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26 KORTCHMAR

27 UNITED STATES DISTRICT COURT  
28 CENTRAL DISTRICT OF CALIFORNIA

29 DON HENLEY, MIKE CAMPBELL and  
30 DANNY KORTCHMAR,

31 Plaintiffs,

32 v.

33 CHARLES S. DEVORE and  
34 JUSTIN HART,

35 Defendants.

36 AND RELATED COUNTERCLAIMS  
37  
38

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Case No. 09-CV-481-JVS (RNBx)

**FIRST AMENDED  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Don Henley, Mike Campbell and Danny Kortchmar bring this First  
2 Amended Complaint against Defendants Charles S. DeVore and Justin Hart, and  
3 allege as follows:

4 **INTRODUCTION**

5  
6 1. This action arises out of the wholesale appropriation and exploitation by  
7 Defendants DeVore and Hart of the well-known and valuable songs “The Boys of  
8 Summer,” written by Plaintiffs Don Henley and Mike Campbell, and “All She  
9 Wants to Do Is Dance,” written by Plaintiff Danny Kortchmar. Defendants’  
10 infringing conduct is unauthorized, brazenly willful, and pursued solely in order to  
11 promote DeVore and Hart’s personal and professional agenda.

12 2. Openly flouting Henley and Campbell’s intellectual property rights, DeVore  
13 and Hart copied almost all of Henley and Campbell’s copyrighted musical  
14 composition, “The Boys of Summer,” note for note and, altering the lyrics to suit  
15 their own purpose and, using a recorded performance of the work to mimic the  
16 original Henley recording, produced and distributed a video featuring Henley and  
17 Campbell’s song (the “Boys of Summer Video”). DeVore and Hart’s avowed aim  
18 in doing this was to use the Boys of Summer Video to promote DeVore’s campaign  
19 for the Republican nomination for the U.S. Senate in 2010.

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

25 4. Henley caused a notice to be sent to YouTube requesting YouTube to remove  
26 the infringing Boys of Summer Video pursuant to the Digital Millennium  
27 Copyright Act (“DMCA”), 17 U.S.C. § 512, and the Boys of Summer Video was  
28

1 taken down from the YouTube site. DeVore and Hart, however, asked YouTube to  
2 repost the Boys of Summer Video. YouTube, in turn, notified Henley that it would  
3 do so unless Henley pursued prompt legal action against DeVore and Hart.

4  
5 5. Further, just days after being informed that Henley objected to their  
6 infringing use of “The Boys of Summer,” DeVore and Hart appropriated and  
7 exploited yet another famous song, “All She Wants to Do Is Dance,” which was  
8 written by Kortchmar and is widely associated with Henley, who recorded it. As  
9 they did with “The Boys of Summer,” DeVore and Hart fashioned “All She Wants  
10 to Do Is Dance” into a campaign advertisement video (the “Dance Video”)  
11 (together with the Boys of Summer Video, the “Infringing Videos”). Again,  
12 DeVore and Hart reproduced a lengthy note for note rendition of the musical  
13 composition, altering the lyrics to suit their own purpose and, using a recorded  
14 performance of the work to mimic the original Henley recording, produced and  
15 distributed this second video.

16 6. In making and distributing the Infringing Videos, DeVore and Hart willfully  
17 and intentionally appropriated Henley’s, Campbell’s and Kortchmar’s exclusive  
18 rights, as well as Henley’s goodwill, identity and persona by using well-known  
19 songs associated with him, one almost immediately after another, in what are  
20 essentially campaign fundraising videos. Such close identification of Henley with  
21 DeVore’s fundraising efforts is an egregious, intentional, false association that must  
22 be stopped.

23  
24 7. Henley, who carefully selects the particular causes he wishes to endorse and  
25 selectively licenses his exclusive copyrights, did not authorize DeVore or Hart to  
26 use his copyrighted musical work, does not endorse DeVore’s campaign and does  
27 not wish his name or work to be associated with DeVore or the DeVore campaign.  
28

1 Nor did Campbell or Kortchmar authorize their copyrighted work to be used by or  
2 associated with DeVore or DeVore's campaign.

3  
4 8. In bringing this action, Henley, Campbell and Kortchmar seek (i) a  
5 declaration that DeVore and Hart have infringed Henley's, Campbell's and  
6 Kortchmar's rights under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and Henley's  
7 rights under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and California Business &  
8 Professions Code § 17200 *et seq.*, (ii) preliminary and permanent injunctive relief  
9 to halt DeVore and Hart's continuing violation of Plaintiffs' intellectual property  
10 rights, (iii) damages, and (iv) attorneys' fees and costs.

