

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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 SAMUEL BARTLEY STEELE, :  
 :  
 Plaintiff, : Civil Action  
 v. : No. 10-11458-NMG  
 :  
 ANTHONY RICIGLIANO, BOB BOWMAN, BOSTON :  
 RED SOX BASEBALL CLUB LIMITED :  
 PARTNERSHIP, BRETT LANGEFELS, CRAIG BARRY, :  
 DONATO MUSIC SERVICES, INC., FENWAY SPORTS :  
 GROUP a/k/a FSG f/k/a New England Sports Enterprises :  
 LLC, JACK ROVNER, JAY ROURKE, JOHN :  
 BONGIOVI, individually and d/b/a Bon Jovi Publishing, :  
 JOHN W. HENRY, LAWRENCE LUCCHINO, MAJOR :  
 LEAGUE BASEBALL ADVANCED MEDIA, L.P., :  
 MAJOR LEAGUE BASEBALL PROPERTIES, INC., :  
 a/k/a and/or d/b/a Major League Baseball Productions, :  
 MARK SHIMMEL individually and d/b/a Mark Shimmel :  
 Music, MIKE DEE, NEW ENGLAND SPORTS :  
 ENTERPRISES LLC f/d/b/a Fenway Sports Group f/a/k/a :  
 FSG, RICHARD SAMBORA individually and d/b/a :  
 Aggressive Music, SAM KENNEDY, THOMAS C. :  
 WERNER, TIME WARNER INC., TURNER :  
 BROADCASTING SYSTEM, INC., TURNER SPORTS, :  
 INC., TURNER STUDIOS, INC., VECTOR :  
 MANAGEMENT LLC f/k/a and/or a/k/a and/or successor :  
 in interest to Vector Management, WILLIAM FALCON :  
 individually and d/b/a Pretty Blue Songs, :  
 Defendants. :  
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**DEFENDANTS ANTHONY RICIGLIANO,  
 DONATO MUSIC SERVICES, INC., BRETT LANGEFELS AND  
 CRAIG BARRY'S MOTION TO DISMISS THE VERIFIED COMPLAINT**

Pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Anthony Ricigliano, Donato Music Services, Inc., Brett Langefels, and Craig Barry (collectively, the "Rule 12(b)(2) Defendants") hereby move for an order dismissing the Verified Complaint with prejudice.

The grounds for this motion are set forth in the accompanying memorandum of law.

**LOCAL RULE 7.1 CERTIFICATION**

I, Christopher G. Clark, hereby certify that on November 5, 2010 I conferred with counsel for Plaintiff in a good faith attempt to resolve or narrow the issues herein but was unable to obtain the Plaintiff's assent to the specific relief requested in this motion.

Dated: November 5, 2010

/s/ Christopher G. Clark  
Christopher G. Clark

Dated: November 5, 2010  
Boston, Massachusetts

Respectfully submitted,

Of Counsel:

Kenneth A. Plevan  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036  
(212) 735-3000  
kplevan@skadden.com

/s/ Matthew J. Matule  
Matthew J. Matule (BBO #632075)  
Christopher G. Clark (BBO #663455)  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Beacon Street  
Boston, Massachusetts 02108  
(617) 573-4800  
mmatule@skadden.com  
cclark@skadden.com

Counsel for Defendants  
Anthony Ricigliano, Donato Music Services,  
Inc., Brett Langefels and Craig Barry

**CERTIFICATE OF SERVICE**

I, Christopher G. Clark, 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 November 5, 2010.

Dated: November 5, 2010

/s/ Christopher G. Clark  
Christopher G. Clark

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 MANAGEMENT LLC f/k/a and/or a/k/a and/or successor :  
 in interest to Vector Management, WILLIAM FALCON :  
 individually and d/b/a Pretty Blue Songs, :  
 Defendants. :  
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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS  
 ANTHONY RICIGLIANO, DONATO MUSIC SERVICES, INC., BRETT LANGEFELS  
 AND CRAIG BARRY'S MOTION TO DISMISS THE VERIFIED COMPLAINT**

Defendants Anthony Ricigliano, Donato Music Services, Inc., Brett Langefels and Craig Barry (collectively, the "Rule 12(b)(2) Defendants") respectfully submit this memorandum of law in support of their motion to dismiss the Verified Complaint ("*Steele III*").

