

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

No. 11-1675

SAMUEL BARTLEY STEELE,

Plaintiff-Appellant,

v.

ANTHONY RICIGLIANO; BOSTON RED SOX BASEBALL CLUB LIMITED PARTNERSHIP; BRETT LANGEFELS; JOHN BONGIOVI, d/b/a Bon Jovi Publishing; JOHN W. HENRY; MAJOR LEAGUE BASEBALL PROPERTIES, INC., a/k/a Major League Baseball Productions; RICHARD SAMBORA, d/b/a Aggressive Music; TIME WARNER, INC.; TURNER SPORTS INC.; TURNER STUDIOS INC.; VECTOR MANAGEMENT LLC, a/k/a Successor in Interest to Vector Management; WILLIAM FALCONE, d/b/a Pretty Blue Songs; BOB BOWMAN; CRAIG BARRY; DONATO MUSIC SERVICES, INC.; FENWAY SPORTS GROUP, a/k/a FSG, f/k/a New England Sports Enterprises LLC; JACK ROVNER; JAY ROURKE; LAWRENCE LUCCHINO; MAJOR LEAGUE BASEBALL ADVANCED MEDIA, L.P.; MARK SHIMMEL, d/b/a Mark Shimmel Music; MIKE DEE; NEW ENGLAND SPORTS ENTERPRISES, INC., f/d/b/a Fenway Sports Group, a/k/a FSG; SAM KENNEDY; THOMAS G. WERNER; TURNER BROADCASTING SYSTEM, INC.

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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**CORPORATE DISCLOSURE STATEMENTS PURSUANT
TO FEDERAL RULE OF APPELLATE PROCEDURE 26.1**

**BOSTON RED SOX BASEBALL
CLUB LIMITED PARTNERSHIP**

Boston Red Sox Baseball Club Limited Partnership is a Massachusetts limited partnership. One percent of ownership interest in the Boston Red Sox Baseball Club Limited Partnership is held by New England Sports Ventures, LLC (“NESV”) and 99% of ownership interest in the Boston Red Sox Baseball Club Limited Partnership is held by N.E.S.V. IV, LLC (“NESV IV”). NESV IV is wholly owned by NESV, which is wholly owned by N.E.S.V. I, LLC (“NESV I”). No publicly traded company owns 10% or more of the stock of Boston Red Sox Baseball Club Limited Partnership.

MAJOR LEAGUE BASEBALL PROPERTIES, INC.

Major League Baseball Properties, Inc. is wholly owned by Major League Baseball Enterprises, Inc., which is not a publicly traded company. No publicly held corporation owns 10% or more of the stock of Major League Baseball Properties, Inc.

TIME WARNER INC.

Time Warner Inc. is a publicly traded corporation, and no shareholder owns 10% or more of Time Warner Inc.’s stock. Time Warner Inc. has no parent corporation.

TURNER SPORTS, INC.

Turner Sports, Inc. is wholly owned by Turner Broadcasting System, Inc. Turner Broadcasting System, Inc. is ultimately wholly owned by Time Warner Inc., a publicly traded company. No publicly traded company or person owns 10% or more of Time Warner Inc.’s issued outstanding common stock.

TURNER STUDIOS, INC.

Turner Studios, Inc. is wholly owned by Turner Entertainment Networks, Inc., which is wholly owned by Turner Broadcasting System, Inc. Turner Broadcasting System, Inc. is ultimately wholly owned by Time Warner Inc., a publicly traded company. No publicly traded company owns 10% or more of Time Warner Inc.'s issued outstanding common stock.

VECTOR MANAGEMENT LLC

Vector Management LLC's ultimate parent company is Live Nation Entertainment, Inc. Live Nation Entertainment, Inc. is a publicly traded company and has no parent corporation. The following entities possess beneficial ownership of more than 5% of Live Nation Entertainment, Inc.'s stock: (1) Liberty Media Corporation, (2) Blackrock, Inc., (3) Tiger Global Management, LLC and (4) Shapiro Capital Management LLC.

DONATO MUSIC SERVICES, INC.

Donato Music Services, Inc. has no parent corporation. No publicly traded company owns 10% or more of the stock of Donato Music Services, Inc.

**FENWAY SPORTS GROUP a/k/a FSG f/k/a
NEW ENGLAND SPORTS ENTERPRISES, LLC**

Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises, LLC ("NESE") states that it is a registered trade name and is currently the d/b/a of N.E.S.V. I LLC.

MAJOR LEAGUE BASEBALL ADVANCED MEDIA, L.P.

