

**EXHIBIT “1”**

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11 CORPORATION and CBS STUDIOS  
INC.  
12

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 PARAMOUNT PICTURES  
CORPORATION, a Delaware  
17 corporation; and CBS STUDIOS INC.,  
a Delaware corporation,  
18 Plaintiffs,  
19

20 v.

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

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

**FINAL PRETRIAL  
CONFERENCE ORDER**

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

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1 Following pretrial proceedings, pursuant to F.R.Civ.P. 16 and L.R. 16, IT IS  
2 ORDERED:

3 1. The parties are: Plaintiffs Paramount Pictures Corporation  
4 (“Paramount”) and CBS Studios Inc. (“CBS”)(Paramount and CBS, “Plaintiffs”)  
5 and Defendants Axanar Productions, Inc. and Alec Peters (collectively,  
6 “Defendants”).

7 Each of these parties has been served and has appeared. All other parties  
8 named in the pleadings and not identified in the preceding paragraph are now  
9 dismissed.

10 The pleadings which raise the issues are: Plaintiffs’ First Amended Complaint  
11 for Direct, Contributory, and Vicarious Copyright Infringement, and for a  
12 Declaratory Judgment; Defendants’ Answer to Plaintiffs’ First Amended Complaint  
13 and Counterclaim for Declaratory Relief.

14  
15 2. Federal jurisdiction and venue are invoked upon the following grounds:  
16 This is a civil action concerning alleged copyright infringement. Jurisdiction is  
17 asserted under 17 U.S.C. § 510 and 28 U.S.C. §§ 1338(a). The facts requisite to  
18 federal jurisdiction are admitted. Venue is proper in this District pursuant to 28  
19 U.S.C. §§ 1391(b), (c), (d), and 1400(a) because Plaintiffs’ claims arose in this  
20 district and because Defendants reside or may be found in this district.

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22 3. The trial is estimated to take ten (10) trial days.

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24 4. The trial is to be a jury trial. At least seven (7) days prior to the trial  
25 date, the parties shall file and serve by e-mail, fax, or personal delivery: (a)  
26 proposed jury instructions as required by L.R. 51-1 and (b) any special questions  
27 requested to be asked on voir dire.

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1           5.     The following facts are admitted and require no proof:

2           (a)     The original Star Trek television series (“*The Original Series*”)   
3 debuted in 1966, and ran for three seasons, until 1969. [See Defendants’ Response to   
4 Plaintiffs’ UMF No. 7 (Dkt. 87-1); Ranahan 12/14/16 email re: Proposed Stipulated   
5 Fact No. 7].

6           (b)     *The Original Series* chronicled the adventures of the U.S.S.   
7 Enterprise (one of the ships of “Starfleet”) and its crew as they traveled through   
8 space during the twenty-third century.

9           (c)     In “*Whom Gods Destroy*,” one of the episodes of *The Original*   
10 *Series*, James T. Kirk (played by the actor William Shatner), the Captain of the   
11 U.S.S. Enterprise, meets his hero, Garth of Izar, a former starship captain. [See   
12 Defendants’ Response to Plaintiffs’ UMF No. 10 (Dkt. 87-1)].

13           (d)     Klingons are an alien race, from the planet Qo’noS, who are   
14 portrayed as a serious and war-like species. [See Defendants’ Response to Plaintiffs’   
15 UMF No. 15 (Dkt. 87-1)].

16           (e)     *Star Trek: Prelude to Axanar* was funded on Kickstarter. [See   
17 Defendants’ Response to Plaintiffs’ UMF No. 37 (Dkt. 87-1)].

18           (f)     Kickstarter is a crowdsourcing website where parties can raise   
19 money to fund their projects. [See Defendants’ Response to Plaintiffs’ UMF No. 38   
20 (Dkt. 87-1); Ranahan 12/14/16 email re: Proposed Stipulated Fact No. 34].

21           (g)     *Prelude to Axanar* features the character Soval. [See Defendants’   
22 Response to Plaintiffs’ UMF No. 48 (Dkt. 87-1)].

23           (h)     The Vulcan Scene features Vulcans. [See Defendants’ Response   
24 to Plaintiffs’ UMF No. 59 (Dkt. 87-1)].

25           (i)     The Vulcan Scene features the character Soval. [See Defendants’   
26 Response to Plaintiffs’ UMF No. 60 (Dkt. 87-1)].

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1 (j) The Axanar Script features Garth of Izar. [See Defendants’  
2 Response to Plaintiffs’ UMF No. 65 (Dkt. 87-1); Ranahan 12/14/16 email re:  
3 Proposed Stipulated Fact No. 48].

4 (k) The Axanar Script includes Soval the Vulcan ambassador. [See  
5 Defendants’ Response to Plaintiffs’ UMF No. 66 (Dkt. 87-1)]; Ranahan 12/14/16  
6 email re: Proposed Stipulated Fact No. 49].

7 (l) Defendants have set the Axanar Works in 2241.03 to 2245.1,  
8 which is twenty-one years before *The Original Series* episode “Where No Man Has  
9 Gone Before.” [See Defendants’ Response to Plaintiffs’ UMF No. 74 (Dkt. 87-1)].

10 (m) Star Trek was originally conceived by Gene Roddenberry, and  
11 debuted as a television show in 1966.

12 (n) In 2010, Mr. Peters purchased the original screen-used costume  
13 of the character Garth of Izar from the third season Star Trek episode “Whom Gods  
14 Destroy.”

