

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

<p>WESTPAW FILMS INC., directly and derivatively on behalf of the D&amp;D Production,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>JAMES SPRATTLEY, MICHAEL ANDREW PASCAL, and FANTASY GAME FILMS LLC,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">and</p> <p>the D&amp;D Production,</p> <p style="text-align: center;">Nominal Defendant.</p>
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Index No. 505665/2014

AFFIDAVIT OF MICHAEL ANDREW  
PASCAL IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
A PRELIMINARY INJUNCTION

STATE OF FLORIDA	)
	) ss.
COUNTY OF ORANGE	)

MICHAEL ANDREW PASCAL being duly sworn, deposes and says:

1. I am a defendant in this action, and a member of co-defendant Fantasy Game Films LLC ("FGF"). I am over 18 years of age and resident of Kings County.

2. I originated the idea for a documentary film about the fantasy game Dungeons & Dragons ("D&D") in December 2010, and discussed my initial ideas about such film with, among others, co-defendant James Sprattley on or about December 15, 2010. James and I developed the concept over the next several months, and in the spring of 2011, James and I decided to approach Anthony Savini ("Savini"), owner of Plaintiff Westpaw Films Inc. ("Westpaw"), to suggest that he direct the proposed film.

3. Not long after that, James, Savini and I made a verbal agreement to work together, temporarily using Westpaw as a production company. During this initial period, decisions were made collaboratively, but with the understanding that a majority of the three of us could carry the vote. Also at this stage, all parties understood that James and I would form our own company that would eventually partner with Westpaw to continue to develop and jointly own the film. James and I formed Iconoscope Films LLC (“Iconoscope”) in February 2012, after which we transferred our ownership in the film project and the partnership to Iconoscope.

4. Once we formed Iconoscope, all parties agreed that Iconoscope and Westpaw would share equally in the ownership of the project. Though things were generally informal, we divided responsibilities roughly as follows: Westpaw would be in charge of the creative aspects of the project and Iconoscope would handle financing, marketing and distribution matters. Contrary to the allegations in the complaint, after the formation of Iconoscope, James and I never understood us to be “managers” of the partnership or anything like that at all, nor did Savini ever refer to us (or himself) as that. Rather, our actions in connection with the partnership were solely on behalf of Iconoscope, much as Savini acted on behalf of Westpaw.

5. One of the first signs of trouble occurred on or about June 30, 2012 when Savini accused James and me of trying to steal his movie after we, as part of our job, merely offered suggestions for a possible narrative for the film. See Exhibit A. As part of that accusation, Savini/Westpaw asked Iconoscope for an agreement to govern the parties’ relationship, and Iconoscope, in or about July 2012, sent him a draft agreement reflecting the above terms – among other things, total creative control to Westpaw and

joint ownership of the film between Iconoscope and Westpaw. Attached hereto as Exhibit B is a true and correct copy of the draft partnership agreement sent to Savini in or about July 2012. Savini/Westpaw never responded or commented on the draft agreement and never signed it, though Iconoscope continued to operate the partnership under the terms reflected in the draft agreement, in particular, affording Westpaw 100% creative control of the film.

6. Many times over the next several months, Iconoscope asked Westpaw to see the footage shot to date, but those requests were rebuffed or ignored. On or about July 18, 2012, Iconoscope learned from reviewing Westpaw-submitted receipts that Savini had unilaterally submitted a second Writer's Guild Association registration for the film. The first such registration, already filed, listed Savini and me as the authors. Though I did not have access to the second registration, James asked Savini about it. He was elusive and never provided a copy. I firmly believed then and now that the second registration listed only Savini/Westpaw as the author of the movie. To protect Iconoscope's interest in the project, I then filed a preregistration for copyright for the film (PRE000005643) with the U.S. Copyright Office listing Savini, James and me as the authors. These were the first of many signs that Savini was rejecting the partnership we believed we had established. Nonetheless, Iconoscope proceeded forward in the hopes that the relationship could be maintained and the film completed.