### 11 JURISDICTION AND VENUE

12 9. This action arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, the  
13 Lanham Act, 15 U.S.C. § 1051 *et seq.*, and California Business & Professions Code  
14 § 17200 *et seq.*

15  
16 10. This Court has original subject matter jurisdiction of this action under 28  
17 U.S.C. §§ 1331 and 1338(a) and (b).

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

19  
20 12. This Court has personal jurisdiction over DeVore and Hart. On information  
21 and belief, DeVore resides in and maintains his campaign office in Irvine,  
22 California, within this District. On information and belief both DeVore and Hart  
23 conduct continuous and systematic business in the state of California and this  
24 District.

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

**PARTIES**

1  
2  
3 14. Plaintiff Don Henley is a songwriter and recording artist. He is a resident of  
4 Dallas, Texas.

5 15. At all times relevant to the allegations in the complaint, Henley has been and  
6 remains the co-owner of the copyright to “The Boys of Summer.” In addition to  
7 using his own name, Henley has used the fictitious business names (or “d/b/as”)  
8 Cass County Music and/or Woody Creek Music in relation to his copyright interests  
9 in “The Boys of Summer” and other musical compositions he has written and co-  
10 written.

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

13  
14 17. At all times relevant to the allegations in the complaint, Campbell has been  
15 and remains the co-owner of the copyright to “The Boys of Summer.” In addition  
16 to using his own name, Campbell has used the fictitious business name (or “d/b/a”)   
17 Wild Gator Music in relation to his copyright interests in “The Boys of Summer”  
18 and other musical compositions he has written and co-written.

19 18. Plaintiff Danny Kortchmar is a songwriter, recording artist, and producer.  
20 He is a resident of Connecticut.

21  
22 19. At all times relevant to the allegations in the complaint, Kortchmar has been  
23 the copyright owner or beneficial copyright owner of “All She Wants to Do Is  
24 Dance.” In addition to using his own name, Kortchmar has used the fictitious  
25 business name (or “d/b/a”) Kortchmar Music in relation to his copyright interests in  
26 “All She Wants to Do Is Dance” and other musical compositions he has written and  
27 co-written.  
28

1 20. On information and belief, Defendant DeVore is a California State  
2 Assemblyman residing in Irvine, California. DeVore is now conducting a  
3 campaign for the Republican nomination for the U.S. Senate seat currently held by  
4 U.S. Senator Barbara Boxer. DeVore maintains an office at 3 Park Plaza, Suite  
5 275, Irvine, California 92614 and a mailing address for his campaign at 4790 Irvine  
6 Boulevard, Suite 105-191, Irvine, California 92620.

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

### 12 **FACTUAL ALLEGATIONS**

13 22. Henley and Campbell are the authors and copyright owners of "The Boys of  
14 Summer," which has been registered with the United States Copyright Office,  
15 registration number PA 231-596. On the copyright registration certificate, Henley  
16 is shown to be the co-author of "The Boys of Summer" as well as a copyright co-  
17 claimant for the song under his fictitious business name, "Cass County Music."  
18 Similarly, Campbell is shown to be the co-author of the song as well as a co-  
19 claimant under his fictitious business name, "Wild Gator Music."

20  
21 23. Kortchmar is the author and original copyright owner of "All She Wants to  
22 Do Is Dance," which has been registered with the United States Copyright Office,  
23 registration number PA 237-015. On the copyright registration certificate,  
24 Kortchmar is shown to be the author of "All She Wants to Do Is Dance" as well as  
25 the copyright claimant for the song under his fictitious business name, "Kortchmar  
26 Music."

1 24. In or about April 1992, Kortchmar assigned legal title to the copyright in “All  
2 She Wants to Do Is Dance” to WB Music Corporation c/o Warner/Chappell Music,  
3 Inc. (“Warner/Chappell”). Under his agreement with Warner/Chappell, Kortchmar  
4 is entitled to receive royalties for the exploitation of “All She Wants to Do Is  
5 Dance.” Pursuant to 17 U.S.C. § 501(b), Kortchmar, as the beneficial owner of  
6 exclusive rights in the copyright to “All She Wants to Do Is Dance,” is entitled to  
7 institute an action for infringement of that song.

8  
9 25. Henley, a preeminent songwriter and recording artist, is a founding member  
10 and lead singer of the Eagles, the band credited with recording the largest-selling  
11 album ever in the United States. Henley co-wrote all ten of the Eagles’ top ten hits  
12 and was the lead singer for many of them.