15  
16 6. The following facts, though stipulated, shall be without prejudice to  
17 any evidentiary objection:

18 (a) Paramount owns the copyrights in the Star Trek Motion  
19 Pictures.<sup>1</sup> [See Defendants’ Response to Plaintiffs’ UMF No. 3 (Dkt. 87-1)].

20 (b) Paramount owns the copyright in the published novel entitled  
21 *Garth of Izar*. [See Defendants’ Response to Plaintiffs’ UMF No. 4 (Dkt. 87-1)].  
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25 <sup>1</sup> The Star Trek Motion Pictures Are: *Star Trek – The Motion Picture* (1979),  
26 *Star Trek II – The Wrath of Khan* (1982), *Star Trek III The Search for Spock* (1984),  
27 *Star Trek IV: The Voyage Home* (1986), *Star Trek V: The Final Frontier* (1989),  
28 *Star Trek VI – The Undiscovered Country* (1991), *Star Trek Generations* (1994),  
*Star Trek: First Contact* (1996), *Star Trek: Insurrection* (1998), *Star Trek Nemesis*  
(2002), *Star Trek* (2009), *Star Trek Into Darkness* (2013), *Star Trek Beyond* (2016)  
(collectively, the “Star Trek Motion Pictures”).

1 (c) CBS owns the copyright in the published novel entitled  
2 *Strangers from the Sky*. [See Defendants’ Response to Plaintiffs’ UMF No. 5 (Dkt.  
3 87-1)].

4 (d) CBS owns the copyright in the published novel entitled *Infinity’s*  
5 *Prism*. [See Defendants’ Response to Plaintiffs’ UMF No. 6 (Dkt. 87-1)].

6 (e) Defendants used donor funds to pay actors. [See Defendants’  
7 Response to Plaintiffs’ UMF No. 86 (Dkt. 87-1)].

8 (f) Defendants used donor funds to pay crew members. [See  
9 Defendants’ Response to Plaintiffs’ UMF No. 87 (Dkt. 87-1)].

10 7.

11 Plaintiff(s):

12 (a) Plaintiffs plan to pursue the following claims against the  
13 following defendants:

14 Claim 1: Copyright Infringement-- Defendants infringed Plaintiffs’ Star Trek  
15 Motion Pictures, Star Trek Television Series, licensed derivative works including  
16 *The Four Years War*, and novels (the “Star Trek Copyrighted Works”).

17 Claim 2: Contributory Copyright Infringement -- Peters contributed to Axanar  
18 Productions’ infringement of Plaintiffs’ Star Trek Copyrighted Works.

19 Claim 3: Vicarious Copyright Infringement -- Peters vicariously infringed  
20 Plaintiffs’ Star Trek Copyrighted Works.

21 Claim 4: Declaratory Judgment -- Plaintiffs seek a declaration that  
22 Defendants’ continued production the Axanar Motion Picture constitutes  
23 infringement of the Star Trek Copyrighted Works.

24 Prayer for Relief: Damages -- Plaintiffs seek, at their election, statutory  
25 damages of up to \$150,000 for each separate Star Trek Copyrighted Work infringed,  
26 for willful infringement pursuant to 17 U.S.C. § 504(c), or Plaintiffs’ actual  
27 damages sustained as a result of Defendants’ acts of copyright infringement  
28

1 according to proof and Defendants' profits obtained as a result of their acts of  
2 copyright infringement according to proof.

3 Prayer for Relief: Permanent Injunction -- Plaintiffs request that the Court  
4 enjoin Defendants, their agents, servants, employees, attorneys, successors, assigns,  
5 subsidiaries, and all persons, firms, and corporations acting in concert with them,  
6 from directly or indirectly infringing the copyrights in the Star Trek Copyrighted  
7 Works, including but not limited to continuing to distribute, copy, publicly perform,  
8 market, advertise, promote, produce, sell, or offer for sale the Axanar Works or any  
9 works derived or copied from the Star Trek Copyrighted Works, and from  
10 participating or assisting in any such activity whether or not it occurs in the United  
11 States.

12 (b) The elements required to establish Plaintiff's claims are:

13 **Claim 1: Copyright Infringement**

14 Elements: Plaintiffs must prove that: (1) Plaintiffs are the owners of a valid  
15 copyright; and (2) Defendants copied original expression from the copyrighted  
16 work.

17 Authority: Ninth Circuit Manual of Model Jury Instructions § 14.1 (2007).

18 **Claim 2: Contributory Copyright Infringement**

19 Elements: Plaintiffs must prove that: (1) Defendant Peters knew or had  
20 reason to know of the infringing activity of Axanar Productions, Inc.; and (2)  
21 Defendant Peters intentionally induced or materially contributed to Axanar  
22 Productions, Inc.'s infringing activity.

23 Authority: Ninth Circuit Manual of Model Jury Instructions § 17.20 (2007).

24 **Claim 3: Vicarious Copyright Infringement**

25 Elements: Plaintiffs must prove that: (1) Defendant Peters directly benefitted  
26 financially from the infringing activity of Axanar Productions, Inc.; and (2)  
27 Defendant Peters had the right and ability to supervise or control the infringing  
28 activity of Axanar Productions, Inc.

1 Authority: Ninth Circuit Manual of Model Jury Instructions § 17.19 (2007).

2 **Claim 4: Declaratory Judgment**

3 Elements: Plaintiffs seek a declaration that Defendants' continued production  
4 the *Axanar* Motion Picture constitutes infringement of the Star Trek Copyrighted  
5 Works.

