

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	Civil Action No.
SAMUEL BARTLEY STEELE,)	08-11727-NMG
BART STEELE PUBLISHING,)	
STEELE RECORDZ,)	
)	
Plaintiffs)	
)	
v.)	LEAVE ALLOWED
)	September 21, 2010
TURNER BROADCASTING)	
SYSTEM, INC,)	
Et al,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS' REPLY TO VECTOR MANAGEMENT LLC'S OPPOSITION TO
PLAINTIFFS' RULE 55(a) MOTION FOR ENTRY OF DEFAULT AS TO
DEFENDANT VECTOR MANAGEMENT**

Plaintiffs Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz ("Steele") hereby replies to Vector Management LLC's Opposition to Plaintiff's Rule 55(a) Motion for Entry of Default as to Defendant Vector Management ("Opposition").

INTRODUCTION AND SUMMARY OF ARGUMENT

First, Vector Management fails to address, much less rebut, the determinative and well-documented facts contained in Steele's Motion for Default as to Vector Management

("Steele Motion") proving the elements for entry of default. See Fed.R.Civ.P. 55(a).¹

Second, Vector Management's argument that the Amended Complaint filed by the *pro se* Steele "superseded" Steele's original Complaint and "dropped" Vector Management defies this Court's April 3, 2009 Order that both of Steele's Complaints are to be read together. In addition, Vector Management was in default for a full month before Steele filed his Amended Complaint and Vector Management cannot, in any event, point to the Amended Complaint to retroactively absolve its default.

Vector Management's default was also intentional - intended to conceal Vector Management from the *pro se* Steele - while a different company, Vector 2 LLC ("Vector 2"), unilaterally and improperly substituted itself for Vector Management by voluntarily appearing (claiming Steele "misidentified" Vector Management) on the very day Vector Management was served. Vector Management's attempt to characterize the *pro se* Steele's good faith reliance on the misrepresentations of counsel for Vector Management and Vector 2, and their improper substitution of one for the other, when he named Vector 2 as

¹ For clarity's sake, Vector Management is referred to herein by its full name, i.e., "Vector Management." As detailed below, this is necessary to sort through Vector Management's multitude of intentionally confusing names in its Opposition.

"dropping" Vector Management is appalling.²

Third, Vector Management's Opposition's use of several variations of names for itself and its client in different contexts reveals its ongoing efforts to conceal Vector Management's default, its improper substitution of Vector 2, and to otherwise confuse what is, in the end, a very simple issue: Whether Vector Management was served and, if so, whether it timely pleaded or defended. See Fed.R.Civ.P. 55(a).

Fourth, two critical assertions in Vector Management's Opposition, prepared by its current counsel, Proskauer Rose LLP ("Proskauer"), are directly contradicted by Vector Management's prior counsel, Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"). Skadden's contradicting statements, it should be noted, are not from the initial stages of this case, e.g., 2008 or 2009, but from the past several weeks, contemporaneously with Proskauer's instant Opposition. The contradictions are difficult to explain in any manner consistent with good faith.

Fifth, the facts and allegations in Steele's Complaint clearly implicate Vector Management. Moreover, it was Vector Management's own misconduct - its willful default and substitution of Vector 2 - which led Steele on a snipe hunt for information about Vector

² This same *modus operandi* was used by counsel for Major League Baseball Advanced Media, L.P. ("MLBAM"). See Steele's Motion for Entry of Default as to MLBAM, Opposition, and Reply, docket entries #118-124. Neither ploy was discovered until Steele was able to retain counsel.

2, of which none is publicly available, that was responsible for any lack of detail in his Amended Complaint as to Vector Management. Accordingly there is no good cause to preemptively vacate Vector Management's default, particularly in light of its intentional and improper misdirection of Steele at the pleadings stage.

Sixth, Vector Management's claim of a Due Process violation, given Steele's undisputed eight months of repeated notice of his claims as to Vector Management prior to filing suit - including *directly informing Vector Management of the details of his claim* (his e-mails to and from "libby@vectormgmt.com") - Steele's proper naming of Vector Management in his suit, and Steele's undisputedly proper and timely service of process on Vector Management is an affront to the very concept of Due Process. Vector Management's own actions belie its due process claim: it was Vector Management's *actual, detailed, and longtime notice* - not lack of notice - of Steele's claims that resulted in its attempt to hide behind Vector 2.

Seventh, and last, the undersigned directs this Court to correspondence attached as Exhibit 1, whereby information I requested in order to make a reasonable determination as to the merits of Steele's Motion has been inexplicably withheld from me despite repeated requests.

1. Vector Management Concedes Default; The Docket Should so Reflect it

Vector Management's failure to address the facts listed below, which are well-documented in Steele's Motion, prove beyond question that Vector Management has, in

fact, defaulted. Steele requests this Honorable Court Order the Clerk to enter Vector Management's default without further delay.³

- A. Vector Management was named, sued, and properly served on December 8, 2008.
- B. Twenty-one days later, Vector Management had failed to file an answer pursuant to Rule 12(a)(1)(A)(i) or a motion pursuant to Rule 12(a)(4). See Fed.R.Civ.P. 12(a)(1)(A)(i); Fed.R.Civ.P. 12(a)(4).
- C. As of December 30, 2008, Vector Management was in default.⁴
- D. Vector Management, to date, has failed to plead or otherwise defend. See Fed.R.Civ.P. 55(a).

Though Rule 55 entry of default requires no additional facts, the following facts are also undisputed and further support entry of default:

- E. Vector Management had notice of Steele's claims eight months prior

³ It should come as no surprise that Steele, proceeding *in forma pauperis*, simply does not have the resources to conduct a drawn-out legal battle with the likes of Proskauer Rose and Skadden Arps over a Rule 55(a) entry of default where, as here, there is no legitimate issue as to Vector Management's default.

⁴ “Defendants act at their peril if, after receiving actual notice of a pleading, they choose to ignore the lawsuit in reliance on their own, untested belief that either the process or service was faulty.” See Federal Civil Rules Handbook, 2010, West, comment to Rules 12(b)(4)(5), pp. 430-431, and cases cited therein. Here, of course, service and process are not challenged having been waived long ago.

to filing his Complaint and Vector Management's General Manager, Joel Hoffner was served with a Summons and Copy of Steele's Complaint.

F. Vector Management's Default was willful.

F. Vector 2 was not served, but appeared voluntarily and unilaterally, improperly substituting itself for Vector Management under false pretenses, and without notice or leave of Court, to cover for Vector Management, which attempted to hide from Steele and this Court.

G. Vector 2 had no legal right and offers no legal justification for substituting itself for Vector Management.

2. Steele's Amended Complaint Does not "Undo" Vector Management's Default

This Court, in its April 3, 2009 Order, explicitly allowed, at the *pro se* Steele's request, Steele's Complaints to be "read together." See April 3, 2009 Order on Defendants' Motions to Dismiss, docket entry #85 ("Order").⁵ Accordingly, Vector Management's argument that Steele's Amended Complaint "dropped" Vector Management is contemptuous of the Order.

⁵ Steele requested that the Court "consider everything in both my original and amended complaint." See Steele's March 4, 2009 Opposition to Defendants Motion to Dismiss, at 2, docket entry #61. Steele further made clear that his Amended Complaint did not "drop" any defendants but, in fact, added one, the Boston Red Sox. See Id.

Moreover, for argument's sake, even if the Court had not allowed Steele's complaints to be read together, Steele filed his Amended Complaint on January 30, 2009, one month after Vector Management's default. Vector Management cites no authority for the proposition that Steele's Amended Complaint provides retroactive relief for their default. Regardless, given the Court's Order, the issue is purely academic.

Steele's naming of Vector 2 in his Amended Complaint was the direct result of Vector Management - and its counsel, Skadden - misrepresenting Vector 2 as, and improperly substituting Vector 2 for, Vector Management. Vector Management's attempt to attribute its fraudulent statements and illegal party substitution at the outset to Steele's "intention" to "remove" Vector Management from the case is dishonest and reprehensible.

Steele named Vector 2 in the Amended Complaint because Steele, *pro se*, believed Skadden when it said Steele had "misidentified" Vector Management.

Of course, Skadden's claim that Steele "misidentified" Vector Management was false and Vector 2's appearance for Vector Management was a sham. For Vector Management to blame - and take *further* advantage of - Steele for assuming Skadden's good faith is odious. Steele's identification of Vector Management was correct, as shown by his unequivocal and unwavering intent to sue Vector Management. See, e.g., Steele's Motion and Exhibits thereto.

It was Vector Management's (or its counsel's) own intentional misrepresentations, *designed specifically to conceal Vector Management and illegally replace it with Vector 2*, that

caused Steele to name Vector 2 in the Amended Complaint in the first place. Vector Management's circular reasoning, grounded in its fraudulent statements and actions cannot stand.

3. Vector Management Intentionally Fails to Meaningfully Define itself and its Client, Rendering Several Arguments Virtually Indecipherable

Vector Management, represented by Proskauer, fails to adequately define the operative parties in its Opposition - most notably its client Vector Management and Vector Management's client or clients, the band Bon Jovi and/or John Bongiovi. While Proskauer initially uses standard legal writing conventions in defining Vector Management LLC as "Vector" and Vector Two LLC as "Vector Two," the definitions only add to the confusion because Proskauer selectively disregards their own nomenclature thereafter.

To wit, at various points in Vector Management's Opposition, Proskauer references the following: "Vector;" "Vector Management;" "Vector Management LLC;" "A Management Company Known As Vector Management LLC;" "Vector 2;" "Vector 2 LLC;" "Vector Two;" "Vector Two LLC;" "Vector Entity;" "The Entity That was Bon Jovi's Manager;" and "the Company Which Performs Management Services on Behalf of John

Bongiovi."⁶

As to Vector Management's client or clients, Proskauer refers to: "The Recording Artist Jon Bon Jovi;" "Bon Jovi;" "Jon Bon Jovi;" "John Bongiovi," and "John Francis Bongiovi, Jr."⁷

Proskauer's failure to define, for example, "Bon Jovi," which Proskauer appears to use, at different times, to describe both the person – Bongiovi – and the band Bon Jovi, as well as Proskauer's myriad names for Vector Management and Vector 2, makes it problematic to determine what Vector Management is, was, or did, and who or what it manages or managed, and when.

This was by design. Take one glaring example from page 2 of Vector Management's Opposition:

it was apparent... that Steele was seeking to hold liable the management company that acted as the personal manager to the recording artist Jon Bon Jovi (also known as John Francis Bongiovi, Jr.), whose alleged performance of Steele's work was the foundation upon which Steele based his claims. While there is a management company known as Vector Management, LLC, which manages other recording artists, Vector Management neither has nor had any connection with Bon Jovi. The correct name of the management company that acted as personal manager for Jon Bon Jovi, and which obviously was the target of Steele's allegations when he named Vector Management, is a company known as Vector Two, LLC ("Vector

⁶ Also, on December 8, 2008, Skadden appeared for "Vector 2 LLC." In fact, they appeared for Vector Two LLC – though Skadden failed to acknowledge their "mistake" until last week, and only after Steele put them on notice of it.

⁷ Until now, all sides have referred to the band as "Bon Jovi" and the person as "Bongiovi."

Two”).

See Vector Opp. at 2-3.⁸

First, it was in no way “apparent” Steele intended to hold Bongiovi’s “personal manager” liable, in fact Steele never knew Bongiovi had a personal manager – just as Vector 2’s appearance was the first Steele had heard of Vector 2. See Steele Complaints, docket entries #1, 3, 41.

Second, Steele did not “base his claims” on the performance of “Jon Bon Jovi,” but on Bon Jovi. See Id. See also Steele Motion.

Third, consider this excerpt from the above:

“While there is a management company known as Vector Management, LLC, which manages other recording artists, Vector Management neither has nor had any connection with Bon Jovi.” See Vector Opp. at 2.

Are “Vector Management LLC” and “Vector Management” the same company here? And who is the artist obliquely referenced by omission in saying there are “other recording artists” managed by Vector Management LLC, i.e., other than who?

And who or what, exactly “neither has nor had” connections with “Bon Jovi” – “Vector Management LLC?” “Vector Management?” Are they different companies? If so,

⁸ Putting aside, for a moment, that no party or attorney was entitled to decide what Steele “was seeking” or intended and, on that basis, willfully default without consequence.

do they both still exist? And so on. Also, who or what is “Bon Jovi” as used here - which Proskauer appears to use to describe both the band and the person at various times.

Under any reasonable interpretation, however, Proskauer manufactured from whole cloth that: “... Vector Management neither has nor had any connection with Bon Jovi.” See Vector Opp. at 2. Proskauer should have fact-checked such a obvious untruth – by checking with, for example, Vector Management, Mr. Rovner, defendant Bongiovi, or other Bon Jovi band members – before representing this to the Court. See Steele Motion at 4-5, 11-12.

In addition, any intelligently worded internet search reveals numerous public statements of Vector Management and Bongiovi describing their long and close business relationship. Of course, Proskauer’s failure to define “Bon Jovi” renders the sentence intentionally ambiguous, to put it mildly, but whether describing the band or the person – the statement is false.

4. Vector Management’s Prior and Current Counsel Directly Contradict Each Other on Two Substantive Issues

Two of Proskauer’s essential assertions in its Opposition are in direct contradiction to contemporaneous statements of Vector Management’s prior counsel, Skadden.

First, below are the firms' contradictory statements attempting to explain - nearly two years after the fact - why Vector 2 was substituted for Vector Management:

Proskauer (from Vector Management's Opposition, filed August 25, 2010):

“it was apparent [from Steele’s Complaint]... that Steele was seeking to hold liable the management company that acted as the personal manager to the recording artist Jon Bon Jovi (also known as John Francis Bongiovi, Jr.),” see Vector Management’s Opposition at 2; and “the correct name of the management company that acted as personal manager for Jon Bon Jovi, and which obviously was the target of Steele’s allegations when he named Vector Management, is a company known as Vector Two, LLC.” See Id. at 2-3 (emphasis supplied to both).

Skadden (see September 4, 2010 Letter to Hunt, included in Exhibit 1):⁹

“it was determined that Mr. Steele intended to name the Vector entity that served as the manager of the Bon Jovi band.” See Exhibit 1 (emphasis supplied). Exhibit 1 includes, for context, correspondence to and from Skadden which preceded the letter with the above statement.