13 26. In addition to his extraordinary success as a member of the Eagles, Henley  
14 has also had a remarkable solo career. His multi-platinum solo album *Building the*  
15 *Perfect Beast*, released in 1984, included the hit song, “The Boys of Summer,” in  
16 which the singer reminisces on his love for a woman during summer days. That  
17 song earned Henley a Grammy Award in 1985. The same album also included the  
18 hit song, “All She Wants to Do Is Dance.”

19 27. Campbell, a prominent songwriter, recording artist, and producer, is a  
20 founding member of the rock band Tom Petty and the Heartbreakers. In addition to  
21 his work with Henley and Tom Petty, he has co-written songs that have been  
22 recorded by other popular artists, including the Dixie Chicks, Stevie Nicks and John  
23 Prine. He has co-produced a series of top-selling albums for Tom Petty and has  
24 also acted as a producer for Stevie Nicks, Roy Orbison and Del Shannon.  
25

26 28. Kortchmar is a highly successful songwriter, recording artist, and producer.  
27 In addition to his work with Henley, he has written and co-written songs that have  
28 been recorded by other well-known artists, including James Taylor, Jackson

1 Browne, and Crosby, Stills & Nash. He has also performed and recorded songs  
2 with these artists, as well as Ringo Star and Bon Jovi. As a producer, Kortchmar  
3 has worked with Neil Young, Hall & Oates, James Taylor, Bon Jovi, Stevie Nicks,  
4 Billy Joel, and others.

5  
6 29. At no time has DeVore or Hart obtained a license, authorization, or other  
7 permission to exploit “The Boys of Summer” or “All She Wants to Do Is Dance” in  
8 the manner described herein or to capitalize on Henley’s celebrity or reputation as a  
9 songwriter and recording artist for the purpose of promoting DeVore’s political  
10 aspirations. Indeed, Henley has a longstanding practice of denying requests to  
11 license his works for political or religious causes.

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

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

22 32. On or about April 1, 2009, DeVore posted an article on the website “Andrew  
23 Breitbart Presents Big Hollywood” (“Big Hollywood”). In this article, DeVore  
24 published a set of lyrics to accompany the music of Henley and Campbell’s song,  
25 “The Boys of Summer.” DeVore’s lyrics do not comment on the style, technique,  
26 genre, or subject matter of Henley and Campbell’s song; instead, they address the  
27 actions of President Barack Obama.  
28



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

12 34. Hart’s introduction, spoken over the well-known opening bars of Henley and  
13 Campbell’s work, explains the purpose of the Boys of Summer Video as follows:  
14 “Hi, this is Justin Hart. I’m Director of Internet Strategies and New Media for the  
15 Chuck DeVore Campaign. And we want to thank you, the thousands of supporters  
16 of Chuck DeVore, in his bid for the U.S. Senate. And to show you our  
17 appreciation, Chuck has prepared a very serious exposition on the financial crisis  
18 and political realities of our day under President Barack Obama.”  
19

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

26 36. On information and belief, DeVore and/or Hart arranged to post the Boys of  
27 Summer Video on YouTube, from which it was linked to other websites such as  
28

1 DeVore's page on the popular Facebook site. Additionally, on information and  
2 belief, by posting the Boys of Summer Video to another online host service,  
3 Hipcast.com, DeVore and/or Hart arranged to make the Boys of Summer Video  
4 available as a link through still more online sources used by DeVore to publicize  
5 and generate support for his campaign.

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

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

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

25 40. On or about April 8, 2009, YouTube sent notice to Henley's counsel,  
26 explaining that as a result of the DMCA counter-notice, YouTube would wait ten  
27 days for confirmation that Henley had filed an action seeking a court order to  
28 restrain the infringing activities of DeVore and Hart. In the notice, YouTube

1 further explained that if it did not receive notice of such a suit within ten days,  
2 YouTube would reinstate the material to YouTube.

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

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

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

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

1 45. Also on or about April 14, 2009, DeVore made good on his threat to commit  
2 additional acts of infringement based upon Henley's creative work. To this end,  
3 DeVore and Hart produced a new video, the Dance Video, incorporating almost the  
4 entirety of the song "All She Wants to Do Is Dance," written by Kortchmar and  
5 recorded by Henley, to further DeVore's political ambitions.

