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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12 PARAMOUNT PICTURES
CORPORATION, a Delaware
13 corporation; and CBS STUDIOS INC., a
Delaware corporation,

14 Plaintiffs,

15 vs.

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

18 Defendants.
19
20

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

Assigned to: Hon. R. Gary Klausner

**REPLY IN SUPPORT OF
DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF THEIR MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Hearing Date: May 9, 2016
Time: 9:00 a.m.

Complaint Filed: 12/29/2015

I. INTRODUCTION

In support of their Motion to Dismiss Plaintiffs' First Amended Complaint, Defendants request judicial notice of certain dictionary definitions, publicly available websites, and literary sources that are either common knowledge, in the public domain, or can be accurately and readily determined by the Court. *See* Request for Judicial Notice ("RJN"), Dkt. No. 30. As discussed in greater detail below, courts have routinely held that these types of documents are proper subjects for judicial notice. Accordingly, Defendants respectfully request that the Court grant their Request for Judicial Notice in its entirety.

II. ARGUMENT

A. The Court May Take Judicial Notice of Exhibits E, F, I, J, L, N, and P (Dictionary Definitions)

Courts in this Circuit have consistently held that "[a] dictionary definition is a proper subject for judicial notice." *Delgado v. United Facilities, Inc.*, No. 2:11-cv-00485-MCE-DAD, 2012 WL 10717266, at *5 (E.D. Cal. Feb. 21, 2012) (granting defendant's request to judicially notice dictionary definition); *Wayne v. Leal*, No. 07 CV 1605 JM (BLM), 2009 WL 2406299, at *4 (S.D. Cal. Aug. 4, 2009) (courts may take judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, such as an almanac, dictionary, calendar, or other source"); *see also Phillips v. P.F. Chang's China Bistro, Inc.*, No. 5:15-cv-00344-RMW, 2015 WL 4694049, at *2 (N.D. Cal. Aug. 6, 2015) (same). Thus, there is no question that Exhibits E, F, I, J, L, N, and P – definitions from Merriam-Webster dictionary – are proper subjects of judicial notice.

Moreover, Plaintiffs' reliance on *United States v. Guerrero* is unfounded. In *Guerrero*, the Southern District of Texas noted that it did not take judicial notice of a Simon & Schuster's International Dictionary definition of the Spanish word "revisar" because there was "no one, right way to interpret one Spanish verb out of context." 806 F. Supp. 2d 992, 1004 (S.D. Tex. 2011). Since the Merriam-Webster dictionary

1 definitions here do not require translation, *Guerrero* has no application here.

2 Finally, Plaintiffs are incorrect that these dictionary definitions are irrelevant to
3 determination of the Motion. As explained in the Motion and the concurrently-filed
4 Reply, Plaintiffs improperly seek to assert copyright claims based on ideas that are not
5 original to Star Trek. To the extent Defendants request that this Court take judicial
6 notice that, for example, the term “Vulcan” is not original to Star Trek, such request is
7 proper and relevant. Plaintiffs do not contest the accuracy of the dictionary definitions
8 provided, nor do they provide contrary definitions of any of the words. Accordingly,
9 the Court should grant Defendants’ Request for Judicial Notice of Exhibits E, F, I, J,
10 L, N, and P.

11 **B. The Court May Take Judicial Notice of Exhibits A, B, C, and**
12 **M (Publicly Accessible Websites)**

13 Courts in this Circuit have also held that websites are proper subjects for
14 judicial notice, particularly where, as here, the requesting party provides the court
15 with copies of the websites at issue. *See Minor v. FedEx Office and Print Svcs., Inc.*,
16 78 F. Supp. 3d 1021, 1028 (N.D. Cal. 2015) (finding publicly accessible websites
17 proper subjects for judicial notice); *Caldwell v. Caldwell*, No. C 05-4166 PJH, 2006
18 WL 618511, at *3-4 (N.D. Cal. Mar. 13, 2006) (recognizing that websites are proper
19 subjects of judicial notice); *Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 965
20 (C.D. Cal. 2005) (finding defendant’s objections based on hearsay and lack of
21 authentication meritless, as websites are proper subjects of a request for judicial
22 notice); *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1084 n. 2 (C.D. Cal. 2001)
23 (same). Thus, the Court may take judicial notice of Exhibits A, B, C, and M –
24 printouts from publicly accessible websites. *See* RJN Exhibits A, B, C, and M.¹

25 Plaintiffs contend that Exhibits A, B, and C, which are printouts from the CBS
26 Store website, “cannot be judicially noticed for the disputed factual claim that ‘the

27 ¹ Plaintiffs have not opposed judicial notice of Exhibit K, the Flag of the United
28 Federation of Planets, as compared to the Flag of the United Nations. Therefore, any
objection to judicial notice of Exhibit K is waived. Even so, judicial notice of Exhibit
K is proper for the same reasons set forth herein.

