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 DON HENLEY AND MIKE CAMPBELL

16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

19 SACV09-0481 JVS (RNDx)

20 DON HENLEY and MIKE CAMPBELL,

21 Plaintiffs,

22 v.

23 CHARLES S. DEVORE
 and JUSTIN HART,

24 Defendants.

Case No.

COMPLAINT

DEMAND FOR JURY
 TRIAL

2009 APR 17 PM 2:30

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1 Plaintiffs Don Henley and Mike Campbell bring this Complaint against
2 Charles S. DeVore and Justin Hart, and allege as follows:

3 **INTRODUCTION**

4
5 1. This action arises out of the wholesale appropriation and exploitation by
6 Defendants DeVore and Hart of the well-known and valuable song “The Boys of
7 Summer,” written by Plaintiffs Don Henley and Mike Campbell. Defendants’
8 infringing conduct is unauthorized, brazenly willful, and pursued solely in order to
9 promote DeVore and Hart’s personal and professional agenda. Openly flouting
10 Henley and Campbell’s intellectual property rights, DeVore and Hart copied almost
11 all of Henley and Campbell’s copyrighted musical composition note for note and,
12 altering the lyrics to suit their own purpose and using a recorded performance of the
13 work to mimic the original Henley recording, produced and distributed a video
14 featuring Henley and Campbell’s song (the “Boys of Summer Video”). DeVore
15 and Hart’s avowed aim in doing this was to use the Boys of Summer Video to
16 promote DeVore’s campaign for the Republican nomination for the U.S. Senate in
17 2010.

18 2. To this end, DeVore and Hart posted the infringing Boys of Summer Video
19 on the popular online video site YouTube and elsewhere, publicized their efforts
20 through multiple media outlets, and encouraged others to make infringing videos of
21 Henley and Campbell’s work as well.

22
23 3. Henley sent a notice requesting YouTube to remove the infringing Boys of
24 Summer Video pursuant to the Digital Millennium Copyright Act (“DMCA”),
25 17 U.S.C. § 512, and the Boys of Summer Video was taken down from the
26 YouTube site. DeVore and Hart, however, have asked YouTube to repost the Boys
27 of Summer Video. YouTube, in turn, has notified Henley that it will do so unless
28 Henley pursues prompt legal action against DeVore and Hart.

1 4. Further, just days after being informed that Henley objected to their
2 infringing use of “The Boys of Summer,” DeVore and Hart appropriated and
3 exploited yet another famous song widely associated with Henley, “All She Wants
4 to Do Is Dance,” which they also fashioned into a campaign advertisement (the
5 “Dance Video”). Again, DeVore and Hart copied almost the entire musical
6 composition note for note, altering the lyrics to suit their own purpose and, using a
7 recorded performance of the work to mimic the original Henley recording,
8 produced and distributed this second video.

9
10 5. In making and distributing the videos, DeVore and Hart have willfully and
11 intentionally appropriated not just Henley’s exclusive rights, but also his goodwill,
12 identity and persona by using well-known songs associated with him, one almost
13 immediately after another, in what are essentially campaign fundraising videos.
14 Such close identification of Henley with DeVore’s fundraising efforts is an
15 egregious, intentional, false association that must be stopped.

16 6. Henley, who carefully selects the particular causes he wishes to endorse and
17 selectively licenses his exclusive copyrights, did not authorize DeVore or Hart to
18 use his copyrighted musical work, does not endorse DeVore’s campaign and does
19 not wish his name or work to be associated with DeVore or the DeVore campaign.
20 Nor does Campbell wish his copyrighted work to be used by or associated with
21 DeVore or DeVore’s campaign.

22 7. In bringing this action, Henley and Campbell seek (i) a declaration that
23 DeVore and Hart have infringed Henley and Campbell’s rights under the Copyright
24 Act, 17 U.S.C. § 101 *et seq.*, the Lanham Act, 15 U.S.C. § 1051 *et seq.* and
25 California Business & Professions Code § 17200 *et seq.*, (ii) preliminary and
26 permanent injunctive relief to halt DeVore and Hart’s continuing violation of their
27 intellectual property rights, (iii) damages, and (iv) attorneys’ fees and costs.
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JURISDICTION AND VENUE

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8. This action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and California Business & Professions Code § 17200 *et seq.*

9. This Court has original subject matter jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a) and (b).

10. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

11. This Court has personal jurisdiction over DeVore and Hart. On information and belief, DeVore resides in and maintains his campaign office in Irvine, California, within this District. On information and belief both DeVore and Hart conduct continuous and systematic business in the state of California and this District.

12. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because DeVore and Hart or their agents may be found in this District and because they are subject to personal jurisdiction in this District.

PARTIES

13. Plaintiff Don Henley is a songwriter and recording artist. He is a resident of Dallas, Texas.

14. Plaintiff Mike Campbell is a songwriter, recording artist, and producer. He is a resident of Los Angeles, California.

15. On information and belief, Defendant DeVore is a California State Assemblyman residing in Irvine, California. DeVore is now conducting a campaign for the Republican nomination for the U.S. Senate seat currently held by

1 U.S. Senator Barbara Boxer. DeVore maintains an office at 3 Park Plaza, Suite
2 275, Irvine, California 92614 and a mailing address for his campaign at 4790 Irvine
3 Boulevard, Suite 105-191, Irvine, California 92620.

4 16. On information and belief, Defendant Hart, a resident of Virginia, is
5 employed by DeVore as the Director of Internet Strategies and New Media for
6 DeVore's California-based campaign. In this capacity, Hart travels to California
7 and engages in business in California.
8

9 **FACTUAL ALLEGATIONS**

10 17. Henley and Campbell own the copyright to "The Boys of Summer," which
11 has been registered with the United States Copyright Office, registration number
12 PA 231-596.

13 18. Henley, a preeminent songwriter and recording artist, is a founding member
14 and lead singer of the Eagles, the band credited with recording the largest-selling
15 album ever in the United States. Henley co-wrote all ten of the Eagles' top ten hits
16 and was the lead singer for many of them.
17

18 19. In addition to his extraordinary success as a member of the Eagles, Henley
19 has also had a remarkable solo career. His multi-platinum solo album *Building the*
20 *Perfect Beast*, released in 1984, included the hit song "The Boys of Summer."
21 "The Boys of Summer," in which the singer reminisces on his love for a woman
22 during summer days, earned Henley a Grammy Award in 1985.
23

24 20. Campbell, a prominent songwriter, recording artist, and producer, is a
25 founding member of the rock band Tom Petty and the Heartbreakers. In addition to
26 his work with Henley and Tom Petty, he has co-written songs that have been
27 recorded by other popular artists, including the Dixie Chicks, Stevie Nicks and John
28

1 Prine. He has co-produced a series of top-selling albums for Tom Petty and has
2 also acted as a producer for Stevie Nicks, Roy Orbison and Del Shannon.

3 21. At no time has DeVore or Hart obtained a license, authorization, or other
4 permission to exploit "The Boys of Summer" in the manner described herein or to
5 capitalize on Henley and Campbell's celebrity or reputation as songwriters and
6 recording artists for the purpose of promoting DeVore's political aspirations.
7 Indeed, Henley has a longstanding practice of denying requests to license his works
8 for political or religious causes.
9

10 22. DeVore maintains an online presence for his Senate campaign through a
11 variety of Internet applications, including his Facebook.com page, a Twitter.com
12 page, and several other websites, such as <http://www.ChuckDeVore.com>,
13 <http://tweetforchuck.com/tweet2> and <http://www.Chuck76.com>. DeVore also
14 contributes a web-log through the website
15 <http://bighollywood.breitbart.com/cdevore>.

16 23. As described in a January 30, 2009 article in *The Wall Street Journal*,
17 DeVore frequently uses the Internet as a fundraising source. According to the
18 article, such online fundraising efforts are led by Hart.
19

20 24. On or about April 1, 2009, DeVore posted an article on the website "Andrew
21 Breitbart Presents Big Hollywood" ("Big Hollywood"). In this article, DeVore
22 published a set of lyrics to accompany the music of Henley and Campbell's song
23 "The Boys of Summer." DeVore's lyrics do not comment on the style, technique,
24 genre, or subject matter of Henley and Campbell's song; instead, they address the
25 actions of President Barack Obama.