6 46. The Dance Video is devoted to a critique of the alleged tax policies of  
7 Senator Barbara Boxer – a centerpiece of DeVore's campaign – and concludes with  
8 an invitation to visit DeVore's website. Far from being a parody of Kortchmar's  
9 work, it does not address or comment on the style or substance of Kortchmar's song  
10 at all, but rather simply employs his well-known music as a vehicle to present a  
11 campaign message for DeVore. Indeed, Defendants have characterized the Dance  
12 Video as a "parody of Barbara Boxer's penchant to raise taxes again and again" that  
13 was "[c]reated for the tax day tea parties by Assemblyman Chuck DeVore,  
14 candidate for U.S. Senate in 2010."

15  
16 47. Like the Boys of Summer Video, the Dance Video consists of a lengthy note  
17 for note rendition of the music Kortchmar wrote and Henley famously performed,  
18 but substituting DeVore's lyrics for Kortchmar's. This unauthorized use of  
19 Kortchmar's copyrighted work is synchronized with a series of photographic  
20 images of DeVore, Senator Boxer and Al Gore, among others. At the conclusion of  
21 the Dance Video, as the instrumental recording of Kortchmar's song comes to a  
22 close, the message "Visit ChuckDeVore.com" appears. On information and belief,  
23 chuckdevore.com is a website operated by DeVore's campaign, which, among other  
24 things, solicits campaign contributions.

25  
26 48. On information and belief, DeVore and/or Hart arranged to post the Dance  
27 Video on YouTube and Hipcast.com, from which it was linked to other websites,  
28 such as DeVore's Facebook page and www.chuck76.com/tax.

1 49. On or about April 16, 2008, the day before this action was filed,  
2 Warner/Chappell, as the assignee of Kortchmar's copyright, sent a notice to  
3 YouTube pursuant to the DMCA, 17 U.S.C. § 512, requesting that the Dance Video  
4 be removed.

5 50. On information and belief, YouTube responded to the notice by removing the  
6 Dance Video from its service.  
7

8 51. On information or belief, on or about July 17, 2009, barely over a week after  
9 this Court's denial of Defendants' motion to dismiss Plaintiffs' Lanham Act and  
10 unfair competition claims (now counts seven and eight of this First Amended  
11 Complaint), DeVore and/or Hart sent a DMCA counter-notice to YouTube  
12 requesting that the Dance Video be reposted.

13 52. On or about July 23, 2009, Plaintiffs' counsel contacted YouTube, copying  
14 counsel for DeVore and Hart. Plaintiffs' counsel explained that the Dance Video  
15 was the subject of Lanham Act false association and state law unfair competition  
16 claims in an action currently pending in federal court. Accordingly, Plaintiffs'  
17 counsel asked that YouTube refrain from reposting the Dance Video until there has  
18 been a judicial determination of these claims.  
19

20 53. Despite this communication, on or about August 5, 2009, the Dance Video  
21 was again made available on YouTube. This time, however, the following message  
22 was added to the opening of the video: "Don Henley did not approve this message.  
23 Don Henley not only didn't approve this message, he doesn't approve of Chuck  
24 DeVore or any of Chuck DeVore's message. The feeling is mutual."

25 54. On August 5, 2009, DeVore wrote on <http://twitter.com/chuckdevore>, "The  
26 video Eagles Don Henley sued us [on] to prevent you from seeing is back up on  
27 YouTube!" That same day, on the same site, DeVore wrote "The video about  
28

1 Obama is still in court, Henley had no legit copyright claim on the 2d – only  
2 threats. We stared him down.”

3  
4 55. In addition to taking valuable copyrighted works and repurposing them for  
5 their own interests, it is apparent that DeVore and Hart are attempting to capitalize  
6 on Henley’s fame and popularity as a hit songwriter and recording artist to advance  
7 their personal and professional agenda.

8 56. Henley, Campbell and Kortchmar do not wish to have their creative works  
9 used as part of DeVore’s political campaign, or in videos to promote his campaign.  
10 They do not want the public to believe that they might be associated with or  
11 endorse the social or political views of DeVore.

12 57. The further exploitation of “The Boys of Summer” and “All She Wants to Do  
13 Is Dance” by DeVore and Hart in the above-described manner, and the wide public  
14 dissemination of the Infringing Videos by YouTube and other online sources, will  
15 cause the creative work of Henley, Campbell and Kortchmar to become associated  
16 with DeVore and Hart in the public mind.

17  
18 58. Henley, Campbell and Kortchmar derive substantial income and economic  
19 value from licensed uses of their copyrighted musical compositions “The Boys of  
20 Summer” and “All She Wants to Do Is Dance,” and Henley from his recorded  
21 performances of these songs.

