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 13 Justin Hart

14 **UNITED STATES DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA**  
 16 **SOUTHERN DIVISION**

17 DON HENLEY and MIKE CAMPBELL,

18 Plaintiffs,

19 v.

20 CHARLES S. DEVORE and JUSTIN  
 21 HART,

22 Defendants.

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23 CHARLES S. DEVORE and JUSTIN  
 24 HART,

25 Counterclaimants,

26 v.

27 DON HENLEY, MIKE CAMPBELL and  
 28 ROES 1-10 inclusive,

Counter-defendants.

Case No. SACV09-0481 JVS (RNBx)

**DEFENDANTS' ANSWER TO  
 PLAINTIFFS' COMPLAINT**

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1. Defendants admit that this action concerns, in part, the song “Boys of Summer.” Defendants deny all of the other allegations in paragraph 1.
2. Defendants deny that they posted any infringing work anywhere and deny any other allegations in paragraph 2.
3. Defendants admit that Henley asked YouTube to remove Defendants’ parody from YouTube. Defendants admit that they asked YouTube to repost the parody. Defendants lack knowledge of facts sufficient to admit or deny allegations concerning YouTube’s communications with Henley and, on this basis, Defendants deny all such allegations. Defendants deny any other allegations in paragraph 3.
4. Defendants admit to having created and distributed a second parody. Defendants deny any other allegations in paragraph 4.
5. Defendants deny all allegations in paragraph 5.
6. Defendants lack knowledge of facts sufficient to admit or deny the allegations in paragraph 6 and, on that basis, Defendants deny them.
7. Paragraph 7 does not call for Defendants to admit or deny any allegations. What Plaintiffs are pursuing is set forth in the complaint. Defendants do deny that Plaintiffs are entitled to the relief set forth in paragraph 7 or any other relief.
8. Paragraph 8 does not call for Defendants to admit or deny any allegations. Defendants do deny that Plaintiffs have stated or can state valid claims under the statutes set forth in paragraph 8 or any other statute or common law doctrine.
9. Defendants admit that this Court has subject matter jurisdiction over this action.
10. Defendants admit that this Court has supplemental jurisdiction over the state-law claim.
11. Defendants admit that this Court has personal jurisdiction over the Defendants.
12. Defendants admit that venue is proper.

- 1 13. Defendants admit Don Henley is a songwriter and recording artist. Defendants  
2 lack knowledge of facts sufficient to admit or deny the location of Henley's  
3 residence.
- 4 14. Defendants admit Mike Campbell is a songwriter, recording artist, and producer.  
5 Defendants lack knowledge of facts sufficient to admit or deny the location of  
6 Campbell's residence.
- 7 15. Admitted.
- 8 16. Admitted.
- 9 17. Defendants lack knowledge of facts sufficient to admit or deny the allegations in  
10 paragraph 17 and, on this basis, deny them.
- 11 18. Defendants lack knowledge of facts sufficient to admit or deny the allegations in  
12 paragraph 18 and, on this basis, deny them.
- 13 19. Defendants lack knowledge of facts sufficient to admit or deny the allegations in  
14 paragraph 19 and, on this basis, deny them.
- 15 20. Defendants lack knowledge of facts sufficient to admit or deny the allegations in  
16 paragraph 20 and, on this basis, deny them.
- 17 21. Defendants admit that at no time have they sought or obtained a license related to  
18 "Boys of Summer." Defendants lack knowledge of facts sufficient to admit or  
19 deny the remaining allegations in paragraph 21 and, on this basis, deny them.
- 20 22. Admitted.
- 21 23. Defendants admit that DeVore uses the internet to raise funds for political  
22 campaigns. Defendants admit that Hart participates in some or all of those  
23 efforts. Defendants lack knowledge of facts sufficient to admit or deny the  
24 remaining allegations in paragraph 23 and, on this basis, deny them.
- 25 24. Defendants admit that DeVore posted an article on "Big Hollywood" and that the  
26 article contained lyrics written by DeVore. Defendants deny the remaining  
27 allegations of paragraph 24.
- 28