26 25. In the same April 1 "Big Hollywood" article, DeVore included a link to the
27 Boys of Summer Video posted by Hart that reproduces Henley and Campbell's
28

1 song, as sung by Hart, and encouraged others to make their own infringing videos
2 as well. The Boys of Summer Video, titled "A Special Message from Chuck
3 DeVore," consists of a spoken introduction by Hart, followed by a full-length,
4 verse-by-verse rendition of Henley and Campbell's song that reproduces, note for
5 note, almost all of the music Henley and Campbell wrote for the song, mimics
6 Henley's recorded performance of "The Boys of Summer" music, and substitutes
7 DeVore's lyrics for Henley and Campbell's. This unauthorized use of Henley and
8 Campbell's copyrighted work is synchronized with a series of photographic images
9 of DeVore, Hart and President Barack Obama, among others.

10 26. Hart's introduction, spoken over the well-known opening bars of Henley and
11 Campbell's work, explains the purpose of the Boys of Summer Video as follows:
12 "Hi, this is Justin Hart. I'm Director of Internet Strategies and New Media for the
13 Chuck DeVore Campaign. And we want to thank you, the thousands of supporters
14 of Chuck DeVore, in his bid for the U.S. Senate. And to show you our
15 appreciation, Chuck has prepared a very serious exposition on the financial crisis
16 and political realities of our day under President Barack Obama."
17

18 27. At the conclusion of the Boys of Summer Video, with the instrumental
19 recording of Henley and Campbell's song still playing, a DeVore campaign ad
20 slogan appears: "Time for Chuck DeVore." Beneath the slogan, there is a standard
21 campaign ad notice that the video has been "paid for by DeVore for California,"
22 even though no payment has been made to, nor permission sought from, Henley
23 and Campbell for the music in the video, to which they own the rights.

24 28. On information and belief, DeVore and/or Hart arranged to post the Boys of
25 Summer Video on YouTube, from which it was linked to other websites such as
26 DeVore's page on the popular Facebook site. Additionally, on information and
27 belief, by posting the Boys of Summer Video to another online host service,
28

1 Hipcast.com, DeVore and/or Hart arranged to make the Boys of Summer Video
2 available as a link through still more online sources used by DeVore to publicize
3 and generate support for his campaign.

4 29. Henley and Campbell's song and the associated instrumental track are used
5 throughout the entire Boys of Summer Video, including during the promotional
6 messages for DeVore's campaign. Viewers accessing the Boys of Summer Video
7 through YouTube or by other means who are familiar with Henley and Campbell's
8 well-known song could easily conclude that "The Boys of Summer" was used by
9 DeVore and Hart with permission, even though Henley and Campbell did not, and
10 would not, authorize the use of their song for this purpose. Viewers might also
11 conclude that Henley and Campbell are political supporters or sponsors of DeVore,
12 which they are not.

13
14 30. Concerned about this unauthorized and damaging use of his song, Henley
15 directed that a takedown notice be sent to YouTube on or about April 3, 2009,
16 pursuant to the DMCA, 17 U.S.C. § 512, asking that the Boys of Summer Video be
17 removed. On information and belief, YouTube responded to the notice by
18 removing the Boys of Summer Video from its service.

19
20 31. On information and belief, on or about April 7, 2008, DeVore and/or Hart
21 sent a DMCA counter-notice to YouTube requesting that the Boys of Summer
22 Video be reposted.

23 32. On or about April 8, 2009, YouTube sent notice to Henley's counsel,
24 explaining that as a result of the DMCA counter-notice, YouTube would wait ten
25 days for confirmation that Henley had filed an action seeking a court order to
26 restrain the infringing activities of DeVore and Hart. In the notice, YouTube
27 further explained that if it did not receive notice of such a suit within ten days,
28 YouTube would reinstate the material to YouTube.