MLB Advanced Media, L.P. (“MLBAM”) is a limited partnership organized under the laws of the State of Delaware. Its partners consist of MLB Advanced Media, Inc., and MLB Media Holdings, L.P. (“MLBMH”). There is no publicly held corporation that owns 10% or more of the stock of MLBAM, MLBMH, or MLB Advanced Media, Inc.

**NEW ENGLAND SPORTS ENTERPRISES, LLC,
f/d/b/a FENWAY SPORTS GROUP, a/k/a FSG**

New England Sports Enterprises, LLC (“NESE”) is wholly owned by New England Sports Ventures, LLC (“NESV”). No publicly traded company owns 10% or more of the stock of NESE.

TURNER BROADCASTING SYSTEM, INC.

Turner Broadcasting System, Inc. is jointly owned by Historic TW Inc. and Warner Communications Inc. Turner Broadcasting System, Inc. is ultimately wholly owned by Time Warner Inc., a publicly traded company. No publicly traded company has a 10 percent or greater stock ownership in Time Warner Inc.’s issued outstanding common stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

REASONS WHY ORAL ARGUMENT NEED NOT BE HEARDiv

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW v

INTRODUCTION 1

STATEMENT OF FACTS AND PROCEEDINGS BELOW3

 A. Steele’s “Proliferating” Lawsuits3

 B. The Claims In Steele III5

 C. The District Court’s Grant Of Defendants’ Motion To Dismiss6

SUMMARY OF THE ARGUMENT8

ARGUMENT9

I. THE DISTRICT COURT’S DECISION GRANTING
APPELLEES’ MOTION TO DISMISS SHOULD BE AFFIRMED9

 A. Standard Of Review9

 B. The District Court’s Holding That Steele’s
Claims Are Barred By The Doctrine Of Claim
Preclusion Is Supported By Settled First Circuit Precedent9

 C. Steele Concedes That The Claims In
This Case Could Have Been Raised In Steele I 13

 D. The District Court Also Considered -- And Correctly Gave
No Weight To -- Steele’s “Fraud On The Court” Argument..... 14

 E. This Court Also May Affirm The District Court’s
Decision For Any Reason Made Manifest By The Record 16

 F. The District Court Correctly Imposed
Rule 11 Sanctions On Steele And Hunt And
Any Argument To The Contrary Has Been Waived..... 16

II. THIS COURT SHOULD SUMMARILY
AFFIRM THE DISTRICT COURT’S DECISION..... 18

CONCLUSION19

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<u>Airframe Systems, Inc. v. Raytheon Co.</u> , 601 F.3d 9 (1st Cir. 2010).....	9, 10, 11
<u>Allen v. McCurry</u> , 449 U.S. 90 (1980).....	10
<u>Ashcroft v. Iqbal</u> , 556 U.S. ___, 129 S. Ct. 1937 (2009)	9
<u>Bell Atlantic Corp. v. Twombly</u> , 550 U.S. 544 (2007).....	9
<u>In re Belmont Realty Corp.</u> , 11 F.3d 1092 (1st Cir. 1993).....	11
<u>In re El San Juan Hotel Corp.</u> , 841 F.2d 6 (1st Cir. 1988).....	12
<u>Hodgens v. General Dynamics Corp.</u> , 144 F.3d 151 (1st Cir. 1998).....	16
<u>SEC v. Tambone</u> , 597 F.3d 436 (1st. Cir. 2010).....	17
<u>Solis-Alarcon v. Abreu-Lara</u> , 722 F. Supp. 2d 157 (D.P.R. 2010)	11
<u>Steele v. Bongiovi</u> , No. 10-11218-NMG, 2011 WL 1882276 (D. Mass. May 17, 2011)	4
<u>Steele v. Turner Broadcasting System, Inc.</u> , 746 F. Supp. 2d 231 (D. Mass. 2010).....	2, 4, 5, 8
<u>Steele v. Turner Broadcasting System, Inc.</u> , 607 F. Supp. 2d 258 (D. Mass. 2009).....	4, 5, 8

Steele v. Turner Broadcasting System, Inc.,
646 F. Supp. 2d 185 (D. Mass. 2009).....3, 4

Tracy v. Winfrey,
No. 07-1630, 2008 WL 2357943 (1st Cir. June 11, 2008).....18

United States v. Zannino,
895 F.2d 1 (1st Cir. 1990).....17

RULES & STATUTES

PAGE(S)

