

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
SAMUEL BARTLEY STEELE)	
Plaintiff)	No. 10-11458-NMG
v.)	
)	
ANTHONY RICIGLIANO et al.,)	
Defendants)	
_____)	

**PLAINTIFF’S OPPOSITION TO THE MOVING DEFENDANTS’ MOTION TO
DISMISS AND FOR OTHER RELIEF**

Plaintiff Samuel Bartley Steele Opposes the Moving Defendants’ Motion to Dismiss and for Other Relief ("Defendants’ Motion") on the following grounds.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Steele asserts four independently sufficient bases for denying Defendants’ Motion.

1. Judicial Estoppel: Defendants’ Motion takes a position that is "clearly inconsistent" with their position in Steele I, which Defendants had succeeded in persuading this Court to adopt, and from which now Defendants "would derive an unfair advantage or impose an unfair detriment" on Steele if not estopped. See New Hampshire v. Maine, 532 U.S. 742, 750-751 (2001) (New Hampshire estopped from asserting terms defining maritime boundary inconsistent with terms to which it had previously agreed).

2. Steele III Alleges ONLY Facts and Issues NOT Litigated or Adjudicated in Steele I: This case – Steele III – will, by its terms and its statutory cause of action, litigate only those

facts and issues not litigated or adjudicated in Steele I. No facts, issues of law, or rulings from Steele I will be “re-litigated” in Steele III.

3. Steele III's Claim was Not, and Could Not Have Been, Litigated In Steele I: Steele I, filed October 8, 2008, arose from Steele's earlier-filed Performing Arts ("PA") copyright registration of Steele's musical composition and lyrics "Man (I Really) Love This Town" ("Steele work"). Steele III, on the other hand, arises from Steele's Sound Recording ("SR") copyright registration, which occurred on November 23, 2009, and over which this Court had no jurisdiction when Steele I was filed. Steele III could not have been brought on October 8, 2008, as the Court implicitly recognized in its April 3, 2009 Order.

4. Fraud on the Court: Defendants committed fraud on the Court in Steele I. Accordingly, enforcement thereof is "manifestly unconscionable" and Defendants may not now "tak[e] any benefit whatever from it." See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244-45 (1944).

Finally, Steele addresses several collateral issues raised by Defendants, including their request for stay of Steele III as an alternative remedy and their request for sanctions and attorneys' fees.

II. ARGUMENT

1. Defendants are Judicially Estopped from Asserting Position Clearly Inconsistent with Position in Steele I to Impose Unfair Detriment to Steele in Steele III

In Steele I Defendants successfully framed - and thereby limited - the issue before the Court as “substantial similarity.” Defendants, for dispositive motions purposes, conceded facts unrelated to substantial similarity - *i.e.*, *copying as a factual matter and access* - to increase their chances at

summary judgment. The Court's orders explicitly limited the litigation of Steele I in its entirety - from Defendants' motions to dismiss, through discovery, and in its final judgment - to substantial similarity.

In Steele III, on the other hand, the *only facts at issue are factual copying and access*, that is, exact reproduction, the exact issues Defendants' waived – and the Court excluded - to drastically limit the scope of Steele I and, eventually, to win at summary judgment.

Inherent in, and necessary to, Defendants' claim preclusion argument in Steele III is Defendants' position that access and factual copying were adjudicated in Steele I, a position “clearly inconsistent” with their position in Steele I, that access and factually copying could be - and were - safely ignored.

Without good cause, a party may not “gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory... [or] because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” See New Hampshire v. Maine, 532 U.S. at 749.

Judicial estoppel applies where a “party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create ‘the perception that either the first or the second court was misled.’” See Id. at 750 (citation omitted).

Courts typically consider three factors when applying judicial estoppel:

First, a party's later position must be “clearly inconsistent” with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position... A third consideration is whether the party seeking to assert an

inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

See Id. at 750-51 (citations omitted).

Judicial estoppel is an equitable doctrine applied at the Court's discretion to prevent the "improper use of judicial machinery." See Id. at 742.

Defendants' Position and Persuasion of the Court in Steele I:

In Steele I, Defendants consistently and repeatedly argued throughout that access and copying were irrelevant, beginning with their very first appearances:

"Applying these [legal] standards to the case at bar – regardless of whether copying is assumed for the purposes of this motion – the Complaint fails to state a cognizable copyright claim..."¹

"Neither access nor copying...can salvage a copyright infringement claim if the works at issue are not substantially similar."²

"Defendants... have assumed access solely for the purpose of their pending motion to dismiss. Should this lawsuit not be dismissed, the factual contentions concerning Defendants' purported "access" to the Steele Song, as well as actual copying, will be vigorously disputed."³

¹ See Defendants' Motion to Dismiss Steele I of December 8, 2008 at 8 (Docket No. 18). (emphasis supplied).