6 **Prayer for Relief: Damages**

7 Elements: With respect to statutory damages, Plaintiffs are entitled to  
8 statutory damages between \$750 and \$30,000 per infringed work, unless the jury  
9 concludes that Defendants' infringement is willful (in which case Plaintiffs are  
10 entitled to statutory damages of up to \$150,000 per work).

11 With respect to actual damages, Plaintiffs are entitled to recover the actual  
12 damages suffered as a result of the infringement. Actual damages means the amount  
13 of money adequate to compensate the copyright owner for the reduction of the fair  
14 market value of the copyrighted work caused by the infringement. The reduction of  
15 the fair market value of the copyrighted work is the amount a willing buyer would  
16 have been reasonably required to pay a willing seller at the time of the infringement  
17 for the actual use made by Defendants of the Plaintiffs' works. That amount also  
18 could be represented by the lost license fees Plaintiffs would have received for  
19 Defendants' unauthorized use of Plaintiffs' works.

20 Authority: For statutory damages: 17 U.S.C. §§ 504(c)(1), (2); Ninth Circuit  
21 Manual of Model Jury Instructions § 17.34 (2007).

22 For actual damages: 17 U.S.C. § 504(b); Ninth Circuit Manual of Model Jury  
23 Instructions § 17.32 (2007).

24 **Prayer for Relief: Permanent Injunction**

25 Elements: In determining whether to issue a permanent injunction in  
26 copyright infringement actions, courts evaluate four factors: (1) irreparable harm;  
27 (2) inadequacy of monetary damages; (3) the balance of hardships; and (4) whether  
28 the public interest would be served by a permanent injunction.



1            Authority: *Flexible Lifeline Sys. v. Precision Lift, Inc.*, 654 F.3d 989, 994 (9th  
2            Cir. 2011).

3            In brief, the key evidence Plaintiff relies on for each of the claims is:

4            **Claim 1: Copyright Infringement**

5            Plaintiffs will introduce the following categories of evidence establishing that  
6            Defendants willfully reproduced, adapted, performed, and distributed Plaintiffs'  
7            copyrighted works:

- 8            • Copies of copyright registrations for Plaintiffs' Star Trek Copyrighted  
9            works as well as other chain of title documents showing that Plaintiffs  
10            acquired title to the Star Trek Copyrighted Works from the original  
11            producers.<sup>2</sup>
- 12            • If necessary, and if Defendants attempt to contest ownership, testimony  
13            from employees of Plaintiffs describing the chain of title for the Star  
14            Trek Copyrighted Works.
- 15            • Excerpts/clips and stills from television episodes and motion pictures  
16            that are part of the Star Trek Copyrighted Works. The Star Trek  
17            Copyrighted Works comprise hundreds of hours of potentially relevant  
18            material. In the interest of saving time and resources, Plaintiffs will  
19            only introduce material sufficient to show that Defendants copied the  
20            Star Trek Copyrighted Works in producing the Axanar Works.
- 21            • Excerpts from novels that are part of the Star Trek Copyrighted Works.  
22            Out of the hundreds of novels set in the Star Trek universe, Plaintiffs

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25            <sup>2</sup> Defendants previously represented to the Court, in connection with  
26            Plaintiffs' Motion for Partial Summary Judgment, that they did not dispute  
27            Plaintiffs' ownership of the Star Trek Copyrighted Works. Defendants also failed  
28            and refused, in discovery, to provide any basis for disputing Plaintiffs' ownership of  
                 the Star Trek Copyrighted Works. Nevertheless, Defendants have not agreed to  
                 stipulate to ownership for purposes of trial, so Plaintiffs are listing this element as a  
                 potential item for the trial of this matter.

1 will introduce only material sufficient to show that Defendants copied  
2 the Star Trek Copyrighted Works in producing the Axanar Works.

- 3 • A copy of a booklet entitled *The Four Years War*, published by the  
4 FASA Corporation and licensed and copyrighted by Plaintiff  
5 Paramount. This document describes the fictional events that form the  
6 basis of the Axanar Works and was used extensively by Defendants.
- 7 • Evidence of the Axanar Works themselves, including *Prelude*, the  
8 Axanar Script, an illustrated script for *Prelude*, and a completed scene  
9 from the upcoming Axanar feature with professional actor Gary  
10 Graham reprising his role from the television series, *Star Trek:  
11 Enterprise*, as the Vulcan Ambassador Soval.
- 12 • Communications in the form of emails and Facebook messages  
13 between Defendant Peters and various individuals who contributed to  
14 the Axanar Works regarding the creative sources for the Axanar Works.  
15 These communications include numerous emails between Mr. Peters  
16 and the director of *Prelude* discussing the use of copyrighted material  
17 from the Star Trek Copyrighted Works and ways in which to ensure  
18 that the Axanar Works appeared as authentic Star Trek works, and were  
19 consistent with Star Trek “canon.”
- 20 • Testimony from Defendant Peters, and various individuals who  
21 contributed to the Axanar Works, relating to the creation of the Axanar  
22 Works as well as to the source material for the Axanar Works. This  
23 evidence makes clear that Defendants copied original elements from  
24 Plaintiffs’ works, including Klingons, Vulcans, Starfleet Officers, the  
25 U.S.S. Enterprise, Klingon battlecruisers, Vulcan spaceships, uniforms,  
26 weapons, and specific characters including Garth of Izar, Soval the  
27 Vulcan Ambassador and Klingon Commander Chang. Plaintiffs will  
28 also introduce testimony from these witnesses that Defendants’

1 intended that the Axanar Works be extremely similar, or in some cases  
2 identical, to the Star Trek Copyrighted Works. Apart from Defendant  
3 Peters, Plaintiffs will introduce testimony from the director of *Prelude*,  
4 and the director of the upcoming Axanar feature.