Fed. R. App. P. 30(a)13

Fed. R. App. P. 34(a)iv

Fed. R. Civ. P. 112, 6, 16, 17

1st Cir. R. 27.0(c).....v, 18, 19

1st Cir. R. 34.0(a).....iv

REASONS WHY ORAL ARGUMENT NEED NOT BE HEARD

Pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure and First Circuit Rule 34.0(a), Appellees respectfully submit that no oral argument is necessary because the District Court applied settled principles in dismissing this action that it described as “frivolous” and “possibly vexatious,” and because the facts and legal arguments are adequately presented in the briefs and record. Accordingly, Appellees believe that the decisional process would not be significantly aided by oral argument.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court properly granted the Defendants-Appellees' motion to dismiss and correctly concluded that the Plaintiff-Appellant's claims asserted in this third federal court lawsuit relating to the same common nucleus of operative facts were barred as a matter of law by the doctrine of claim preclusion?

2. Whether this appeal should be summarily affirmed pursuant to First Circuit Rule 27.0(c) because it "clearly appear[s] that no substantial question is presented"?

INTRODUCTION

This proceeding is the fourth appeal pending in this Court -- one of eight related state and federal court proceedings in total filed since 2008 -- that Plaintiff-Appellant Samuel Bartley Steele (“Steele”) has initiated or prosecuted against more than 40 defendants relating to a song he wrote in 2004 about the Boston Red Sox. The first three appeals arise from two of Steele’s prior federal court actions, both now dismissed on dispositive motions.¹

In this third-filed lawsuit, which the parties refer to as Steele III,² the District Court granted the Defendants-Appellees’ motions to dismiss, holding that “Steele’s claims in this case are claim precluded by Steele I” because they are “based on the same ‘nucleus of operative facts.’” (May 18, 2011 Order at A567.) The District Court further concluded that “there is no reason why the new defendants and new claims could not have been included in Steele I,” and “Steele has provided no compelling reason for his failure to do so and, as such, the Court

¹ All three federal court lawsuits were assigned to and decided by the Honorable Nathaniel M. Gorton. Steele also has commenced a fourth lawsuit based on the same core set of facts in Massachusetts state court. Steele v. Boston Red Sox Baseball Club Limited Partnership, Civ. No. 2010-3418-E (Mass. Super. Ct. filed Aug. 27, 2010). A motion to dismiss that case is fully briefed.

² The District Court and the parties have adopted the convention of referring to Steele’s lawsuits as “Steele I” through “Steele IV,” based on the order in which they were filed. Using that convention, this appeal is from the dismissal of “Steele III.”

finds that he should be precluded from raising such claims in a separate lawsuit.”

(Id. at A568.) Judge Gorton also imposed Rule 11 sanctions in the form of an admonition against Steele and his attorney, Christopher A.D. Hunt (“Hunt”):

Steele’s claims in this action are clearly precluded by this Court’s holding in Steele I and appear to be an attempt to circumvent that holding. Thus, this lawsuit is at least frivolous, and possibly vexatious

(Id. at A572.)³

In granting the motion to dismiss, the District Court applied long-established Supreme Court and First Circuit claim-preclusion precedent. In addition, the Court correctly concluded that all Steele III claims could have, and should have, been brought in Steele I. On this appeal, Steele does not dispute that conclusion. In fact, he affirmatively states that the Steele III claims were asserted in Steele I, and that he filed Steele III as a new lawsuit precisely because he was dissatisfied with the result in Steele I. (See, e.g., Appellant’s Brief at 14-15, 28, 42, 45, 65 and 67.) This presents a classic case of improper claim splitting, warranting

³ This is not the first such warning. Steele previously filed meritless, post-judgment motions in Steele I for entry of “default” against certain entities. In denying those motions, Judge Gorton admonished Steele and Hunt for filing “ill-advised and perhaps unnecessary” motions, adding that “Plaintiff and his counsel are [] forewarned that any further motion practice in this regard will be looked upon askance.” 746 F. Supp. 2d 231, 239 (D. Mass. 2010) (currently fully briefed on appeal and awaiting decision by this Court, No. 10-2173).

a summary affirmance on the well-reasoned decision the District Court issued below.

**STATEMENT OF FACTS
AND PROCEEDINGS BELOW**

The facts on which this dispute is based are set forth at length in four merits decisions issued by Judge Gorton in Steele I, Steele II, and Steele III, and also in the Statement Of Facts set forth in Appellees' two prior merits briefs submitted in First Circuit case numbers 09-2571 and 10-2173. Appellees accordingly only briefly address the factual and procedural background of this case below.