7. In August 2012 Iconoscope and Westpaw commenced a Kickstarter fundraising campaign seeking \$150,000 to produce the film, and by the close of that campaign the following month the partnership had received net amounts of approximately \$176,000. After that, over time, backers who missed out on the original

Kickstarter campaign or discovered it too late reached out, including those in June 2013, referenced in Plaintiff's complaint, wanting to know if they could still back the film. I encouraged whoever reached out to contact me using the dungeonsdoc@gmail email address. Once backers did so, I sent them a Paypal invoice. More money was collected for the project from about half a dozen such people after the close of the Kickstarter campaign. All such monies were directly deposited by Paypal into the project's bank account, which was opened specifically for the Kickstarter funds to run the day-to-day business of the project. Attached hereto as Exhibit C is one of these email exchanges, including the PayPal receipt and confirmation of the transfer of funds to the project account. All such funds were properly accounted for at the time they were collected, and Iconoscope provided Westpaw with a full accounting of *all* Kickstarter funds collected and spent well prior to the final settlement with Westpaw. Attached hereto as Exhibit D is a true and correct copy of the final accounting for all Kickstarter funds received and how such funds were spent.

8. Despite the tremendous results of the Kickstarter campaign, or perhaps because of it, relations between Iconoscope and Westpaw, indeed James and I, on the one hand, and Savini, on the other hand, became even more strained, particularly after a contentious telephone conference call on December 8, 2012. The situation went from bad to worse and it was becoming impossible to work together as winter turned to spring in 2013. Our requests to see footage were still being rebuffed or ignored. And then, to my utter surprise and disbelief, Savini for the first time disputed the existence of the partnership, calling the idea of Iconoscope being a partner with Westpaw on the film "problematic". At this point, two years into the project, Westpaw had still not shared

any footage with Iconoscope (other than trailers and reels made for public events), despite repeated requests by Iconoscope. All footage was in Westpaw's sole possession and control. (As of the date of this Affidavit, James and I still have not seen any of the footage from the original film, other than what has been used to create promotional public reels and trailers). James and I were becoming concerned about Savini's behavior and actions regarding the partnership while he at the same time maintained strict control and possession of the footage.

9. On or about April 25, 2013, Westpaw/Savini sent James and I an email stating that he wanted to mediate the disputes between the parties. Though the cost was going to be high, we eventually agreed as there was seemingly no other way to resolve things. Things had become unbearably contentious, Iconoscope had completely lost faith that it could continue to work with Westpaw/Savini to finish the film. We were also concerned that we would never see a finished film. Just prior to mediation James and I discussed the situation and decided that, barring a satisfying resolution of the mediation, the partnership would be over and Iconoscope would not continue to work with Westpaw.

10. The mediation took place on May 14 and 17, 2013, but was not successful. Since the parties could not agree on a framework for going forward together, it was the last straw for Iconoscope, which viewed the partnership as terminated as of that point. We expressly communicated to Savini that we were done – the partnership was over and we would no longer be working with Westpaw or Savini. Similarly, after mediation broke down, Savini instructed us to communicate to him about the dispute only through counsel and took the position that Westpaw alone owned 100% of the film and footage.

11. Since Westpaw was denying that Iconoscope had any rights to the footage, among other things, Iconoscope immediately retained attorney Adam Kagan. Mr. Kagan initially worked with Westpaw's lawyers to negotiate a different, non-partnership structure as a way get the film finished, i.e., various versions of a loan-out agreement, whereby Iconoscope would hire Westpaw as director, or conversely, as Westpaw proposed, Westpaw would hire Iconoscope to produce the film, while limiting contact and interaction between the parties as much as possible. As part of these negotiations in early June 2013, Westpaw continued to insist that it owned 100% of the footage, and demanded that Iconoscope quitclaim any interest it thought it might have in the film to Westpaw. Thus, any partnership that might have existed between Westpaw and Iconoscope had officially terminated following the breakdown of negotiations after the mediation – in late May and early June 2013. As set forth above, Iconoscope believed and intended that to be the case, and Westpaw also affirmatively took the position that no partnership existed at that time.