Second, below are the firms’ contradictions as to what, if anything, “Vector Management” is or was, and its capacity to be sued:

Proskauer: “[Steele’s] Amended Complaint, which removed Vector Management as

⁹ Skadden has served on the undersigned a Rule 11 Motion based on Steele’s Motion for Default as to Vector - though *not* on behalf of Vector Management, which Skadden no longer represents. Proskauer has neither joined Skadden’s Rule 11 Motion nor filed its own. As further detailed below, my correspondence with Skadden, which includes the above quotes, was an attempt to gather information as to Skadden’s bases for their Rule 11 Motion so as to make a reasoned decision whether to withdraw Steele’s Motion for Default.

a party,” see Vector Management's Opposition at 3; and “... Vector Management was dropped as a party and has not been the object of any pending Complaint since before January 30, 2009...” See Id at 4 (emphasis supplied).

Therefore, Proskauer admits that, at a minimum, Vector Management was, at some point, a “party.”

Skadden: “First, there is no legal entity named “Vector Management”” and, as such, it “cannot be subject to “default...”” and “the question of what entity the U.S. Marshals served when they handed a summons to Joel Hoffner [Vector Management's General Manager] is inherently ambiguous.” See Exhibit 1.

Skadden, unlike Proskauer, claims Vector Management does not exist – at least as a “legal entity” subject to default (or, necessarily, to being a “party”).

If Skadden were correct, there would be no “inherent ambiguity” as to “what entity” the U.S. Marshals served, for it could not have been - based on Skadden’s faulty reasoning - Vector Management because it didn't "legally exist." If Skadden seriously subscribes to this theory, it should have forthrightly argued that Vector Management did not have the capacity to be sued and, therefore, *could not have been and was not served*. Instead, Skadden hides behind vague terminology. Of course, Skadden’s theory - pure fiction, legally and factually –

would not require such delicate parsing were it made in good faith.¹⁰

The issue before this Court - Vector Management's default - is not nearly as complicated as Proskauer and Skadden make out. It is quite simple when stripped of bad faith distractions.

The following straightforward, unchallenged, and undisputed facts simplify the matter: (1) Vector Management was an unincorporated Tennessee business association, of which Jack Rovner was a member, on December 2008 when it was properly served; (2) Vector Management was Bon Jovi's management company and Jack Rovner was Bon Jovi's manager on that date; (3) Vector Management was succeeded by Vector Management LLC, a Delaware limited liability company that registered in Tennessee on October 29, 2009.¹¹ Moreover, it is reasonable to assume Vector Management LLC opposed Steele's Motion *because* it is successor to Vector Management.¹²

In addition, defendant Bongiovi is a member of the band Bon Jovi. Steele's clear allegations in his eight months of pre-trial communications, complaint, amended complaint,

¹⁰ Rule 17(b)(3)(A) provides unequivocally that Vector Management, even if not a "legal entity" has capacity to be sued "in its common name" in federal question cases. See Fed.R.Civ.P. 17(b)(3)(A). The "misnomer doctrine" also fails to excuse Vector Management; in fact, Vector Management's misconduct is sanctionable. See, e.g., Steele Reply to MLBAM's Opposition to Default, docket # 124.

¹¹ Likely to attempt, retrospectively, to avoid liability to Steele - as it continues to do - in conjunction with its acquisition by Ticketmaster

¹² Skadden's purpose, on the other hand, in serving its Rule 11 Motion, is less obvious.

oppositions, motions, and other papers filed in the District Court were aimed at Bon Jovi's management company, Vector Management - not Skadden's offering - Bongiovi's "personal manager," Vector 2.

5. Steele's Complaints State a Claim as to Vector Management; Any Deficiency in Steele's Amended Complaint Resulted From Defense Counsel and Vector Management's Misconduct and Fraud

Steele's Complaint (including Exhibits thereto, which are "part of the pleading for all purposes," see Fed.R.Civ.P. 10(c)) and Amended Complaint, read together, clearly state a claim against Vector Management.

Steele's Complaint explicitly named Vector Management as a defendant. Vector Management cannot credibly claim it was not on notice of Steele's intent to sue Vector Management, given the eight months of pre-suit correspondence between and among Steele and Vector Management, including Steele's detailed description, in one of several e-mails to "libby@vectormgmt.com," of his claims, and Libby's promise to relay Steele's message to Jack Rovner, all of which is detailed in Steele's Motion.

Then, months after it first had notice of Steele's allegations, Vector Management was formally served with Steele's Complaint - which described in great detail how Vector Management's client, Bon Jovi, had infringed his rights. Vector Management, of course - as Bon Jovi's *management company* - would have been intimately involved in Bon Jovi's business affairs. Steele's allegations as to Bon Jovi in his Complaint were directly tied to Vector Management, just as Steele's pre-suit communications with Vector Management were

related to Bon Jovi.

In reality, Vector Management knew exactly what the Steele Complaint was alleging months prior to being served. Skadden's misrepresentations and improper substitution of Vector 2 were, in fact, done *precisely because Vector Management and Skadden had advanced knowledge of Steele's allegations*. Recall that Skadden filed its appearance for Vector 2 the very same day Vector Management was served, an unlikely "coincidence."

Steele's Amended Complaint explicitly stated that Vector 2 performed management services on behalf of Bongiovi.¹³ Taken together, the facts and allegations in Steele's Complaints state a claim against Vector Management explicitly and, by virtue of its role as Bon Jovi's manager, implicitly - though no less clearly.

In sum, Steele's Complaints provide more than sufficient facts to state a claim - respectfully, this Court's ruling notwithstanding.¹⁴ Accordingly, once default is entered, the facts in Steele's complaint - deemed admitted - will be more than sufficient to state a claim and no "good cause" exists to pre-emptively set aside Vector Management's default.

¹³Any misnomer in the Amended Complaint is solely the result of Vector 2's misrepresentations and false substitution of itself for Vector Management.

¹⁴ Significantly, this Court's April 3, 2009 Order specifically applied to Vector 2, not Vector Management because of Vector 2's improper substitution of itself for Vector Management. The Court, like Steele presumed (mistakenly) Vector 2's good faith. Vector Management, after concealing itself by willfully defaulting while Vector 2 took its place, should not now - only after being caught out - be excused from its legal obligation to plead or otherwise defend in a timely manner. See Fed.R.Civ.P. 55(a).

Ultimately, this Court should look at the misconduct of Vector Management and its counsel - perpetrated *because they had longstanding notice* of Steele's claims - and examine Steele's allegations in light thereof.

Rule 12(b)(6) requires fair notice to a party of the claims against them. By now it should be clear that Vector Management had more than fair notice of Steele's claims against it. To deny entry of default in this situation would reward Vector Management's misconduct and turn Rule 12(b)(6)'s notice requirement on its head.

6. Vector Management's Claim of a Due Process Violation is an Abomination

Vector Management's Due Process argument insults the very concept of Due Process, which is concerned, ultimately, with *fairness*. Due Process cannot properly be employed to hide or defend the sort of *unfair* and illegal procedural trickery employed by Vector Management and its counsel. Vector Management had more than fair notice and opportunity to defend - in fact well more than most defendants are given.¹⁵

7. Steele's Good Faith Efforts to Obtain Additional Information about Vector Management and its Default

Finally, Steele directs this Court again to Exhibit 1 and, in addition, to Exhibit 2,

¹⁵ Vector Management's request for sanctions does not merit a response other than to say Steele trusts this Court to recognize which parties have acted - and continue to act - in good faith and which have not. Steele has addressed the fraud, bad faith, and misconduct displayed by Vector, its co-defendants, and their counsel in this and other recent filings. As to Proskauer's instant request for sanctions, Steele lets the facts speak for themselves.

correspondence between the undersigned and Skadden - Vector Management's former counsel - and current counsel for other co-defendants.¹⁶ Skadden, as noted, served on the undersigned two Rule 11 Motions based on Steele's Motions for Default as to MLBAM and Vector Management. Skadden informs me unequivocally that it will file its motions on September 15, 2010.

The correspondence is pertinent because it shows that over the past several months I have repeatedly asked Skadden, in good faith, for information on several important issues, including details regarding Vector Management's default and the role of Vector 2.

I specifically requested information about Vector 2's appearance in lieu of Vector Management so that I could make an informed decision as to whether to withdraw Steele's Motion for Default as to Vector Management pursuant to Rule 11's "safe harbor" provision. See Exhibit 1.

Earlier, I had requested information in anticipation of Steele moving for Rule 11 sanctions based on, among other things, MLBAM's willful default. See Exhibit 2. As with the more recent Vector correspondence, at Exhibit 1, Skadden failed to provide any explanation for MLBAM's default (and MLB's substitute appearance). See Id. Though I

¹⁶ Exhibit 2 is correspondence between the undersigned and Skadden from June and July 2010, which was originally attached to Steele's Reply to MLBAM's Opposition to Default as Exhibits 7-9.

had not yet discovered Vector's default when the exchange of letters at Exhibit 2 occurred, I anticipated it, if indirectly, by warning Skadden of the possible consequences of its misconduct, referring also to Steele's prior similar warnings, and specifically stating that I believed more instances of misconduct would be uncovered. See Id.

Skadden's unwillingness or inability to meaningfully respond is obvious. Other than cross-referencing prior filings - which had raised the questions in the first place - citing the rules, and making threats, Skadden has utterly failed to help me understand the reasoning behind their Rule 11 Motion. That is, of course, their right. But I can think of no benefit Skadden's clients derive by withholding very basic and pertinent information that could only help them by potentially leading to the withdrawal of Steele's Motion for Default - the very motion Skadden argues is sanctionable.

As it stands, with no information disputing or otherwise explaining Vector's Default, I have no choice but to pursue Steele's Motion for Default as to Vector Management.

WHEREFORE, plaintiffs Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz respectfully request that this Honorable Court allow Plaintiffs' Motion for Entry of Default as to Vector Management.

Dated: September 21, 2010

Respectfully submitted,

/s/ Christopher A.D. Hunt
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CERTIFICATE OF SERVICE

I, Christopher A.D. Hunt, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on September 21, 2010.

Dated: September 21, 2010

/s/ Christopher A.D. Hunt
Christopher A.D. Hunt

EXHIBIT 1

THE HUNT LAW FIRM LLC

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VIA E- MAIL AND FIRST CLASS MAIL

September 2, 2010

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Re: **Vector 2's Rule 11 Motion for Sanctions
Request for Information and Clarification
Steele v. Turner Broadcasting System, Inc., et al., No: 08-11727**

Dear Attorneys Matule, Clark, Plevan, and Sloan:

This is to request information pertaining to your August 24, 2010 Motion for Rule 11 Sanctions Based upon Steele's Motion for Default against Vector Management ("Rule 11 Motion"). Pursuant to Rule 11's plain language prerequisites and "safe harbor" provision, I request the following information in order to determine (1) whether Steele's Motion for Default as to Vector Management ("Steele's Motion") may, in fact, violate any of Rule 11's requirements and (2) whether your Rule 11 Motion itself comports with Rule 11's mandates.

Upon receipt of substantive responses to my queries below, I will made a good faith analysis as to both of the above issues and take appropriate action, whether it be the withdrawal of Steele's Motion, moving for Rule 11 sanctions on behalf of Steele, or something in-between. Until I know the authority on which you rely for certain essential elements relating to both motions, however, I cannot make an informed and good faith decision.

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Accordingly, please provide me with the following information at your earliest convenience, but in no event later than Monday, September 6, 2010. If the Rule 11 motion has been filed in good faith, the information requested should be at your fingertips, so certainly several days is a reasonable period for a response, particularly with the 21 day "safe harbor" period running.

1. Was Vector Management served on December 8, 2008 (or any other date)?
2. If you claim Vector Management was not served on that date, who/what was?
3. If, as you appear to argue, Joel Hoffman's receipt in-hand of the summons and complaint from the U.S. Marshal was insufficient service of process as to Vector Management, under what authority is that assertion based?
 - a. If service by hand delivery to Hoffman was deficient, what additional steps were required to perfect service upon Vector Management, and under what authority are such additional steps required?
4. Was Vector 2 ever served?
5. Under what legal authority did you act in unilaterally making an appearance on behalf of Vector 2 in lieu of Vector Management?
 - a. What rule or law allows a defendant or their counsel such discretion?
 - b. What factual basis did you have for your "assumption" that Steele "intended" to sue Vector 2, when all of Steele's pre-litigation communications and post-litigation filings refer specifically to Vector Management and even more specifically to Jack Rovner, both of which were widely known as Bon Jovi's manager?
6. Under what legal authority do you base your assertion that Steele's Motion constitutes a "later claim" in a "later suit," subject to claim or issue preclusion?
7. Did Skadden Arps represent Vector Management at any point during the pre-suit communications and/or litigation of 08-11727?

THE HUNT LAW FIRM LLC

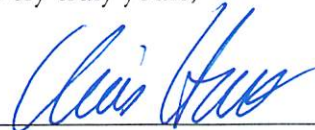
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- a. In particular, at the time of Vector 2's first appearance, did Skadden Arps also represent Vector Management?
 - i. If not, under what authority or pursuant to whose permission (if any) was Vector 2 authorized to appear for the purportedly "misidentified" Vector Management?
 - ii. Was Vector Management without counsel – Skadden or otherwise - when it defaulted (which was prior to the filing of Steele's Amended complaint)?

I will have additional requests for information and clarification relating to your Rule 11 Motion in coming days. In the meantime, I look forward to your reply and to clarifying these pivotal issues as soon as possible.

Thank you in advance for your attention to this matter.

Very truly yours,



Christopher A.D. Hunt

cc: Jeremy P. Oczek, Esq. (via e-mail only)
Michael R. Hackett, Esq. (via e-mail only)

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September 2, 2010

BY EMAIL AND FIRST CLASS MAIL

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RE: Steele v. Turner Broadcasting System, Inc. et al.,
No. 10-11727-NMG (D. Mass.)

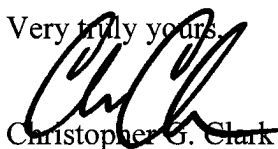
Dear Mr. Hunt:

This letter is in response to your letter dated September 2, 2010 relating to the Defendants' Motion For Rule 11 Sanctions Based On Plaintiffs' Filing Of A Motion For Entry Of Default Against "Vector Management" served on you by hand delivery on August 24, 2010.