1 other Star Trek Television Series . . . contain very different plots, characters, and other
 2 elements.” Opp. to RJN at 3:4-6. Plaintiffs are mistaken, however, because the
 3 accuracy of the source – Plaintiff CBS Studios, Inc.’s online store – cannot reasonably
 4 be disputed under these circumstances. Neither are the statements hearsay, as they
 5 constitute admissions of an opposing party under Federal Rule of Evidence 801(d)(2).

6 Plaintiffs’ argument that these documents cannot be judicial noticed for a
 7 disputed factual claim should be rejected. Plaintiffs’ own allegations in the FAC
 8 highlight the significant differences that exist between the various Star Trek television
 9 series and motion pictures as to the plots, characters, and other elements. Plaintiffs do
 10 not dispute that such differences exist. The Court may properly take judicial notice of
 11 these documents as further support for the uncontroverted proposition that not every
 12 element identified by Plaintiffs appears in every Star Trek Work.

13 Plaintiffs also contend that the Court cannot take judicial notice of Exhibit M
 14 for the “disputed factual claim that ‘warp drive . . . has existed in science fiction as
 15 early as 1945.’” Opp. to RJN at 6:21-22. Plaintiffs are again mistaken, however,
 16 because Plaintiffs cannot reasonably dispute – and do not dispute – that the concept of
 17 faster-than-light travel predates the Star Trek Works.

18 Accordingly, the Court should grant Defendants’ Request for Judicial Notice of
 19 Exhibits A, B, C, and M.

20 **C. The Court May Take Judicial Notice of Exhibits D, G, and O**
 21 **(Facts in the Public Domain)**

22 Courts have routinely held that publications and other information found in the
 23 public domain are judicially noticeable under Federal Rule of Evidence 201. *See*
 24 *Makaeff v. Trump Univ., LLC*, 715 F. 3d 254, 259 n.2 (9th Cir. 2013) (taking judicial
 25 notice of publications to indicate what was in the public domain); *Von Saher v. Norton*
 26 *Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (same); *Phillips*
 27 *v. Worldwide Internet Solutions*, No. C 05-5125 SBA, 2006 WL 1709189, at *1 n.1
 28 (N.D. Cal. Jun. 20, 2006) (finding that judicial notice of books is appropriate where a

1 party properly requests it, and produces it to the court); *see also Keimer v. Buena*
 2 *Vista Books, Inc.*, 75 Cal. App. 4th 1220, 1221 n.4 (1st Dist. 1999) (finding judicial
 3 notice of books for the existence of certain statements made in their pages
 4 appropriate). Thus, the Court may take judicial notice of Exhibits D, G, and O –
 5 excerpts from books and a still frame from a motion picture.²

6 Contrary to Plaintiffs’ assertions, the Court may properly take judicial notice of
 7 these works, which have been in the public domain for over a century and contain
 8 elements Plaintiffs allege are original to the Star Trek Works. Moreover, Plaintiffs
 9 cannot reasonably dispute – and do not dispute – that Nosferatu is a fictional
 10 humanoid character with pointy ears, that triangular medals on uniforms have been
 11 used by military, religious, and other organizations throughout history, that heat ray
 12 weapons appeared in “War of the Worlds,” or that all of these third party and public
 13 domain uses predated Star Trek. Plaintiffs are also incorrect that these matters are
 14 irrelevant to determination of the Motion. As explained in the Motion and the
 15 concurrently-filed Reply, Plaintiffs improperly seek to assert copyright claims based
 16 on ideas that are not original to Star Trek. Defendants’ request that this Court take
 17 judicial notice of the foregoing matters is proper. Accordingly, the Court should grant
 18 Defendants’ Request for Judicial Notice of Exhibits D, G, and O.

19 **III. CONCLUSION**

20 For the foregoing reasons, Defendants respectfully request that the Court grant
 21 its Request for Judicial Notice.

22 Dated: April 25, 2016

WINSTON & STRAWN LLP

24 By: /s/ Erin R. Ranahan
 25 Erin R. Ranahan
 26 Attorneys for Defendants
 AXANAR PRODUCTIONS, INC.,
 and ALEC PETERS

27
 28 ² Plaintiffs have not opposed judicial notice of Exhibit H, excerpts from *The Odyssey*
 of Homer. Therefore, any objection to judicial notice of Exhibit H is waived. Even
 so, judicial notice of Exhibit H is proper for the same reasons set forth herein.