1 33. Additionally, on or about April 7, 2009, DeVore posted another article on the
2 “Big Hollywood” site. In this article, DeVore observed that the Boys of Summer
3 Video had been taken down from YouTube due to a notice of infringement. In an
4 apparent dismissal of and reaction to Henley’s efforts to protect his intellectual
5 property rights – and apparently ignoring the fact that a “parody” involves criticism
6 of a particular work, not of the person who created it or of a third party – DeVore
7 stated: “And, it goes without saying that I’ll now be looking for every opportunity
8 to turn any Don Henley work I can into a parody of any left tilting politician who
9 deserves it”

10 34. Notwithstanding his knowledge of Henley’s claim of infringement
11 concerning the Boys of Summer Video, DeVore included in the April 7 article a
12 link to a different website where the Boys of Summer Video could continue to be
13 accessed, <http://www.chuck76.com/nov>. On information and belief, this posting of
14 the Boys of Summer Video was hosted by an online service provider used by
15 DeVore and/or Hart, Hipcast.com.
16

17 35. In addition to being able to view the Boys of Summer Video, a user who
18 clicked on the link supplied by DeVore in the April 7 post and then attempted to
19 navigate from the video to www.chuck76.com was automatically redirected to a
20 DeVore fundraising page captioned “SUPPORT Chuck DeVore for US Senate,” at
21 <http://tweetforchuck.com/tweet2>.

22 36. On or about April 14, 2009, Henley’s counsel sent a takedown notice to
23 Hipcast.com. On or about April 15, 2009, Hipcast.com notified counsel for Henley
24 that it would arrange for the Boys of Summer Video to be taken down or disabled,
25 and the video was removed from the Hipcast site.
26

27 37. Also on or about April 14, 2009, DeVore made good on his threat to commit
28 additional acts of infringement based upon Henley’s creative work. To this end,

1 DeVore and Hart produced a new video, the Dance Video, incorporating almost the
2 entirety of another very well-known song recorded by Don Henley (this one written
3 by Henley's colleague, Danny Kortchmar), "All She Wants to Do Is Dance." In the
4 Dance Video, which again appropriates and alters the underlying copyrighted work
5 to further DeVore's political ambitions, DeVore presents a critique of Senator
6 Barbara Boxer.

7
8 38. In addition to taking valuable copyrighted works and repurposing them for
9 their own interests, it is apparent that DeVore and Hart are attempting to capitalize
10 on Henley and Campbell's fame and popularity as hit songwriters and recording
11 artists to advance their personal and professional agenda.

12 39. Henley and Campbell do not wish to have their creative work used as part of
13 DeVore's political campaign, or in videos to promote his campaign. They do not
14 want the public to believe that they might be associated with or endorse the social
15 or political views of DeVore.

16 40. The further exploitation of "The Boys of Summer" and "All She Wants to Do
17 Is Dance" by DeVore and Hart in the above-described manner, and the wide public
18 dissemination of the Boys of Summer and Dance Videos by YouTube and other
19 online sources, will cause the creative work of Henley and Campbell to become
20 associated with DeVore and Hart in the public mind.

21
22 41. Henley and Campbell derive substantial income and economic value from
23 licensed uses of their copyrighted musical composition "The Boys of Summer," and
24 Henley from his recorded performances in "The Boys of Summer" and "All She
25 Wants to Do Is Dance." The association of Henley and Campbell's works with
26 DeVore's campaign and views will make these works less attractive to be licensed
27 for other legitimate, income-producing purposes, such as for film, television and
28 commercials.

1 42. Henley and Campbell have been irreparably harmed by the actions of
2 DeVore and Hart, and will continue to be so harmed if DeVore and Hart are not
3 enjoined from further using and exploiting “The Boys of Summer” and “All She
4 Wants to Do Is Dance,” from the infringement of any additional songs associated
5 with Henley and/or Campbell that DeVore and Hart choose to appropriate, and
6 from engaging in further conduct that falsely suggests an association between
7 Henley and Campbell and their creative works, on the one hand, and DeVore, Hart,
8 and the DeVore campaign, on the other.

9 **FIRST CLAIM FOR RELIEF**

10 **(DIRECT COPYRIGHT INFRINGEMENT)**

11 **(By Both Plaintiffs)**

12
13 43. Henley and Campbell repeat and reallege each and every allegation set forth
14 in paragraphs 1 through 42 as if fully set forth herein.