We are not aware of any provision in "Rule 11's plain language" that provides you with the right to "request information" or "substantive responses," whether as to facts or legal conclusions, and you have failed to cite any legal authority suggesting otherwise. As required by Rule 11(c)(2), we served the motion for sanctions pursuant to Rule 5 and are waiting the requisite 21 days before filing the motion with the Court. That is all that Rule 11 requires, and we have complied, and will continue to comply, with the language of the Rule. Nevertheless, we would consider providing a response to some of your requests, but we certainly are not going to do so piecemeal. When you have assembled all of the requests you plan to make, please provide a consolidated list of queries and we will consider responding to them.

Please be advised that this correspondence does not in any way delay our right to file the motion for Rule 11 sanctions with the Court on September 15, 2010.

Very truly yours,



Christopher G. Clark

cc: Matthew J. Matule, Esq.
Kenneth A. Plevan, Esq.
Clifford M. Sloan, Esq.
Jeremy P. Oczek, Esq.
Michael R. Hackett, Esq.

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VIA E- MAIL AND FIRST CLASS MAIL

September 3, 2010

Matthew J. Matule, Esq.
Christopher G. Clark, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
Boston, MA 02108

Kenneth A. Plevan, Esq.
Skadden Arps Slate Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522

Cliff Sloan, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

**Re: Vector 2's Rule 11 Motion for Sanctions
Second Request for Information and Clarification
Steele v. Turner Broadcasting System, Inc., et al., No: 08-11727**

Dear Attorneys Matule, Clark, Plevan, and Sloan:

This will reply to your letter responding to my letter requesting information relating to your Rule 11 Motion for Steele's Motion for Default as to Vector Management, each of which were dated today, September 2, 2010.

Rule 11's plain language prerequisites to which my initial letter referred - and as you hopefully know - impose specific good faith obligations on attorneys prior to signing, filing, submitting, or "later advocating" certain papers before the Court. As you point out, there is no language - and I did not imply there was - obligating you to provide me with facts and law necessary to reasonably determine the validity of your Rule 11 Motion; the Rule 11 obligation, rather, requires the signing attorney to make reasonable inquiry to ensure that valid legal authority and factual bases exist prior to signing (as well as a proper purpose for filing, of course) the paper and presenting it to the Court.

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Rule 11, therefore, does, by its terms, automatically render the signing attorney as certifying the existence of valid good faith legal and factual bases for the paper's contentions. Accordingly, you have certified that legitimate factual and legal bases for your Rule 11 arguments exist.

Given your certification that factual and legal information in support of your Rule 11 arguments exists, I simply ask you to provide so that I may make an informed decision as to whether to "appropriately correct[]" the "challenged paper" within the safe harbor period, pursuant to Rule 11.

Given Rule 11's attorney certification by signing, one would expect a Motion filed with the Court in good faith – particularly a Rule 11 Motion for Sanctions – to already contain the factual and legal underpinnings for the assertions contained therein. It is inherent to Rule 11 and the good faith practice of law and, in fact, axiomatic in my opinion, that any good faith motion, and in particular a Rule 11 Motion, filed with the Court provide the necessary supporting facts and law. Anything less is, by definition, improper.

That I have to even request such information from you – and that you resist providing it – raises disturbing questions. For one, why would you hesitate to provide me with information necessary for me to consider "withdraw[ing]" or taking other "correct[ive]" action pursuant to Rule 11?

In sum, Rule 11 does not, by its language, oblige you to provide me with any information. Nonetheless, I request the following information, in good faith, in order to, among other things, prevent "unnecessary delay in concluding this lawsuit." See Rule 11 Motion at 12.

As you have requested, this is a final "consolidated list of queries." I ask that you please provide me with the following information at your earliest convenience, but in no event later than Monday, September 6, 2010, given the running of the 21 day safe harbor period. In light of your Rule 11 certification, several days should be plenty of time to provide information already in your possession.

1. Was Vector Management served on December 8, 2008 (or any other date)?
2. If you claim Vector Management was not served on that date, who/what was?

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3. If, as you appear to argue, Joel Hoffman's receipt in-hand of the summons and complaint from the U.S. Marshal was insufficient service of process as to Vector Management, under what authority is that assertion based?
 - a. If service by hand delivery to Hoffman was deficient, what additional steps were required to perfect service upon Vector Management, and under what authority are such additional steps required?
4. Was Vector 2 ever served?
5. Under what legal authority did you act in unilaterally making an appearance on behalf of Vector 2 in lieu of Vector Management?
 - a. What rule or law allows a defendant or their counsel such discretion?
 - b. What factual basis did you have for your "assumption" that Steele "intended" to sue Vector 2, when all of Steele's pre-litigation communications and post-litigation filings refer specifically to Vector Management and even more specifically to Jack Rovner, both of which were widely known as Bon Jovi's manager?
6. Under what legal authority do you base your assertion that Steele's Motion constitutes a "later claim" in a "later suit," subject to claim or issue preclusion?
7. Did Skadden Arps represent Vector Management at any point during the pre-suit communications and/or litigation of 08-11727?
 - a. In particular, at the time of Vector 2's first appearance, did Skadden Arps also represent Vector Management?
 - i. If not, under what authority or pursuant to whose permission (if any) was Vector 2 authorized to appear for the purportedly "misidentified" Vector Management?
 - ii. Was Vector Management without counsel – Skadden or otherwise – when Joel Hoffman received the summons and complaint?

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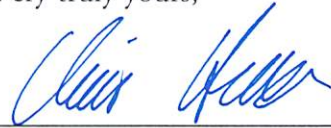
- iii. Was Vector management without counsel – Skadden or otherwise - when it defaulted (which was prior to the filing of Steele’s Amended complaint)?
8. You allege on page 12 that “Steele and Hunt” have asserted “factual allegations without evidentiary support or the likely prospect of such support.”
 - a. To which allegations, specifically, do you refer?
9. On page 5 you state that the Court’s April 3, 2009 Order “found that there was a complete absence of any allegations against a “Vector” entity, in either version of Steele’s Complaint.”
 - a. Where in the Court’s April 3, 2009 Order did the Court find this?
 - b. Is it defendants’ position that there was “a complete absence of any allegations” as to either Vector Management or Vector 2 in either complaint and, if so, on what facts or law do you base this position?
10. Also on page 5, you state that “no entity by the name of “Vector Management” has been a defendant herein.” What facts or law support this statement?
11. On page 10 you argue that there would be “good cause” to set aside any “technical default” because “Vector 2 filed a notice of appearance and defended the interests of the entity that was the Bon Jovi Manager.”
 - a. Who or what is “the entity that was the Bon Jovi Manager?”
 - b. Why, and under what legal authority, did Vector 2 appear and defend the interests of “the entity that was the Bon Jovi Manager?”

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I look forward to your reply and to clarifying these pivotal issues as soon as possible.

Very truly yours,



Christopher A.D. Hunt

cc: Jeremy P. Oczek, Esq. (via e-mail only)
Michael R. Hackett, Esq. (via e-mail only)

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September 4, 2010

BY EMAIL

Christopher A.D. Hunt, Esq.
The Hunt Law Firm LLC
10 Heron Lane
Hopedale, Massachusetts 01747

RE: Steele v. Turner Broadcasting System, Inc. et al.,
No. 08-11727-NMG (D. Mass.) ("Steele I")

Dear Mr. Hunt:

This letter is in response to your letter dated September 3, 2010 relating to the Defendants' Motion For Rule 11 Sanctions Based On Plaintiffs' Filing Of A Motion For Entry Of Default Against "Vector Management," served in the above-noted lawsuit on you by hand delivery on August 24, 2010.

We note that you have acknowledged that "Rule 11 does not, by its language, oblige [us] to provide [you] with any information." We can only conclude that through your letter writing you are again attempting to divert attention from the fact that your motion for entry of a default against "Vector Management" is entirely without merit. Nevertheless, while we are not obligated to provide any response, we are providing the following information in the hopes that you will promptly withdraw your meritless motion.

In this response, we will not, however, restate the factual and legal arguments that are set forth in the supporting Memorandum of Law that was served on you (including, among other things, that the Court's holding that the Steele Song is not substantially similar to any of the other challenged works at issue in *Steele I* precludes a judgment in favor of Mr. Steele, default or otherwise, as to *any defendant*, served or unserved, named or unnamed). All of the factual information relevant to the Rule 11 motion is amply set forth in those papers and the Court record. We likewise will not respond to questions that request "information" on questions of law.

Christopher A.D. Hunt, Esq.
September 4, 2010
Page 2

First, there is no legal entity named "Vector Management." Because there is no such legal entity, this is a complete response to all of your questions concerning "Vector Management." As there is no such legal entity, it cannot be subject to "default." In this regard, with respect to your question whether "Vector Management" was served, because there is (and was) no legal entity named "Vector Management" the question of what entity the U.S. Marshals served when they handed a summons to Joel Hoffner is inherently ambiguous.

Second, acting in good faith and based on a review of Steele's complaint, it was determined that Mr. Steele intended to name the Vector entity that served as the manager of the Bon Jovi band. It was on that basis that the Vector legal entity that filed an appearance in *Steele I* was the one that provided management services to the Bon Jovi band. It was our belief then, and continues to be our belief today, that Vector Two, LLC is the correct Vector entity for the purposes of responding to and defending against the allegations in the *Steele I* complaint.¹

Third, with respect to your question concerning the Court's conclusion that there were no substantive allegations of wrongdoing against any "Vector" entity in either of Steele's complaints, we direct you to the following passage from the Court's April 3, 2009 Order: "Two of the defendants (Sony and Vector), apart from being identified as such, are not mentioned anywhere in either complaint." *Steele I*, 607 F. Supp. 2d 258, 263 (D. Mass. 2009). Tellingly, Mr. Steele did not appeal the Court's ruling on this issue.

Fourth, with respect to your question concerning Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") and its representation of "Vector Management," at no time prior to the filing of *Steele I* in October 2008 did Skadden represent any Vector entity or Jack Rovner with respect to the allegations contained in that lawsuit. In addition, based on a review of our records, it is our understanding that Skadden had not represented any Vector entity or Jack Rovner at any time prior to the filing of *Steele I*.

For the avoidance of doubt, and as you are already aware, we do not currently represent any Vector entity in *Steele I*. Vector is represented by Jeremy P. Oczek, Esq. and Michael R. Hackett, Esq. of the law firm Proskauer Rose LLP.

¹ As explained in the supporting Memorandum of Law, the use of an arabic "2" in the filings in *Steele I* instead of spelling out the word "two" was a typographical error that has no bearing on the issues addressed herein.

Christopher A.D. Hunt, Esq.
September 4, 2010
Page 3

We believe this is not only an appropriate response to your September 3, 2010 letter, but also is far more than contemplated by the Rules and, in any event, is the only response that we will be providing. If the motion is not withdrawn by the end of the day on September 14, 2010, we will promptly file our motion for Rule 11 sanctions on September 15, 2010.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C.G. Clark', written over the closing text.

Christopher G. Clark

cc: Matthew J. Matule, Esq.
Kenneth A. Plevan, Esq.
Clifford M. Sloan, Esq.
Jeremy P. Oczek, Esq.
Michael R. Hackett, Esq.

EXHIBIT 2

EXHIBIT 7

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VIA ELECTRONIC MAIL

June 28, 2010

Clifford M. Sloan, Esq.
Skadden Arps Slate Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005-0000

**Re: Notice of Intent to File Rule 11 Motion for Sanctions
Steele v. Turner Broadcasting System, Inc., et al., No: 08-11727**

Dear Attorney Sloan:

This is to notify you that on Monday, July 5, 2010, I intend to serve a Rule 11 motion for sanctions ("Motion") against your firm, your clients, you personally, as well as other attorneys (hereinafter collectively "Skadden"), where warranted. After service of my Rule 11 motion, Skadden will have a 21 day "safe harbor" period to withdraw or correct the papers subject to Rule 11 sanctions.

If and when I file the Motion, I will request an evidentiary hearing in order to allow the Court to obtain testimony from attorneys and parties, as well as non-party witnesses, likely to have personal knowledge of Skadden's alleged misconduct. Specifically, in addition to requesting testimony from parties and counsel involved in the misconduct, I will seek testimony from Anthony Ricigliano, who I believe either contributed to, or has knowledge of, Skadden's misconduct. I may also seek testimony from Brett Langfels, other persons with knowledge of Skadden's digital records pertaining to this case, and persons with knowledge of Skadden's standard and litigation-related document retention policies and conformance therewith.

As further detailed below, upon review of the record and case file to date, I believe that Skadden acted in its filings in the District Court and First Circuit and that Skadden's acts were (1) willful; (2) repeated; (3) done with intent to injure my client and abuse the judicial process; (4) done in a manner that have infected - and

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continues to infect – the full scope of proceedings to date. Further, the sophistication, expertise, and resources of Skadden, Arps (and its clients) - particularly when opposing a *pro se* plaintiff (or a solo practitioner) - will likely be considered by the Court as a factor in determining whether sanctions are appropriate, as well as the nature and extent of such sanctions.

1. Notice and Timing of This Motion

Although informal notice is not a prerequisite for serving a Rule 11 Motion, I offer advance notice out of professional courtesy and to allow Skadden to bring to my attention any bases for Rule 11 sanctions Skadden believes are incorrect or to take remedial measures for those bases Skadden does not dispute.

I reserve the right to file a motion for sanctions pursuant to the Court's inherent authority to maintain the integrity of the judicial process at any time. I further reserve the right to move for similar sanctions, if appropriate, against Dwyer & Collora LLP and its individual attorneys personally.

My review of Skadden's conduct both in and out of Court during the course of this litigation continues. It appears, however, that Skadden acted improperly to conceal a properly served defendant (MLBAM), filed false evidence, made numerous material factual and legal misrepresentations to, and improperly withheld evidence from, my formerly *pro se* client who, as such, was unable to divine, much less challenge, Skadden's actions.

The Motion, if filed, will be timely. See, e.g., Chambers v. NASCO, Inc., 501 U.S. 32, 57 (1991) (sanctions, including under Rule 11, "may be imposed years after a judgment on the merits"); see also Cooter v. Hartmax Corp., 496 U.S. 384, 395-396 (1990); U.S. v. Coloian, 480 F.3d 47, 51 (1st Cir. 2007) (citing Chambers); Young v. Providence 404 F.3d 33, 38 (1st Cir. 2005); Muthig v. Brant Point Nantucket, 838 F.2d 600, 603-604 (1st Cir. 1988).