22 59. The association of Henley’s, Campbell’s and Kortchmar’s works with  
23 DeVore’s campaign and views will make them less attractive to be licensed for  
24 other legitimate, income-producing purposes, such as for film, television and  
25 commercials.

26  
27 60. Henley, Campbell and Kortchmar have been irreparably harmed by the  
28 actions of DeVore and Hart, and will continue to be so harmed if DeVore and Hart

1 are not enjoined from further using and exploiting “The Boys of Summer” and “All  
2 She Wants to Do Is Dance,” from the infringement of copyright in any additional  
3 songs owned by Henley, Campbell and/or Korchmar that DeVore and Hart may  
4 choose to appropriate, and from engaging in further conduct that falsely suggests an  
5 association between Henley and his creative works, on the one hand, and DeVore,  
6 Hart and the DeVore campaign, on the other.

7 **FIRST CLAIM FOR RELIEF**

8 **(DIRECT COPYRIGHT INFRINGEMENT)**

9 **(By Henley and Campbell)**

10  
11 61. Henley and Campbell repeat and reallege each and every allegation set forth  
12 in paragraphs 1 to 60 above as if fully set forth herein.

13  
14 62. DeVore and Hart’s unauthorized reproduction of, preparation of a derivative  
15 work based upon, distribution to the public of, and public performance of Henley  
16 and Campbell’s copyrighted musical work “The Boys of Summer” in the Boys of  
17 Summer Video infringe Henley and Campbell’s exclusive rights in violation of the  
18 Copyright Act, 17 U.S.C. § 101 *et seq.*

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

23  
24 64. DeVore and Hart’s conduct has been and continues to be intentional, willful,  
25 and with full knowledge of Henley and Campbell’s copyright interests and the  
26 infringement thereof.

1 65. 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 66. 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 67. 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 68. 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 Henley and Campbell)**

19  
20 69. Henley and Campbell repeat and reallege each and every allegation set forth  
21 in paragraphs 1 to 68 above as if fully set forth herein.

22 70. 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 71. 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  
4 72. DeVore and Hart's conduct has been and continues to be intentional, willful,  
5 and with full knowledge of Henley and Campbell's copyright interests and the  
6 infringement thereof.

7 73. 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 74. 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 75. 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  
20 76. Henley and Campbell are further entitled to their attorneys' fees and full  
21 costs pursuant to 17 U.S.C. § 505, and prejudgment interest according to law.

22 **THIRD CLAIM FOR RELIEF**

23 **(VICARIOUS COPYRIGHT INFRINGEMENT)**

24 **(By Henley and Campbell)**

25  
26 77. Henley and Campbell repeat and reallege each and every allegation set forth  
27 in paragraphs 1 to 76 above as if fully set forth herein.

28

1 78. 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 79. 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 80. 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 81. 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 82. 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

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

1 84. 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 85. 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 **(DIRECT COPYRIGHT INFRINGEMENT)**

9 **(By Kortchmar)**

10  
11 86. Kortchmar repeats and realleges each and every allegation set forth in  
12 paragraphs 1 to 85 above as if fully set forth herein.

13 87. DeVore and Hart's unauthorized reproduction of, preparation of a derivative  
14 work based upon, distribution to the public of, and public performance of  
15 Kortchmar's copyrighted musical work "All She Wants to Do Is Dance" in the  
16 Dance Video infringes Kortchmar's exclusive rights in violation of the Copyright  
17 Act, 17 U.S.C. § 101 *et seq.*

18  
19 88. Each unauthorized reproduction, derivative work, distribution to the public  
20 and public performance of Kortchmar's copyrighted musical work constitutes an  
21 individual act of infringement of Kortchmar's exclusive rights under the Copyright  
22 Act, 17 U.S.C. § 101 *et seq.*

23 89. DeVore and Hart's conduct has been and continues to be intentional, willful,  
24 and with full knowledge of Kortchmar's copyright interests and the infringement  
25 thereof.

26  
27 90. The foregoing acts by DeVore and Hart constitute willful, direct  
28 infringement of Kortchmar's exclusive rights in "All She Wants to Do Is Dance."

1 91. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of DeVore  
2 and Hart's infringement of Kortchmar's exclusive rights, Kortchmar is entitled to  
3 recover statutory damages of up to \$150,000 for the work infringed. Alternatively,  
4 at Kortchmar's election, pursuant to 17 U.S.C. § 504(b), he shall be entitled to his  
5 actual damages, including DeVore and Hart's profits from infringement, as will be  
6 proven at trial.