A. Steele's "Proliferating" Lawsuits

Beginning in October 2008, Steele (initially pro se in Steele I) and his counsel, Christopher A.D. Hunt (who appeared on November 6, 2009), have filed four state and federal court lawsuits. All are based on the same underlying facts, namely a song that Steele wrote in 2004 concerning the Boston Red Sox, and the alleged copying of that song by one or more defendants.⁴ Those proceedings have to date generated five substantive district court decisions -- each and every one adverse to Steele.

⁴ The principal claim in Steele I alleged copyright infringement. It was dismissed on summary judgment following discovery on the issue of substantial similarity. 646 F. Supp. 2d 185, 194 (D. Mass. 2009).

In summary, those four lawsuits, and Steele's appeals from adverse rulings in those actions, are:

1. Steele I: Steele v. Turner Broadcasting System, Inc., No. 08-cv-11727-NMG (D. Mass. filed Oct. 8, 2008). The claims in this case were dismissed on motions to dismiss, 607 F. Supp. 2d 258, 265 (D. Mass. 2009), and for summary judgment, 646 F. Supp. 2d 185, 193-94 (D. Mass. 2009). The court also denied two post-judgment motions by Steele for entry of "default" as to two entities. 746 F. Supp. 2d 231, 239-40 (D. Mass. 2010).
2. Steele I first appeal: Steele v. Turner Broadcasting System, Inc., No. 09-2571 (1st Cir. docketed Nov. 18, 2009). This appeal, from the district court's dismissal of Steele's claims on the merits, is fully briefed.
3. Steele I second appeal: Steele v. Vector Management, No. 10-2173 (1st Cir. docketed Oct. 8, 2010). This appeal, from the district court's denial of Steele's "default" motions, is fully briefed.
4. Steele II: Steele v. Bongiovi, No. 10-cv-11218-NMG (D. Mass. filed Jul. 20, 2010). This case was dismissed on a motion to dismiss on the basis that, among other things, the single claim asserted was insufficient as a matter of law and was barred by claim preclusion. The district court also characterized this lawsuit as "meritless," "frivolous," and "vexatious" and, pending resolution of the Steele I appeals, preliminarily imposed sanctions on Steele and Hunt in the form of an admonition. No. 10-11218-NMG, 2011 WL 1882276, at *4 (D. Mass. May 17, 2011).
5. Steele II appeal: Steele v. Bongiovi, No. 11-1674 (1st Cir. docketed June 14, 2011). This Court has issued a briefing schedule, and Steele's opening brief has been filed.
6. Steele III: Steele v. Ricigliano, No. 10-cv-11458-NMG (D. Mass. filed Aug. 25, 2010), is the District Court decision that is the subject of this appeal.
7. Steele III appeal: Steele v. Ricigliano, No. 11-1675 (1st Cir. docketed June 15, 2011), is this appeal.

8. Steele IV: Steele v. Boston Red Sox Baseball Club Limited Partnership, Civ. No. 2010-3418-E (Mass. Super. Ct. filed Aug. 27, 2010). Defendants' motion to dismiss is fully briefed, and the court has calendared a hearing on that motion for October 6, 2011.

In total, there are more than 40 defendants named in one or more of Steele's four lawsuits. While the defendant line-up is different in each lawsuit, and some defendants are not named in every one, certain defendants (or closely related parties) are named in each of the four. These include (i) Bon Jovi band members John Bongiovi and Richard Sambora, (ii) Major League Baseball Properties, Inc., and (iii) Turner Broadcasting System, Inc.

B. The Claims In Steele III

The Complaint in this action, dated August 25, 2010, named dozens of individuals and entities as Defendants based on alleged "temp tracking" of the Steele Song during the creation of a promotional audiovisual. (A22.) "Temp tracking" also was expressly referred to in Steele's pleadings and court filings in Steele I. See 607 F. Supp. 2d at 261; 746 F. Supp. 2d at 234.

On September 1, 2010, two Defendants filed a motion to dismiss and requested an order enjoining Steele and Hunt from making additional motions in federal court or commencing new lawsuits related to the Steele Song without first obtaining leave of the Court to do so. (A113-43.) Thereafter, all remaining Defendants joined in that motion to dismiss. (A280.) In addition, four Defendants (Anthony Ricigliano, Donato Music Services, Inc., Brett Langefels and Craig

Barry) filed a motion to dismiss for lack of personal jurisdiction. (See Motion To Dismiss The Verified Complaint at A283-96.)