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I reserve the right to take additional action in response to newly uncovered prior misconduct as well as any ongoing misconduct, if warranted. I again stress that if I my understanding of any of the matters discussed below is mistaken, I respectfully request that you immediately contact me and explain where and how I have erred.

2. Sanctions Sought

I will seek some or all of the following sanctions, based on Skadden's misconduct including, but not limited to, the acts described below (section 3), see, e.g., Chambers, 501 U.S. 32, 54-55 (sanctions properly imposed for party's conduct during litigation, including the "fraud [] perpetrated on the court and the bad faith [] displayed toward both [the party's] adversary and the court throughout the course of the litigation"):

a. Vacation of the District Court's judgment and entry of default judgment for plaintiffs.¹

¹ See, e.g., Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1119, 1122 (1st Cir. 1989) ("[w]e find the caselaw fully consonant with the view that a federal district judge can order dismissal or default where a litigant has stooped to the level of fraud on the court," where party intentionally submitted false evidence; party "chose to play fast and loose with [opponent] and with the district court. He was caught out..." Party's "brazen conduct merited so extreme a sanction; [opponent], having undergone extra trouble and expense, had a legitimate claim to dismissal; and the court, jealous of its integrity and concerned about deterrence, was entitled to send a message, loud and clear"); Chambers, 501 U.S. 32, 44, 49 ("inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court") (citing Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944)); John's Insulation, Inc. v. L. Addison and Assoc., 156 F.3d 101, 109 (1st Cir. 1998) (default judgment on counterclaim appropriate sanction for misconduct, noting "[t]he purpose of sanctions, moreover, is not merely to penalize violations of court procedures, but also to deter future violations by other parties, and thus sanctions do not have to be strictly proportional to the severity of a given party's violations.").

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b. Attorney's fees and costs for all proceedings to date, given the "bad faith" and "frequency and severity" of Skadden's "abuses of the judicial system."²

c. Additional monetary sanctions as the Court may deem appropriate to be paid into the Court.³

d. Disqualification of Skadden, Arps from the remainder of these proceedings.⁴

e. Admissions or presumptions of facts favorable to Steele as to issues subject to the Motion, including, but not limited to, Steele's digital temp-tracking allegations.⁵

3. Bases for Rule 11/Sanctions Motion

If, as I believe, Skadden's misconduct was carefully conceived and executed, then Skadden, of course, has actual knowledge of the complained-of acts (and likely other acts of which I am yet unaware). This informal notice, in that event, serves to inform Skadden that *my client and I* are also now aware of at least some of Skadden's actions that may constitute Rule 11 violations.

² See, e.g., Chambers, 501 U.S. 32, 45-46, 56-57 (defendant part of "sordid scheme of deliberate misuse of the judicial process" designed to "defeat [plaintiff's] claim")

³ See e.g., Fed.R.Civ.P. 11(c), Advisory Committee Notes.

⁴ See e.g., Zavala Santiago v. Gonzalez Rivera, 553 F.2d 710, 712 n.1 (1st Cir. 1977) (noting "dismissal of the suit unless new counsel is secured" is a "lesser sanction" than dismissal for attorney misconduct).

⁵ Based on remedies available for intentional spoliation and/or bad faith destruction or alteration of evidence, including digital evidence submitted to the court, willful failure to correct digitally altered submissions, and bad faith denial of same, even after being put on notice by plaintiffs. See e.g., Spoliation of Digital Evidence - A Changing Approach to Challenges and Sanctions, Steven W. Teppler, *TheSciTechLawyer* (Fall 2007) and cases cited therein. Default judgment is also an appropriate remedy for willful spoliation. Id.

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Skadden is also already aware of the assertions of misconduct my client and I have made, both in the District Court and the First Circuit. *See*, e.g., September 15, 2009 Steele Affidavit; Steele's Appellate Brief; Steele's Reply to Appellees' Brief; Steele June 18, 2010 Affidavit, attached as Exhibit 13 to Plaintiffs' June 18, 2010 Motion for Entry of Default as to MLBAM (with September 15, 2009 Steele Affidavit attached thereto). Steele's Memorandum in Support of Motion for Entry of Default as to MLBAM and Exhibit 13 thereto are attached as Exhibit 1.

a. Digital Spoliation & Fraud on the Court: The Altered MLB Audiovisual

Skadden's submission of false evidence in the form of the "FINAL 2" MLB Audiovisual, in and of itself, was clearly a Rule 11 violation. Worse, Skadden submitted it three times in District Court and once in the First Circuit – there was no objection to the Joint Appendix that I created, which was understandable, given that it included the very DVD Skadden had previously served on my client – showing a pattern of Rule 11 violations.

Willfulness is obvious, since once Steele's Appeal Brief pointed out the alterations, Skadden nonetheless denied them (or at least failed to acknowledge them) ("in *conclusory* fashion... Steele's alteration *theory*..."), argued Steele had waived his false evidence claim, argued the alterations were non-prejudicial, and posited that Steele failed to "use the discovery opportunity provided by the court to explore such questions." Skadden App. Br. At 47-49.

Skadden emphasized that "Steele's failure to conduct discovery or to develop an argument is particularly notable in light of his statement at the motion to dismiss stage that there were 'various different promo versions that were all released.'" *Id.* at 49.

This last argument is particularly offensive and dishonest.

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First, the District Court informed Steele that he was to provide an expert report for the Court to consider at summary judgment and was specifically forbidden from seeking discovery as to access and creation of the MLB Audiovisual.

Second, as Skadden well knows – and I as I learned two days ago - my client did ask Skadden for the “FINAL 1” version of the MLB Audiovisual during the District Court proceedings. Skadden rebuffed him. By then, Skadden had already filed “FINAL 2” in the District Court for the *third time*, Attorney Scott Brown claiming “under the pains and penalties of perjury” that it was “true and correct.” I can only assume Skadden hoped that Steele would fail to retain an attorney or that Steele’s request for “FINAL 1” would not be remembered or considered significant by Steele should he manage to retain counsel that late in the proceedings.

Third, Skadden’s dismissive, sarcastic, and contemptuous treatment of the idea that “earlier drafts” or “various different” versions of the MLB Audiovisual had been created were designed to mislead the Court – even while Skadden knew the truth: Unless Brett Langefels or TBS Studios have uncovered magical production software, drafts of the MLB Audiovisual exist. That it could be otherwise is impossible (unless they have been destroyed, of course). I’m sure Mr. Langefels would agree.

Ultimately, Skadden’s submission of the “FINAL 2” draft to the District Court in sworn-to statements by counsel – three times, no less – conclusively disproves Skadden’s contrary insinuations. Skadden’s untenable and disingenuous position is further evidenced by Skadden’s refusal to honor Steele’s request for the “FINAL 1” version.

Moreover, as Skadden knows – because, among the dozens of other stories in 2007 touting various versions of the MLB Audiovisual to be played worldwide in a variety of media and venues - on August 27, 2007, Turner Sports senior vice president of marketing and programming, Jenny Storms, stated that “[t]here will be hundreds of spots, which are taggable, on the local level.”

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Finally, it goes without saying – or should – that fraud on the Court cannot be waived.

b. Concealing MLBAM

The District Court record makes it abundantly clear that one of Skadden’s motives was to improperly conceal MLBAM’s role in creating the MLB Audiovisual and, if possible, to conceal MLBAM’s very existence from Steele and the District Court. A number of facts point to this these improper goals:

First, MLBAM was easily served with process. On the other hand, that same day – likely after MLB caught wind of the service – MLB successfully evaded service by physically preventing a United States Marshal from performing his Court-ordered task, going so far as refusing to provide a telephone number or name. Nonetheless, it appears that, on reflection, MLB and MLBAM determined that, for whatever reason, they both preferred MLB to defend the case rather than MLBAM. Of course, this was not Skadden’s decision to make.

MLB later filed its appearance voluntarily – which might have raised an attorney’s eyebrow, but not a *pro se* litigant’s – and began a well-planned but highly improper scheme to shift the District Court and Steele’s attention from MLBAM to MLB.

Second, to further the scheme, Skadden claimed that MLB – *not MLBAM* – had been “misidentified” as “Major League Baseball/MLB Productions,” knowing full well that MLBAM *is* MLB Productions and that MLBAM – *not MLB* – had been properly served. In each of Skadden’s initial filings, as well as later filings, it included the false “misidentified” language.⁶ Skadden later stopped inserting the above

⁶ Skadden made these misrepresentations in later filings, including, among others, its Local Rule 83.5.3(b) motion asking permission for attorneys Kenneth Plevan and Clifford Sloan to practice in the District Court for this case.

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language in its papers – presumably to stop bringing attention to the issue in the event Steele retained counsel or the Court otherwise took note of it – only to use it again in its Appeal Brief.

Once again, Skadden’s clever nomenclature claiming “misidentification” of MLB (which, true or not, did not relieve MLBAM of the duty to defend or face default), would have gotten the attention of opposing counsel, had there been one – and therefore the attention of the Court – but was easily slipped by the *pro se* Steele. It was a fraud designed to shield MLBAM from the Court by taking advantage of Steele’s *pro se* status and inability to obtain counsel (a situation in which Skadden played no small role).⁷

Third, Skadden’s deletion of the MLBAM copyright notice from the MLB Audiovisual was such a blatantly self-evident – though clumsy - attempt to maintain MLBAM’s low (or non-existent) profile that it barely merits further mention. I refer Skadden to Steele’s Appellate filings.

c. Knowingly Misrepresenting Copyright Law

Skadden knows full well that “synchronization rights” have nothing whatsoever to do with protecting “intervals of time,” the District Court’s summary judgment opinion notwithstanding.

Nonetheless, Skadden expressly adopted the District Court’s incorrect application of “synch rights” as relating to “intervals” of time, as opposed to Steele’s proper application of the law, i.e., infringement occurred during Skadden’s use of his song in “timed relation” to a series of images. See Defendants’ Opposition to

⁷ MLB’s answer to Steele’s Amended Complaint also explicitly denied that it was the parent company of MLBAM and MLB.com.

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Plaintiffs' Motion to Reconsider at 6 (“[t]he court squarely and *accurately* addresses the issue of synchronization rights in its August 19 Order at pages 15-16.”)

Skadden did not, however, merely adopt the Court's misapplication of the law, but helped sow it.⁸ Skadden knowingly and intentionally sought to confuse the Court with incorrect, incomplete, or misleading interpretations of copyright law, sometimes contradicting its own expert, Anthony Ricigliano. In its Reply to Steele's Opposition to Summary Judgment, Skadden mocks Steele, asserting Steele is trying to “tar defendants with a ‘temp tracker’” label.

Putting aside that defendants have yet to deny using Steele's Song as a temp track (in fact, as we all know and has been widely reported, temp tracking is standard operating procedure for several defendants), Ricigliano has repeatedly stated – in industry publications (and his report for this case) – that he has worked for years “clearing” hundreds of commercials for advertising companies that use temp tracks during the creation of their audiovisual commercials. Ricigliano's sole purpose in this endeavor, by his own admission, is to help advertisers or other producers – like MLBAM and TBS - skirt the very same copyright laws Steele seeks to enforce.

Ricigliano's role in clearing temp-tracks, including his likely clearance of the MLB Audiovisual as to Steele's Song, was underscored by Skadden's refusal to answer Steele's questions as to whether Ricigliano cleared the MLB Audiovisual and how many hours he billed to this case. Skadden instead would only provide the dollar amount paid Ricigliano.

As with Steele's request for the “FINAL 1” version of the MLB Audiovisual, Skadden's abrupt refusal to answer Steele's question about whether Ricigliano cleared the MLB Audiovisual reveals more than it hides.

⁸ For example, Skadden's insistence that synch rights are reserved only for those works present in the final, “actual,” or published version, is disingenuous and contrary to basic copyright doctrine.

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Skadden's strategy from the outset has been to distract and mislead the Court by setting forth irrelevant arguments and incorrect legal interpretations, and by patronizing – if not ridiculing outright – my client in subtle and not-so-subtle ways. Skadden's strategy worked, resulting in a Federal Court decision on synch rights that, if not reversed, will eventually harm defendants, my client, and others similarly situated by making synch rights violations nearly impossible to prove.

In similar fashion, Skadden's argument that without substantial similarity there can be no copyright infringement is flat wrong – and Skadden knew it was wrong. Several defendants, e.g., Time Warner, have successfully prosecuted infringers without addressing substantial similarity. Now those same defendants reverse their positions, hoping for short term gain by misleading the Court, while risking long-term harm to themselves – and to all publishers and labels – as well as to all authors of original works.

Skadden has put forth other misstatements of law as well. Concededly, some of Skadden's statements of law or their applications, individually, may not violate Rule 11. Skadden's consistent and repeated misstatements of law, however, collectively constitute a pattern of misrepresentations in Court filings amounting to a Rule 11 violation.

d. Intentional Misstatements of Fact

Several of Skadden's factual misrepresentations to the Court are described in Steele's Appeal Brief and Reply and need not be repeated here. Considering the context of, and improper motive behind the misrepresentations – some minor, some glaring - Skadden's conduct again arises to a Rule 11 violation. Skadden was engaged in an all-out effort to conceal MLBAM and otherwise “win at all costs,” without regard to attorney or party obligations to the Court, to Steele, or to the truth.

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Skadden's misstatements are numerous and I continue to unearth more. The trend is clear: Skadden said whatever needed to be said to the Court and my client in order to mislead the Court, e.g., by defining and characterizing the MLB Audiovisual as a "song" (rather than a soundtrack) and conflating the MLB Audiovisual soundtrack with Bon Jovi's 4:38 "song" from Lost Highway. The fruits of Skadden's misdeeds are contained in the District Court's statements and rulings, from the hearing through its decision on Steele's Motion to Reconsider.

Skadden presented other misleading themes in this manner as well, e.g., falsely stating that the Bon Jovi song has nothing to do with baseball (directly contradicted by defendants' own public comments, several of which were published online in 2007 but later edited); asserting that there is not a "single reference" to baseball in the Bon Jovi "song" (also directly contradicted by defendants' public comments); that Steele's affiants were incredible because they were "all" his friends or acquaintances (factually incorrect and marginally relevant; identifying the MLB Audiovisual as the "TBS Promo" (despite MLBAM's claimed copyright ownership and control over its use).