- 5 • Testimony from John Van Citters, employee of Plaintiff CBS, and  
6 Daniel O'Rourke, employee of Defendant Paramount, regarding the  
7 elements of the Star Trek Copyrighted Works that were copied by the  
8 Axanar Works, and the originality of these elements. These witnesses  
9 will also introduce excerpts from the Star Trek Copyrighted Works to  
10 the jury so that the jury is able to form their own opinion regarding  
11 copying.
- 12 • Evidence that Defendants had access to the entirety of the Star Trek  
13 Copyrighted Works, including every television episode, motion picture,  
14 and *The Four Years War* supplement, among others, when they  
15 produced the Axanar Works.
- 16 • Evidence that Defendants intentionally withheld probative evidence  
17 from Plaintiffs, demonstrating that Defendants' infringement was  
18 willful and that Defendants attempted to mislead Plaintiffs and the jury  
19 as to the true extent of Defendants' infringement.

20 **Claim 2: Contributory Copyright Infringement**

21 Plaintiffs will introduce the following categories of evidence establishing that  
22 Defendant Peters is contributorily liable for the copyright infringement of Defendant  
23 Axanar Productions, Inc.

- 24 • Testimony of Defendant Peters establishing that he controlled virtually every  
25 aspect of production of the Axanar Works and had final say on every single  
26 decision of consequence.
- 27 • Testimony of contributors to the Axanar Works other than Defendant Peters  
28 establishing that they discussed creative decisions regarding the Axanar

1 Works with Peters. This testimony will also show that Peters insisted on  
2 being kept informed of all decisions as they occurred and became disturbed  
3 and irate if any changes in the Axanar Works were introduced without his  
4 first being consulted.

- 5 • Documentary evidence, such as draft scripts and concept art, showing that  
6 Peters was involved in all aspects of producing the Axanar Works.
- 7 • Pictures of Defendant Peters present at various stages of the production of the  
8 Axanar Works, including during the filming of *Prelude to Axanar*.
- 9 • Evidence establishing that Peters had access to the entirety of the Star Trek  
10 Copyrighted Works, including every television episode, motion picture, and  
11 *The Four Years War* when he produced the Axanar Works.
- 12 • Emails and other communications between Peters and other contributors to  
13 the Axanar works establishing that Peters was aware of all creative decisions  
14 made in connection with the Axanar Works.
- 15 • Corporate documents showing that Peters owns the sole interest in Defendant  
16 Axanar Productions, Inc.

17 **Claim 3: Vicarious Copyright Infringement**

18 Plaintiffs will introduce the following categories of evidence establishing that  
19 Defendant Peters is vicariously liable for the copyright infringement of Defendant  
20 Axanar Productions, Inc.

- 21 • Documentary evidence showing that Defendant Peters planned to use the Star  
22 Trek Copyrighted Works to fund a for-profit film studio for his own benefit.
- 23 • Corporate documents showing that Peters owned the sole interest in  
24 Defendant Axanar Productions, Inc.
- 25 • Financial documents from Defendants showing the total funds raised by  
26 Defendants using the protected material from the Star Trek Copyrighted  
27 Works. This evidence also shows the funds raised by Defendants that  
28 Plaintiffs claim were improperly used.

- 1 • Communications, including emails and Facebook chat transcripts, showing
- 2 that use of the Star Trek Copyrighted Works was critical in raising funds that
- 3 were spent by Peters.
- 4 • Testimony from various contributors to the Axanar works regarding payments
- 5 received from Defendants.
- 6 • Testimony of Peters establishing that he controlled virtually every aspect of
- 7 producing the Axanar Works and had final say on every single decision of
- 8 consequence.
- 9 • Testimony of other contributors to the Axanar Works establishing that they
- 10 discussed creative decisions regarding the Axanar Works with Peters. This
- 11 testimony will also show that Peters insisted on being kept informed of all
- 12 decisions as they occurred and became disturbed and irate if any changes in
- 13 the Axanar Works were proposed without his first being consulted.
- 14 • Documentary evidence showing that Peters was involved in all aspects of
- 15 producing the Axanar Works.
- 16 • Pictures of Peters present at various stages of the production of the Axanar
- 17 Works, including during the filming of Prelude to Axanar.
- 18 • Evidence establishing that Peters had access to the entirety of the Star Trek
- 19 Copyrighted Works, including every television episode, motion picture, and
- 20 *The Four Years War* supplement, when he produced the Axanar Works.
- 21 • Emails and other communications between Peters and other contributors to
- 22 the Axanar works establishing that Peters was aware of all creative decisions
- 23 made in connection with the Axanar Works.