7 92. DeVore and Hart are causing and, unless enjoined by the Court, will continue  
8 to cause, Kortchmar irreparable harm for which he has no adequate remedy at law.  
9

10 93. Kortchmar is further entitled to his attorneys' fees and full costs pursuant to  
11 17 U.S.C. § 505, and prejudgment interest according to law.

12 **FIFTH CLAIM FOR RELIEF**

13 **(CONTRIBUTORY COPYRIGHT INFRINGEMENT)**

14 **(By Kortchmar)**

15  
16 94. Kortchmar repeats and realleges each and every allegation set forth in  
17 paragraphs 1 to 93 above as if fully set forth herein.

18  
19 95. Through their conduct alleged herein, DeVore and Hart knowingly and  
20 systematically induced, caused, materially contributed to and participated in the  
21 infringement of Kortchmar's copyrighted musical work "All She Wants to Do Is  
22 Dance."

23 96. Each unauthorized reproduction, derivative work, distribution to the public  
24 and public performance of Kortchmar's copyrighted musical work constitutes an  
25 individual act of infringement of Kortchmar's exclusive rights under the Copyright  
26 Act, 17 U.S.C. § 101 *et seq.*  
27  
28

1 97. DeVore and Hart's conduct has been and continues to be intentional, willful,  
2 and with full knowledge of Kortchmar's copyright interests and the infringement  
3 thereof.

4 98. The foregoing acts by DeVore and Hart constitute willful, contributory  
5 infringement of Kortchmar's exclusive rights in "All She Wants to Do Is Dance."  
6

7 99. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of DeVore  
8 and Hart's infringement of Kortchmar's exclusive rights, Kortchmar is entitled to  
9 recover statutory damages of up to \$150,000 for the work infringed. Alternatively,  
10 at Kortchmar's election, pursuant to 17 U.S.C. § 504(b), Kortchmar shall be  
11 entitled to his actual damages, including DeVore and Hart's profits from  
12 infringement, as will be proven at trial.

13 100. DeVore and Hart are causing and, unless enjoined by the Court, will continue  
14 to cause, Kortchmar irreparable harm for which he has no adequate remedy at law.  
15

16 101. Kortchmar is further entitled to his attorneys' fees and full costs pursuant to  
17 17 U.S.C. § 505, and prejudgment interest according to law.

18 **SIXTH CLAIM FOR RELIEF**

19 **(VICARIOUS COPYRIGHT INFRINGEMENT)**

20 **(By Kortchmar)**

21  
22 102. Kortchmar repeats and realleges each and every allegation set forth in  
23 paragraphs 1 to 101 above as if fully set forth herein.

24  
25 103. On information and belief, DeVore and Hart have and had the right and  
26 ability to control the unauthorized reproduction and/or adaptation of Kortchmar's  
27 copyrighted musical work "All She Wants to Do Is Dance" and the unauthorized  
28

1 distribution to the public and public performance of the Dance Video incorporating  
2 such work, to the extent that these activities relate to DeVore's Senate campaign.

3  
4 104. On information and belief, DeVore and Hart received a direct financial and  
5 economic benefit from the Dance Video by, among other things, receiving media  
6 exposure and additional campaign contributions.

7 105. Each unauthorized reproduction, derivative work, distribution to the public  
8 and public performance of Kortchmar's copyrighted musical work constitutes an  
9 individual act of infringement of Kortchmar's exclusive rights under the Copyright  
10 Act, 17 U.S.C. § 101 *et seq.*

11 106. DeVore and Hart's conduct has been and continues to be intentional, willful,  
12 and with full knowledge of Kortchmar's copyright interests and the infringement  
13 thereof.  
14

15 107. The foregoing acts by DeVore and Hart constitute willful, vicarious  
16 infringement of Kortchmar's exclusive rights in "All She Wants to Do Is Dance."

17 108. Pursuant to 17 U.S.C. § 504(c), as a direct and proximate result of DeVore  
18 and Hart's infringement of Kortchmar's exclusive rights, Kortchmar is entitled to  
19 recover statutory damages of up to \$150,000 for the work infringed. Alternatively,  
20 at Kortchmar's election, pursuant to 17 U.S.C. § 504(b), Kortchmar shall be  
21 entitled to his actual damages, including DeVore and Hart's profits from  
22 infringement, as will be proven at trial.  
23

24 109. DeVore and Hart are causing and, unless enjoined by the Court, will continue  
25 to cause, Kortchmar irreparable harm for which he has no adequate remedy at law.

