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11 CORPORATION and CBS STUDIOS
INC.
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

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

19 Plaintiffs,

20 v.

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

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

**PLAINTIFFS' MOTION IN
LIMINE NO. 9 TO EXCLUDE
THE TESTIMONY OF
CHRISTIAN TREGILLIS**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that, on January 31, 2017, at 9:00 a.m., or as soon
3 thereafter as counsel may be heard in the Courtroom of the Honorable R. Gary
4 Klausner, United States District Judge, Central District of California, located at 255
5 E. Temple Street, Los Angeles, California 90012, plaintiffs Paramount Pictures
6 Corporation and CBS Studios Inc. (“Plaintiffs”) will and hereby do move to exclude
7 the testimony of Christian Tregillis.

8 This motion is brought on the grounds that, as stated more fully in the
9 accompanying Memorandum of Points and Authorities, the claimed expert is not
10 qualified to render the opinions given, the testimony of this claimed expert is not
11 reliable and will unfairly prejudice Plaintiffs.

12 Plaintiffs discussed the reasons for the filing of this Motion with Defendants’
13 counsel. This Motion is based on this Notice, the accompanying Memorandum of
14 Points and Authorities, the Declaration of Jennifer Jason, all records in this action
15 and on such further argument, evidence and authority as may be offered at the time
16 of hearing.

17 Dated: December 16, 2016

18 LOEB & LOEB LLP
19 JONATHAN ZAVIN
20 DAVID GROSSMAN
21 JENNIFER JASON

22 By: /s/ Jennifer Jason
23 Jennifer Jason
24 Attorneys for Plaintiffs
25 PARAMOUNT PICTURES
26 CORPORATION and CBS STUDIOS
27 INC.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Paramount Pictures Corporation and CBS Studios Inc. (collectively, “Plaintiffs”) anticipate that Defendants Axanar Productions, Inc. and Alec Peters (collectively, “Defendants”) will seek to introduce the testimony of purported expert Christian Tregillis (“Tregillis”) on damages. In support of Defendants’ Motion for Summary Judgment, Tregillis submitted a report (the “Report”) that opines on four subjects:

- (1) Fan films generally benefit commercial film studios;
- (2) *Prelude to Axanar* benefited Plaintiffs in the same manner;
- (3) Tregillis does not know of any information regarding funds donated to Defendants being diverted from Plaintiffs; and
- (4) Tregillis is unaware of any profits Defendants have earned from *Prelude to Axanar* or Defendants’ other Axanar projects.

Tregillis is not qualified to render an opinion on the first two of these subjects, and his opinions on the latter two subjects are completely unsupported by any data.

Tregillis’ opinions are also irrelevant to the topics to which he intended to limit his testimony and will be unduly prejudicial for the jury and add needless confusion and time to the trial.

II. The Standards Applicable to Plaintiffs’ Claimed Expert.

Federal Rule of Evidence 702 (“Rule 702”) permits a qualified witness to “testify in the form of an opinion or otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.”

1 Additionally, the Court “must ensure that any and all scientific testimony or
2 evidence admitted is not only relevant, but reliable.” *Daubert v. Merrell Dow*
3 *Pharm., Inc.*, 509 U.S. 579, 589 (1993). “In its role as gatekeeper, the district court
4 determines the relevance and reliability of expert testimony and its subsequent
5 admission or exclusion.” *Barabin v. AstenJohnson, Inc.*, 700 F.3d 428, 431 (9th Cir.
6 2012), *on reh’g en banc sub nom. Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d
7 457 (9th Cir. 2014). “[T]his basic gatekeeping obligation applies [not] only to
8 ‘scientific’ testimony [but] all expert testimony.” *Kumho Tire Co. v. Carmichael*,
9 526 U.S. 137, 147 (1999). Here, Mr. Tregillis’ proposed testimony fails to satisfy
10 any of the requirements for admission under Rule 702, *Daubert*, or its progeny.

