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14 Attorneys for Plaintiffs
 DON HENLEY and MIKE CAMPBELL

16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**

19 DON HENLEY and MIKE
 CAMPBELL,

20 Plaintiffs,

21 v.

22 CHARLES S. DEVORE and JUSTIN
 23 HART,

24 Defendants.

Case No. SACV09-0481 JVS (RNBx)

Hon. James V. Selna

**PLAINTIFFS' ANSWER TO
 COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

25 **AND RELATED COUNTERCLAIMS**
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1 Plaintiffs Don Henley and Mike Campbell, by and through their undersigned
2 attorneys, submit the following Answer to the Counterclaims of Defendants Charles
3 S. DeVore and Justin Hart (the “Counterclaims”).

4 **GENERAL STATEMENT**

5 Numerous allegations in the Counterclaims are not specific to any particular
6 defendants, but instead refer generally to the “counter-defendants.” The responses
7 herein are made only on behalf of Plaintiffs Henley and Campbell. Henley and
8 Campbell deny all allegations of the Counterclaims not specifically admitted below.

9 **COMMON ALLEGATIONS**

10 1. Henley and Campbell admit the allegations set forth in paragraph 1 of
11 the Counterclaims, except lack knowledge or information sufficient to form a belief
12 as to whether Justin Hart is a paid media consultant, and therefore deny the same.

13 2. Henley and Campbell admit the allegations set forth in paragraph 2 of
14 the Counterclaims.

15 3. Henley and Campbell lack knowledge or information sufficient to
16 form a belief about the allegations set forth in paragraph 3 of the Counterclaims and
17 therefore deny the same.

18 4. Henley and Campbell deny the allegations set forth in paragraph 4 of
19 the Counterclaims, except admit that Henley has supported and made donations to
20 various causes and campaigns, and performs in various venues.

21 5. Henley and Campbell deny the allegations set forth in paragraph 5 of
22 the Counterclaims. To the extent that the Counterclaims purport to quote
23 unidentified sources, Henley and Campbell respectfully refer the Court to such
24 sources for the quoted contents thereof.

25 6. Henley and Campbell deny the allegations set forth in paragraph 6 of
26 the Counterclaims.

27 7. Henley and Campbell deny the allegations set forth in paragraph 7 of
28 the Counterclaims to the extent they pertain to Henley and Campbell, and otherwise

1 lack knowledge or information sufficient to form a belief about the allegations set
2 forth in paragraph 7 of the Counterclaims and therefore deny the same, except
3 admit on information and belief that YouTube and others were contacted about the
4 infringing nature of the videos that are the subject of this action and YouTube and
5 others disabled public access to videos.

6 8. Henley and Campbell deny the allegations set forth in paragraph 8 of
7 the Counterclaims, except admit that DeVore and Hart made a video using the
8 copyrighted song “The Boys of Summer” and respectfully refer the Court to the
9 video for the contents thereof.

10 9. Henley and Campbell deny the allegations set forth in paragraph 9 of
11 the Counterclaims, except admit that DeVore and Hart made a video using the
12 copyrighted song “All She Wants to Do Is Dance” and respectfully refer the Court
13 to the video for the contents thereof.

14 10. Henley and Campbell deny the allegations set forth in paragraph 10 of
15 the Counterclaims.

16 CAUSES OF ACTION

17 First Cause of Action

18 11. Henley and Campbell repeat and reallege each and every response to
19 paragraphs 1 through 10 of the Counterclaims above as if fully set forth herein.

20 12. Henley and Campbell deny the allegations set forth in paragraph 12 of
21 the Counterclaims, except admit that there is a dispute concerning, *inter alia*,
22 DeVore’s and Hart’s unauthorized use of “The Boys of Summer” and “All She
23 Wants to Do Is Dance,” and respectfully refer the Court to the Complaint for their
24 allegations in this action and the relief they are seeking.

25 13. Henley and Campbell lack knowledge or information sufficient to
26 form a belief about the allegations set forth in paragraph 13 of the Counterclaims
27 and therefore deny the same, except acknowledge that Henley and Campbell
28 believe their claims in this action may be resolved by the Court, and assert that to

1 the extent the allegations set forth in paragraph 13 of the Counterclaims purport to
2 state legal conclusions, no response is required.

3 14. Henley and Campbell lack knowledge or information sufficient to
4 form a belief about the allegations set forth in paragraph 14 of the Counterclaims
5 and therefore deny the same.

6 15. Henley and Campbell lack knowledge or information sufficient to
7 form a belief about the allegations set forth in paragraph 15 of the Counterclaims
8 and therefore deny the same.

9 **Second Cause of Action**

10 16. Henley and Campbell repeat and reallege each and every response to
11 paragraphs 1 through 15 of the Counterclaims above as if fully set forth herein.

12 17. Henley and Campbell deny the allegations set forth in paragraph 17 of
13 the Counterclaims, except admit that there is a dispute concerning, *inter alia*,
14 DeVore's and Hart's unauthorized use of "The Boys of Summer" and "All She
15 Wants to Do Is Dance," and respectfully refer the Court to the Complaint for their
16 allegations in this action and the relief they are seeking.

17 18. Henley and Campbell lack knowledge or information sufficient to
18 form a belief about the allegations set forth in paragraph 18 of the Counterclaims
19 and therefore deny the same, except acknowledge that Henley and Campbell
20 believe their claims in this action may be resolved by the Court, and assert that to
21 the extent the allegations set forth in paragraph 18 of the Counterclaims purport to
22 state legal conclusions, no response is required.