24 **Claim 4: Declaratory Judgment**

25 Plaintiffs will introduce the following categories of evidence establishing

26 Plaintiffs are entitled to a declaratory judgment that Defendants' continued

27 production of the *Axanar* feature constitutes infringement of the Star Trek

28 Copyrighted Works.

- 1 • Copies of copyright registrations for Plaintiffs' Star Trek Copyrighted works  
2 as well as other chain of title documents showing that Plaintiffs acquired title  
3 to the Star Trek Copyrighted Works from the original producers.
- 4 • Testimony from employees of Plaintiffs describing the chain of title for the  
5 Star Trek Copyrighted Works.
- 6 • Excerpts/clips and stills from television episodes and motion pictures that are  
7 part of the Star Trek Copyrighted Works. The Star Trek Copyrighted Works  
8 comprise hundreds of hours of potentially relevant material. In the interest of  
9 saving time and resources, Plaintiffs will only extract sufficient material to  
10 show that Defendants copied the Star Trek Copyrighted Works in producing  
11 the Axanar Works.
- 12 • Excerpts from novels that are part of the Star Trek Copyrighted Works. Out  
13 of the hundreds of novels set in the Star Trek universe, Plaintiffs will extract  
14 only sufficient material to show that Defendants copied the Star Trek  
15 Copyrighted Works in producing the Axanar Works.
- 16 • Evidence of the upcoming *Axanar* feature, including the Axanar Script, and a  
17 completed scene from the Axanar feature featuring professional actor Gary  
18 Graham reprising his role from *Star Trek: Enterprise* as Vulcan Ambassador  
19 Soval.
- 20 • A copy of a booklet entitled *The Four Years War*, published by the FASA  
21 Corporation and licensed and copyrighted by Plaintiff Paramount. This  
22 document describes the fictional events that form the basis of the Axanar  
23 Works and was used extensively by Defendants.
- 24 • Testimony of Defendant Peters and other contributors to the *Axanar* feature  
25 regarding future plans to raise additional funds from the public and produce  
26 the *Axanar* feature.
- 27 • Documentary evidence showing that Defendants intended to continue  
28 producing more infringing content for the foreseeable future.

1           Defendant(s):

2                   (a) Defendants plan to pursue the following counterclaims and  
3 affirmative defenses: [Insofar as defenses are concerned, Defendant should identify  
4 only affirmative defenses, which are those matters on which the Defendant bears the  
5 burden of proof. They are matters which would defeat Plaintiff’s claim even if  
6 Plaintiff established the elements of the claim. Examples of such affirmative  
7 defenses – which must have been pleaded in Defendant’s Answer – appear in  
8 F.R.Civ.P. 8(c). Insofar as counterclaims are concerned, Defendant should follow  
9 the same format as Plaintiff in listing claims.]

10   (1)    **Counterclaim for Declaratory Judgment of Non-**  
11   **Infringement**

12           Defendants seek a declaratory judgment that Defendants’ Works at issue do  
13 not infringe Plaintiffs’ Works at issue, including without limitation because  
14 Plaintiffs’ alleged Works are unprotectable as a matter of law; because Defendants’  
15 Works are not substantially similar to protectable elements of Plaintiffs’ Works; and  
16 because to the extent Defendants’ Works are held to be substantially similar to  
17 protectable elements of Plaintiffs’ Works, Defendants’ Works make fair use of such  
18 elements and are therefore non-infringing as a matter of law.

19   (2)    **Fair Use**

20           Plaintiffs’ claims are barred because any use by Defendants is a fair use, and  
21 therefore “is not an infringement of copyright” as a matter of law. To the extent  
22 Defendants’ Works are found to have copied protectable elements of Plaintiffs’  
23 alleged works resulting in substantial similarity of the works, such use is fair  
24 because it has been made for purposes or criticism, comment, parody, or other  
25 purpose that is permitted pursuant to the First Amendment, decisional law, statute,  
26 or otherwise.

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**(3) Waiver**

Plaintiffs’ claims are barred because Plaintiffs expressly or impliedly waived their claims for copyright infringement against Defendants.

**(4) Unclean Hands**

Plaintiffs’ claims are barred because Plaintiffs’ conduct in connection with this litigation, including without limitation their eleventh-hour filing of this lawsuit, was unfair or unethical.

**(5) First Amendment**

Plaintiffs’ claims are barred in whole or in part because the Copyright Act must be interpreted to be compatible with First Amendment guarantees, but Plaintiffs’ claims and requested remedies are incompatible with the First Amendment.

**(6) Estoppel**

Plaintiffs are estopped from bringing some or all of their claims because of their past actions and statements that are inconsistent with or contradict their present assertions and claims.

**(7) Failure to Mitigate**

Plaintiffs are not entitled to damages, including but not limited to damages for unregistered works and statutory damages for willful infringement, because they failed to take reasonable steps to mitigate such damage.

**(8) Failure to Register**

Plaintiffs’ claims are barred in whole or in part because Plaintiffs failed to register their alleged copyrights, including without limitation by failing to register purported “characters.”





- 1                   c.     The amount and substantiality of the portion
- 2                             used in relation to the copyrighted work as a
- 3                             whole;
- 4                   d.     The effect of the use upon the potential market
- 5                             for, or value of, the copyrighted work;
- 6                   e.     Any other factors that bear on whether the use is fair.

7     *See* 17 U.S.C. § 107; Ninth Circuit Manual of Model Jury Instructions (2007 ed.),  
8     Instruction No. 17.21.

9                   **2.     Waiver**

10            The elements of a defense of waiver require a showing of Plaintiffs’  
11     intentional relinquishment of a right with knowledge of its existence and the intent  
12     to relinquish it. *See A&MRecords, Inc. v. Napster, Inc.*, 239 F.3d 1004 (2001), *aff’d*  
13     *after remand*, 284 F.3d 291 (9th Cir. 2002).