- 1 25. Defendants admit that DeVore included a link on “Big Hollywood” to a video  
2 made by Defendants. Defendants deny the remaining allegations of paragraph 25.
- 3 26. Defendants admit that Hart speaks the quoted words in the video posted on “Big  
4 Hollywood.” Defendants deny the remaining allegations of paragraph 26.
- 5 27. Defendants admit that at the end of the video posted on “Big Hollywood” the  
6 words “Time for Chuck DeVore” appear and that a campaign ad notice also  
7 appears. Defendants deny the remaining allegations of paragraph 27.
- 8 28. Denied.
- 9 29. Denied.
- 10 30. Defendants admit that YouTube removed their parody video from its website.  
11 Defendants deny the remaining allegations of paragraph 30.
- 12 31. Admitted.
- 13 32. Defendants lack knowledge of facts sufficient to admit or deny the allegations in  
14 paragraph 32 and, on this basis, deny them.
- 15 33. Defendants admit that DeVore posted the quoted language on “Big Hollywood.”  
16 Defendants deny the remaining allegations of paragraph 33.
- 17 34. Defendants admit that DeVore made the parody video available on  
18 [www.chuck76.com](http://www.chuck76.com). Defendants deny the remaining allegations of paragraph 34.
- 19 35. Defendants lack knowledge of facts sufficient to admit or deny the allegations in  
20 paragraph 36 and, on this basis, deny them.
- 21 36. Defendants lack knowledge of facts sufficient to admit or deny the allegations in  
22 paragraph 36 and, on this basis, deny them.
- 23 37. Defendants admit that DeVore created a second parody video. Defendants deny  
24 the remaining allegations of paragraph 37.
- 25 38. Denied.
- 26 39. Defendants lack knowledge of facts sufficient to admit or deny the allegations in  
27 paragraph 39 and, on this basis, deny them. But Defendants do admit that  
28

1 Plaintiffs' position in this lawsuit and desire to end Defendants' protected speech  
2 is related to their distaste for DeVore's political views.

3 40. Denied.

4 41. Denied.

5 42. Denied.

6 43. Defendants incorporated any denials made to the allegations set forth in  
7 paragraphs 1 through 42 as if set forth fully herein.

8 44. Denied.

9 45. Denied.

10 46. Denied.

11 47. Denied.

12 48. Denied.

13 49. Denied.

14 50. Denied.

15 51. Defendants incorporated any denials made to the allegations set forth in  
16 paragraphs 1 through 50 as if set forth fully herein.

17 52. Denied.

18 53. Denied.

19 54. Denied.

20 55. Denied.

21 56. Denied.

22 57. Denied.

23 58. Denied.

24 59. Defendants incorporated any denials made to the allegations set forth in  
25 paragraphs 1 through 58 as if set forth fully herein.

26 60. Denied.

27 61. Denied.

28 62. Denied.

- 1 63. Denied.
- 2 64. Denied.
- 3 65. Denied.
- 4 66. Denied.
- 5 67. Denied.
- 6 68. Defendants incorporated any denials made to the allegations set forth in
- 7 paragraphs 1 through 67 as if set forth fully herein.
- 8 69. Denied.
- 9 70. Denied.
- 10 71. Denied.
- 11 72. Denied.
- 12 73. Denied.
- 13 74. Denied.
- 14 75. Denied.
- 15 76. Denied.
- 16 77. Defendants incorporated any denials made to the allegations set forth in
- 17 paragraphs 1 through 76 as if set forth fully herein.
- 18 78. Denied.
- 19 79. Denied.
- 20 80. Denied.

21

22 **AFFIRMATIVE DEFENSES**<sup>1</sup>

23 As separate affirmative defenses to the Plaintiffs' Complaint, Defendants allege as

24 follows:

- 25 1. The Complaint fails to state any claims upon which relief can be granted.
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28 <sup>1</sup> By including the following affirmative defenses, Defendants do not concede that they bear the burden of proof or persuasion on any of them.

1           2.     The claims of the Complaint are barred, in whole or in part, due to estoppel,  
2     unclean hands, waiver and/or laches.

3           3.     The claims of the Complaint are barred by Plaintiffs' fraud.

4           4.     The claims of the Complaint are barred by license, consent, and acquiescence.

5           5.     The claims of the Complaint are barred by the failure to mitigate damages.

6           6.     The claims of the Complaint are barred or unenforceable by the doctrine of  
7     fraud on the United States Copyright Office.