15
16 44. DeVore and Hart’s unauthorized reproduction of, preparation of a derivative
17 work based upon, distribution to the public of, and public performance of Henley
18 and Campbell’s copyrighted musical work “The Boys of Summer” in the Boys of
19 Summer Video infringe Henley and Campbell’s exclusive rights in violation of the
20 Copyright Act, 17 U.S.C. § 101 *et seq.*

21 45. Each unauthorized reproduction, derivative work, distribution to the public
22 and public performance of Henley and Campbell’s copyrighted musical work
23 constitutes an individual act of infringement of Henley and Campbell’s exclusive
24 rights under the Copyright Act, 17 U.S.C. § 101 *et seq.*

25
26 46. DeVore and Hart’s conduct has been and continues to be intentional, willful,
27 and with full knowledge of Henley and Campbell’s copyright interests and the
28 infringement thereof.

1 47. The foregoing acts by DeVore and Hart constitute willful, direct
2 infringement of Henley and Campbell’s exclusive rights in “The Boys of Summer.”

3 48. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of DeVore
4 and Hart’s infringement of Henley and Campbell’s exclusive rights, Henley and
5 Campbell are entitled to recover statutory damages of up to \$150,000 for the work
6 infringed. Alternatively, at Henley and Campbell’s election, pursuant to 17 U.S.C.
7 § 504(b), they shall be entitled to their actual damages, including DeVore and
8 Hart’s profits from infringement, as will be proven at trial.
9

10 49. DeVore and Hart are causing and, unless enjoined by the Court, will continue
11 to cause, Henley and Campbell irreparable harm for which they have no adequate
12 remedy at law.

13 50. Henley and Campbell are further entitled to their attorneys’ fees and full
14 costs pursuant to 17 U.S.C. § 505, and prejudgment interest according to law.
15

16 **SECOND CLAIM FOR RELIEF**

17 **(CONTRIBUTORY COPYRIGHT INFRINGEMENT)**

18 **(By Both Plaintiffs)**

19
20 51. Henley and Campbell repeat and reallege each and every allegation set forth
21 in paragraphs 1 through 50 as if fully set forth herein.

22 52. Through their conduct alleged herein, DeVore and Hart knowingly and
23 systematically induced, caused, materially contributed to and participated in the
24 infringement of Henley and Campbell’s copyrighted musical work “The Boys of
25 Summer.”

26
27 53. Each unauthorized reproduction, derivative work, distribution to the public
28 and public performance of Henley and Campbell’s copyrighted musical work

1 constitutes an individual act of infringement of Henley and Campbell’s exclusive
2 rights under the Copyright Act, 17 U.S.C. § 101 *et seq.*

3 54. DeVore and Hart’s conduct has been and continues to be intentional, willful,
4 and with full knowledge of Henley and Campbell’s copyright interests and the
5 infringement thereof.
6

7 55. The foregoing acts by DeVore and Hart constitute willful, contributory
8 infringement of Henley and Campbell’s exclusive rights in “The Boys of Summer.”
9

10 56. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of DeVore
11 and Hart’s infringement of Henley and Campbell’s exclusive rights, Henley and
12 Campbell are entitled to recover statutory damages of up to \$150,000 for the work
13 infringed. Alternatively, at Henley and Campbell’s election, pursuant to 17 U.S.C.
14 § 504(b), Henley and Campbell shall be entitled to their actual damages, including
15 DeVore and Hart’s profits from infringement, as will be proven at trial.

16 57. DeVore and Hart are causing and, unless enjoined by the Court, will continue
17 to cause, Henley and Campbell irreparable harm for which they have no adequate
18 remedy at law.