**PRELIMINARY STATEMENT**

The Rule 12(b)(2) Defendants join in and adopt the arguments set forth in the Moving Defendants' Motion To Dismiss And For Other Relief filed by Defendants Turner Broadcasting System, Inc. and Boston Red Sox Baseball Club Limited Partnership. (*See Steele III* Docket Nos. 7 and 8.)<sup>1</sup>

In addition, the Rule 12(b)(2) Defendants file this separate memorandum of law in support of their motion to dismiss pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction. Steele alleges that each of those Defendants reside and work in New York or Georgia -- not Massachusetts. Moreover, to the extent that any alleged unauthorized conduct occurred -- which it did not -- there are no factual allegations in the Verified Complaint suggesting that those actions occurred in Massachusetts. In light of this complete absence of plausible factual allegations demonstrating any connection between the Rule 12(b)(2) Defendants and Massachusetts, the Verified Complaint must also be dismissed as to those Defendants for the additional reason of lack of personal jurisdiction.

**RELEVANT FACTUAL BACKGROUND**

On August 25, 2010, Steele commenced this action, which is one of four separate lawsuits and two separate appeals currently pending in several state and federal courts.<sup>2</sup> In his

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<sup>1</sup> Capitalized terms herein shall have the same meaning as in the Memorandum Of Law In Support Of The Moving Defendants' Motion To Dismiss And For Other Relief (*Steele III* Docket No. 8).

<sup>2</sup> This Court previously dismissed Steele's first lawsuit as a matter of law. *Steele I*, 607 F. Supp. 2d 258, 263, 265 (D. Mass. 2009); *Steele I*, 646 F. Supp. 2d 185, 190-94 (D. Mass. 2009). Those decisions are currently on appeal. (*See* No. 09-2571 (1st Cir.)) On September 27, 2010, this Court denied Steele's post-judgment motions for entry of default against MLB Advanced Media, L.P. and Vector Management. (*Steele I* Docket No. 136.) That decision also is currently on appeal. (*See* No. 10-2173 (1st Cir.)) As this Court recognized in its September 14, 2010 Memorandum and Order herein, in addition to *Steele I* and this case (referred to as *Steele III*), Steele has filed another case in the District of Massachusetts, *Steele*

Verified Complaint, Steele asserts claims for copyright infringement and vicarious copyright infringement, and conclusorily alleges that the Defendants, including the Rule 12(b)(2) Defendants, "reproduce[ed] 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." (*Steele III* Compl. ¶ 200.) Steele alleges that this purported reproduction occurred when the Steele Song was used "as a temp track" during the production of the audiovisual. (*Id.* ¶ 202.)

As to the Rule 12(b)(2) Defendants, Steele fails to allege any material facts connecting those defendants to this Massachusetts venue. More specifically, Steele alleges that "Anthony Ricigliano ('Ricigliano') is a natural person residing in Scarsdale, New York. Defendant Ricigliano is a musicologist and president of defendant Donato Music Services, Inc." (*Id.* ¶ 10.) Steele also alleges that "Donato Music Services, Inc. ('Donato') is a New York corporation located at 74 Malvern Road, Scarsdale, NY 10583-4844 with a principal office at 203 Glenbrook Road, Upper Nyack, New York 10690." (*Id.* ¶ 15.) Steele does not allege that Ricigliano or Donato Music Services, Inc. ("Donato Music") have any Massachusetts contacts, and there are no allegations in the Verified Complaint suggesting that any purported wrongdoing by those Defendants occurred in Massachusetts.

Steele further alleges that "Brett Langefels ('Langefels') is a natural person residing, on information and belief, in Atlanta, Georgia. Defendant Langefels was, at all

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*v. Bongiovi*, No. 10-11218-DPW (D. Mass. filed July 20, 2010) (Woodlock, J.) (*Steele II*). Steele also has filed a fourth lawsuit in Massachusetts state court, *Steele v. Boston Red Sox Baseball Club Limited Partnership*, No. 10-3418-E (Mass. Super. Ct. filed Aug. 26, 2010) (*Steele IV*). All four cases arise out of the defendants' alleged use of Steele's song or ideas, *i.e.*, the same common nucleus of operative facts.

pertinent times, an editor for Defendant Turner Studios, Inc." (*Id.* ¶ 13.) Steele similarly alleges that "Craig Barry ('Barry') is a natural person residing, on information and belief, in Atlanta, Georgia. Defendant Barry was at all pertinent times and is Senior Vice President and Creative Director of defendant Turner Sports, Inc." (*Id.* ¶ 14.)<sup>3</sup> Steele does not allege that Langefels or Barry have any Massachusetts contacts, and there are no allegations in the Verified Complaint suggesting that any purported wrongdoing by those Defendants occurred in Massachusetts.