26 110. Kortchmar is further entitled to his attorneys' fees and full costs pursuant to  
27 17 U.S.C. § 505, and prejudgment interest according to law.  
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**SEVENTH CLAIM FOR RELIEF**

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

**(By Henley)**

111. Henley repeats and realleges each and every allegation set forth in paragraphs 1 to 110 above as if fully set forth herein.

112. Henley is one of the world’s most famous songwriters and recording artists. The well-known hit song, “The Boys of Summer,” for which Henley earned a Grammy Award, is famously associated with Henley and immediately suggests Henley’s identity and persona in the mind of the public.

113. Similarly, the well-known hit song recorded by Henley, “All She Wants to Do Is Dance,” is famously associated with Henley and immediately suggests Henley’s identity and persona in the mind of the public.

114. DeVore and Hart’s use of these two songs in connection with their videos was in commerce, specifically for campaign, publicity and fundraising purposes, and to further DeVore and Hart’s interests.

115. DeVore and Hart knew or should have known that their unauthorized use of Henley’s identity and persona by incorporating well-known songs associated with him in their videos, one almost immediately after another, was likely to cause confusion or mistake by the public regarding whether Henley has endorsed, is affiliated, connected to, or associated with, or has approved of the message and content of, such videos, DeVore and/or DeVore’s Senate campaign, in violation of the Lanham Act, 15 U.S.C. § 1125(a).

1 116. Due to DeVore and Hart's unauthorized use of Henley's identity and persona  
2 through the use of these songs in their videos, Henley has suffered damages and  
3 will continue to suffer damages.

4 117. DeVore and Hart's conduct has been and continues to be intentional, willful,  
5 and with full knowledge of the violation of Henley's rights.

6  
7 118. DeVore and Hart are causing and, unless enjoined by the Court, will continue  
8 to cause, Henley irreparable harm for which he has no adequate remedy at law.

9 119. Henley is further entitled to his attorneys' fees and full costs pursuant to  
10 15 U.S.C. § 1117, and prejudgment interest according to law.

11  
12 **EIGHTH CLAIM FOR RELIEF**

13 **(STATE UNFAIR BUSINESS PRACTICES –**

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

15  
16 **(By Henley)**

17 120. Henley repeats and realleges each and every allegation set forth in  
18 paragraphs 1 to 119 above as if fully set forth herein.

19 121. As described above, DeVore and Hart's conduct is likely to cause confusion  
20 or mistake regarding whether Henley has endorsed, is affiliated, connected to or  
21 associated with, or has approved of the message and content of, the Boys of  
22 Summer and Dance Videos, DeVore and/or his Senate campaign. The conduct of  
23 DeVore and Hart is intended to produce and likely has produced substantial  
24 benefits for DeVore and Hart at the expense of Henley.  
25  
26  
27  
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1 122. DeVore and Hart's conduct is likely to deceive the general public and  
2 constitutes willful and intentional unlawful, unfair and fraudulent business practices  
3 in violation of California Business & Professions Code § 17200 *et seq.*

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

9  
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Henley, Campbell and Kortchmar pray for relief as follows:

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

13  
14 1. For a declaration that:

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

21  
22 (b) through their conduct, DeVore and Hart have willfully and  
23 contributorily infringed the copyright in the musical work "The Boys of  
24 Summer" by their unauthorized reproduction of, creation of a derivative  
25 work based upon, distribution to the public of, and public performance of  
26 such work, in violation of Henley and Campbell's exclusive rights under the  
27 Copyright Act, 17 U.S.C. § 101 *et seq.*; and  
28

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

7  
8 2. For a preliminary and permanent injunction enjoining DeVore and  
9 Hart and their agents, servants, employees, officers, attorneys, successors,  
10 licensees, partners, and assigns, and all persons acting in concert with them:

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

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

15  
16 (c) requiring removal of the Boys of Summer Video from all places where  
17 it has been stored and/or made available and destruction of any and all  
18 copies of the Boys of Summer Video;

19  
20 3. For an award of statutory damages to Henley and Campbell pursuant  
21 to the Copyright Act in the amount of \$150,000 for the willful infringement of  
22 Henley and Campbell’s work “The Boys of Summer” or, at Henley and Campbell’s  
23 election, actual damages and profits as permitted under the Copyright Act, in an  
24 amount to be determined at trial;

25 4. For prejudgment interest according to law;

26  
27 5. For an order awarding Henley and Campbell their attorneys’ fees,  
28 together with the costs and disbursements of this action; and