12. When the parties could not agree on any type of employment or loan-out arrangement for the project, our respective attorneys spent the following months negotiating the formal wind-up of any assets and the parties' separation and settlement. At no time after the mediation discussion broke down did Iconoscope and Westpaw, indeed any of the individuals, conduct any business together or do any work together on the film. In fact, neither Iconoscope, James nor I ever worked on that film again after the mediation.

13. As negotiations dragged on, James and I realized that the only way to completely sever ties with Westpaw and Savini and be able to go our own way was for Iconoscope to agree to give up everything. Indeed, in the final settlement agreement, Iconoscope gave up all rights to ownership of the footage and the film, all remaining Kickstarter funds and total control over all aspects of the movie. The only exception was a portion of Kickstarter funds that Iconoscope retained that was to be used solely to satisfy certain rewards owing to Kickstarter donors, an obligation that Iconoscope insisted on taking on to make sure those donors got the benefit of their bargain. Iconoscope also retained the right to certain credits and a passive back-end interest in net proceeds from the exploitation of the film, if any.

14. It was during the time that the attorneys negotiated the wind up, in or about August 2013, that James and I first began doing some initial work on our new and separate film, independently raising funds from private investors and contributing our own money to start development and production. In October 2013, we formed defendant FGF to be the entity that owned and produced our new film.

15. During the course of negotiations between Mr. Kagan and the attorneys for Westpaw (who are its attorneys in this action), Westpaw's counsel, on at least two separate occasions asked for a non-compete to be included in the agreement between the parties. On both occasions, our attorney flatly refused Westpaw's request. There is no non-compete on the final settlement agreement. Iconoscope refused to agree to a non-compete because James and I were intending to make our own D&D movie, a fact of which Savini was well aware. I know that Westpaw/Savini knew that James and I were planning to make our own D&D movie because I specifically told him that on at least one

occasion prior to his attorney's requests to include a non-compete clause. I firmly believe that the reason that his lawyers repeatedly requested the non-compete clause is because I had told Savini about our intentions for a second film. Iconoscope agreed to give up virtually everything with respect to the first film solely and precisely so that James and I could move on and make our own D&D movie without Savini/Westpaw -- and Savini knew that. He negotiated for a non-compete, but did not get it. He is now trying to get it after the fact through this litigation.

16. In addition, since the formal separation in December 2013, Westpaw/Savini has on more than one occasion reset the password to the Kickstarter site preventing James and I (and our assistant Erika Dahl) from accessing it and preventing Iconoscope from meeting some of the reward obligations to donors. Attached hereto as Exhibit E are true and correct copies of emails reflecting the lock-out and some of its effects. Westpaw/Savini's claims that James and I have fostered confusion or delay among the Kickstarter backers is patently untrue. If any confusion exists, it is because we were denied access and a means of communication to those backers as a result of Savini's vindictive actions. *Id.*

17. In every interview we have conducted for our new movie -- all with people publicly known to be closely associated with D&D or its creators -- we have informed the interviewees of the existence of and our separation from the previous film, and made clear that the new interviews were for our own, separate film. We encouraged all interviewees to continue to work with Westpaw to complete the earlier film and have never disparaged that film or Westpaw. All interviewees freely gave their time to be interviewed for our new movie, including Rob Kuntz. Plaintiff's complaint suggests



(Compl. ¶¶52-53) that Rob Kuntz, who we interviewed for the new film, believed he was actually being interviewed again for the first film. This is false. We clearly explained to Mr. Kuntz that we were working on a completely different D&D film than the film for which he was already interviewed. The reference to “the crew” in Mr. Kuntz’s blog was apparently his general way of referring to us, as there was no official name for the new project at that time. Neither James, nor I nor FGF has *ever* used any assets, footage, money or other property belonging to Westpaw or the first movie project in connection with our new film.