² See Defendants' Motion to Dismiss Steele I Amended Complaint of February 18, 2009 at 8, n.8 (Docket No. 49) (emphasis supplied).

³ See Defendants' Reply to Opposition to Motion to Dismiss Steele I of May 18, 2009 at 3, n.3 (Docket No. 90) (citation omitted).

“In [the instant case], Plaintiffs have alleged copying of portions of a musical composition, not digital sampling of portions of sound recordings.”⁴

“As the Court noted, there can be no copyright infringement in the absence of a showing of substantial similarity, and thus other issues such as access and copying need not be addressed for there to be a complete disposition of the matter.”⁵

“[The issues of access and copying] are not before the Court.”⁶

The Court’s Rulings in Steele I:

The Court limited the scope of Steele I to the issue of substantial similarity. See Memorandum & Order of April 3, 2009 at 12.⁷ The Court's April 3, 2009 Order was very clear, emphasizing that access and copying were forbidden territory. See Id.⁸ As expected, in its final judgment on August 19, 2009, the Court analyzed Steele’s infringement claims in terms of substantial similarity with no mention of access or factual copying. See Memorandum and Order of August 19, 2009.

⁴ See Defendants’ Reply to Opposition to Motion to Dismiss Steele I of May 18, 2009 at 3, n.4 (Docket No. 90) (emphasis supplied).

⁵ See Defendants’ Motion for Summary Judgment of Steele I of June 10, 2009 at 2 (Docket No. 93) (emphasis supplied).

⁶ See Defendants’ Reply to Opposition to Motion For Summary Judgment of Steele I of July 29, 2009 at 4, n.3 (Docket No. 102-2) (emphasis supplied).

⁷ The Order stated: “This Court concludes that the most prudent course of action is to permit, at this stage, limited discovery on the issue of substantial similarity. Upon completion of that discovery the Court will entertain motions for summary judgment on that specific issue and proceed (of not proceed) accordingly.” See Court Memorandum & Order of April 3, 2009 at 12.

⁸ “It is worth reiterating that discovery is to be restricted to the issue of substantial similarity and the parties will not be permitted to engage in discovery relevant to other aspects of the case, including, without limitation, who had access to Steele’s copyrighted work or when or who was responsible for the creation of the allegedly infringing works. Steele may offer, by affidavit, expert analysis of his work or the infringing work as deemed necessary and the Court will consider such analysis in making the substantial similarity determination.” See Id.

Defendants' "Clearly Inconsistent" Position in Steele III:

Defendants' cry of claim preclusion asserts, by implication, the prior adjudication of Steele III's claims - *access and factually copying* - in Steele I. However, not only is this incorrect as a matter of fact and law, Defendants' position in Steele I, that access and factual copying were irrelevant in that case, is "clearly inconsistent" with their current position that Steele III is now precluded because access and factual copying were not only relevant in Steele I, but that the Court in Steele I actually *adjudicated* the heretofore irrelevant and ignored issues of access and factual copying.

Defendants may not first assert a position in one case - conceding facts to narrow issues and obtain a favorable judgment - then, in another case, argue the exact opposite position to shield themselves from their prior position, i.e., that the prior favorable judgment *was* based on the facts they successfully removed from consideration in the first case. See New Hampshire v. Maine, 532 U.S. at 749.

Judicial estoppel is particularly appropriate where, as here, Defendants' "interests have changed" between Steele I and Steele III and their inconsistent position is "to the prejudice of the party who has acquiesced in the position formerly taken by him." See Id. Moreover, "[Defendants] succeeded in persuading [this] court to accept [Defendants'] earlier position, so that judicial acceptance of [Defendants'] inconsistent position in [Steele III] would create 'the perception that either the first or the second court was misled.'" See Id. at 750

2. *Mutually Exclusive "Operative Facts:"*

This Court's August 19, 2009 Memorandum and Order ("Steele I Order") on Defendants' Motion for Summary Judgment ruled that the works before it were not substantially similar. See

Memorandum & Order of August 19, 2009. By its terms - and consistent with the Court's rulings at the March 31, 2009 hearing and following April 3, 2009 Order - the Steele I Order did not adjudicate or enter final judgment as to "access and copying" (i.e., infringement by exact reproduction). See Id.

As Defendants point out, the "long-established doctrine of claim preclusion" bars relitigation of claims that were or could have been made in an earlier suit. See Defendants' Motion at 7, citing Airframe Systems, Inc. v. Raytheon Co., 601 F.3d 9, 14 (1st Cir. 2010) ("plaintiff had every opportunity to fully litigate its various claims against the full range of defendants in an earlier suit and made the strategic choice not to do so").

Steele III is based *entirely* on those elements *not determined* the Steele I Order: access and factual copying. The *entire* "nucleus of operative facts" in Steele III - access and factual copying - implicates facts and issues intentionally and specifically neither litigated nor ruled upon in Steele I. Accordingly Steele III will in no way overlap, duplicate, or relitigate issues of fact or matters of law litigated or determined in Steele I. See Airframe 601 F.3d at 14.