19 58. Henley and Campbell are further entitled to their attorneys’ fees and full
20 costs pursuant to 17 U.S.C. § 505, and prejudgment interest according to law.
21

22 **THIRD CLAIM FOR RELIEF**

23 **(VICARIOUS COPYRIGHT INFRINGEMENT)**

24 **(By Both Plaintiffs)**

25
26 59. Henley and Campbell repeat and reallege each and every allegation set forth
27 in paragraphs 1 through 58 as if fully set forth herein.
28

1 60. On information and belief, DeVore and Hart have and had the right and
2 ability to control the unauthorized reproduction and/or adaptation of Henley and
3 Campbell's copyrighted musical work "The Boys of Summer" and the unauthorized
4 distribution to the public and public performance of the Boys of Summer Video
5 incorporating such work, to the extent that these activities relate to DeVore's Senate
6 campaign.

7
8 61. On information and belief, DeVore and Hart received a direct financial and
9 economic benefit from the Boys of Summer Video by, among other things,
10 receiving media exposure and additional campaign contributions.

11 62. Each unauthorized reproduction, derivative work, distribution to the public
12 and public performance of Henley and Campbell's copyrighted musical work
13 constitutes an individual act of infringement of Henley and Campbell's exclusive
14 rights under the Copyright Act, 17 U.S.C. § 101 *et seq.*

15 63. DeVore and Hart's conduct has been and continues to be intentional, willful,
16 and with full knowledge of Henley and Campbell's copyright interests and the
17 infringement thereof.

18
19 64. The foregoing acts by DeVore and Hart constitute willful, vicarious
20 infringement of Henley and Campbell's exclusive rights in "The Boys of Summer."

21 65. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of DeVore
22 and Hart's infringement of Henley and Campbell's exclusive rights, Henley and
23 Campbell are entitled to recover statutory damages of up to \$150,000 for the work
24 infringed. Alternatively, at Henley and Campbell's election, pursuant to 17 U.S.C.
25 § 504(b), Henley and Campbell shall be entitled to their actual damages, including
26 DeVore and Hart's profits from infringement, as will be proven at trial.
27
28

1 66. DeVore and Hart are causing and, unless enjoined by the Court, will continue
2 to cause, Henley and Campbell irreparable harm for which they have no adequate
3 remedy at law.

4 67. Henley and Campbell are further entitled to their attorneys' fees and full
5 costs pursuant to 17 U.S.C. § 505, and prejudgment interest according to law.
6

7 **FOURTH CLAIM FOR RELIEF**

8 **(FALSE ASSOCIATION OR ENDORSEMENT – 15 U.S.C. § 1125(a))**

9 **(By Plaintiff Henley)**

10 68. Henley repeats and realleges each and every allegation set forth in
11 paragraphs 1 through 67 as if fully set forth herein.
12

13 69. Henley is one of the world's most famous songwriters and recording artists.
14 The well-known hit song, "The Boys of Summer," for which Henley earned a
15 Grammy Award, is famously associated with Henley and immediately suggests
16 Henley's identity and persona in the mind of the public.

17 70. Similarly, the well-known hit song recorded by Henley, "All She Wants to
18 Do Is Dance," is famously associated with Henley and immediately suggests
19 Henley's identity and persona in the mind of the public.
20

21 71. DeVore and Hart's use of these two songs in connection with their videos
22 was in commerce, specifically for campaign, publicity and fundraising purposes,
23 and to further DeVore and Hart's interests.

24 72. DeVore and Hart knew or should have known that their unauthorized use of
25 Henley's identity and persona by incorporating well-known songs associated with
26 him in their videos, one almost immediately after another, was likely to cause
27 confusion or mistake by the public regarding whether Henley has endorsed, is
28

1 affiliated, connected to, or associated with, or has approved of the message and
2 content of, such videos, DeVore and/or DeVore's Senate campaign, in violation of
3 the Lanham Act, 15 U.S.C. § 1125(a).

4 73. Due to DeVore and Hart's unauthorized use of Henley's identity and persona
5 through the use of these songs in their videos, Henley has suffered damages and
6 will continue to suffer damages.

7
8 74. DeVore and Hart's conduct has been and continues to be intentional, willful,
9 and with full knowledge of the violation of Henley's rights.

10 75. DeVore and Hart are causing and, unless enjoined by the Court, will continue
11 to cause, Henley irreparable harm for which he has no adequate remedy at law.

12
13 76. Henley is further entitled to his attorneys' fees and full costs pursuant to
14 15 U.S.C. § 1117, and prejudgment interest according to law.