18. The identities of all the individuals we interviewed for our new film are well-known to the community of role-playing game enthusiasts because of their connection with D&D, and are therefore not confidential or proprietary but rather known to the general public familiar with the game. Indeed, three of them – David Ewalt, Jon Peterson, and Tim Kask – are also disclosed on plaintiff’s public Kickstarter page. Three more are close relatives of the deceased co-creator of D&D, Gary Gygax; their identities are disclosed, among other places, on Mr. Gygax’s Wikipedia page. And the remaining three, David Megarry, David Wesely and Rob Kuntz were early employees or shareholders of TSR, the game company founded by Gygax, and remain active in the role-playing game industry, a fact that is publicly known and not confidential. Likewise, the identities of all of the donors to the first D&D film via Kickstarter are available to the general public on that project’s Kickstarter page located at <https://www.kickstarter.com/projects/andrewpascal/dungeons-and-dragons-a-documentary/backers>. Attached hereto as Exhibit F is a true and correct copy of print-outs from such Kickstarter webpage showing a partial list of those donors.

19. With respect to the email account [dungeonsdoc@gmail.com](mailto:dungeonsdoc@gmail.com), plaintiff alleges in the complaint that this email was of vital importance to the production, but nothing could be farther from the truth. I set up the account anticipating that we all would use it as the central communication hub of the project. However, we hardly ever used it for the production. The vast majority of communications about the production did not flow through that account, but rather through the personal email accounts of Savini, James and me. In any event, after setting up the account, I gave complete control and access to the account to all three of us, though Savini and James have never used the account. Attached hereto as Exhibit G is a true and correct copy of an email dated September 4, 2012 from me to Savini and Sprattley containing the email login and password information. That control and access via that login and password has not changed since that time. As this will be a public document, we have redacted the password in the attached exhibit. Thus, not only was the account not that important to the production, Savini has had complete access to the account since the beginning and still does, but he has never used it. Savini obviously knew about the account at the time of settlement negotiations. If it were as critical to the production as he now claims, he would have raised the issue during negotiations. Neither he nor his lawyers ever mentioned the email account at that time, and it was not included in the settlement agreement to be transferred to Westpaw. Neither James, nor I, nor FGF has ever used that email account in connection with the new film.

20. The complaint also mentions “one or more releases” that Iconoscope allegedly still has in its possession that it has refused to turn over, purportedly signed by a “crucial interviewee for the D&D Production and associated with film footage in

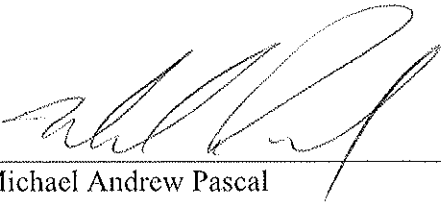
possession of Westpaw.” This is not true. Iconoscope delivered to Westpaw all releases in its possession related to the first film after the Separation Agreement was signed. Neither James, nor I, nor FGF has any such releases in our possession. From a logic standpoint, any such release would be useless to us for the new project since it would only give permission to use that particular interview in connection with the footage for the first Westpaw film, which is in Westpaw’s possession -- as Westpaw admits. The release would serve no purpose for us in connection with a different film and a completely new interview.

21. Currently, with respect to the new film, we are still raising funds to complete post-production work. Post-production is likely to take approximately 8 months to complete. We still have not found a distributor nor do we have a plan or timetable for releasing the film. Even under the best circumstances, we are at least 12 months away from the release of our film.

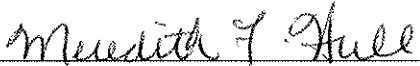
22. A preliminary injunction would cause defendants great harm if it were granted. Such an injunction would almost certainly be the death of our film and cause tremendous personal, professional and financial hardship to James and me. Together James and I have invested approximately \$45,000 of our own money into our film and have borrowed another \$35,000 that we have also put into the film -- all of which will be lost if the project ends. Also, we have secured the schedules of our director and editors for the completion of the film. If a preliminary injunction were granted, we would lose our team to other projects. Significantly, we would have to return the more than \$50,000 we recently raised through Kickstarter to fund post-production. If we had to do that, we will have lost that investment permanently and with it the ability to ever finish our film.

There would almost certainly be no resuscitating our film after the preliminary injunction is granted, even if it is eventually lifted many months or years in the future.

Dated: New York, New York  
July 21, 2014

  
Michael Andrew Pascal

Sworn to before me this  
21 day of July 2014

  
Notary Public

My commission expires:

2/22/2016