11 **A. Tregillis Does Not Have Specialized Knowledge in the Areas of His**
12 **Testimony, Nor is His Testimony Based on Data.**

13 Tregillis is an accountant hired by Defendants to analyze potential damages
14 assuming liability under at least one of the causes of action in Plaintiffs’ amended
15 complaint. Declaration of Jennifer Jason (“Jason Decl.”), ¶ 3, Ex. B, at 1. However,
16 the majority of Tregillis’ report is dedicated to matters outside of this purpose and,
17 similarly, beyond Tregillis’ expertise. The first ten pages of the Report simply notes
18 that the Plaintiffs’ *Star Trek* franchise has had tremendous success over the past fifty
19 years. *Id.* at 2-10. Although Plaintiffs readily acknowledge this fact, and the value
20 of the *Star Trek* brand, it is unclear why Defendants think that Tregillis has any
21 special knowledge on the subject. Tregillis does not claim to have studied the *Star*
22 *Trek* films and television series, or that he is an expert in the film or television
23 business, or even that he is a fan of Plaintiffs’ products.

24 The Report then launches into an examination of the American film industry
25 and Tregillis’ opinion on how film studios are changing their marketing strategies to
26 incorporate social media outreach. *Id.* at 15-26. However, Tregillis does not have
27 any special knowledge of film industry marketing strategies such that could satisfy
28 the requirements of Rule 702. Tregillis does not list any experience in marketing

1 films or television series on his resume, or explain how his training as an accountant
2 is relevant to the subject. *Id.* at 34. Instead, Tregillis appears to have relied on a
3 number of publicly available websites for information on the film industry, and
4 simply aggregated the findings of his internet search in the Report. *Id.* at 31.

5 Tregillis does not guarantee the expertise or accuracy of his sources (all of which are
6 hearsay), nor does he explain who authored articles for websites such as *BuzzFeed*
7 and *The Huffington Post*. *Id.* Nor does he provide contact information for those
8 sources so that the Court, or Plaintiffs, can investigate further. Furthermore, several
9 of the websites listed as Sources of the Report are no longer accessible for review by
10 Plaintiffs (e.g., [http://www.huffingtonpost.com/david-m-kirby/the-role-of-social-](http://www.huffingtonpost.com/david-m-kirby/the-role-of-social-media-_b_10571026.htm)
11 [media-_b_10571026.htm](http://www.huffingtonpost.com/david-m-kirby/the-role-of-social-media-_b_10571026.htm)).

12 The Report then attempts to apply Tregillis' online findings to *Prelude to*
13 *Axanar*, concluding, without reliable evidence, that Defendants' works are free
14 advertising for Plaintiffs. *Id.* at 28. First, Tregillis incorrectly assumes that *Prelude*
15 *to Axanar* is a "fan film" despite Defendants' repeated insistence that it is not a "fan
16 film" but rather an "independent professional production." Jason Decl., ¶¶ 4-10,
17 Exs. A-I. Further, as noted above, Tregillis' general conclusion that a "fan film"
18 such as *Prelude to Axanar* benefits the infringed Star Trek works is unsupported by
19 Tregillis' specialized knowledge or data, and any related testimony. In fact,
20 Tregillis' "opinion" on whether *Prelude to Axanar* harmed or benefited Plaintiffs is
21 merely argument and supposition based on his "review" of selected websites and
22 news articles. This is not "expert opinion," it is merely Defendants' counsel's
23 closing argument disguised as an "expert report," where the "expert" has no
24 expertise in the area of marketing of films, and the aggregation of selected hearsay
25 news reports could have been done by any clever college student. Likewise, given
26 that Tregillis has no expertise in the field of marketing or distribution of films, he
27 would have no way to evaluate these hearsay reports, or whether any expert in
28 marketing has ever relied on them. *Weber v. Shelley*, 347 F.3d 1101, 1105 (9th Cir.