Steele III alleges infringement by exact reproduction of Steele's sound recording - shown by access and factual copying - pursuant to 17 U.S.C. § 114 ("Scope of Exclusive Rights in Sound Recordings"):

200. Each defendant named herein directly infringed Steele's exclusive rights in the Steele Team Song sound recording by reproducing the Steele Team Song sound recording without Steele's permission by sending, forwarding, or otherwise transmitting by e-mail or internet, or by copying or downloading by digital means, or otherwise illegally copying, the Steele Team Song sound recording before and during the pre-production and production of the MLB Audiovisual.

See Steele III Complaint, ¶ 200.

Accordingly, the exact facts conceded for argument by defendants, barred from discovery by this Court's Order of April 3, 2009, and not part of the Court's August 19, 2009 Summary Judgment Order in Steele I are the only facts at issue in Steele III. Thus, this Court's final judgment in Steele I does not, given its limited scope, preclude Steele III, which alleges only facts and legal claims specifically excluded from the Court's final judgment in Steele I.

The First Circuit's "transactional approach" defines claims as arising from "all or any part of the transaction, or series of connected transactions, out of which the action arose." See Airframe, 601 F.3d at 15. The cause of action, or common nucleus of operative facts, is determined by the (1) facts' relation in time, space, origin or motivation, (2) whether they are convenient as a trial unit, and (3) whether such treatment conforms to parties' expectations. See Id.

Here, the operative facts of reproduction - Steele III - as compared to the operative facts of substantial similarity - Steele I - are not related in time or space. See Airframe, 601 F.3d at 14.

The temporal facts relevant to Steele III's illegal reproduction range from in October 2004 with Defendant Red Sox's admitted receipt of Steele's sound recording up through August 2007 with the completion of the MLB Audiovisual. The infringing reproductions occurred during that nearly three-year period in which the pre-production and production of the MLB Audiovisual took place. See Steele III Complaint, ¶200.

Facts relating to substantial similarity in Steele I, on the other hand, do not occur until the facts relating to reproduction are over, i.e., August, 2007, after preproduction and production of the

MLB Audiovisual, with which the Steele Song was compared in Steele I, as part of the Court's substantial similarity analysis.

As to geography of facts, Steele III's claim of infringing reproduction began in Boston and likely spread to Atlanta, Nashville, and New York, at a minimum. See Steele III Complaint.⁹ Conversely, location was irrelevant in determining substantial similarity in Steele I.

Defendants' reliance on Airframe is misplaced. Plaintiff in Airframe failed to state a claim, failed to amend his complaint, and withheld his claim as a “calculated tactical decision” in order to “mere[ly] shift...evidence offered to support a ground held unproved in a prior action.” See Airframe, 601 F.3d at 16. Steele withheld nothing: Steele I alleged reproduction, as well as illegal derivation and violation of his synch rights in defendants' creation of the MLB Audiovisual. See Steele Complaint of October 8, 2008 (Docket No. 1) at ¶¶ 16, 29, 32; Steele's Opposition to Motion to Dismiss of January 30, 2009 at ¶¶ 1, 2, 6, 8, 11, 13, 16, 18, 20; Steele's Opposition to Summary Judgment of July 17, 2009 (Docket No. 101) at 3, 5-6.

Nor has Steele's underlying theory for Steele I or Steele III varied. As this Court noted in Steele I: “Steele contends the [the MLB Audiovisual] was unlawfully derived from his work through a method called “temp tracking”... the use of a song as a template to create an audiovisual work which, in turn, is used to create a final soundtrack.” See Memorandum & Order of August 19, 2009 (Docket No. 104) at 3 (emphasis supplied).

⁹ Defendant Red Sox admitted receipt in Boston; Turner Studios, which edited the MLB Audiovisual, is in Atlanta, as is Turner Sports; MLBAM is located in New York.

More to the point, unlike in Airframe, the facts of “access” and “actual copying” (i.e., creation of the MLB Audiovisual and Bon Jovi audio works) were neither “vigorously disputed” nor “held unproved in [Steele I].” See Airframe, 601 F.3d at 16. Claim preclusion protects parties against gamesmanship and claim-splitting, spares judicial resources, and promotes consistency in the courts. See Id. at 14. These protections apply to Steele as well as Defendants. Steele III's claim of unlawful digital reproduction of his sound recording should not be precluded by this Court's ruling on plagiarism and synchronization of his composition Steele I.

Finally, given the mutually exclusive facts and issues of Steele I and Steele III, and with the policy behind claim preclusion in mind, Steele III will not relitigate previously determined claims, the Court will not expend unnecessary judicial resources determining facts and issues left unresolved from Steele I, and because the Steele III cause of action arises solely from Steele's exclusive right to reproduce his sound recording, pursuant to 17 U.S.C. §114, this Court runs no risk of rendering inconsistent decisions.