Some of Skadden's misrepresentations mix law and fact, as with Skadden's surreal argument that Steele waived "musicological" elements of his claim on appeal when a major pillar of Steele's argument explicitly asserted the exact opposite; arguing that the Court should look at the MLB Audiovisual (rather than Steele's Song) "as a whole" to determine infringement, pointing to numerous irrelevant facts in support of its incorrect statement of law; listing dissimilarities between Steele's Song and the MLB Audiovisual and arguing they disprove infringement (in contradiction to established law); pointing out similarities between the MLB Audiovisual's own images and sounds, a legally meaningless exercise designed to mislead and confuse the Court; arguing that infringement cannot be proven without a mandatory "side by side" comparison of the works – the lyrics, in particular.⁹

⁹ Skadden's submissions purporting to show Steele's Song's lyrics "side by side" with the MLB Audiovisual and Bon Jovi lyrics appear to have been edited so that they do not line up on the page when literally viewed "side by side." Skadden's submission of Steele's lyrics in a separate exhibit

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e. Skadden's Misconduct Towards Steele and Counsel Considering His Case

Skadden's consistent and repeated factual and procedural misrepresentations to Steele, to attorney Kevin McCullough, and to the District Court are detailed in Steele's June 18, 2010 affidavit, Exhibit 13 to Steele's Memorandum in Support of Motion for Entry of Default as to MLBAM, attached as Exhibit 1.

Steele's earlier affidavit, filed in the District Court on September 19, 2009, showed that Steele, even as a *pro se* litigant, had begun to see through Skadden's misconduct, noting defendants have shown a "pattern of deception and contradiction in an attempt to mislead the Court, and have shown contempt for me, a Pro Se Plaintiff, and the Court in their dishonest procedural maneuvers and misrepresentations." Steele's September 19, 2009 Affidavit, appended to his June 18, 2010 Affidavit, is attached as Exhibit 1.

Three months prior to that, Steele sent Attorney Scott Brown a letter, a copy of which is attached as Exhibit 2, addressing Skadden's threatening and abusive tactics, as to both Steele and Attorney McCullough. Attorney McCullough declined to take Steele's case in part due to Skadden's repeated and false assertions that Steele had already "defaulted" on discovery requests as well as Skadden's bombardment of unreasonable demands that McCullough either file his appearance immediately (as in *today*), respond to Steele's "overdue" discovery responses, and inform Skadden "whether" he will be representing Steele.¹⁰

were blown up to huge proportions, taking up two pages, where MLB's lyrics were kept their normal size, further giving the impression that they were not similar. In any other circumstance, I would not give these seemingly trivial edits a second thought – someone made a mistake in the word processor or copy room. But here, as I have learned, Skadden has gone to great lengths and paid excruciating attention to detail to mislead the court whether through direct action – altering evidence – or through subtle suggestion using careful editorial tweaks.

¹⁰ As detailed in Steele's June 18, 2010 affidavit, Skadden misrepresented to Attorney McCullough that Steele had told Skadden he had already retained McCullough. Skadden followed this untruth

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3. Additional Matters

Please advise me immediately if Skadden, Arps has represented MLBAM at any time in this case or the matters addressed herein and, if so, the date on which that representation began, if that representation is ongoing or has been terminated and, if applicable, the date of termination.

I further request that Skadden continue the mandatory "hold" (assuming the required hold was implemented) pertaining to all potentially discoverable materials, including, but not limited to, documents and things maintained in digital form, including cached and locally stored web pages, as well as digital and analog files relating to creation of the MLB Audiovisual, given the likelihood of future proceedings upon remand or otherwise.

The compulsory hold, of course, includes retention of all documents and things, digital or otherwise, that otherwise would be destroyed pursuant to Skadden's document retention policies. While digital spoliation is difficult to detect, it is not impossible. Skadden's lack of candor to the Court and my client, moreover, provides strong grounds for questioning any claim that such files either do not exist or have been "inadvertently" destroyed or lost.

As one might imagine, Mr. Steele is extremely upset by Skadden's abuse of him and the Court and reasonably feels he was taken advantage of, deceived, and treated unfairly during the District Court proceedings. I have scoured the record, researched the law, and searched my own conscience, and I am, as of now, unable to disabuse him of that notion.

with harassing letters and calls, in the midst of which Skadden cleverly gave McCullough an "out" from Skadden's onslaught by once again "requesting" that Attorney McCullough inform them whether he was going to be representing Steele. Skadden succeeded, McCullough declined Steele's case.

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In closing, if I am mistaken on any of the facts, the record, or the law I ask that Skadden so inform me immediately in order to mitigate or eliminate the need to file a Rule 11 Motion.

Otherwise, I will assume Skadden is unable or unwilling to explain the matters addressed herein and will proceed with the Motion as planned.

Thank you for your attention to this matter.

Very truly yours,



Christopher A.D. Hunt

cc: Kenneth A. Plevan, Esq. (via e-mail)
Scott D. Brown, Esq. (via e-mail)
Matthew J. Matule, Esq. (via e-mail)
Christopher G. Clark, Esq. (via e-mail)
Amy B. Auth, Esq. (via e-mail)
David A. Bunis, Esq. (via e-mail)
Daniel J. Cloherty, Esq. (via e-mail)
Michael Mellis, Esq., MLBAM, (via e-mail: Mike.Mellis@mlb.com)

EXHIBIT 1

PLEASE NOTE THIS IS PART OF EXHIBIT 7
TO STEELE'S REPLY NOT EXHIBIT 1 THERETO

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAMUEL BARTLEY STEELE,)	Civil Action No.
BART STEELE PUBLISHING,)	08-11727-NMG
STEELE RECORDZ,)	
)	
Plaintiffs)	
)	
v.)	
)	
TURNER BROADCASTING)	
SYSTEM, INC,)	
Et al,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' RULE 55(a) MOTION FOR ENTRY OF DEFAULT AS TO DEFENDANT MLB ADVANCED MEDIA, L.P FOR FAILURE TO PLEAD OR OTHERWISE DEFEND

Plaintiffs Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz ("Steele") move this Honorable Court, pursuant to Fed.R.Civ.P. 55(a), for entry of default as to MLB Advanced Media, L.P. ("MLBAM"). MLBAM was properly served on November 17, 2008, but failed to appear, plead, or otherwise defend and, accordingly, "the clerk must enter"

MLBAM's default. See Fed.R.Civ.P. 55(a).¹

FACTUAL BACKGROUND

I. Steele Sues Major League Baseball Properties, Inc. ("MLB") and MLBAM

Steele filed this lawsuit, *pro se* and proceeding *in forma pauperis*, on October 8, 2008 in the U.S. District Court in Boston against several parties, including MLBAM and Major League Baseball Properties, Inc. ("MLB"), which are two discrete corporate entities. See U.S.D.C. (MA) Docket Sheet, C.A. 08-11727, attached as Exhibit 1. See also Steele Complaint, attached as Exhibit 2.

Steele's Complaint named MLB as "Major League Baseball" and MLBAM as "MLB Productions." See Exhibit 2 at 1. Steele's Process Receipt named MLBAM as "MLB Productions/MLB.com," and was properly served at MLBAM's principle place of business. See United State's Marshals Service Process Receipt and Return, attached as Exhibit 3.

MLB, on the other hand, was *not* successfully served, but later appeared voluntarily.

¹ Although this Court's August 19, 2009 ruling and entry of Judgment allowing certain defendants' motions for summary judgment has been timely appealed to the First Circuit Court of Appeals (09-2571), this Court's August 19, 2009 ruling and Judgment did not apply to MLBAM because, as detailed below, MLBAM failed to appear, failed to move for summary judgment, and this Court's ruling and Judgment excluded MLBAM. This Court, therefore, may consider and rule on this motion. See Standard Oil of Cal. v. United States, 429 U.S. 17, 18 (1976) ("the appellate mandate relates to the record and issues then before the court," addressing Rule 60(b) motion filed during pendency of appeal); Boston Car Co. v. Acura, 971 F.2d 811, 815 (1st Cir. 1992); Puerto Rico v. SS Zoe Colocotroni, 601 F.2d 39, 41 (1st Cir. 1979) (district court directed to review Rule 60(b) motions expeditiously and either deny or issue memorandum stating it is inclined to allow motion, after which movant can seek remand from Court of Appeals so district court can vacate judgment and proceed accordingly). Here, however, there is no judgment against MLBAM to vacate and this is not (and could not be) a Rule 60(b) motion).

Specifically - and also on November 17, 2008 (likely after serving MLBAM) – the same United States Marshal, “Michelle V.,” attempted Service on MLB at their headquarters at 245 Park Avenue, 31st Floor, New York, NY 10167. See MLB Process Receipt and Return, attached as Exhibit 4. In the “Remarks” section of the Process Receipt and Return, the U.S. Marshal stated:

“11-17-08 Michelle V. supervisor of security spoke with someone in the legal dept. of Major League Baseball. Legal dept. refused to let me up to the 31st fl. to serve summons. Legal would not speak with me on the phone or give their names.” See Exhibit 4.

Nonetheless, on December 8, 2008, MLB filed Notices of Appearance (Docket entries 10 and 11), Corporate Disclosure Statement (Docket entry 13), Motion to Dismiss and Memorandum in Support (Docket entries 17 and 18, respectively), and Transmittal Declaration of Scott D. Brown in Support of MLB’s Motion to Dismiss.

Accordingly, MLB appeared voluntarily in this Court, despite actively evading service by having a security guard prevent the U.S. Marshal from serving, calling, or even obtaining a name from MLB. See Exhibit 4.

II. MLBAM, Properly Served, Fails to “Plead or Otherwise Defend”

MLBAM owns, operates, and does business as both MLB Productions and MLB.com (www.mlb.com). See, e.g., MLB.com website pages, attached as Exhibits 5-8.²

² The URL links for Exhibits 5-8 are http://mlb.mlb.com/mlb/official_info/about_mlb_com/, http://mlb.mlb.com/mlb/official_info/about_mlb_com/terms_of_use.jsp, http://mlb.mlb.com/mlb/help/contact_us.jsp, and http://mlb.mlb.com/mlb/video/mlb_productions/feature.jsp?content=overview, respectively.

MLBAM has “owned the MLB.com URL since January 2001.” See Exhibit 9, at 2 (quoting Kristen Ferguson, vice president of marketing for MLBAM). See also Exhibit 5 (“MLB.com Official Info,” directing inquires about MLB.com to MLBAM at the above address); Exhibit 7 (MLB.com “Contact Us” information giving same address); Exhibit 8 (MLB Productions’ website and “About Us” page part of MLB.com and subject to MLB.com’s “Terms of Use,” which are attached as Exhibit 6, and “© 2001-2010 MLB Advanced Media, L.P”).

MLBAM is a Delaware Corporation with its headquarters and principal place of business located at 75 Ninth Avenue, New York, NY 10011. See Exhibit 6 (“MLB.com Terms of Use Agreement” at page 2, section 2 “Notice and Procedure for Making Claims of Copyright Infringement,” listing MLBAM at the above address as “Service Provider” and “Designated Agent to Which Notification Should Be Sent”).

At 3:00 p.m. on November 17, 2008, the United States Marshals Service properly completed service of process on MLBAM at the above address. See Exhibit 3. Proof of service on MLBAM was filed with the district court on December 17, 2008 and entered into the docket on December 22, 2008. See Exhibit 3; see also Exhibit 1, docket entry #35.

MLBAM failed to plead or otherwise defend itself during the year-long pendency of the district court action. See Exhibit 1. Nor did MLBAM attempt a special appearance challenging process or service of process. Id. Accordingly, MLBAM defaulted in the district court and Steele requests that this Honorable Court order the clerk to enter the required default as to MLBAM. See Fed.R.Civ.P. 55(a) (“the clerk must enter default” given

MLBAM's failure "to plead, or otherwise defend" (emphasis supplied)).

III. This Court's August 19, 2009 Judgment did not Dismiss MLBAM

Attached as Exhibit 10 is this Court's Judgment, entered on August 19, 2009, in accordance with the Court's Memorandum and Order of the same day, granting certain defendants' motions for summary judgment ("Judgment"). Attached as Exhibit 11 is this Court's Memorandum and Order allowing certain defendants' motions for summary judgment ("Order").

Neither the Judgment nor the Order dismissed – or even addressed – MLBAM. See Exhibits 10 and 11. The Court's Order and Judgment were logical insofar as they excluded MLBAM, given that MLBAM had not appeared and was not a party to defendants' motion for summary judgment. See Defendants' Motion for Summary Judgment Dismissing the Copyright Claim, attached as Exhibit 12 (the other motion for summary judgment, docket entry 98, was filed solely on behalf of defendant Kobalt Music Publishing America, Inc.).

MLBAM is therefore not a party to Steele's appeal (which appeals only this Court's summary judgment ruling) and default must be entered in *this* Court for failing to appear. See Fed.R.Civ.P. 55(a); see also Standard Oil of Cal, 429 U.S. at 18; Boston Car Co, 971 F.2d at 815; SS Zoe Colocotroni, 601 F.2d at 41, cited above at note 1.

IV. First Circuit Precedent and Judicial Economy Warrant an Expeditious Ruling on This Motion³

Steele requests that this Court “review [this motion] expeditiously, within a few days of [its] filing,” given that “any delay in ruling could delay the pending appeal.” See SS Zoe Colocotroni 601 F.2d at 42. If this Court is “unable conscientiously to dispose of [this] motion within a few days of its filing,” this Court may “issue a brief memorandum” stating that this Court “will require a specified number of more days to complete its review and issue an order,” which Steele may present to the First Circuit to “enable [the First Circuit] to act intelligently on extension requests made in the appeal.” Id. Finally, if the party losing this motion appeals, the First Circuit “will entertain a request to consolidate that appeal with the pending appeal from final judgment where feasible.” Id.

V. Timing of This Motion

Steele, *pro se* in the district court proceedings, did not move for entry of default because he was unfamiliar with default options or proceedings and did not notice MLBAM’s failure to appear in the case. See Affidavit of Samuel Bartley Steele (“Steele Affidavit”), attached as Exhibit 13. Moreover, the undersigned, who did not represent Steele in the district court proceedings – other than appearing to file Steele’s Notice of Appeal – did not become aware of MLBAM’s default until six days ago, on June 12, 2010, while reviewing the district court docket and my client’s case file.

³ This is not an emergency motion. The undersigned is fully aware that this is being filed on a Friday afternoon, but represents to the Court that, as a solo practitioner working 12-15 hours a day for the past six days, I filed this when it was completed and not a minute later.