15 **FIFTH CLAIM FOR RELIEF**

16 **(STATE UNFAIR BUSINESS PRACTICES –**

17 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200)**

18 **(By Plaintiff Henley)**

19
20 77. Henley repeats and realleges each and every allegation set forth in
21 paragraphs 1 through 76 as if fully set forth herein.

22
23 78. As described above, DeVore and Hart's conduct is likely to cause confusion
24 or mistake regarding whether Henley has endorsed, is affiliated, connected to or
25 associated with, or has approved of the message and content of, the Boys of
26 Summer and Dance Videos, DeVore and/or his Senate campaign. The conduct of
27
28

1 DeVore and Hart is intended to produce and likely has produced substantial
2 benefits for DeVore and Hart at the expense of Henley.

3 79. DeVore and Hart’s conduct is likely to deceive the general public and
4 constitutes willful and intentional unlawful, unfair and fraudulent business practices
5 in violation of California Business & Professions Code § 17200 *et seq.*
6

7 80. Henley has suffered substantial injury as a result of DeVore and Hart’s
8 wrongful acts. DeVore and Hart’s misconduct also has caused, and is continuing to
9 cause, irreparable injury to Henley, his reputation and goodwill, and unless
10 enjoined will cause further irreparable injury for which Henley has no adequate
11 remedy at law.

12 **PRAYER FOR RELIEF**

13
14 WHEREFORE, Henley and Campbell pray for relief as follows:

15 **FIRST, SECOND AND THIRD CLAIMS FOR RELIEF**

16 1. For a declaration that:

17
18 (a) through their conduct, DeVore and Hart have willfully and directly
19 infringed the copyright in the musical work “The Boys of Summer” by their
20 unauthorized reproduction of, creation of a derivative work based upon,
21 distribution to the public of, and public performance of such work, in
22 violation of Henley and Campbell’s exclusive rights under the Copyright
23 Act, 17 U.S.C. § 101 *et seq.*;

24 (b) through their conduct, DeVore and Hart have willfully and
25 contributorily infringed the copyright in the musical work “The Boys of
26 Summer” by their unauthorized reproduction of, creation of a derivative
27 work based upon, distribution to the public of, and public performance of
28

1 such work, in violation of Henley and Campbell's exclusive rights under the
2 Copyright Act, 17 U.S.C. § 101 *et seq.*; and

3 (c) through their conduct, DeVore and Hart have willfully and vicariously
4 infringed the copyright in the musical work "The Boys of Summer" by their
5 unauthorized reproduction of, creation of a derivative work based upon,
6 distribution to the public of, and public performance of such copyrighted
7 work, in violation of Henley and Campbell's exclusive rights under the
8 Copyright Act, 17 U.S.C. § 101 *et seq.*;

9
10 2. For a preliminary and permanent injunction enjoining DeVore and
11 Hart and their agents, servants, employees, officers, attorneys, successors,
12 licensees, partners, and assigns, and all persons acting in concert with them:

13 (a) from all further infringing conduct in connection with the Boys of
14 Summer Video;

15 (b) from all further infringement of any copyrighted musical work owned
16 or controlled by Henley and/or Campbell; and

17
18 (c) requiring removal of the Boys of Summer Video from all places where
19 it has been stored and/or made available and destruction of any and all copies
20 of the Boys of Summer Video;

21
22 3. For an award of statutory damages to Henley and Campbell pursuant
23 to the Copyright Act in the amount of \$150,000 for the willful infringement of
24 Henley and Campbell's work "The Boys of Summer" or, at Henley and Campbell's
25 election, actual damages and profits as permitted under the Copyright Act, in an
26 amount to be determined at trial;

27 4. For prejudgment interest according to law;

28

1 5. For an order awarding Henley and Campbell their attorneys' fees,
2 together with the costs and disbursements of this action; and

3 6. For such other relief as the Court deems just and proper.