C. The District Court's Grant Of Defendants' Motion To Dismiss

On May 18, 2011, the District Court granted Defendants' motion to dismiss, holding that "Steele's claims in this case are claim precluded by Steele I" because they are "based on the same 'nucleus of operative facts.'" (May 18, 2011 Order at A567-69; see also Order of Dismissal at A574.) The District Court further reasoned that "there is no reason why the new defendants and new claims could not have been included in Steele I," and "Steele has provided no compelling reason for his failure to do so and, as such, the Court finds that he should be precluded from raising such claims in a separate lawsuit." (May 18, 2011 Order at A568.)

In its decision, the District Court also considered and rejected Steele's reckless "conten[tion] that the defendants committed fraud on the Court" and the "numerous allegations of misconduct by the defendants and their attorneys." (Id. at A570.) In doing so, the District Court went on to impose Rule 11 sanctions in the form of an admonition against Steele and his attorney, reasoning that the "claims in this action are clearly precluded by this Court's holding in Steele I and appear to be an attempt to circumvent that holding." (Id. at 572.) The District Court concluded that "this lawsuit is at least frivolous, and possibly vexatious" and

warned that “any future filing of frivolous or vexatious cases in this Court will result in the imposition of sanctions, including an order enjoining [Steele] from filing further proceedings in this Court arising from the same nucleus of operative facts.” (Id.)

On June 13, 2011, Steele filed a Notice of Appeal. (A20-21.) This appeal followed.

SUMMARY OF THE ARGUMENT

The only issue before this Court is whether the District Court correctly granted the Defendants' motion to dismiss and held that Steele's claims in this lawsuit are barred by the doctrine of claim preclusion.

All of the claim-preclusion elements are clearly satisfied here. The first lawsuit, Steele I, was dismissed on the merits. 607 F. Supp. 2d at 265; 746 F. Supp. 2d at 193-94. There also is no question regarding the existence of a common nucleus of operative facts between the two lawsuits, as dozens of the Steele III factual allegations are similar or identical to the factual assertions made in Steele I. (See A138-43.) Indeed, Steele himself, in his Appellant's Brief, repeatedly acknowledges that the issues are similar. (E.g., Appellant's Brief at 14-15, 28, 42, 45, 65 and 67.)

Finally, all Appellees either were named as defendants in Steele I or are closely affiliated with the defendants named in that prior lawsuit. (See A136.) Consequently, as the District Court properly concluded, this lawsuit is barred as a matter of law by the doctrine of claim preclusion. As such, the District Court's order should be summarily affirmed.

ARGUMENT

I. THE DISTRICT COURT’S DECISION GRANTING APPELLEES’ MOTION TO DISMISS SHOULD BE AFFIRMED

A. Standard Of Review

This Court’s review of a district court decision granting a motion to dismiss is de novo. Airframe Sys., Inc. v. Raytheon Co., 601 F.3d 9, 11 (1st Cir. 2010). Although the Court must take all well-pleaded facts in the complaint as true and make all reasonable inferences in favor of Steele, there is no duty for “courts to conjure up unpleaded facts that might turn a frivolous claim . . . into a substantial one.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 562 (2007). Rather, “to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. ___, 129 S. Ct. 1937, 1949 (2009) (internal quotation marks omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

B. The District Court’s Holding That Steele’s Claims Are Barred By The Doctrine Of Claim Preclusion Is Supported By Settled First Circuit Precedent

In dismissing the lawsuit, the District Court applied the long-established doctrine of claim preclusion, which prevents parties from “relitigating claims that could have been made in an earlier suit, not just claims that were

actually made.” Airframe Sys., Inc., 601 F.3d at 14. This Court has explained that “[t]he doctrine of claim preclusion serves at least two important interests: protecting litigants against gamesmanship and the added litigation costs of claim-splitting, and preventing scarce judicial resources from being squandered in unnecessary litigation.” Id. See also Allen v. McCurry, 449 U.S. 90, 94 (1980) (recognizing that preclusion doctrines “relieve parties of the cost and vexation of multiple lawsuits” and “conserve judicial resources”).

In its May 18, 2011 Order, the District Court relied on binding Supreme Court and First Circuit claim-preclusion precedent:

The doctrine of res judicata provides that “a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” Allen v. McCurry, 449 U.S. 90, 94 (1980). Accordingly, res judicata applies if

(1) the earlier suit resulted in a final judgment on the merits, (2) the causes of action asserted in the earlier and later suits are sufficiently identical or related, and (3) the parties in the two suits are sufficiently identical or closely related.