3. Steele's Claim in III Was Not, and Could Not Have Been, Brought in Steele I

When Steele I was filed, Steele did not and could not have brought his Steele III claim of digital reproduction of his sound recording pursuant to 17 U.S.C. §114. In fact, the Court in Steele I would not have allowed the claim because it would have lacked subject matter jurisdiction over such a claim. Steele I therefore – on clear jurisdictional grounds - has no preclusive effect over Steele III.

The Copyright Act grants authors exclusive rights to, among other things, reproduce “exact copies” of their original work and to create “derivative works” based upon the original. See Coquico,

Inc., v. Rodriguez-Miranda, 562 F.3d 62, 66 (1st Cir. 2009). See 17 U.S.C. § 106 (1), (2). A copyrighted musical work may be infringed by exact reproduction of a sound recording or plagiarism of the musical composition. See Johnson v. Gordon, 409 F.3d 12, 14, 26 n.8 (1st Cir. 2005) (citation omitted); see also 17 U.S.C. § 114 (“Scope of exclusive rights in sound recordings”).

“Sound recordings’ are works that result from the fixation of a series of musical, spoken, or other sounds.” See 17 U.S.C. § 101. Sound recordings are independent works of authorship with distinct copyrights. See Johnson v. Gordon, 409 F.3d 12, 26 n.8 (1st Cir. 2005). See 17 U.S.C. §102(7).

As to infringing reproduction of sound recordings, copying as “factual matter” is determinative of infringement. See H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. at 106 (1976) (“[I]nfringement takes place whenever all or any substantial portion of the actual sounds that go to make up a copyrighted sound recording are reproduced.”)

“An exception to [the substantial similarity] principle, applicable to the reproduction of copyrighted sound recordings, is specified in section 114.” See Id. at 61. See also Bridgeport Music, Inc. v. Dimension Films, et al., 410 F.3d 792 (6th Cir. 2005) (“The analysis that is appropriate for determining infringement of a musical composition copyright is not the analysis that is to be applied to determine infringement of a sound recording.”).

As the Six Circuit stated in Bridgeport:

In most copyright actions, the issue is whether the infringing work is substantially similar to the original work....The scope of inquiry is much narrower when the work in question is a sound recording. The only issue is whether the actual sound recording has been used without authorization. Substantial similarity is not an issue...

See Id. at 798 n.6 (citation omitted).

Infringement of a sound recording copyright is an independent cause of action. See 17 U.S.C. § 501 (“The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right.”); See also Pharmacy Records v. Nassar, 248 F.R.D. 507, 526 (E.D.Mich. 2008) (“In [Bridgeport] the Sixth Circuit drew clear and explicit distinctions between musical composition copyright infringement claims and sound recording infringement claims.”); Bouchat v. Bon-Ton Dept. Stores, Inc., 506 F.3d 315, 332 (4th Cir. 2007) (Niemeyer, J., concurring) (an author has the right to institute an action for each infringement of each exclusive right, but warning against “subatomic” claim splitting).

As to methods of infringing reproduction, the unauthorized digital reproduction – whether by e-mail or internet or digital download – constitutes copyright infringement. See Universal City Studios Productions LLLP v. Bigwood, 441 F.Supp.2d 185, 190-191 (D.Mass. 2006) (“downloading copyrighted media files ‘infringe[s] Plaintiffs’ rights of reproduction’ and constitutes direct copyright infringement”); See also Sony BMG Music Entertainment v. Tenenbaum, 672 F.Supp.2d 217 (D.Mass. 2009) (citing “robust” “equities in copyright,” Court held digital file transfers infringed sound recording reproduction rights) (citing A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1014 (9th Cir. 2001) (“[unauthorized parties] who download files containing copyrighted music violate plaintiffs’ reproduction rights”). Unauthorized digital reproduction via email or digital download constitutes whole, exact copying. See Id. (“file transfer necessarily ‘involves copying the entirety of the copyrighted work.’”).

Steele registered his sound recording – the subject work of Steele III - with the United States Copyright Office on November 23, 2009. As this Court noted in Steele I (in a different context) in its April 3, 2009 Order, Steele could only maintain an action for works he had registered or preregistered with the copyright office, such registration being a jurisdictional prerequisite for any infringement action. See April 3, 2009 Order, citing 17 U.S.C. § 411(a).¹⁰

Accordingly, Steele could not, as a jurisdictional matter, have maintained a §114 claim in Steele I. While Steele I did assert infringement by reproduction - the reproduction right coexists under both §106 and §114 - the issue was, in any event, explicitly excluded from adjudication in Steele I, as detailed above.