4 **FOURTH AND FIFTH CLAIMS FOR RELIEF**

5
6 1. For a declaration that:

7 (a) through their conduct, DeVore and Hart improperly used Henley's
8 identity and persona by creating the false impression that Henley has
9 endorsed, is affiliated, connected to or associated with, or has approved of
10 the message and views of, the Boys of Summer and Dance Videos, DeVore
11 and/or his Senate campaign, in violation of the Lanham Act, 15 U.S.C. §
12 1125(a); and

13 (b) through their conduct, DeVore and Hart improperly used Henley's
14 identity and persona by creating the false impression that Henley has
15 endorsed, is affiliated, connected to or associated with, or has approved of
16 the message and views of, the Boys of Summer and Dance Videos, DeVore
17 and/or his Senate campaign, in violation of California Business &
18 Professions Code § 17200 *et seq.*;

19
20 2. For a preliminary and permanent injunction enjoining DeVore and
21 Hart and their agents, servants, employees, officers, attorneys, successors,
22 licensees, partners, and assigns, and all persons acting in concert with them:

23 (a) from all further unlawful conduct in connection with the Boys of
24 Summer Video and Dance Video;

25 (b) from improperly suggesting an association with Henley or his creative
26 works in violation of the Lanham Act, 15 U.S.C. § 1125(a);
27
28

1 (c) from improperly suggesting an association with Henley or his creative
2 works in violation of California Business & Professions Code § 17200 *et*
3 *seq.*; and

4 (d) requiring removal of the Boys of Summer Video and Dance Video
5 from all places where it has been stored and/or made available and
6 destruction of any and all copies of the Boys of Summer Video and Dance
7 Video;
8

9 3. For an award of DeVore and Hart's profits and damages according to
10 proof, for their violations of the Lanham Act, 15 U.S.C. § 1125(a), in an amount to
11 be determined at trial;

12 4. For an award of DeVore and Hart's profits and damages according to
13 proof, for their violations of California Business & Professions Code § 17200 *et*
14 *seq.*, in an amount to be determined at trial;

15 5. For prejudgment interest according to law;

16 6. For an order awarding Henley his attorneys' fees, together with the
17 costs and disbursements of this action; and
18

19 7. For such other relief as the Court deems just and proper.
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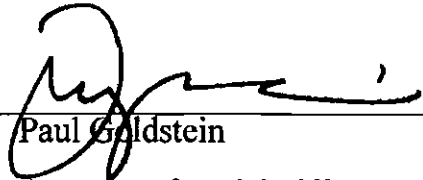
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JURY DEMAND

Henley and Campbell hereby demand a trial by jury on all issues so triable.

Dated: April 17, 2009

MORRISON & FOERSTER LLP
CHARLES S. BARQUIST
JACQUELINE C. CHARLESWORTH
KELVIN D. CHEN
PAUL GOLDSTEIN

By: 

Paul Goldstein
Attorneys for Plaintiffs
DON HENLEY and MIKE CAMPBELL

ORIGINAL

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself) Don Henley and Mike Campbell
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Charles S. Barquist Morrison & Foerster LLP 555 West Fifth Street, Suite 3500 Los Angeles, CA 90013-1024 Telephone: (213) 892-5200

DEFENDANTS Charles S. DeVore and Justin Hart
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business in this State
Incorporated and Principal Place of Business in Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. ORIGIN (Place an X in one box only.)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify):
6 Multi-District Litigation
7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: Yes No
MONEY DEMANDED IN COMPLAINT: \$ 150,000 or actual damages

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Table with 6 columns: OTHER STATUTES, CONTRACT, REAL PROPERTY, TORTS PERSONAL INJURY, TORTS PERSONAL PROPERTY, TORTS BANKRUPTCY CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE / PENALTY, LABOR. Each column contains a list of legal categories with checkboxes.

FOR OFFICE USE ONLY: Case Number:
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

SACV09-0481

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Mike Campbell: Los Angeles	Don Henley: Texas

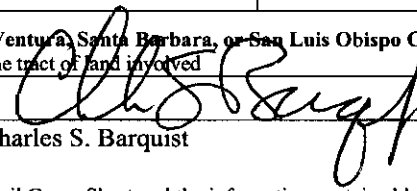
- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Charles S. DeVore: Orange County	Justin Hart: Virginia

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date April 17, 2009
 Charles S. Barquist

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)