### **ARGUMENT**

#### **I. THIS COURT LACKS PERSONAL JURISDICTION OVER EACH OF DEFENDANTS RICIGLIANO, DONATO MUSIC, LANGEFELS AND BARRY**

##### **A. Legal Standard**

It is axiomatic that "[t]o hear a case, a court must have personal jurisdiction over the parties." *Hannon v. Beard*, 524 F.3d 275, 279 (1st Cir. 2008) (internal quotation marks omitted); *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 290 F.3d 42, 50 (1st Cir. 2002). To survive a motion to dismiss pursuant to Rule 12(b)(2), the plaintiff bears the burden of demonstrating that the court has personal jurisdiction over each defendant. *Id.*; *Dodora Unified Commc'ns., Inc. v. Direct Info. Pvt. Ltd.*, 379 F. Supp. 2d 10, 13-14 (D. Mass. 2005) (Gorton, J.) (granting motion to dismiss pursuant to Rule 12(b)(2) for lack of personal jurisdiction and holding that the plaintiff "missed meeting, by a country mile, its burden of demonstrating that a Massachusetts court has personal jurisdiction" over the defendants).

The First Circuit has recognized two types of personal jurisdiction in analyzing minimum contacts: general jurisdiction and specific jurisdiction. To establish general

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<sup>3</sup> Steele alleges that both Turner Sports, Inc. and Turner Studios, Inc. are "Georgia corporation[s] located at 1015 [or 1050] Techwood Drive, Atlanta, GA 30303, with a principal office address at One CNN Center, Atlanta, GA 30303." (*Id.* ¶¶ 32-33.)

jurisdiction, a plaintiff must allege that a defendant "has engaged in continuous and systematic activity in Massachusetts." *Hannon*, 524 F.3d at 279.

To establish specific jurisdiction, a plaintiff must establish "a demonstrable nexus between the plaintiff's claims and a defendant's forum-based activities, such as when the litigation itself is founded directly on those activities." *Id.* at 279-80. In addition, the plaintiff must show that (1) the Massachusetts long-arm statute grants jurisdiction and, if it does, (2) the exercise of jurisdiction under the long-arm statute is consistent with the Due Process Clause of the Constitution. *Id.* at 280; *see* M.G.L. c. 223A, § 3. The Massachusetts long-arm statute has been interpreted to be coextensive with the limits allowed by the Constitution, so the Court may "sidestep the statutory inquiry and proceed directly" to analyzing whether the exercise of jurisdiction comports with the Due Process Clause. *Hannon*, 524 F.3d at 280; *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 287 (1st Cir. 1999). For an exercise of jurisdiction to pass constitutional muster, the plaintiff must demonstrate that the defendant has sufficient "minimum contacts" with Massachusetts such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).

**B. Binding Supreme Court And First Circuit Precedent Confirm That This Court Cannot Exercise Jurisdiction Over The Rule 12(b)(2) Defendants**

Steele alleges in conclusory fashion that "[t]his Court has personal jurisdiction over defendants because defendants conduct systematic and continuous business activity in Massachusetts and/or because the claims against defendants arise directly out of, or relate to, defendants' contacts with Massachusetts." (*Steele III* Compl. ¶ 2.) As a matter of law, this bare allegation is insufficient to establish jurisdiction over the Rule 12(b)(2) Defendants. *See Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S. Ct. 1937, 1949 (2009) (recognizing that a "pleading that

offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do" (internal quotation marks omitted)).

**1. This Court Does Not Have General Jurisdiction**

Steele cannot establish that the Rule 12(b)(2) Defendants have "engaged in continuous and systematic activity in Massachusetts," and the Verified Complaint does not contain any factual allegations suggesting otherwise. *See Hannon*, 524 F.3d at 279. Indeed, with the exception of the one boilerplate jurisdiction allegation as to all defendants generally (*see Steele III Compl.* ¶ 2), there are no plausible factual allegations suggesting that the Rule 12(b)(2) Defendants regularly transacted business in Massachusetts or would otherwise be subject to general jurisdiction in Massachusetts. Accordingly, this Court does not have general jurisdiction over the Rule 12(b)(2) Defendants.

**2. This Court Does Not Have Specific Jurisdiction**

Steele also cannot satisfy the stringent standard for obtaining specific jurisdiction over the Rule 12(b)(2) Defendants. An exercise of specific jurisdiction would be proper only if *all* of the following three requirements are satisfied: (a) Steele's claim "directly relates to or arises out of the defendant's contacts with the forum," (b) each of the Rule 12(b)(2) Defendants' contacts constitute a purposeful availment of the benefits and protections of the laws of Massachusetts, and (c) the exercise of jurisdiction is reasonable. *Phillips Exeter Acad.*, 196 F.3d at 288, 292 (affirming dismissal for lack of personal jurisdiction where the claims were not related to the defendant's contacts with the forum state, and the "very exiguousness of these contacts suggest[ed] that the [defendant] could not reasonably have foreseen its susceptibility to suit" in the forum state). Here, Steele falls far short of clearing those jurisdictional hurdles.