Confounding my review was the fact that several docket entries are inconsistent with actual filings including, for example, docket entries 92 and 93, which indicate a summary judgment motion and supporting memorandum filed on behalf of “Major League Baseball” (i.e., “MLB”) and “MLB Productions” (i.e., “MLBAM”) whereas the actual motion and memorandum papers moved only on behalf of Major League Baseball Properties, Inc., i.e., “MLB.” See Exhibit 1; Exhibit 12. Significantly, docket entry 35 incorrectly states that both MLB and MLBAM were served, when in fact only MLBAM was, though MLB later appeared voluntarily. See Exhibit 1.

More pertinent to the substance of this motion, in further reviewing the docket and file in this case, partially prompted by my June 12, 2010 discovery of MLBAM’s failure to plead or defend, it has become clear that MLBAM’s failure to appear was intentional, part of a coordinated effort among the appearing defendants (including MLB - explaining their otherwise inexplicable voluntary appearance) and MLBAM to improperly conceal and protect MLBAM from this litigation. No doubt Steele’s *pro se* status entered into the equation as well. The undersigned addressed several of defendants’ efforts to hide MLBAM in Steele’s Appellate Brief and Reply, which have been filed in the First Circuit (09-2571) (“Steele’s Appellate Papers”).⁴

For example, the undersigned, in preparing Steele’s Appellate Papers, learned that defendants’ submitted a false and altered version of the so-called “TBS Promo” to *this* Court on three separate occasions in its various motions. See Steele’s Appellate Papers (pointing

⁴ Steele’s appeal has been briefed, but not yet assigned a date for argument.

out that defendants intentionally filed an unpublished draft version of the “TBS Promo” in *his* Court that was materially different from the true “TBS Promo” at issue). Of great significance, the MLBAM Copyright Notice (“© 2007 MLB Advanced Media”) appearing at the end of the true “TBS Promo” had been deleted prior to defendants’ submission of the false TBS Promo to this Court. *Id.* Defendants’ false audiovisual ends showing the TBS logo rather than the MLBAM copyright notice. *Id.* See also Exhibit 13.

VI. Defendants’ Misrepresentations and Filings in This Court

Just as disturbing, the undersigned has uncovered in the past six days, after extensive review of both the district court record and Steele’s case file, that defendants made a number of material misrepresentations to Steele during the district court proceedings that severely hampered his ability to fairly litigate his case, unbeknownst to this Court. See Exhibit 13. Defendants also made material misrepresentations and issued unfounded threats to an attorney Steele was seeking to retain pursuant to this Court’s advice, which resulted in that attorney quickly withdrawing his consideration of Steele’s case, further hampering Steele’s efforts by forcing Steele to continue to litigate *pro se*. *Id.* Defendants’ improper tactics and intentional misrepresentations are more fully detailed in Exhibit 13, Steele’s Affidavit.

Defendants’ abusive, deceptive, and reprehensible tactics were designed to improperly screen MLBAM from this litigation, frustrate Steele’s ability to pursue his claim, and to interfere with Steele’s attempts to obtain counsel. *Id.*

WHEREFORE, plaintiffs respectfully request that this Honorable Court allow Plaintiffs' Rule 55(a) Motion for Entry of Default as to Defendant MLB Advanced Media, L.P., for Failure to Plead or Otherwise Defend.

Dated: June 18, 2010

Respectfully submitted,

/s/ Christopher A.D. Hunt
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CERTIFICATE OF SERVICE

I, Christopher A.D. Hunt, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on June 18, 2010.

Dated: June 18, 2010

/s/ Christopher A.D. Hunt
Christopher A.D. Hunt

EXHIBIT 13

PLEASE NOTE THIS IS PART OF EXHIBIT 7
TO STEELE'S REPLY NOT EXHIBIT 13 THERETO

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAMUEL BARTLEY STEELE,)	Civil Action No.
BART STEELE PUBLISHING,)	08-11727-NMG
STEELE RECORDZ,)	
)	
Plaintiffs)	
)	
v.)	
)	
TURNER BROADCASTING)	
SYSTEM, INC,)	
Et al,)	
)	
Defendants.)	
)	

AFFIDAVIT OF SAMUEL BARTLEY STEELE

I, Samuel Bartley Steele, state the following under the pains and penalties of perjury:

1. In 2004 through 2006, I repeatedly sent internet "links" to my copyrighted song, "(Man I Really) Love This Team" ("Song") and my ideas for how my song could be used as a national marketing campaign by changing the lyrics to fit with any team and town (not just Boston) to MLB.com at its "Contact Us" link, http://mlb.mlb.com/mlb/help/contact_us.jsp.
2. My purpose in contacting MLB.com was to discuss a joint business venture with Major League Baseball.
3. At no time did I submit anything to TBS.
4. I am not an attorney and prior to this case I had no litigation experience.
5. After becoming aware of Major League Baseball's 2007 audiovisual advertisement featuring a Bon Jovi soundtrack ("MLB Audiovisual") in August 2007, I immediately saw it was a derivative of my Song and attempted to contact various defendants, including, based on publicly available information put out by the defendants, those I believed the parties most responsible for copying my Song, including John Bongiovi,

TBS, TBS musical consultant, Mark Shimmel, Vector Management 's Jack Rovner (Bon Jovi's manager), the Boston Red Sox, Sony, and Universal Music Group.

6. After more than a year of attempting to work out my grievance with these defendants, as well as contacting the American Society of Composers and Publishers ("ASCAP") and being repeatedly ignored or rebuffed by defendants' attorneys, as well as ASCAP, I filed suit, *pro se*, in the U.S. District Court in Boston.
7. I filed *pro se* because I could not find an attorney willing to take my case. I was told by each of the several attorneys I approached that they either had a conflict or that they simply did not want to litigate against such wealthy and powerful defendants and Skadden Arps, on a contingent fee basis. I could not afford to pay an attorney or law firm by the hour.
8. Prior to and during the Court proceedings I was not aware that Major League Baseball Advanced Media, L.P. ("MLBAM") owned and operated MLB.com and also called itself MLB Productions, and that it was not the same thing as Major League Baseball Properties, Inc. ("MLB").
9. Nonetheless, I named and served (or tried to serve) both MLBAM (insofar as I knew MLBAM at the time, as "MLB Productions" and on the service of process papers as "MLB Productions/MLB.com") and MLB. During the litigation, I was lead to believe - through conversations with Skadden, defendants' court filings, and conversations with Skadden attorneys - that Skadden's appearance on behalf of, and defense of MLB, included both MLB and MLBAM. This is further detailed below.
10. Also as detailed below, defendants' representations to me and in the this Court lead me - and this Court, apparently - to believe that the MLB Audiovisual was essentially a TBS, Time Warner, and Bon Jovi creation and that MLBAM played only a minor role, rather than being its producer, owner, and distributor, which I discovered later.
11. I was learning legal procedure as best I could, but often would contact Christopher Clark, a Skadden associate with whom I had developed a rapport, to ask about procedural issues. For the most part, Attorney Clark readily answered my questions, though - as I later learned - many of his answers were misleading or simply incorrect.
12. In addition, the one time I informed Skadden that I might be retaining counsel, they barraged him with threatening letters, misstating facts and - I believe - misstating this Court's order, causing him to abruptly drop me as a potential client. This is explained in detail below.

13. I believe defendants and Skadden misled me (and likely this Court) and obstructed my ability to fairly litigate my case based on the following facts:

- a. MLB incorrectly stated in its court filings that I had “misidentified” MLBAM as MLB, even though they were two separate defendants, each of whom I identified and attempted to serve.
- b. Initially, this Court’s docket sheet correctly listed MLB and MLBAM (as “MLB Productions”), as did defendants’ early filings. However, Skadden changed their filings’ captions mid-way through the litigation so that it only listed MLB, rendering it inconsistent with the facts as well as the docket. When they changed their filings’ captions, they simultaneously stopped inserting their “misidentified as” language in their filings.
- c. As a *pro se* plaintiff, I trusted that Skadden would not have made such a representation to a federal court unless it was true. Therefore, I did not think to question their “misidentification” language or their changing of their filings’ captions.
- d. I did not know what “default” was or that MLBAM failed to appear in this case.
- e. Skadden’s filings called the MLB Audiovisual “the TBS Promo” for short, which this Court and I adopted in our papers. This shorthand was misleading because TBS’s role in creating the MLB Audiovisual was lesser than other defendants’, MLBAM in particular – TBS was not even allowed to air the full audiovisual.
- f. Also, MLBAM claims copyright to the MLB Audiovisual (though deleted its copyright notice from the version of the MLB Audiovisual Skadden filed in this Court) and, as stated in my appeal brief and reply – which MLB has never denied – MLBAM paid for and produced the MLB Audiovisual.
- g. Skadden submitted false evidence – three times in this Court – in the form of a DVD containing a previously unpublished draft of the MLB Audiovisual that had been edited to remove the MLBAM copyright notice in the last few seconds. I discovered this after the district court proceedings ended and the case was pending in this Court.
- h. Skadden’s unpublished and edited MLB Audiovisual ends on the TBS logo, rather than the MLBAM copyright notice, which furthered the appearance - misleadingly - that it was a TBS – rather than MLBAM - production. This issue is further addressed in my Appellate brief and Reply.

- i. On April 7, 2009, Skadden served me with interrogatories, requests for production of documents, and a deposition notice. Skadden's interrogatories and request for production asserted that my responses were due no later than May 7, 2009. Their deposition notice was for "each person" I was planning to have testify on substantial similarity, and was set for May 12, 2009.
- j. Skadden's deadline to me was - as with their summary judgment "deadline" - once again, incorrect.
- k. This Court in fact had stated twice during the March 3, 2009 hearing that it was inclined to give me "60 days" to "come up with an expert, some affidavit," that I "[hadn't] given [the court] already" to "produce to the Court" on substantial similarity (on pages 13 and 27 of the hearing's transcript).
- l. This Court's April 3, 2009 written order stated that I was allowed to "offer, by affidavit, expert analysis" of the works at issue, which "the Court will consider... in making the substantial similarity determination."
- m. This Court's April 3, 2009 written order gave me until May 31, 2009 - 58 days - to provide an expert report or affidavit.
- n. This Court's April 3, 2009 written order was silent as to depositions. My understanding was that I had to provide a written expert report or affidavit by May 31, 2009.
- o. On May 11, 2009, I informed Skadden Arps that - in accordance with the Court's well-grounded advice to continue to seek counsel - I was consulting with, but had not yet formally retained, an attorney (one of many I approached prior to and during this Court's proceedings), Kevin McCullough, about possibly taking my case.
- p. I authorized Skadden to communicate with Attorney McCullough, but made clear he was not (yet) "my attorney."
- q. On that same day, May 11, 2009, Skadden Attorney Kenneth Plevan sent Attorney McCullough an e-mail stating - incorrectly - that "[w]e have been advised by Samuel Bartley Steele... that you are his counsel." I have this e-mail and others, as well as letters from Plevan discussed below, which I can produce to this Court if required.
- r. Attorney Plevan's May 11, 2009 e-mail further asked Attorney McCullough to contact Plevan immediately, stating incorrectly that I had "defaulted on discovery

requests due last Thursday, and [that I] advised [Skadden] today that [I] will not be producing a witness for the deposition schedule (sic) for tomorrow."

- s. Plevan's e-mail continued: "[g]iven the status of the lawsuit, we request that you promptly file a notice of appearance on behalf of the plaintiffs, if you will in fact be representing them."
- t. The next day, May 12, 2009, Plevan sent Attorney McCullough a letter via e-mail and overnight mail again misrepresenting that I had told them that Attorney McCullough was "Plaintiffs' counsel" and incorrectly stating that my "responses to the request for production and the interrogatories were due on Thursday, May 7."
- u. Plevan's same May 12, 2009 letter informed Attorney McCullough: "In my email yesterday, I asked you to promptly file a notice of appearance, if you were in fact planning to be counsel for Plaintiffs herein. As of now, we have not seen any such notice of appearance."
- v. Finally, Plevan's May 12, 2009 letter stated that defendants "reserved the right" to move for summary judgment "if we do not hear from you promptly" and that they also "reserved the right" to "move to preclude any expert report Plaintiffs may seek to use in opposition to said motion."
- w. The next day, May 13, 2009, Plevan e-mailed defendants' discovery requests to Attorney McCullough, concluding "we look forward to hearing from you as to whether you will be representing Mr. Steele in this lawsuit."
- x. Six days later, on May 19, 2009, Plevan sent another letter to Attorney McCullough via e-mail and overnight mail noting that Attorney McCullough had "failed to file a notice of appearance in the lawsuit on behalf of plaintiffs."
- y. Plevan's May 19, 2009 letter further asserted – incorrectly, at least as far as I understood the plain language of this Court's discovery order - that my discovery responses were "now almost two weeks overdue," that "neither you nor Mr. Steele has offered a date on which the responses would be submitted, or asked defendants to agree to an extension."
- z. Plevan's May 19, 2009 letter stated that this Court had "specifically advised Mr. Steele that whether or not he retained an attorney, he would be 'required to abide by rules of procedure that are sometimes arcane and hard to understand, but nevertheless, you will be required to abide by them,'" citing "Transcript at 6."