23 19. Henley and Campbell lack knowledge or information sufficient to
24 form a belief about the allegations set forth in paragraph 19 of the Counterclaims
25 and therefore deny the same.
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1 DeVore’s and Hart’s unauthorized use of “The Boys of Summer” and “All She
2 Wants to Do Is Dance,” and respectfully refer the Court to the Complaint for their
3 allegations in this action and the relief they are seeking.

4 28. Henley and Campbell lack knowledge or information sufficient to
5 form a belief about the allegations set forth in paragraph 28 of the Counterclaims
6 and therefore deny the same, except acknowledge that Henley and Campbell
7 believe their claims in this action may be resolved by the Court, and assert that to
8 the extent the allegations set forth in paragraph 28 of the Counterclaims purport to
9 state legal conclusions, no response is required.

10 29. Henley and Campbell lack knowledge or information sufficient to
11 form a belief about the allegations set forth in paragraph 29 of the Counterclaims
12 and therefore deny the same.

13 30. Henley and Campbell lack knowledge or information sufficient to
14 form a belief about the allegations set forth in paragraph 30 of the Counterclaims
15 and therefore deny the same.

16 **Fifth Cause of Action**

17 31. Henley and Campbell repeat and reallege each and every response to
18 paragraphs 1 through 30 of the Counterclaims above as if fully set forth herein.

19 32. Henley and Campbell deny the allegations set forth in paragraph 32 of
20 the Counterclaims, except admit that there is a dispute concerning, *inter alia*,
21 DeVore’s and Hart’s unauthorized use of “The Boys of Summer” and “All She
22 Wants to Do Is Dance,” and respectfully refer the Court to the Complaint for their
23 allegations in this action and the relief they are seeking.

24 33. Henley and Campbell lack knowledge or information sufficient to
25 form a belief about the allegations set forth in paragraph 33 of the Counterclaims
26 and therefore deny the same, except acknowledge that Henley and Campbell
27 believe their claims in this action may be resolved by the Court, and assert that to
28

1 the extent the allegations set forth in paragraph 28 of the Counterclaims purport to
2 state legal conclusions, no response is required.

3 34. Henley and Campbell lack knowledge or information sufficient to
4 form a belief about the allegations set forth in paragraph 34 of the Counterclaims
5 and therefore deny the same.

6 35. Henley and Campbell lack knowledge or information sufficient to
7 form a belief about the allegations set forth in paragraph 35 of the Counterclaims
8 and therefore deny the same.

9 **Sixth Cause of Action**

10 36. Henley and Campbell repeat and reallege each and every response to
11 paragraphs 1 through 35 of the Counterclaims above as if fully set forth herein.

12 37. Henley and Campbell deny the allegations set forth in paragraph 37 of
13 the Counterclaims to the extent they pertain to Henley and Campbell, and otherwise
14 lack knowledge or information sufficient to form a belief about the allegations set
15 forth in paragraph 37 of the Counterclaims and therefore deny the same, except
16 admit on information and belief that YouTube and others were contacted about the
17 infringing nature of the videos that are the subject of this action and YouTube and
18 others disabled public access to the videos.

19 38. Henley and Campbell deny the allegations set forth in paragraph 38 of
20 the Counterclaims to the extent they pertain to Henley and Campbell and otherwise
21 lack knowledge or information sufficient to form a belief about the allegations set
22 forth in paragraph 38 of the Counterclaims and therefore deny the same.

23 39. Henley and Campbell deny the allegations set forth in paragraph 39 of
24 the Counterclaims.

25 **AFFIRMATIVE DEFENSES**

26 Henley and Campbell allege the following affirmative defenses to the
27 Counterclaims, and in doing so do not concede that they bear the burden of proof or
28 persuasion on any of them:

1 1. The Counterclaims fail, in whole or in part, to state a claim upon which
2 relief can be granted.

3 2. DeVore's and Hart's unauthorized use of copyrighted material does not
4 qualify as fair use under 17 U.S.C. § 107 or other applicable law.

5 3. DeVore's and Hart's use of copyrighted material is not excused under
6 the First Amendment to the United States Constitution.

7 4. The Court lacks subject matter jurisdiction over the Counterclaims to
8 the extent they seek declaratory relief related to the copyright for "All She Wants to
9 Do Is Dance."

10 5. The Counterclaims are barred, in whole or in part, by the doctrine of
11 unclean hands.

12 6. The Counterclaims are barred, in whole or in part, by the doctrines of
13 waiver, laches and/or equitable estoppel.

14 7. The Counterclaims are barred, in whole or in part, by DeVore's and
15 Hart's failure to suffer any damages.

16 8. The Counterclaims are barred, in whole or in part, by DeVore's and
17 Hart's failure to mitigate any alleged damages.

18 9. The Counterclaims are barred, in part, because DeVore and Hart have
19 failed to join necessary and indispensable parties.

20 10. The Counterclaims are barred, in part, because DeVore and Hart have
21 failed to plead fraud and/or misrepresentation with particularity as required by
22 Federal Rule of Civil Procedure 9(b).

23 11. Henley and Campbell reserve the right to raise additional affirmative
24 and other defenses as may be established by discovery and the evidence in this
25 proceeding.

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DEMAND FOR JURY TRIAL

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

Dated: August 10, 2009

MORRISON & FOERSTER LLP
Charles S. Barquist
Jacqueline C. Charlesworth
Craig B. Whitney
Kelvin D. Chen
Paul Goldstein

By: /s/ Charles S. Barquist
Charles S. Barquist

Attorneys for Plaintiffs
DON HENLEY and MIKE CAMPBELL