**(a) Steele's Claims Against The Rule 12(b)(2) Defendants Are Not Related To Any Contacts With Massachusetts**

The conclusory allegations in the Verified Complaint, even if true, confirm that Steele's claims do not relate to the Rule 12(b)(2) Defendants' voluntary contacts with Massachusetts -- because *no* such contacts are alleged. As the First Circuit has recognized, "the first step to achieving personal jurisdiction is that a claim *must arise out of, or be related to*, the defendant's in-forum activities." *Hannon*, 524 F.3d at 282 (internal quotation marks omitted) (emphasis added). The First Circuit has further held that the relatedness requirement "is not an open door; it is closely read, and it requires a showing of a material connection." *Negron-Torres v. Verizon Commc'ns Inc.*, 478 F.3d 19, 25 (1st Cir. 2007) (affirming the district court's holding that it did not have specific jurisdiction over an out-of-state defendant where the plaintiff's conclusory allegations failed to demonstrate relatedness).

As set forth above, Steele does not allege that any of the Rule 12(b)(2) Defendants had any contacts whatsoever with Massachusetts. Moreover, even to the extent that any alleged unauthorized reproduction of the Steele Song actually occurred, there are no plausible factual allegations in the Verified Complaint suggesting that those actions occurred in Massachusetts. *See Iqbal*, 129 S. Ct. at 1949 (to survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face"). Indeed, the Verified Complaint alleges that Ricigliano and Donato Music reside and operate in New York, and that Langefels and Barry reside and work in Georgia. (*Steele III* Compl. ¶¶ 10, 13-15.) On those facts, Steele has not satisfied the relatedness prong, and that dispositive deficiency requires dismissal of the Verified Complaint.

(b) **The Rule 12(b)(2) Defendants Have Not Purposefully Availed Themselves Of The Benefits And Protections Of The Laws Of Massachusetts**

Steele also cannot demonstrate that the Rule 12(b)(2) Defendants have "purposely avail[ed] [themselves] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). The purposeful availment analysis focuses on two factors, voluntariness and foreseeability, and is intended to ensure that "personal jurisdiction is not premised solely upon a defendant's random, isolated or fortuitous contacts with the forum state." *Sawtelle v. Farrell*, 70 F.3d 1381, 1391 (1st Cir. 1995) (internal quotations marks omitted). To obtain specific jurisdiction, Steele must demonstrate that the Rule 12(b)(2) Defendants' contacts with Massachusetts were "not based on the unilateral actions of another party" and were such that they "could reasonably anticipate being haled into court" in Massachusetts (or that there is *any* basis upon which they could reasonably anticipate being haled into a Massachusetts court). *Hannon*, 524 F.3d at 284.

As set forth above, the Verified Complaint does not allege any plausible facts suggesting that the Rule 12(b)(2) Defendants voluntarily and purposefully availed themselves of the benefits and protections of the laws of Massachusetts. *See id.* Accordingly, Steele fails to satisfy another prong of the specific jurisdiction analysis.

(c) **Given Steele's Utter Failure To Demonstrate Relatedness And Purposeful Availment, It Is Unreasonable To Exercise Jurisdiction Over The Rule 12(b)(2) Defendants**

Steele also cannot demonstrate that exercising jurisdiction over the Rule 12(b)(2) Defendants would be reasonable. As the First Circuit has noted, "the reasonableness stage of the jurisdictional analysis evokes a sliding scale:" the weaker Steele's showings on the relatedness

and purposeful availment prongs, the less the Rule 12(b)(2) Defendants need to show in terms of unreasonableness to defeat an exercise of jurisdiction. *Sawtelle*, 70 F.3d at 1394.<sup>4</sup>

In light of Steele's dispositive failure to satisfy the relatedness and purposeful availment prongs, Steele cannot demonstrate that an exercise of jurisdiction over the Rule 12(b)(2) Defendants is reasonable. All of the Rule 12(b)(2) Defendants reside and conduct business either in New York and Georgia, making it burdensome to appear in and defend a lawsuit in a Massachusetts court.