In sum, Steele has not had his "day in court" legally, factually, or otherwise with respect to his claim of infringing reproduction. As a factual matter, the issue was excluded entirely from consideration in Steele I; as a legal matter, Steele III is Steele's first and only claim pursuant to 17 U.S.C. §114 seeking to enforce his exclusive right to reproduction thereunder. Preclusion of Steele III's infringing reproduction claim – never having been litigated or adjudicated - would be grossly unjust and inconsistent with claim preclusion principles as well as basic notions of due process, justice, and fair play.

4. Fraud on the Court:

Defendants' acts constituting fraud on the Court have been briefed in detail in Steele's

¹⁰ On March 2, 2010, the Supreme Court held that 411(a)'s registration requirement was not a jurisdictional prerequisite. See Reed Elsevier, Inc. v. Muchnick, 130 S.Ct. 1237 (2010). Nonetheless, it was in 2008 when Steele I was filed - or at least the vast majority of Federal Courts agreed with this Court in so interpreting §411(a).

motions, memoranda, and replies filed in Steele I relating to Steele's Motions for Default as to Major League Baseball Advanced Media, L.P. ("MLBAM") and Vector Management ("Vector"). In addition, on September 16, 2010, Defendants filed a "Notice of Recent Activity" in the instant case (Docket Entry #9), which attached, as Exhibit A, a copy of Steele's September 15, 2010 Motion for Sanctions filed with the First Circuit in connection with the pending appeal (09-2571, 1st Cir., Pending) of Steele I.

Exhibit A to Docket #9 in this case, Defendants' "Notice of Recent Activity," summarizes the currently known extent of Defendants' fraud and misconduct in this Court and in the First Circuit.

Long-standing Supreme Court law holds that fraud on the court impeaches the judgment obtained by such fraud. See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244-45 (1944).

Where a judgment is fraudulently obtained or otherwise infected with fraud, the Court – this Court – has the inherent authority to, among other things, set aside the judgment or limit or disregard the judgment's preclusive effect. See Chambers v. NASCO, Inc., 501 U.S. 32, 44, 111 S.Ct. 2123 (1991) (courts have a "historic power of equity to set aside fraudulently begotten judgments"); Simon v. Navon, 116 F.3d 1, 6 (1st Cir. 1997) ("the power of a court to set aside a judgment for fraud upon the court is not limited by [Rule 60]"); George P. Reintjes Co., Inc. v. Riley Stoker Corp., 71 F.3d 44, 47 (1st Cir. 1995) ("under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry"); Tri-Cran, Inc., v. Fallon (In re Tri-Cran, Inc.), 98 B.R. 609, 616 (Bankr.D.Mass. 1989) ("Where a

judgment is obtained by fraud perpetrated by an attorney acting as an officer of the court, the judgment may be attacked for fraud on the court.”); Medina v. Chase Manhattan Bank, N.A., 737 F.2d 140, 144 (1st Cir. 1984) (a judgment may lose its preclusive effect in the presence of fraud); Boston Regional Medical Center, Inc., v. Reynolds, 2004 WL 1778881 at 5 (D.Mass.) (unpublished) (“When a fraud on the court is found, the array of remedies available to redress the harm is extensive and would not preclude the undoing of the res judicata effect of a prior judgment.”).

5. *Other Issues*

Defendants' Motion devotes all but three and a half pages to issues unrelated to the legal basis - claim preclusion - asserted for their Motion. For the most part, Defendants attempt to paint a surreal picture of "Steele and Hunt" running amok, manipulating the innocent and hapless Defendants and their counsel, Skadden Arps. Defendants' fictional short story also implicitly questions the judicial system's ability to sift the wheat from chaff. As I was taught in law school, for an argument to have anything to stand on, it must first pass the "laugh test." Theirs does not.

Steele briefly addresses Defendants' additional "issues" below.

Defendants' Motion to Deny Steele's Request to Proceed *in forma pauperis* is moot.

Defendants' Request for a stay of Steele III as an alternative remedy was, until September 4, 2010, seriously considered - in fact provisionally agreed to (on more limited terms) - by the undersigned on August 31, 2010. However, Defendants' initial *quid pro quo* terms to enter into a proposed stipulation grew to the point where Steele had to reject it - as was Defendants' plan. See September 4, 2010 Letter to Clark, attached as Exhibit 1. Defendants' Motion to Dismiss should be

denied outright. If the Court orders a stay, however, Steele requests only that the stay be fair to both sides, namely that all parties to Steele III are subject to the stay, including all defendants (not just the “Moving Defendants”), and that the stay remain in place only until the First Circuit makes its determination on the appeal of Steele I (No. 09-2571).

Defendants' request for an order preventing "Steele or Hunt"¹¹ from filing "new" claims or motions should be seen for what it is - beyond its plain language improperly seeking to limit Steele's prospective legal rights – that is, further evidence of Defendants' guilt. Steele has uncovered Defendants' well-concealed misconduct during Steele I slowly, and has warned Defendants, beginning with the undersigned's June 28, 2010 Letter to Defendants' Lead Counsel, Clifford Sloan, that Steele believed additional misconduct was still being concealed and was likely to be uncovered at some point. A copy of that letter is attached as Exhibit 2. Indeed, a short time thereafter, Steele discovered Vector Management's willful default and simultaneous voluntary appearance of the until-then unknown entity "Vector 2 LLC" as its proxy. See Steele's Motion for Default as to Vector Management in Steele I.