14                   **3.     Unclean Hands**

15            The elements for a defense of unclean hands in the copyright context are:

- 16                   a.     inequitable conduct by Plaintiffs;
- 17                   b.     that Plaintiffs’ conduct directly relates to the
- 18                             claim which it has asserted against the
- 19                             defendant; and
- 20                   c.     that the Plaintiffs’ conduct injured Defendants.

21     *See Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 173 (9th Cir. 1989);  
22     *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1223  
23     (C.D. Cal. 2007) (citing *Survivor Productions LLC v. Fox Broad. Co.*, No. CV01-  
24     3234 LGB (SHX), 2001 WL 35829270, at \*3 (C.D. Cal. June 12, 2001)).

25                   **4.     First Amendment**

26            Defendants must establish that Plaintiffs’ claims are incompatible with  
27     Defendants’ constitutionally-guaranteed free speech rights.

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1                   **5.    Estoppel**

2           The three elements of statutory estoppel are:

- 3                   **a.**     an assertion by a party of entitlement to statutory right or  
4                                   privilege;
- 5                   **b.**     the receipt by that party of an actual benefit pursuant to the  
6                                   statute; and
- 7                   **c.**     a subsequent assertion by that party that is inconsistent with  
8                                   entitlement to the statutory benefit previously received. *Sathon,*  
9                                   *Inc. v. Am. Arbitration Ass’n*, No. 83 C 6019, 1984 WL 2917,  
10                                  at \*3 (N.D. Ill. Mar. 30, 1984) (citing *Technicon Med. Info.*  
11                                  *Sys. Corp. v. Green Bay Packaging, Inc.*, 687 F. 2d 1032, 1034  
12                                  (7th Cir. 1982), cert. denied, 459 U.S. 1106, 103 S.Ct. 732  
13                                  (1983)).

14                   **6.    Failure to Mitigate**

15           Defendants must establish that:

- 16                   **a.**     the damages suffered by Plaintiffs could have been  
17                                   avoided; and
- 18                   **b.**     Plaintiffs failed to use reasonable care and diligence in  
19                                   avoiding the damages. *Sias v. City Demonstration Agency*,  
20                                  588 F.2d 692 (9th Cir. 1978); Ninth Circuit Manual of  
21                                  Model Jury Instructions (2007 ed.), Instruction No. 5.3.

22                   **7.    Failure to Register**

23           Defendants must establish that Plaintiffs failed to register their alleged  
24           copyrights.

25                   **8.    Lack of Standing**

26           Defendants must establish that Plaintiffs were not the owner or exclusive  
27           licensee of the works they assert were infringed at the time of the alleged  
28

1 infringement. *See Lanard Toys Ltd. v. Novelty Inc.*, 511 F. Supp. 2d 1020, 1033  
2 (C.D. Cal. 2007).

3 **9. Acknowledgment, Ratification, Consent, and Acquiescence**

4 Defendants must prove that Plaintiffs have given a license or its consent or  
5 acquiescence, express or implied, to Defendants to use Plaintiffs' Works. *See*  
6 *Elvis Presley Enters., Inc. v. Elvisly Yours, Inc.*, 936 F.2d 889, 894 (6th Cir. 1991);  
7 *Effects Assocs., Inc. v. Cohen*, 908 F.2d 555, 558 (9th Cir. 1990).

8 **10. Authorized Use**

9 Defendants must establish that Plaintiffs, by words or actions, authorized  
10 Defendants to use Plaintiffs' Works.

11 **11. Misuse of Copyright**

12 The elements of copyright misuse require a showing that Plaintiffs have  
13 attempted to enforce their copyrights in a manner that goes beyond the scope of the  
14 rights granted under the United States Constitution. *See Lasercomb Am., Inc. v.*  
15 *Reynolds*, 911 F.2d 970, 978 (4th Cir. 1990); Ninth Circuit Manual of Model Jury  
16 Instructions (2007 ed.), Instruction No. 17.23.

17 **12. Constitutionally Excessive Damages**

18 Defendants must prove that Plaintiffs seek excessive statutory damages. *Cf.*  
19 *Philip Morris USA v. Williams*, 549 U.S. 346, 346 (2007), cert. dismissed as  
20 improvidently granted, 129 S.Ct. 1436 (2009) (regarding excessive punitive  
21 damages).

22 (c) In brief, the key evidence Defendant relies on for each  
23 counterclaim and affirmative defense is:

24 **1. Fair Use**

25 The key evidence that Defendants will rely upon to support this defense is as  
26 follows: the allegedly infringing videos and script, themselves, including the nature,  
27 purpose, and character of their minimal similarity to Plaintiffs' Works; expert  
28 testimony and documents relating to the lack of potential impact of Defendants'

1 Works on the market for Plaintiffs' Works; and documents and testimony from  
2 Defendants' witnesses regarding Defendants' Works.

3 **2. Waiver**

4 The key evidence that Defendants will rely upon to support this defense is as  
5 follows: testimony from Defendants' and Plaintiffs' witnesses; and documents and  
6 evidence demonstrating that Plaintiffs have ignored Defendant Peters' attempts to  
7 communicate regarding the use of any allegedly infringing content in Defendants'  
8 Works. Defendants will also rely on Plaintiffs' delay in taking action against  
9 allegedly infringing works before this lawsuit and Plaintiffs' delay in filing this  
10 lawsuit.

