters tr. at 182:1-2).</p>
<p>173. Peters was responsible for many of the creative decisions on the Axanar Works.</p>	<p>Grossman Decl., ¶ 84, Ex. B (Burnett tr. at 94:16-95:4), Ex. FFF</p>

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Moving Party’s Alleged Uncontroverted Facts	Response to Opposition
	(email exchange), ¶ 85, Ex. B (Burnett tr. at 201:19-202:11); ¶ 86, Ex. C (Gossett tr. at 38:6-16; 161:14-23; 162:9-163:14).
174. Peters supervised and controlled Axanar Productions.	Grossman Decl., ¶ 83, Ex. A (Peters tr. at 60:6-61:2), ¶ 87, Ex. E (McIntosh tr. at 52:12-20), ¶ 84, Ex. B (Burnett tr. at 94:16-95:4), Ex. FFF (email exchange).
175. Peters [REDACTED]	Grossman Decl., ¶ 88, Ex. A (Peters tr. at 9:21-23; 21:18-25).
176. In the years prior to Peters’ creation of the Axanar Works, Peters sent several emails to CBS to report third parties whom Peters believed were using Plaintiffs’ intellectual property without authorization.	Grossman Decl., ¶ 89, Ex. TT (Peters emails to CBS).
177. Defendants [REDACTED]	Grossman Decl., ¶ 23, Ex. A (Peters tr. at 57:1-58:25).
178. Peters even ensured that [REDACTED]	Grossman Decl., ¶ 34, Ex. GGG is a true and correct copy of an (June 29, 2014 email exchange), Ex. A (Peters tr. at 384:8 -388:2).
179. The average cost to make an episode in	Van Citters Decl., ¶ 66.

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Moving Party's Alleged Uncontroverted Facts	Response to Opposition
<p>the final season of <i>Star Trek Enterprise</i> (Plaintiffs' most recent Star Trek Television Series) was between \$2.2 million and \$2.4 million.</p>	
<p>180. Neither J.J. Abrams nor Justin Lin [REDACTED], and Mr. Abrams [REDACTED] [REDACTED]. Also, Mr. Abrams [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>Grossman Decl., ¶ 101, Ex. KKK (Abrams tr. at 15:17-21; 39:19-40:12), Ex. LLL (Lin tr. at 13:22-25).</p>

Dated: November 28, 2016

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