Airframe Sys., Inc. v. Raytheon Co., 601 F.3d 9, 14 (1st Cir. 2010).

(A567.)

As to the first claim preclusion factor, the District Court concluded that its prior “grant of summary judgment in favor of the defendants in August, 2009 in Steele I was certainly a final judgment on the merits.” (Id.) The District Court also correctly reasoned that:

The fact that Steele I is currently on appeal in the First Circuit does not undermine its validity or preclusive effect. See, e.g., In re Belmont Realty Corp., 11 F.3d 1092, 1095-96, 1099 (1st Cir. 1993). Unless that decision is reversed by the First Circuit, it is a valid and binding determination and the Court may dismiss this case as claim precluded by its decision in Steele I. See id.; Solis-Alarcon v. Abreu-Lara, 722 F. Supp. 2d 157, 161 (D.P.R. 2010) (finding that the possibility that a prior judgment adverse to the plaintiff might be reversed on appeal did not justify staying a subsequent related action).

(A566.)

As to the second claim-preclusion factor, the District Court determined that the claims in this case are based on the same nucleus of operative facts as the claims raised in Steele I:

Steele argues that this case is distinct from Steele I because it arises from his sound recording copyright, whereas the claims in Steele I arose out of his performing arts copyright. Nevertheless, the claims in this case are based on the same “nucleus of operative facts” as the claims in Steele I: the defendants’ alleged infringement of Steele’s copyright in the Steele Song. See Airframe Sys., Inc., 601 F.3d at 15 (holding that the plaintiff’s earlier claims of infringement by possession and its later claims of infringement by use of its source code arose from the same nucleus of operative facts and, therefore, the later claims were barred by res judicata). Thus, the Court finds that the copyright infringement claims Steele brings in this case are sufficiently related to his claims in Steele I.

Moreover, there is no reason why the new defendants and new claims could not have been included in Steele I. Steele argues that he could not have brought the current claims because, at the time Steele I was filed, he had not yet registered his sound recording with the United States Copyright Office. Steele does not, however, explain why he delayed the registration of his sound recording copyright. More importantly, as the defendants point out, Steele could have alleged copyright infringement based on unauthorized copying because such activities would have been in violation of his musical

composition copyright which was registered at the time Steele I was filed. Steele has provided no compelling reason for his failure to do so and, as such, the Court finds that he should be precluded from raising such claims in a separate lawsuit.

(A567-68). The District Court noted that even though “the claims brought here are distinct from those brought in Steele I and may require analysis of some issues not addressed in Steele I,” the claim preclusion doctrine “bars litigation of claims that could have been brought in the prior lawsuit, not just claims that were actually articulated.” (A569 (emphasis added).) Accordingly, the District Court concluded that “[a]lthough all of the issues raised here may not have been litigated in Steele I, they could have been and, therefore, Steele’s claims are barred by res judicata.”

(Id.)⁵

As to the third claim preclusion factor, the District Court found that this element was “clearly satisfied”:

Claim preclusion applies so long as a new defendant is “closely related to a defendant from the original action”. . . . Eight defendants were named in both Steele I and Steele III. Steele alleges that the new defendants added in Steele III are directors, managers, employees or affiliates of or acting in concert with the defendants named in Steele I. The Court finds that those affiliations constitute sufficiently close relationships to warrant the application of claim preclusion. See In re El San Juan Hotel Corp., 841 F.2d 6, 10-11 (1st Cir. 1988).

(A569-70.)

⁵ Appellees submitted to the District Court a chart that compares side-by-side numerous allegations in Steele I and Steele III. (A138-43.) As that chart demonstrates, many of the allegations in the Complaint in this action are virtually identical to those asserted in Steele’s first lawsuit.

In sum, as the District Court correctly concluded, the claim-preclusion elements are clearly satisfied here and justify dismissal. Additional legal authorities supporting the District Court's reasoning are set forth in further detail in the Appellees' briefs filed in the District Court in support of their motion to dismiss, copies of which are included in the Joint Appendix at pages A113-49, A260-65, and A430-35.⁶

C. Steele Concedes That The Claims In This Case Could Have Been Raised In Steele I

In his Appellant's Brief, Steele affirmatively acknowledges that the claims he asserted in this case could have been alleged in Steele I:

Steele filed Steele III precisely because the District Court failed to address reproduction in Steele I and because his appeal on this issue remained pending as the possible limitations period approached. Any other course of action risked Steele losing the right to have his infringing reproduction claim -- properly raised in Steele I, appealed to this Court, and raised again in Steele III -- adjudicated at all.