11 **3. Unclean Hands**

12 The key evidence that Defendants will rely upon to support this defense is as  
13 follows: testimony from Defendants' and Plaintiffs' witnesses; and documents and  
14 evidence demonstrating that Plaintiffs were aware of allegedly infringing content  
15 prior to the filing of the Complaint, and, in spite of corresponding with Defendant  
16 Peters previously about his interest in creating the works at issue, took no action  
17 against Defendant Peters prior to filing this lawsuit and made no request for removal  
18 of the allegedly infringing material.

19 **4. First Amendment**

20 The key evidence that Defendants will rely upon to support this defense is as  
21 follows: the allegedly infringing videos and script, themselves, including the nature,  
22 purpose, and character of their minimal similarity to Plaintiffs' Works; and  
23 documents and testimony from Defendants' witnesses regarding Defendants'  
24 Works.

25 **5. Estoppel**

26 The key evidence that Defendants will rely upon to support this defense is as  
27 follows: testimony from Defendants' and Plaintiffs' witnesses; testimony from  
28 experts and their reports; and documents, including Plaintiffs' internal emails and

1 correspondence among the parties that demonstrate that Plaintiffs took advantage of  
2 and benefited from the kind of fan participation that resulted in the alleged  
3 infringements.

4 **6. Failure to Mitigate**

5 The key evidence that Defendants will rely upon to support this defense is as  
6 follows: documents and testimony from Plaintiffs’ and Defendants’ witnesses  
7 regarding Plaintiffs’ failure to mitigate damages by deliberately delaying in filing  
8 this lawsuit against Defendants in spite of Plaintiffs’ previous awareness of  
9 Defendants’ alleged infringing activity.

10 **7. Failure to Register**

11 The key evidence that Defendants will rely upon to support this defense is as  
12 follows: documents and testimony from Plaintiffs’ and Defendants’ witnesses  
13 regarding Plaintiffs’ failure to register certain of its copyrights, including copyrights  
14 to certain “characters” and other allegedly infringed elements.

15 **8. Lack of Standing**

16 The key evidence that Defendants will rely upon to support this defense is as  
17 follows: documents and testimony from Plaintiffs’ and Defendants’ witnesses  
18 demonstrating that either individual Plaintiff was not the owner or exclusive  
19 licensee of the works ultimately determined to be infringed, if any, and therefore is  
20 not entitled to a joint judgment against Defendants.

21 **9. Acknowledgment, Ratification, Consent, and Acquiescence**

22 The key evidence that Defendants will rely upon to support this defense is as  
23 follows: documents and testimony from Plaintiffs’ and Defendants’ witnesses  
24 regarding Plaintiffs’ failure to mitigate damages by deliberately delaying in filing  
25 this lawsuit against Defendants in spite of Plaintiffs’ previous awareness of  
26 Defendants’ alleged infringing activity.

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1                   **10. Authorized Use**

2           The key evidence that Defendants will rely upon to support this defense is as  
3 follows: testimony from Defendants’ and Plaintiffs’ witnesses; and documents,  
4 including Plaintiffs’ internal emails and correspondence among the parties that  
5 demonstrate that Plaintiffs encouraged, took advantage of, and benefited from the  
6 kind of fan participation that resulted in the alleged infringements.

7                   **11. Misuse of Copyright**

8           The key evidence that Defendants will rely upon to support this defense is as  
9 follows: the allegedly infringing videos and script, themselves; testimony and  
10 documents from Plaintiffs’ and Defendants’ witnesses; and court filings to  
11 demonstrate that Plaintiffs are using this lawsuit to prevent Defendants from  
12 engaging in lawful activity.

13                   **12. Constitutionally Excessive Damages**

14           The key evidence that Defendants will rely upon to support this defense is as  
15 follows: testimony from Plaintiffs’ and Defendants’ witnesses; experts; and  
16 documents and evidence showing that Plaintiffs have failed to provide any  
17 quantifications of actual damages and have not suffered any actual damages.

18  
19                   Third Party Plaintiffs and Defendants:

20           There are no third party Plaintiffs or Defendants.

21  
22           8.       In view of the admitted facts and the elements required to establish the  
23 claims, counterclaims and affirmative defenses, the following issues remain to be  
24 tried:

25                   (a)   (Copyright Infringement) Ownership of Plaintiffs’ copyrighted  
26 works was stipulated to and admitted as undisputed by Defendants in the motion for  
27 summary adjudication proceedings and should not be an issue for this trial;

28

1 (b) (Copyright Infringement) Whether Defendants copied original  
2 elements of expression from Plaintiffs' copyrighted works;

3 (c) (Contributory Infringement) Whether Defendant Peters knew or  
4 had reason to know of the infringing conduct of Defendant Axanar Production, Inc.;

5 (d) (Contributory Infringement) Whether Peters intentionally  
6 induced or materially contributed to Axanar Productions infringing activity;

7 (e) (Vicarious Infringement) Whether Peters directly benefited  
8 financially from the infringing activity of Axanar Productions, Inc.;

9 (f) (Vicarious Infringement) Whether Peters had the right and ability  
10 to supervise and control the activity of Axanar Productions, Inc. This fact was  
11 stipulated to and admitted as undisputed by Defendants in the motion for summary  
12 judgment proceedings (UMF 112 – "Peters was in charge of Axanar Productions'  
13 conduct and was responsible for the infringing activity of Axanar Productions.").

14 (g) (Declaratory Judgment) There is a substantial controversy  
15 between Plaintiffs and Defendants and Plaintiffs request that the Court declare that  
16 the Axanar Works are infringing.

17 (h) (Fair Use) Whether Defendants' Axanar Works constitute fair  
18 use under the Copyright Act.

19

20 9. All discovery is complete.