In addition, Steele's naming of the Rule 12(b)(2) Defendants as parties in this case is just the latest example of Steele's blatant efforts to harass defendants with unreasonable litigation tactics. In *Steele I*, Steele named more than 20 defendants, several of which this Court dismissed because Steele failed to allege any substantive factual allegations whatsoever against those defendants. *Steele I*, 607 F. Supp. 2d at 263 (granting motion to dismiss several defendants and holding that those defendants were either "not mentioned anywhere in either complaint" or were "mentioned but in no way implicated in any wrongdoing").

Here (*Steele III*), Steele has again named a multitude of individuals and corporate entities -- this time *more than two dozen* -- without bothering to assert specific factual allegations sufficient to justify personal jurisdiction over several of them. All told, Steele has now named nearly 50 individuals and corporate entities (including attorneys and a law firm) as defendants in his four closely related lawsuits. (*See* Chart of Defendants attached hereto as Exhibit A.) This

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<sup>4</sup> In conducting the reasonableness analysis, the Court can consider "(1) the defendant's burden of appearing, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the judicial system's interest in obtaining the most effective resolution of the controversy, and (5) the common interests of all sovereigns in promoting substantive social policies." *Hannon*, 524 F.3d at 284.

extreme abuse of process certainly on its face undercuts any possible reasonableness in subjecting the Rule 12(b)(2) Defendants to jurisdiction in Massachusetts.

**CONCLUSION**

For the foregoing reasons, and for the reasons set forth in the memorandum filed by the Moving Defendants in support of their Motion To Dismiss And For Other Relief (*Steele III* Docket No. 8), the Court should grant the Rule 12(b)(2) Defendants' Motion To Dismiss The Verified Complaint.

Dated: November 5, 2010  
Boston, Massachusetts

Respectfully submitted,

Of Counsel:

Kenneth A. Plevan  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036  
(212) 735-3000  
kplevan@skadden.com

/s/ Matthew J. Matule  
Matthew J. Matule (BBO #632075)  
Christopher G. Clark (BBO #663455)  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Beacon Street  
Boston, Massachusetts 02108  
(617) 573-4800  
mmatule@skadden.com  
cclark@skadden.com

Counsel for Defendants  
Anthony Ricigliano, Donato Music Services,  
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Dated: November 5, 2010

/s/ Christopher G. Clark  
Christopher G. Clark

**EXHIBIT A**

**Steele Lawsuits: Chart of Defendants**

	<b>Defendant</b>	<b>Steele I</b>	<b>Steele II</b>	<b>Steele III</b>	<b>Steele IV</b>
1	A&E Television Networks	X			
2	AEG Live LLC	X			
3	Craig Barry			X	
4	John Bongiovi and d/b/a Bon Jovi Publishing	X	X	X	X
5	Boston Red Sox Baseball Club Limited Partnership (Steele lists Boston Red Sox, Inc. in Steele 1)	X		X	X
6	Bob Bowman			X	
7	Scott D. Brown, Esq.		X		
8	Christopher G. Clark, Esq.		X		
9	Mike Dee			X	
10	Donato Music Services, Inc.			X	
11	William Falcon and d/b/a Pretty Blue Songs	X		X	
12	Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC			X	X
13	Fox Broadcasting Company	X			
14	John W. Henry			X	
15	Island Def Jam Records (never served)	X			
16	Sam Kennedy			X	
17	Kobalt Music Publishing America, Inc.	X			
18	Brett Langefels			X	
19	Lawrence Lucchino			X	
20	Major League Baseball Productions (Steele argues he served this entity in Steele 1)			X	X
21	Major League Baseball Advanced Media, L.P. (Steele argues he served this entity in Steele 1)			X	X
22	Major League Baseball Properties, Inc.	X	X	X	X
23	Matthew J. Matule, Esq.		X		
24	Kenneth A. Plevan, Esq.		X		
25	Anthony Ricigliano			X	
26	Jack Rovner			X	
27	Jay Rourke			X	
28	Richard Sambora and d/b/a Aggressive Music	X	X	X	X
29	Mark Shimmel and d/b/a Mark Shimmel Music	X		X	
30	Skadden, Arps, Slate, Meagher & Flom LLP		X		
31	Clifford M. Sloan, Esq.		X		
32	Sony/ATV Tunes LLC	X			
33	The Bigger Picture Cinema Co.	X			
34	Time Warner, Inc.	X		X	X
35	Turner Broadcasting System, Inc.	X	X	X	X
36	Turner Sports, Inc.			X	X
37	Turner Studios, Inc.			X	X
38	Universal-Polygram International Publishing, Inc.	X			
39	Universal Music Publishing, Inc.	X			
40	Vector 2 LLC	X			X
41	Vector Management LLC (Steele argues in Steele 1)			X	X
42	Thomas C. Werner			X	