Defendants' baseless request for sanctions against the undersigned for "multiplying the proceedings" is a perversion: it was Defendants' own misconduct, fraud on the court, and abuse of the pro se Steele in Steele I that brought about the complained-of motions and actions since filed by Steele - now with counsel. Defendants' framing of Steele's efforts to undo or otherwise redress

¹¹ Steele, of course, has not filed anything *pro se* since retaining the undersigned. Nor has the undersigned filed anything other than on Steele's behalf. The disjunctive is used to magnify the non-existing “threat” from “Steele and/or Hunt.”

Defendants' egregious conduct in Steele I as "multiplying the proceedings" has it exactly backwards: Steele is seeking merely to have (not multiply) the fair proceedings denied him by Defendants' chicanery.

Significantly, this is Defendants' fifth baseless request or motion for sanctions since June 30, 2010.¹² Defendants have apparently stopped arguing the merits, other than in passing reference, and are engaged in an all-out effort to beat back "Steele and Hunt" through intimidation and scare tactics. Defendants' request for fees and costs - Skadden's fees and costs - from Steele is, frankly, sickening insofar as it attempts to leverage Steele's known dire financial straits into their increasingly aggressive and bad faith attempts to "win at all costs" without regard to the merits or, indeed, without a sense of decency.

It is a sad irony - in the very sad state of affairs between the litigants - that all of Steele's post-Steele I filings were the direct result of Defendants' own misconduct in Steele I. Rather than concede an inch - much less correct a mile - Defendants have pursued a scorched earth policy, intending to simply run out the clock or - better - to run "Steele and Hunt" into the proverbial ground with their jaw-dropping recalcitrance and hubris.

As Defendants know by now, however, Steele does not respond to threats and will continue to pursue his claims - in good faith, as he has from the start - until they have been fully, fairly, and finally adjudicated.

¹² Steele's first and only request for sanctions was made last week to the First Circuit Court of Appeals.

A great man once said "bad news doesn't get any better with time; one should disclose, forthrightly, bad news at the earliest opportunity." The legal equivalent might be the wise directive often given by partners to new associates: "Virtually any mistake during litigation can be 'undone' with timely admission, appropriate humility, and - most importantly - corrective action."

Steele awaits, with patience, "corrective action," from Defendants or from the Court.

WHEREFORE, plaintiff Samuel Bartley Steele requests that the Moving Defendants' Motion to Dismiss and for Other Relief be denied.

Dated: September 20, 2010

Respectfully submitted,
Plaintiff Samuel Bartley Steele,
by his counsel,

/s/Christopher A.D. Hunt
Christopher A.D. Hunt
MA BBO# 634808
THE HUNT LAW FIRM LLC
10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
cadhunt@earthlink.net

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 20, 2010.

Dated: September 20, 2010

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

EXHIBIT 1

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

VIA E- MAIL AND FIRST CLASS MAIL

September 4, 2010

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

Re: Steele v. Ricigliano al., No: 10-11458

Dear Mr. Clark:

When you first called on August 31, 2010, to have a Rule 7.1 conference by telephone, as opposed to e-mail, I was pleasantly surprised. When you casually mentioned the possibility of a stipulation putting the above case, Steele III, in abeyance, pending the outcome of the appeal – 09-2571 – and pending motions in the same case’s District Court proceedings, I was even more surprised. It was a reasonable proposal, given that the First Circuit’s ruling certainly may affect proceedings in Steele III.

As a matter of fact, my client and I, earlier this summer, had even discussed approaching you to see if you would agree to exactly such an abeyance. Our thinking was that the two cases were, in fact, related and our preference was to file and consolidate Steele III with Steele I upon its remand. However, as the summer wore on, and August 27, 2010 approached, that is, three years after the MLB Audiovisual was released on MLB.com, we filed to preserve the claim as to any statute of limitations defense. This was a prudent precaution despite defendants’ earlier false assertion that the so-called “TBS Promo” was released by TBS on August 31, 2010 (in truth it was released by MLBAM on August 27, 2007) and despite the fact that my client did not discover the infringement until early October 2007.

I called my client and, as I expected, he was willing to give this idea a try. This – Steele’s willingness to negotiate, after months turning to years, of misrepresentations to him, to the Court, and dozens of other instances of inequitable conduct doled out by you and your firm to his detriment – was the “hallmark” of my client’s good faith, honesty, and fairness towards all since the outset of this case. Without hesitation, my client reminded me that he has *always* attempted to deal with you fairly and honestly – as the long record attests - and, despite the ugly treatment he received in return, he asked me to take a good look at what you were proposing.