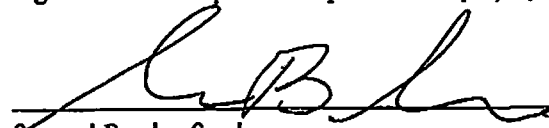
- aa. Plevan's May 19, 2009 letter to Attorney McCullough continued: "Here, we are dealing with a requirement that was and is easy to understand – responses to requests were due on May 7, 2009, and to date plaintiffs have ignored the requests."
- bb. Finally, Plevan's May 19, 2009 letter stated "please consider this defendants final request at clarification. If responses to the written discovery requests at (sic) not received by close of business [that same day], defendants will conclude that plaintiffs will not be relying on any expert analyses on the issue of substantial similarity, and will proceed accordingly."
- cc. On May 19 or 20, 2009, I was disappointed, but not surprised when Attorney McCullough informed me that he had no interest in taking the case.
- dd. Attorney McCullough's abrupt turnabout, suddenly withdrawing any consideration of representing me were, to me, clearly the result of Skadden's numerous and insistent demands and threats to him, which were, based on my understanding of this Court's order, baseless, false, and specifically designed to scare Attorney McCullough from taking my case.
- ee. I was unable to obtain counsel, despite additional efforts, for the remainder of this Court's proceedings.
- ff. In early June 2009 I had a conversation with Attorney Clark in which I asked him if he was aware that MLBAM ran the websites of many non-baseball entertainers, including Bon Jovi's, to which he replied he was not. I jokingly advised Mr. Clark that he should know the clients he's representing a little better. This conversation was part of this Court's record in an affidavit I filed on September 15, 2009 (as docket entry 109). A copy is attached.
- gg. During the same early June 2009 conversation, Attorney Clark failed to inform me that Skadden had not appeared for MLBAM or that MLBAM had not filed an appearance in the case at all.
- hh. Several days later, on June 10, 2009, Skadden suddenly - more than two weeks before the June 26, 2009 deadline - filed its motions for summary judgment on behalf of its clients, including MLB, and submitted their altered and misleading version of the MLB Audiovisual for the third time.
- ii. Surprised by this early filing, I immediately called Attorney Clark and asked him what his early filing meant for my deadline to oppose his summary judgment

motion, which I understood to be July 17, 2009 based on the Court's April 3, 2009 order. Clark told me - falsely, as I later learned - that I had two weeks from their June 10, 2009 filing to file my opposition.

- jj. In that same conversation with Attorney Clark, I informed him that, in addition to opposing their motions, I was planning on filing a summary judgment motion of my own. I asked him how long I had to file my own motion for summary judgment. He informed me – again, falsely, as I later discovered – that I “didn’t need to” file my own motion for summary judgment because they had filed theirs, and that I only needed to file my opposition. Unfortunately, I believed him.
- kk. I began scrambling to prepare an opposition under enormous pressure, both because of Skadden's early filing and because I was misled to believe that my opposition was, as a result of Skadden's early filing, now due on June 24, 2009 instead of July 17, 2009, as ordered by this Court.
- ll. I began to work on my opposition immediately, but as June 24, 2009 approached, I knew I would need more time. I contacted Attorney Clark and asked for another week to file my opposition, to which he agreed.
- mm. A week later, with my extended deadline nearly up, I asked Attorney Clark for another one-week extension, to which he agreed.
- nn. Finally, as what I believed was my twice-extended deadline approached, and on the verge of calling Attorney Clark for a third extension, I instead called district court clerk, Diep Duong, who informed me that Clark's representation to me was incorrect and that I actually had until July 17, 2009 to file my opposition.
- oo. I filed my opposition to summary judgment on July 17, 2009. At 1:37 p.m. (based on my phone records) on July 24, 2009 I received a call from Attorney Clark asking for my consent to allow defendants to file a reply brief. I consented. This conversation and resulting events are also detailed in my September 15, 2009 affidavit (as docket entry 109), copy attached.
- pp. In the same July 24, 2009 conversation with Attorney Clark, I asked for similar consent to file a sur-reply. He thanked me for my consent, but stated he did not have authority to give consent to my reciprocal request and promised to check with his clients and get back to me.

- qq. Attorney Clark never got back to me. Instead, five days later, on July 29, 2009, Skadden filed a motion for leave to file a reply, falsely claiming that I had not given consent for them to file their reply.
- rr. The next morning I called district court deputy clerk Nicewicz and left a voicemail stating that MLB "was being dishonest" in their motion for leave, and to please inform the judge that I had, in fact, consented.
- ss. My attached affidavit relates additional details about these events, including how my reliance on Attorney Clark's statements resulted in a fatal delay to the filing of my sur-reply because I was still waiting to hear from him when the Court allowed MLB's summary judgment motion on August 19, 2009, three weeks before the scheduled hearing date of September 10, 2009. I had assumed, reasonably, I believe, that I had those three weeks to finish my sur-reply and obtain MLB's consent or file a motion for leave to file my sur-reply.

Signed under the pains and penalties of perjury this 18 of June, 2010:



Samuel Bartley Steele

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**FILED
IN CLERKS OFFICE**

2009 SEP 15 P 1:21

**U.S. DISTRICT COURT
DISTRICT OF MASS.**

**SAMUEL BARTLEY STEELE,)
BART STEELE PUBLISHING)
STEELE RECORDZ,)
Plaintiffs)
v.)
TURNER BROADCAST SYSTEM,)
et al,)
Defendants.)
_____)**

Case No. 08-11727-NMG

**AFFIDAVIT OF
SAMUEL BARTLEY STEELE**

I, Samuel Bartley Steele, swear that the following statement is true to the best of my knowledge under the penalty of perjury:

1) In early July 2009, after the defense had filed their Motion for Summary Judgment, but before I had filed my Opposition to that Motion, defendants' attorney Chris Clark of Skadden, Arps called me and asked me if I was willing to agree to change the date set for hearing his clients' Motion for Summary Judgment. The Court had set that hearing for August 12, 2009. Attorney Clark wanted my agreement to move the hearing to July or possibly early September. I said that I would probably be busy on tour in September and would gladly agree to any of dates in July that they had proposed, however I was not sure about extending the hearing until September because of scheduling and the fact that I wanted the case to move forward. After that discussion, I reluctantly agreed to file a joint motion asking the Court reset the hearing, and suggesting several alternative dates in July (and some in September).

2) While I was still waiting to learn the outcome of that joint motion to reset the hearing date, I continued to work on my Opposition to defendants' Motion for Summary Judgment. I filed that Opposition on July 17, 2009, the date set by the Court in its April 3 Order. At 1:37pm on Friday, July 24, 2009, I received a friendly phone call from defense attorney Chris Clark in which I was asked for consent to file a Reply brief to my Opposition. I politely said "yes" and did give him my consent and said both sides had been very courteous up to this point, so why stop now?

3) In that same July 24 phone conversation, I politely asked Clark for consent to file a sur-reply brief. Clark thanked me for my courtesy in allowing him to file a reply. He told me that he could not give consent himself to my filing a sur-reply, but would let me know in the next week or two once he had contacted all the defendants. He has yet to call me back.

4) On July 29, 2009, five days after this phone conversation with Clark, defendants filed a Motion for Leave to File Reply claiming I did not give my consent to their filing a reply brief. This was clearly a blatant misrepresentation by defense attorneys to mislead this Court, intended to portray me as unreasonable and uncooperative in the critical weeks before the Court's judgment.

5) The next morning, at approximately 10am, July 30, 2009, I called Deputy Clerk Nicewicz and left him a voicemail saying that the defense was being dishonest (and to please tell the Judge) because I did in fact consent and I had a question as to procedure going forward.

6) Despite defendant's untrue statements in their reply, I waited to hear back from defendants about their consent to my sur-reply. Because I was waiting to hear from them, I was not sure whether I should file a sur-reply, or a motion for leave to file a sur-reply. Defendants' attorneys had been of some assistance on procedure in the past, and I believed it was best to attempt to cooperate with defendants' attorneys on procedural issues. I now see that this belief was misplaced, as those attorneys have twisted my words and actions against me.

7) I felt blindsided by the Court's August 19 ruling, which came well before the re-scheduled hearing date of September 10, 2009. When I received notice of the August 19 ruling, I was still waiting on the defenses' consent to my filing of a sur-reply, and still believing that I could eventually tell the Court about the defenses' misrepresentations at the hearing on that motion which was pushed back a month (against my wishes), to September 10.

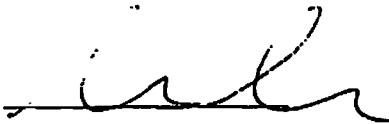
8) I cannot and do not blame this Court for its ruling. The defense, by untruthfully portraying me as an unreasonable Pro Se plaintiff, purposely misled the Court by claiming I did not extend a standard professional legal courtesy like 'consent' to file a motion (which defendants would do whether I consented or not). So I can certainly understand the Court's frustration with me. But the defendants' assertions were intentionally dishonest: I immediately gave consent to their reply, and even agreed to move the hearing date back a month, even though it was not at all convenient for me. The defense never gave reciprocal consent to my sur-reply. Instead, they hung me out to dry and abused the goodwill I had extended to them. Their underhanded scheming and disrespect for me and the Court should not go unnoticed.

9) The defense has misled the Courts in many other ways. Examples: their contradictory statements regarding access to my song, references to baseball in their works (addressed in previous motion) and their repeated attempts to distance Bon Jovi from baseball. I had a polite conversation with Clark in June in which both sides assessed the strengths and weaknesses of their case. In that June conversation, I asked Clark if he knew that MLBAM (Major League Baseball Advanced Media, the copyright owner of the MLB/TBS promo) and FSG (Fenway Sports Group, the Red Sox's non-baseball operations) run the websites of and directly profit from (as well as sell online advertising for) all 30 MLB teams, NASCAR, MLS, Madonna, U2, Bon Jovi and many others. Mr. Clark shockingly said he did not know about this relationship. This is publicly available information. In an article dated May 2007, Sports Business Journal states "MLBAM can even take on other clients...and even rock acts like Jon Bon Jovi". I jokingly advised Mr. Clark that he should know the clients he's representing a little better. Yet defendants continue to claim that Bon Jovi has nothing to do with baseball, despite their intimate business relations. Then a month after this conversation, the defendants filed their Reply, which states (at p.2) that defendants do NOT concede access to my song anymore. This clearly

contradicts statements made in the Answer filed by the Red Sox in April.

10. The defendants have demonstrated a pattern of deception and contradiction in an attempt to mislead the Court, and have shown contempt for me, a Pro Se Plaintiff, and the Court in their dishonest procedural maneuvers and misrepresentations.

Respectfully submitted,



Samuel Bartley Steele (Pro Se)

Dated 9/15/09

EXHIBIT 2

PLEASE NOTE THIS IS PART OF EXHIBIT 7
TO STEELE'S REPLY NOT EXHIBIT 2 THERETO

Dear Scott,

This letter responds to your letter dated May 19, 2009, and the many telephone calls made to me and Kevin McCullough regarding my case. Those letters and phone messages have grown increasingly threatening and insistent that I am under some obligation to comply with the deadlines imposed by your discovery requests/demands. Because I believe that Skadden, Arps is attempting to intimidate me by deliberately misconstruing Judge Gorton's April 3, 2009 Memorandum & Order ("the Order") as well as Judge Gorton's statements at the March 31 hearing, I am writing this letter to make my position clear. I am still a Pro Se plaintiff and I am consulting with several attorneys (just as Judge Gorton advised me to do) and until I decide who shall represent me, please direct all communications regarding this case directly to me.

In short, I believe that your discovery demands are premature and go beyond what is allowed by the Order. I am gathering the affidavits permitted by Judge Gorton, and we are still within the time he allowed me to do that.

The Order and Judge Gorton's statements at the hearing leading up to that order made it very clear that I was granted 60 days to obtain evidence regarding the issue of substantial similarity. The Order states that I "may offer, by affidavit, expert analysis of [my] work or the infringing work as deemed necessary and the Court will consider such analysis in making the substantial similarity determination. Any affidavit or other evidence presented to the Court must be in compliance with Fed. R. Civ. P. 56."

The relevant part of Rule 56 of the Federal Rules of Civil Procedure is very clear. My reading of this rule, in connection with the Order as well as Judge Gorton's statements at the March 31 hearing is that:

1. I have until May 31, 2009 to obtain affidavits, including expert analysis affidavits, regarding the issue of substantial similarity.
2. The Court may permit those affidavits to be supplemented or opposed by depositions, answers to interrogatories, etc. such as you have served on me. To date, the Court has not permitted that. Nevertheless, I will respond to your First Set of Interrogatories just as soon as I have compiled the information requested.

After reviewing your recent court filings, I am convinced that they are simply another attempt to intimidate and harass me because they go over issues already decided by the Order. They even appear to ask the Court to dismiss a defendant I have voluntarily released on April 1, 2009--The Bigger Picture Cinema Company.

Lastly, Mr. Plevan's May 19, 2009 letter insisting that I have "defaulted" on my obligations appears to contain a typographical error. Mr Plevan demands that I respond to your discovery requests by "Friday May 19 2009." The deadline Judge Gorton set out in the Order falls on a Sunday--May 31, 2009. I can only conclude that this is a typographical error and that Mr. Plevan meant to insist that I comply with the Sunday May 31, 2009 deadline stated in the Order, by completing my discovery by Friday May 29, 2009. I intend to comply with the Order.

Sincerely,

Bart Steele
Pro Se Plaintiff

EXHIBIT 8

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SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

July 1, 2010

BY EMAIL, FAX AND FEDEX

Christopher A.D. Hunt, Esq.
The Hunt Law Firm LLC
10 Heron Lane
Hopedale, Massachusetts 01747

RE: Steele v. Turner Broadcasting Systems, Inc.,
Civil Action No. 08-11727 (D. Mass.) (NMG);
Appeal Pending, No. 09-2571 (1st Cir.)

Dear Mr. Hunt:

I am writing to respond to your letter of June 28, 2010, addressed to my colleague, Clifford M. Sloan, but copied to me, among others (the "Letter"). In the Letter, you raise a number of very serious allegations against me and my colleagues, against Skadden, Arps, Slate, Meagher & Flom LLP, and against the defendants in this proceeding.

We have carefully reviewed your allegations and believe each is groundless, whether viewed individually or collectively. Moreover, we believe that neither you (Mr. Hunt) nor your client (Mr. Steele) has a good faith basis for believing in the veracity of the allegations made in the Letter, but rather are asserting them either (a) under the mistaken apprehension that somehow the filing of meritless

Christopher A.D. Hunt, Esq.
July 1, 2010
Page 2

motions in the District Court will have an impact on your clients' appeal pending in the First Circuit, or (b) for the purpose of harassment. In this connection, please be advised that if you follow through with your stated intent to file a Rule 11 motion on the grounds articulated in the Letter, each of the persons and entities against which any such motion is directed will seek sanctions against you and your client.¹

In response to your invitation to point out mistakes contained in the Letter, because so many of the assertions in the Letter are factually and legally groundless, we believe that no purpose would be served by providing a point-by-point refutation. We have, however, addressed a few of your more serious misstatements below.