(Appellant's Brief at 65 (emphasis omitted).) Comparable arguments are made throughout Appellant's Brief.⁷

⁶ Appellees recognize that Fed. R. App. P. 30(a)(2) provides that "[m]emoranda of law in the district court should not be included in the appendix unless they have independent relevance." Nevertheless, Steele designated those documents (and virtually every other document filed in the District Court) for inclusion in the Joint Appendix filed in this appeal.

⁷ See, e.g., Appellant's Brief at 67 ("The District Court's failure to consider Steele's categorical claim of 'copying' during Steele I was the exact reason for Steele's filing of Steele III, i.e., to have his claim of 'copying' -- ignored by the

These concessions both (i) confirm that the District Court properly granted the Defendants' motion to dismiss and (ii) are dispositive of this appeal.

D. The District Court Also Considered -- And Correctly Gave No Weight To -- Steele's "Fraud On The Court" Argument

The District Court also considered Steele's "conten[tion] that the defendants committed fraud on the Court" and "numerous allegations of misconduct by the defendants and their attorneys." (May 18, 2011 Order at A570.)

Court in Steele I -- finally heard." (emphasis in original)); id. at 71 ("Steele III is based entirely on those elements alleged by Steele yet not determined by Steele I" (emphasis in original)); id. at 14 ("Of particular significance to this appeal, Steele repeatedly alleged illegal copying -- by reproduction -- of the Steele Song repeatedly during Steele I."); id. at 15 ("Accordingly, the Steele I District Court failed to address -- hence failed to adjudicate -- Steele I's claim of infringing reproduction."); id. at 28 ("Steele specifically alleged illegal copying -- by reproduction -- of the Steele Song during Steele I."); id. at 42 ("As noted, Steele, did allege 'copyright infringement based on unauthorized copying' during Steele I"); id. at 45 ("Steele III alleged only facts and claims that the District Court ordered excluded from consideration in Steele I, despite Steele's attempts to have those claims heard during Steele I." (emphasis in original)); id. at 54-55 ("Defendants, however, successfully misled -- 'duped' -- in their words, [] the [Steele I] District Court into creating an incorrect legal framework that excluded Steele's allegations of 'infringing reproduction' through illegal copying from consideration."); id. at 62 ("Once defendants succeeded in Steele I -- both as to convincing the District Court to ignore Steele's claim of infringing reproduction and at summary judgment . . ."); id. at 65 ("Steele, pro se, claimed infringing reproduction in Steele I, but was ignored by the District Court, which adopted Skadden's hard-pressed legal framework of a substantial similarity-only determination.").

Steele raises many of those same specious, graphically described “fraud on the court” allegations in his Appellant’s Brief in this Court.⁸

The purported fraud relates to two issues: (1) alleged technical defects in corporate disclosure statements and (2) with respect to a copyrighted work, the alleged addition of lead-in “dead” time and removal of a copyright notice at the end. In dismissing Steele III, the District Court -- which, notably, is the Court that Steele contends the Defendants misled -- summarily disposed of those arguments. (See A570-71.) This Court should likewise conclude that Steele’s “fraud on the court” argument is baseless.⁹

⁸ See, e.g., Appellant’s Brief at 8 (“Steele’s opponents executed a shameless, dishonest, and reprehensible scheme spanning all of his cases, committing fraud on the courts of this circuit at a literally unprecedented level (no published case even comes close).” (emphasis in original)); id. at 10 (“Steele presented the Court with undisputed evidence of Appellees’ unprecedented fraud on the court and abusive tactics during [Steele I] that corrupted the entire proceedings of that case and [led] to flawed discovery and procedural orders and, ultimately, a decision spawned from the poison of Appellees’ offensive and reprehensible tactics in that case.”); id. at 43 (“Defendants’ [sic] continued their ways during Steele III, committing fraud on the court during the Steele III District Court proceedings.” (emphasis in original)); id. at 52 (“fraud on the court is now the primary issue before this Court”).