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

Back to the present. The day after our call, on September 1, 2010, I received your letter, which, in a much sharper tone, added to the previous night's discussion the resolution of client's 17 U.S.C. § 1202 claim (Steele II) as another condition for lifting the Steele III abeyance. I'm sure you recall that during the previous night's conversation, in your "hey, were just talking casually here" tone, I first referenced Steele II, to which you replied "yeah, and we have that going on as well, do we really need to deal with all of these at once" or something to that effect. There was absolutely no suggestion whatsoever that Steele II would be part of any stipulation during that conversation – despite the clear opportunity to do so when I mentioned it.

And this was no small condition you asked me to contemplate; litigation of Steele II would certainly take months, at a minimum, possibly a year or longer, during which time I would have hamstrung my client from pursuing Steele III, while allowing the limitations period to run and being subject to defensive litigation from all but two defendants. And then there's the fact that Skadden – and you, personally – are defendants in Steele II.

Your additional and unilateral "condition" to the limited agreement we discussed the prior evening was an unwelcome surprise, to say the least. I began to sense that things may not be as they appear.

You may also recall that, the first thing I requested from you when we spoke on September 1, 2010 was assurance that you were either representing or otherwise had the authority to speak on behalf of all defendants and bind them to an abeyance of Steele III. You immediately told me that no, you did not, and that in fact the agreement would only be on behalf of defendants Red Sox and TBS. Of course I wondered – aloud, in fact – how only three parties could stay the entire case as to all parties. I pondered whether a Court order could even be crafted so as to toll the statute of limitations as to all parties, and you quickly replied (correctly, of course) that "the stipulation would not bind non-parties."

I left it at that, thought now I was a bit more suspicious, but I knew my client was willing to bend over backwards to act in good faith to any reasonable proposal, as he has throughout this litigation, and it was my duty to present him with defendants' – or rather, the Red Sox and TBS's - modified proposal.

So, at this point, my client's stay of his prosecution of Steele III would apply to all defendants whereas only the Red Sox and TBS would be obligated by the service and limitations tolling provisions and, indeed, the stay of the Steele III litigation. As I considered the "evolving" terms of your offer, my suspicion increased: first, why hadn't you mentioned these crucial "tidbits"

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

of information during the prior evening's discussion? In fact, you hadn't mentioned Steele II at all until I raised it, and then failed to disclose the soon-to-come additional demand; second, what incentive was there for my client to agree to stop proceedings against all defendants, yet allow all but two defendants to continue to litigate freely against him? Or not litigate and simply attempt to run out the statute of limitations – which is exactly what had prompted my question to you on September 1, 2010 as to the scope of your authority in the first place.

When I reasonably inquired as to whether you could nonetheless obtain the remaining defendants' assent to the abeyance – looking back, my naiveté is almost funny – you first said you weren't sure which ones you did or were going to represent in Steele III. When I reminded you that you had already represented many of them in Steele I and its appeal, you fell back to your usual “brush off:” it would take too long for you to get all the other defendants' assent.

Now, that was interesting, so I mentioned to you that I had, in the past, defended multiple large corporations (sometimes dozens) in a single action, and even at the small (compared to Skadden) firm where I worked, we had a communications procedure that allowed decisions to be made, or at least considered, fairly quickly. And based on defendants' litigation of this case to date, there does not seem to be a cumbersome decision process when it comes to actions on defendants' behalf, but rather only when defendants are asked in good faith for something in return.

In addition, given that you filed your motion to dismiss Steele III moments after we got off the phone, clearly some time had been put into its drafting. The papers even include a declaration of Anthony Ricigliano – who, to my knowledge, you have never represented. The limiting of the abeyance to only two defendants was, I began to realize, intentional; there would never be additional defendants subject to its terms because it was not part of your plan. Almost as an afterthought, I also realize now that there was no reason to rush to any of this given that Steele III was docketed just a week prior.

In the midst of these rapid-fire demands, I stated that it might make sense to apply the abeyance to defendants' Rule 11 Motions. You replied without hesitation, “I won't do that.” Of course, as it turned out, all concessions were to come from Steele; all demands from defendants (or just the Red Sox and TBS where it suited defendants).

But the best is yet to come. On September 1, 2010, you also added a rather bizarre demand that my client agree to not file additional motions in Steele I and not to file any additional suits during the abeyance. Now this was getting truly confusing. As I told you right off the bat, I did not see how I could, as an ethical matter, prospectively waive any rights my client may have relating to

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

future motions or claims. You had an answer at the ready: I could simply move for leave from the Court. In retrospect, given the slow but steady unearthing of valid and good faith claims arising from defendants' course of conduct against the *pro se* Steele in the District Court, it's hard not to wonder what else defendants may be hiding.