21

22 10. All disclosures under F.R.Civ.P. 26(a)(3) have been made.

23 The joint exhibit list of the parties has been filed under separate cover  
24 as **Exhibit A** as required by L.R. 16-6.1. The same list was previously filed as Dkt.  
25 No. 150. This list contains the objections to the exhibits and grounds for the  
26 objections. Unless all parties agree that an exhibit shall be withdrawn, all exhibits  
27 will be admitted without objection at trial, except those exhibits that are identified in  
28 **Exhibit A**.



1 11. Witness lists of the parties have been filed with the Court as Dkt. No.  
2 151.

3 Only the witnesses identified in the lists will be permitted to testify  
4 (other than solely for impeachment).

5 Each party intending to present evidence by way of deposition  
6 testimony has marked such depositions in accordance with L.R. 16-2.7. For this  
7 purpose, the following depositions shall be lodged with the Clerk as required by  
8 L.R. 32-1: Alec Peters (October 19 and November 2), Robert Meyer Burnett,  
9 Christian Gossett, Bill Hunt, Diana Kingsbury, J.J. Abrams, Justin Lin, Elizabeth  
10 Kalodner, Karen Magid, Dan O'Rourke, John Van Citters, Bill Burke and Terry  
11 McIntosh.

12 Plaintiffs have submitted their objections to the excerpts of deposition  
13 testimony identified by Defendants for the following witnesses: J.J. Abrams, Bill  
14 Burke, Bill Hunt, Elizabeth Kalodner, Diana Kingsbury, Justin Lin, Karen Magid,  
15 Dan O'Rourke, and John Van Citters.

16 Defendants have submitted their objections to the excerpts of  
17 deposition testimony identified by Plaintiffs for the following witnesses: Terry  
18 McIntosh, Christian Gossett, and Diana Kingsbury. Defendants object to Plaintiffs'  
19 use of deposition testimony of Alec Peters and Robert Burnett, because they will  
20 appear and testify at trial, and the deposition testimony of any other witnesses who  
21 appear and testify at trial, other than solely for impeachment.

22  
23 The following law and motion matters and motions in limine, and no others,  
24 are pending or contemplated:

25 Both parties have filed motions for summary judgment, which are fully  
26 briefed and have been taken under submission (Dkt. No. 114).

27 As reflected in Plaintiffs' Motions in Limine, Plaintiffs believe the following  
28 evidence is inadmissible:

- 1 • Defendants’ altered financial statement and its contents, or any of the
- 2 post-litigation transactions reflected therein (Dkt. No. 120)
- 3 • Scripts created after the litigation was filed and testimony discussing
- 4 them (Dkt. No. 121)
- 5 • Testimony or documents by J.J. Abrams and Justin Lin and their post-
- 6 litigation public statements, or anything related to their post-litigation
- 7 public statements or documents regarding this matter (Dkt. No. 122)
- 8 • Testimony and documents of Reece Watkins (Dkt. No. 123)
- 9 • Testimony and documents of Jonathan Lane (Dkt. No. 124)
- 10 • Testimony and documents relating to Star Trek “fan films” (Dkt. No.
- 11 127)
- 12 • Testimony and documents discussing Peters’ unrelated work regarding
- 13 Star Trek props (Dkt. No. 129)
- 14 • Testimony, documents, or other evidence created after the filing of the
- 15 original complaint in this action (Dkt. No. 131)
- 16 • Testimony of Christian Tregillis (Dkt. No. 137)
- 17 • Testimony of Henry Jenkins (Dkt. No. 142)

18 As reflected in Defendants’ Motions In Limine, Defendants believe the  
19 following evidence is inadmissible:

- 20 1. Evidence concerning alleged discovery violations by Defendants  
21 because no discovery violations have been found against  
22 Defendants in this case nor is evidence of the parties’ discovery  
23 disputes relevant to Plaintiffs’ claims of copyright infringement.  
24 (Dkt. No. 126);
- 25 2. Evidence that was not timely disclosed under the Court’s  
26 scheduling order because the probative value of the evidence is  
27 outweighed by the prejudice to Defendants, who were prevented  
28 from taking any discovery on these documents. (Dkt. No. 128);

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3. Evidence regarding allegedly infringed works not identified in the First Amended Complaint because allowing Plaintiffs to introduce such evidence after they withheld it from Defendants until the end of the discovery period would be severely prejudicial and would violate Defendants’ right to due process. (Dkt. No. 130);
4. Evidence regarding items that are unoriginal, in the public domain, or from third parties because such items are not protected by copyright, and any mention of them would improperly and unlawfully appear to the jury to expand the proper elements at issue with respect to Plaintiffs’ copyright claims. (Dkt. No. 132);
5. Evidence concerning personal drama, smear campaign, and other irrelevant communications, including witnesses Christian Gossett, Terry McIntosh, because the introduction of evidence intended to smear Defendants would evoke bias and influence the jury without adding any probative value to the copyright claims at issue. (Dkt. No. 133);
6. Evidence of irrelevant, superseded scripts because it would waste the jury’s and the Court’s time to sift through a draft script when there is no risk that such script will be made. (Dkt. No. 134);
7. Evidence regarding certain of Defendants’ financial information and inaccurate references to “profits” Defendants allegedly earned because any mention or mischaracterization of the money raised by Defendants through crowdfunding campaigns has no bearing on whether Defendants infringed on Plaintiffs’ copyrights and risks prejudicing Defendants and confusing the jury. (Dkt. No. 135);

