UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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