I left it at that, telling you that I had to run this all by my client. You "gave" me 45 minutes to get back to you, or you would go ahead and file the motion to dismiss. I scrambled to find and speak with my client, not realizing at the time that your threat was nonsense: you were filing the motion to dismiss regardless of whether we came to terms on a stipulation of abeyance.

Looking back, of course, this is all clear, and I blame myself for being victim to such a transparent and clumsy "bait and switch." I mean think about it: Steele was to make enormous concessions for what, exactly? You were filing the motion regardless. In other words, for nothing.

Amazingly, however, Steele was not willing to reject your increasingly outrageous proposal. And so we waited to see how it looked on paper. How it looked, of course, was like a proposal designed to fail.

You had managed to draw me into discussions about a stipulation, but by the time the proposed agreement reached my desk yesterday it was patently obvious that this was nothing but a set-up. The terms as laid out in the proposed stipulation gave all benefits to defendants while giving nothing – in fact taking away rights from my client.

It would have been extremely ill-advised – if not malpractice – for me to agree to it. But if I didn't, you would have something to show the Court – any Court – down the road and argue "unclean hands!" It was a win/win for defendants and a catch-22 for my client. At least that was your plan.

If I had any lingering doubts about your motives, your letter of today dispelled them. Steele was, in fact, intending to make a reasonable counter-proposal along the lines of what we had discussed the evening of August 31, 2010, but your letter beat me to the punch. The most revealing part of which is, of course, your contrived indignation about Steele IV.

You knew about Steele IV before calling me on August 31, 2010. In fact, it was likely the impetus for the set-up. Chris – I'm sure you remember, but would rather forget – you slipped during our last conversation when discussing what claims Steele would be agreeing to not file. You said "state claims" during our back and forth and quickly changed the subject, as any good attorney

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

is trained to do. But I heard you, Chris, and when we hung up shortly thereafter I was left wondering just what was really going on.

But putting aside your verbal gaffe, we both know that Skadden monitors dockets in large exposure cases like these on behalf of their large corporate defendants – particularly during the approach of the first arguable date on which the limitations period would expire. The proof is in your own letter: you did learn about Steele IV – and not from me. How? When? Your letter implies – but of course does not directly state, because it not be true – that you just now found out about it and my failure to tell you is the “hallmark of bad faith.”

On the contrary, your letter simply confirms without question that this entire charade was nothing but a set-up to enable you to have something – anything – to argue bad faith on our part when defendants’ day of reckoning comes. As with altering the audiovisual evidence, willfully defaulting defendants to improperly conceal others, and a slew of other instances of egregious misconduct on your part, this too shall eventually be fully and fairly redressed by the Court. Your gambit, reeking of scandal and crafted in desperation, will be revealed for what it was: a dishonest and unscrupulous attempt to manufacture a record of a “bad faith” act on Steele’s and my part. Your failed hope was to provide a fig leaf for a “balancing the equities” argument when the Court finally takes you and your clients to task for the unconscionable way you have acted in this litigation.

No small irony that Steele IV is based on an equitable claim – and that you have used it to further your inequitable conduct.

Your ruse has not only failed, it has deepened your predicament.

I request that all substantive future communications with me be made in writing.

Very truly yours,



Christopher A.D. Hunt

cc: Cliff Sloan, Esq. (via e-mail only)
Matthew J. Matule, Esq. (via e-mail only)
Kenneth A. Plevan, Esq. (via e-mail only)

EXHIBIT 2

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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).

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.").

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.”

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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.

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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

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
Christopher A.D. Hunt (BBO# 634808)
THE HUNT LAW FIRM LLC
10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

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

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAMUEL BARTLEY STEELE,)
 BART STEELE PUBLISHING,)
 STEELE RECORDZ,)
)
 Plaintiffs)
)
 v.)
)
 TURNER BROADCASTING)
 SYSTEM, INC,)
 Et al,)
)
 Defendants.)

Civil Action No.
08-11727-NMG

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."

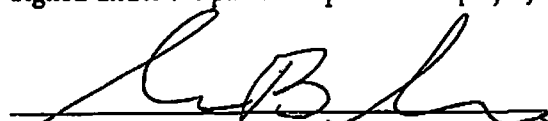
- aa. Plevan's May 19, 2009 letter to Attorney McCullough continued: "Here, we are dealing with a requirement that was and is easy to understand – responses to requests were due on May 7, 2009, and to date plaintiffs have ignored the requests."
- bb. Finally, Plevan's May 19, 2009 letter stated "please 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.

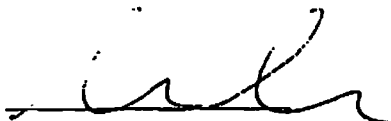
8) I cannot and do not blame this Court for its ruling. The defense, by untruthfully portraying me as an unreasonable Pro Se plaintiff, purposely misled the Court by claiming I did not extend a standard professional legal courtesy like 'consent' to file a motion (which defendants would do whether I consented 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

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