1 2003) (finding that district court did not abuse discretion when it excluded from
2 expert testimony references to news articles and other sources if experts did not
3 normally rely upon those sources). This report and testimony on the subject of the
4 harm or benefit to Plaintiffs caused by *Prelude to Axanar* should be excluded under
5 Rule 702.¹

6 Although Tregillis’ experience might have qualified him to give an opinion
7 regarding the latter two topics in the Report, his testimony on those subjects is
8 unsupported by data as required under Rule 702. In the Report, Tregillis does not
9 conclude that no money destined for Plaintiffs’ products was given to Defendants
10 instead. Citing a lack of data, he only states that he is not aware of any information
11 that money was diverted. Jason Decl., Ex. B, at 29. While Tregillis does speculate
12 that, according to his understanding of film industry marketing, which is that of a
13 layman, it would not make sense, this conclusion is admitted to have no factual basis
14 and, therefore, has no value under Rule 702.

15 Similarly, the Report states that Tregillis is not aware of any profits earned by
16 Defendants through *Prelude to Axanar*, or Defendants other Axanar projects. *Id.* at
17 29. However, the only material examined by Tregillis was Defendants’ doctored
18 financial records, created for the purpose of this litigation (*see* Plaintiffs’ Motion in
19 Limine No. 1), [REDACTED]

20 [REDACTED]
21 [REDACTED]

22 [REDACTED]. *Id.* Tregillis notes that he has no information to
23 indicate that [REDACTED]

24 [REDACTED]

25

26 ¹ Tregillis does not opine at all on the harm or benefit of the creation of a full
27 length “professional” feature film based on the Axanar Script, and his opinion on
28 harm or benefit, such as it is, is limited to *Prelude to Axanar*.

1 [REDACTED]. *Id.* Further, Tregillis does not indicate how [REDACTED]
 2 [REDACTED]. *Id.* Tregillis does not even cite to an
 3 internet search on the topic, apparently relying on his innate knowledge of film-
 4 industry pay scales. Further, Tregillis doesn't even pretend to know or opine on
 5 what the market rate is, if any, paid to producers of "fan films," which Tregillis
 6 (although not Peters prior to this lawsuit) claims Axanar was. Rather, [REDACTED]
 7 [REDACTED]
 8 [REDACTED]. Nor is Tregillis aware, or at
 9 least he certainly does not mention, [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED], his opinion regarding profits by
 15 Defendants is not supported by data and does not meet the standard set by Rule 702.
 16 It should be excluded.

B. Tregillis' Testimony is Irrelevant and Unduly Prejudicial.

17
 18 Federal Rule of Evidence 401 defines "relevant evidence" as "evidence
 19 having any tendency to make the existence of any fact that is of consequence to the
 20 determination of the action more probable or less probable than it would be without
 21 the evidence." See *United States v. Curtin*, 489 F.3d 935, 948 (9th Cir.
 22 2007)(citation omitted).

23 According to the Report, Tregillis' testimony assumes Defendants' liability
 24 and is concerned solely with potential damages. Notwithstanding this limitation, the
 25 majority of the Report discusses issues relevant only to liability. The existence of
 26 the *Star Trek* franchise, and numerous fan films, which may not be similar to
 27 *Prelude to Axanar*, does not impact Plaintiffs' damages from Defendants'
 28 infringement. Nor does Tregillis' inquiry into whether *Prelude to Axanar* (or

1 Defendants' other Axanar projects) is free advertising for Plaintiffs, which claim
2 Tregillis bases solely on some internet searches. These topics are clearly directed
3 towards the elements of Defendants' fair use defense and outside the stated scope of
4 Tregillis' testimony. Any testimony on these topics is irrelevant by definition,
5 unduly prejudicial to Plaintiffs, and should be excluded.

6 **III. CONCLUSION**

7 For the foregoing reasons, Plaintiffs request that the testimony of Tregillis be
8 excluded from trial.

9

10 Dated: December 16, 2016

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By: /s/ Jennifer Jason

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Jennifer Jason
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