8           7.     The claims of the Complaint are barred or unenforceable by the doctrine of  
9     copyright misuse.

10          8.     The claims of the Complaint are barred by the doctrine of copyright fair use  
11     and trademark fair use principles.

12          9.     The claims of the Complaint are barred by the invalidity of the copyright  
13     and/or copyright registration in question.

14          10.    The claims of the Complaint are barred by Plaintiffs' lack of standing.

15          11.    The claims of the Complaint are barred by the First Amendment to the United  
16     States Constitution and the relevant provisions of the California Constitution.

17          12.    The claims of the Complaint are limited by innocent infringer principles.

18          13.    The Complaint is barred, in whole or in part, because the material allegedly  
19     used is in the public domain, and therefore is not subject to copyright protection.

20          14.    The Complaint is barred, in whole or in part, because even if some  
21     copyrighted material allegedly owned by Plaintiffs was used by Defendants, which  
22     Defendants deny, those materials were not original works of authorship and therefore are  
23     not subject to copyright protection.

24          15.    To the extent that the Complaint attempts to assert any claim for relief, or seek  
25     any recovery, based on any legal theory other than a purported violation of the federal  
26     Copyright Act, such claims or recovery are preempted pursuant to 17 U.S.C. § 301.

27          16.    The Complaint, to the extent that it seeks punitive and/or statutory damages  
28     against Defendants violates Defendants' right to procedural and substantive due process

1 under the Fifth and Fourteenth Amendments to the United States Constitution and Article I,  
2 Section 7 of the California Constitution because, among other things, the alleged wrongful  
3 conduct at issue here is not sufficiently reprehensible to warrant any punitive damage  
4 recovery and/or any assessment of statutory damages would grossly exceed any actual  
5 damages to Plaintiffs. Therefore, Plaintiffs cannot recover statutory and/or punitive  
6 damages against Defendants in this case.

7 17. The Complaint, to the extent that it seeks punitive and/or statutory damages  
8 against Defendants violates Defendants' right to procedural and substantive due process  
9 under the Fifth and Fourteenth Amendments to the United States Constitution and Article I,  
10 Section 7 of the California Constitution because, among other things, of the vagueness and  
11 uncertainty of the criteria for the imposition of punitive damages and the lack of fair notice  
12 of what conduct will result in the imposition of such damages. Therefore, Plaintiff cannot  
13 recover statutory and/or punitive damages against Defendants in this case.

14 18. The Complaint, to the extent that it seeks statutory and/or punitive damages  
15 against Defendants violates Defendants' right to protection from "excessive fines" under  
16 Article 1, Section 17 of the California Constitution, and it violates Defendants' right to  
17 substantive due process under the Fifth and Fourteenth Amendments to the United States  
18 Constitution and Article I, Section 7 of the California Constitution. Therefore, Plaintiffs  
19 cannot recover statutory and/or punitive damages against Defendants' in this case.

20 19. The imposition of statutory and/or punitive damages against Defendants  
21 would deny equal protection of the laws, in violation of the Fifth and Fourteenth  
22 Amendments to the United States Constitution and Article I, Section 7 and Article IV,  
23 Section 16 of the California Constitution. Therefore, Plaintiffs cannot recover statutory  
24 and/or punitive damages against Defendants in this case.

25 20. Plaintiffs' claims for relief are barred, in whole or in part, by the United States  
26 Supreme Court's decision in *Dastar v. Twentieth Century Fox*, 123 S. Ct. 2041 (2003).



1 Defendants presently have insufficient knowledge and information upon which to  
2 form a belief as to whether it may have additional defenses. Defendants therefore reserve  
3 the right to assert additional affirmative defenses in the event that discovery or  
4 investigation indicates that such defenses are appropriate.

5  
6 **PRAYER FOR RELIEF**

- 7 1. For judgment in Defendants' favor as to all claims in the Complaint;  
8 2. For attorneys' fees and costs of suit;  
9 3. For such other relief as the Court deems just and proper.

10  
11 Dated: July 16, 2009

**TURNER GREEN AFRASIABI & ARLEDGE LLP**

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13  
14 By: /s/ Christopher W. Arledge  
15 Christopher W. Arledge  
16 Attorneys for Defendants, Charles S. DeVore and  
17 Justin Hart  
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