1. **The Alleged "Concealing" of MLB Advanced Media, L.P.**

The Letter's allegations that Skadden sought to "improperly conceal MLBAM's role in creating the MLB Audiovisual and, if possible, to conceal MLBAM's very existence from Steele and the District Court" are unsupported (and, indeed, unsupportable). In the District Court, you have already filed a factually and legally baseless motion seeking a default judgment against non-party MLB Advanced Media, L.P. Rather than repeating herein the multiple, independently sufficient arguments demonstrating that that motion is without any merit, please refer

¹ Rule 11(c)(2) states that "[i]f warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion." In this connection, we invite your attention to the fact that many of the matters complained of in the Letter (e.g., Steele's "requests" and "questions" and alleged

Christopher A.D. Hunt, Esq.
July 1, 2010
Page 3

to the opposition papers filed yesterday by defendant Major League Baseball Properties, Inc.

In addition, we are at a loss to understand how you could believe that having had another defendant in this lawsuit, with approximately 20 defendants already, could have impacted the outcome of the lawsuit in the District Court. Two of plaintiffs' claims (for alleged violations of the Lanham Act and M.G.L. ch. 93A) were dismissed as legally insufficient, (i.e. on the face of Mr. Steele's pleadings) and the dismissal of the third (copyright infringement) on summary judgment was based on a comparison of publicly available works (Mr. Steele's copyrighted work and the Turner Promo), without regard to the identify of any or all defendants. Thus, the identity and number of the multiple defendants was of no consequence to the outcome of the District Court proceedings (and remains of no consequence today). The decisions were made as a matter of law.

2. The So-Called "Altered" Video

In the Letter, you allege that a Rule 11 violation has been committed on the basis of your assertion that the Turner Promo was altered to remove a copyright notice. (Letter at 8.) You have provided no evidence of any such alteration, nor do you or plaintiffs have a good faith basis for asserting that any document, including a version of the Turner Promo, was "false" or otherwise "altered" by this firm or by any defendant.

misconduct towards "counsel") are not properly the subject of Rule 11, which concerns "pleadings, written motions, and other paper" presented to the Court.

Christopher A.D. Hunt, Esq.
July 1, 2010
Page 4

Moreover, as with your "concealment" claim, we do not understand how the addition of a copyright notice at the end of the Turner Promo could have impacted the outcome of the lawsuit in the District Court in any way. The presence or absence of such a notice had (and has) nothing whatsoever to do with the adjudication of plaintiffs' copyright infringement claims, as it has nothing to do with an analysis of substantial similarity as a legal matter.

3. Steele's "Requests" and "Questions"

You make reference to Steele having made a "request" of, or posed a "question" to, Skadden attorneys on various issues. (E.g. Letter at 6, 9.) Counsel for defendants were under no obligation to respond to such requests or questions raised by Mr. Steele. As Judge Gorton himself admonished Mr. Steele at the hearing on defendants' motion to dismiss, "you're going to be required to abide by rules of procedure that are sometimes arcane and hard to understand, but, nevertheless, you will be required to abide by them." March 31, 2009 Transcript at 6. See also Eagle Eye Fishing Corp. v. U.S. Dep't of Commerce, 20 F.3d 503, 506 (1st Cir. 1994) (proceeding pro se "is not a license not to comply with relevant rules of procedural and substantive law") (internal citations omitted).

4. Alleged Misstatement of Legal Principles

Skadden did not "knowingly misrepresent copyright law." Moreover, Mr. Steele had ample opportunity in his many pages of legal briefs in the District Court to state the law correctly and you had ample opportunity to identify and correct the alleged misstatements in your two briefs in the First Circuit. This

Christopher A.D. Hunt, Esq.
July 1, 2010
Page 5

allegation is certainly not a basis for a Rule 11 motion. Moreover, your argument that Skadden acted improperly by having "expressly adopted the District Court's . . . application of" the synchronization "issue" is certainly a novel (if baseless) argument. Siding on appeal with the District Court's articulation of a legal issue is certainly not sanctionable conduct.

5. Alleged Misconduct Towards "Counsel"

You accuse Skadden of "threatening and abusive tactics" directed at "Attorney McCullough." (Letter at 12.) As neither you nor Mr. Steele apparently dispute, Mr. Steele on May 11, 2009 referred us to Kevin McCullough, an attorney in Salem, Massachusetts. Given the ethical requirements, we immediately ceased communicating with Mr. Steele and contacted Mr. McCullough. The first "abusive" tactic was allegedly that I insisted that Mr. McCullough decide whether he was, in fact, Mr. Steele's attorney, and if the answer was yes, that he file a notice of appearance. (He never did.) That is not "abuse," but rather a perfectly proper request that an attorney timely comply with applicable procedure to move the matter along expeditiously within the schedule set by the District Court.

Next, you claim it was allegedly "abusive" that I advised Mr. McCullough that Mr. Steele was in default on his discovery responses. That was not "abusive," it was entirely correct. A Rule 34 Request, a Rule 33 Request, and a Notice of Deposition had been served on Mr. Steele on April 6, 2009. As you know, the Federal Rules of Civil Procedure require that the Rule 33 and Rule 34 Requests be responded to within 30 days of service, i.e. by May 6, 2009.

Christopher A.D. Hunt, Esq.
July 1, 2010
Page 6

Mr. Steele apparently incorrectly concluded that Judge Gorton had extended those deadlines, and given Mr. Steele's 60 days in which to respond, but no such extension was ever granted. Rather, at the hearing on March 31, 2009, the Court had simply opined that there should be a 60-day period in which all discovery had to be concluded. See March 31, 2009 Transcript at 13. That Mr. Steele may have misunderstood the Court's comments is not a surprise, but that certainly does not support an allegation of "abusive" tactics because defendants asserted a position based on advising an attorney of the time-periods set forth in the Federal Rules of Civil Procedure. Mr. McCullough, moreover, being an attorney, certainly did not have to accept our interpretation of the status of discovery, but was free to make his own assessment.

* * *

In sum, as noted, we see no merit to any issue raised in your letter of June 28, 2010, and will seek the imposition of sanctions if a Rule 11 motion is made.

Sincerely,



Kenneth A. Plevan

cc: Clifford M. Sloan, Esq.
Scott D. Brown, Esq.
Christopher G. Clark, Esq.
Amy B. Auth, Esq.
David A. Buins, Esq.
Daniel J. Cloherty, Esq.
Michael Mellis, Esq.

EXHIBIT 9

THE HUNT LAW FIRM LLC

10 Heron Lane
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cadhunt@earthlink.net

VIA E- MAIL AND FACSIMILE

July 3, 2010

Kenneth A. Plevan, Esq.
Skadden Arps Slate Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522

Clifford M. Sloan, Esq.
Skadden Arps Slate Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005-0000

Re: Notice of Intent to File Rule 11 Motion for Sanctions
Steele v. Turner Broadcasting System, Inc., et al., No: 08-11727

Dear Attorneys Plevan and Sloan:

This will reply to your letter of July 1, 2010. I have reviewed your letter carefully and discussed it with my client. I am, indeed, making "very serious allegations," which makes your inability or unwillingness to meaningfully explain your misconduct all the more inexplicable.¹

Your conclusory assertion that my client and I have no "good faith basis for believing in the veracity" of the very specific and detailed contentions in my June 28, 2010 letter and Steele Affidavits attached thereto ("Letter"), rings hollow without reference to contrary facts. Further, imputing improper motive or bad faith and threatening a groundless retaliatory Rule 11 motion merely underscores the points made in my Letter. The idea that my client - *pro se* - or I, a solo practitioner, by

¹ I address your specific purported "responses" in detail, below.

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seeking clarification of apparent misconduct, is "harassing" Skadden Arps is not credible.

I am under no obligation to confer with you informally prior to serving a Rule 11 motion. I sent the Letter in good faith and out of an abundance of caution in order to make certain that my understanding of your conduct was well-founded and to afford you ample opportunity to show otherwise.

Your claim that there are "so many" mistakes that "no purpose would be served by providing a point-by-point refutation" has it exactly backwards. I went to great lengths to provide you with the necessary detail and supporting facts so that you could make intelligent and equally detailed responses. You cannot, however, simply brush-off inconvenient facts. A less-detailed Letter would likely have provoked a complaint that the lack of specifics makes it impossible for you to meaningfully respond.

Your attempt to address "a few of" the Letter's purported "more serious misstatements" prompts the question: since you believe I have made more than "a few" such "serious misstatements," what possible purpose is served by not addressing all of them, particularly where they involve "very serious allegations" against you and your colleagues?

Once again, I ask that you provide me with any additional information - supported by the record or other factual evidence - that meaningfully addresses the strong evidence of misconduct presented in my Letter.

As to the few points you do address, I respond as follows:

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1. Concealing MLBAM

Here, other than your conclusory assertion that my allegations are "unsupportable," you refer me to your Opposition to Steele's Motion for Default ("Opposition"). The Opposition, however, provides no facts disputing proper service on MLBAM or their failure to appear. The Opposition also does not address numerous other facts relating to MLBAM's role (or non-role) in this case.

Further, as you know from our appeal papers - and as also detailed in my Letter - our allegations as to MLBAM have nothing to do with "having had another defendant in the lawsuit," or the "identity and number of the multiple defendants." Your response is a non sequitur. If you are at a "loss to understand" our allegations as to MLBAM, I am equally at a loss as to how to make them any clearer.

2. The Altered Audiovisual

The undisputed evidence that the MLB Audiovisual was altered is explained in great detail in our appellate papers, your (once again) conclusory denial notwithstanding. Your supposed inability to "understand" how deletion of the copyright notice of an audiovisual work, where that work is at issue in a copyright case, is not credible.

First, I again refer you to my appeal papers, Letter, and the factual record to help you understand how deleting the copyright notice was part of a larger scheme to conceal MLBAM.

Second, as also explained in my appeal papers and letter, it was not just the MLBAM copyright notice that was deleted, but the concurrent section of the soundtrack. It is – or should be – self-evident that deletion of the “end” of the true

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MLB Audiovisual bears directly on Steele's claim of infringement by that very same work, including on the issue of substantial similarity.²

Third, as you undoubtedly know, alteration of material evidence, regardless of its affect on the proceedings, is almost always improper and very often sanctionable misconduct.³

3. Steele's Requests

You resort to a strictly procedural defense, given the increasingly clear (and damaging) implications of acknowledging the underlying substantive reality. Specifically, your failure to acknowledge – much less provide – the “FINAL 1” draft of the MLB Audiovisual upon Steele’s request strongly suggests (1) that the “FINAL 1” and/or other earlier drafts not only exist, but undermine your defense, and (2) that the “FINAL 2” version you submitted to both the District Court and Court of Appeals was altered to conceal MLBAM by removing “© 2009 MLBAM” notice and to attempt to make it appear dissimilar to both the true MLB Audiovisual and Steele’s Song. If true – and I have seen no evidence to the contrary – this was clearly disingenuous, to put it mildly, and intended to mislead the Court.

² We agree that, in the true MLB Audiovisual, the MLBAM copyright notice appears at the “end” of the audiovisual and not “after” it, as you previously asserted in your appellee brief.

³ Interestingly, you argue that we have no “good faith basis” for claiming that the MLB audiovisual was altered by “[your] firm or by any defendant.” I don’t recall specifically claiming that Skadden Arps did the altering. In addition, since you have taken the position that MLBAM is not a “defendant” and have not responded to my query as to whether Skadden Arps represents MLBAM, one might reasonably infer that MLBAM – as neither a “defendant” or Skadden, Arps - was responsible for altering the MLB audiovisual, which, of course, is consistent with our concealment theory.

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Further, your shift in attitude when litigating against the *pro se* Steele in District Court, from relative (and informal) cooperation to abrupt defensiveness when faced with this particular request for “FINAL 1” indicates Steele had noticed something you preferred not be noticed, especially by the Court. That you avoided Steele’s very clear and specific request for “FINAL 1” and continue, to this day, to deflect the alteration and prior draft issues with curt references to the rules and Judge Gorton’s admonishment, only serves to highlight the veracity of Steele’s theories relating to alteration of the MLB Audiovisual and concealment of MLBAM.

Nonetheless, I repeat Steele’s request here and now, informally, for the “FINAL 1” version of the MLB Audiovisual. Given that informal disclosure always serves the salutary purposes of clarifying the issues, avoiding unnecessary litigation, or otherwise expediting the litigation, I also request any other evidence that you believe disproves our claims or theories. For example, you might provide a sworn affidavit of Brett Langefels or even allow me to informally question him, off the record (with his counsel present, of course).⁴

4. Misstatements of Law

Incredibly, Skadden, Arps blames the *pro se* Steele for failing to correct its own misstatements of law. Nonetheless, I have, as you suggest, addressed your legal misrepresentations in my appeals papers, which will soon be addressed by the First Circuit.

Otherwise, you fail to address any specifics other than a small part of my section on synchronization rights, but nonetheless miss the point: the District Court’s incorrect application of synch rights law resulted from your efforts to intentionally complicate an otherwise very simple legal issue.

⁴ Of course, you could have offered such evidence months ago.

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5. Other Misconduct

Your letter ignores the vast majority of instances of misconduct, focusing instead on selected communications you had with Attorney McCullough, which, examined in a vacuum and framed as you have, attempt to appear reasonable.

Facts do not, however, exist in vacuums, nor do interpersonal communications. Steele's Affidavits tell a sordid – and undisputed – tale of misrepresentations and improper tactics. Your inability to explain your misconduct with any substance does not present a very convincing defense of your actions – e.g., your repeated misrepresentations of the summary judgment deadline to Steele, telling Attorney McCullough, falsely, that Steele had retained him (which Steele explicitly had informed you was not the case), and blatantly misrepresenting to the Court that Steele had not given consent for you to file a reply in connection with your summary judgment motion.⁵

In closing, I further repeat my request that you advise me whether your firm has represented MLBAM at any time during the pendency of this case. I will also assume that you have been, and will continue to, comply with all rules pertaining to the preservation of evidence, including digital evidence.

⁵ That your aggressive behavior towards Steele eased somewhat following his May 22, 2009 letter to you (which specifically addressed your misconduct and to which you did not reply) implies at least some knowledge on your part of the overall inappropriateness of your tactics.

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I look forward to any further responses you may have. In the meantime, I have decided to hold my Rule 11 motion in abeyance. Failing receipt of any persuasive – and fact-based – responses from you, however, I maintain the right to serve the Motion at any time.

Very truly yours,



Christopher A.D. Hunt

cc: Scott Brown, Esq. (via e-mail only)
Matthew J. Matule, Esq. (via e-mail only)
Christopher G. Clark, Esq. (via e-mail only)
Amy B. Auth, Esq. (via e-mail only)
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