⁹ Steele is unnecessarily strident in his harsh language directed at the District Court, complaining that the District Court Judge’s “abstention in the face of hard facts indicating fraud occurring before its eyes was an abuse of discretion, if not a dereliction of its duties as a member of the federal judiciary.” (Appellant’s Brief at 49; see also id. at 48-49: “Armed with this information and Steele’s repeated cries for help, the District Court did nothing to protect itself, the integrity of the judiciary, or Steele.” (emphasis in original).) Steele goes so far as to request that

E. This Court Also May Affirm The District Court’s Decision For Any Reason Made Manifest By The Record

This Court also may affirm the District Court decision “on any independently sufficient ground made manifest by the record.” Hodgens v. Gen. Dynamics Corp., 144 F.3d 151, 173 (1st Cir. 1998) (internal quotation marks omitted). For example, the District Court’s order of dismissal also should be affirmed as to Appellees Anthony Ricigliano, Donato Music Services, Inc., Brett Langefels and Craig Barry because the District Court lacks personal jurisdiction over those Appellees. (See Motion To Dismiss The Verified Complaint at A283-96.)

F. The District Court Correctly Imposed Rule 11 Sanctions On Steele And Hunt And Any Argument To The Contrary Has Been Waived

In his brief, Steele does not even contend that the District Court’s May 18, 2011 Order imposing Rule 11 sanctions against Steele and Hunt was erroneous. Indeed, the “Statement Of The Issues Presented For Review” section of Steele’s Appellant’s Brief does not reference any issues concerning Rule 11. (Appellant’s Brief at 10-11.) Likewise, this issue is notably absent from Steele’s nearly 80 page brief.¹⁰

this Court order that “upon remand, a Master be appointed to oversee discovery and otherwise oversee the case and assist the District Court.” (Id. at 76.)

¹⁰ Steele was unquestionably aware of his opportunity to seek appellate review of the District Court’s order imposing Rule 11 sanctions, as he expressly sought

As this Court has held repeatedly, all arguments that have not been briefed and developed on appeal are deemed abandoned. See, e.g., SEC v. Tambone, 597 F.3d 436, 450 (1st. Cir. 2010) (en banc) (holding that appellant’s argument “unveiled for the first time in its reply brief” was waived and would not be considered by this Court); United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (holding that “a litigant has an obligation to spell out its arguments squarely and distinctly, or else forever hold its peace” (internal quotation marks omitted)).¹¹ Accordingly, the District Court’s imposition of Rule 11 sanctions against Steele and Hunt is not at issue on this appeal.

In any event, the District Court’s imposition of sanctions was a proper exercise of discretion. Given Steele’s and Hunt’s harassing tactics in the “proliferating” Steele lawsuits, and the extreme waste of judicial and defendant resources that those lawsuits have caused, the admonishments the District Court imposed were exceptionally reasonable (and perhaps too lenient a sanction in light of the extensive record of vexatious conduct).

review of a similar order in his Steele II appeal. (See Steele II Appeal Opening Brief at 16, 85 (“Did the District Court err in allowing Appellees’ motion for Rule 11 sanctions . . .”).)

¹¹ Steele also was unquestionably aware of this maxim of appellate procedure -- and these specific First Circuit authorities -- as they were repeatedly cited in prior briefs several Appellees herein have filed in this Court in response to Steele’s prior appeals. (E.g., Steele I First Appeal, Appellees’ Brief at 42.)

**II. THIS COURT SHOULD SUMMARILY
AFFIRM THE DISTRICT COURT'S DECISION**

This Court is authorized to summarily affirm the District Court's decision where it "clearly appear[s] that no substantial question is presented." 1st Cir. R. 27.0(c); Tracy v. Winfrey, No. 07-1630, 2008 WL 2357943, at *2 (1st Cir. June 11, 2008) (summarily affirming a district court decision granting defendants' motion to dismiss plaintiffs' claims for copyright infringement, misappropriation of trade secrets, and fraud). In light of the District Court's application of long-established Supreme Court and First Circuit claim preclusion precedent, as well as the "frivolous" nature of this lawsuit and the unjustifiable burden in time and costs imposed on Appellees herein, this Court should summarily affirm the District Court's decision and begin to put an end to these cases.

CONCLUSION

For the foregoing reasons, the District Court’s May 18, 2011 Order should be summarily affirmed in its entirety pursuant to First Circuit Rule 27.0(c) because it “clearly appear[s] that no substantial question is presented.”

Dated: September 12, 2011
Boston, Massachusetts

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christopher G. Clark, hereby certify that on September 12, 2011, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system: Christopher A.D. Hunt, The Hunt Law Firm LLC, 10 Heron Lane, Hopedale, Massachusetts 01747, cadhunt@earthlink.net, counsel of record for Plaintiff-Appellant Samuel Bartley Steele.

Dated: September 12, 2011

/s/ Christopher G. Clark
Christopher G. Clark