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

2 **FOURTH, FIFTH, AND SIXTH CLAIMS FOR RELIEF**

3  
4 1. For a declaration that:

5 (a) through their conduct, DeVore and Hart have willfully and directly  
6 infringed the copyright in the musical work “All She Wants to Do Is Dance”  
7 by their unauthorized reproduction of, creation of a derivative work based  
8 upon, distribution to the public of, and public performance of such work, in  
9 violation of Kortchmar’s exclusive rights under the Copyright Act, 17  
10 U.S.C. § 101 *et seq.*;

11 (b) through their conduct, DeVore and Hart have willfully and  
12 contributorily infringed the copyright in the musical work “All She Wants  
13 to Do Is Dance” by their unauthorized reproduction of, creation of a  
14 derivative work based upon, distribution to the public of, and public  
15 performance of such work, in violation of Kortchmar’s exclusive rights  
16 under the Copyright Act, 17 U.S.C. § 101 *et seq.*; and

17 (c) through their conduct, DeVore and Hart have willfully and  
18 vicariously infringed the copyright in the musical work “All She Wants to  
19 Do Is Dance” by their unauthorized reproduction of, creation of a derivative  
20 work based upon, distribution to the public of, and public performance of  
21 such copyrighted work, in violation of Kortchmar’s exclusive rights under  
22 the Copyright Act, 17 U.S.C. § 101 *et seq.*;

23  
24  
25 2. For a preliminary and permanent injunction enjoining DeVore and  
26 Hart and their agents, servants, employees, officers, attorneys, successors,  
27 licensees, partners, and assigns, and all persons acting in concert with them:  
28

1 (a) from all further infringing conduct in connection with the Dance  
2 Video;

3 (b) from all further infringement of any copyrighted musical work owned  
4 or controlled by Kortchmar; and  
5

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

9  
10 3. For an award of statutory damages to Kortchmar pursuant to the  
11 Copyright Act in the amount of \$150,000 for the willful infringement of  
12 Kortchmar's work "All She Wants to Do Is Dance" or, at Kortchmar's election,  
13 actual damages and profits as permitted under the Copyright Act, in an amount to  
14 be determined at trial;

15 4. For prejudgment interest according to law;

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

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

20 **SEVENTH AND EIGHTH CLAIMS FOR RELIEF**

21  
22 1. For a declaration that:

23 (a) through their conduct, DeVore and Hart improperly used Henley's  
24 identity and persona by creating the false impression that Henley has  
25 endorsed, is affiliated, connected to or associated with, or has approved of  
26 the message and views of, the Infringing Videos, DeVore and/or his Senate  
27 campaign, in violation of the Lanham Act, 15 U.S.C. § 1125(a); and  
28

1 (b) through their conduct, DeVore and Hart improperly used Henley's  
2 identity and persona by creating the false impression that Henley has  
3 endorsed, is affiliated, connected to or associated with, or has approved of  
4 the message and views of, the Infringing Videos, DeVore and/or his Senate  
5 campaign, in violation of California Business & Professions Code § 17200  
6 *et seq.*;

7  
8 2. For a preliminary and permanent injunction enjoining DeVore and  
9 Hart and their agents, servants, employees, officers, attorneys, successors,  
10 licensees, partners, and assigns, and all persons acting in concert with them:

11 (a) from all further unlawful conduct in connection with the Infringing  
12 Videos;

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

15  
16 (c) from improperly suggesting an association with Henley or his  
17 creative works in violation of California Business & Professions Code  
18 § 17200 *et seq.*; and

19 (d) requiring removal of the Infringing Videos from all places where it  
20 has been stored and/or made available and destruction of any and all copies  
21 of the Infringing Videos;

22  
23 3. For an award of DeVore and Hart's profits and damages according to  
24 proof, for their violations of the Lanham Act, 15 U.S.C. § 1125(a), in an amount to  
25 be determined at trial;

26  
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28

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

4           5.     For prejudgment interest according to law;

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

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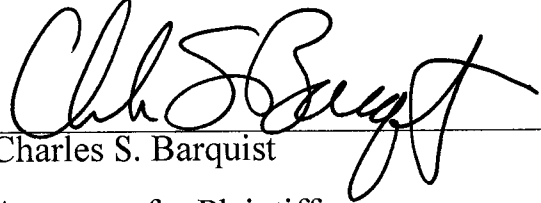
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**JURY DEMAND**

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

Dated: September 24, 2009

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

By:   
Charles S. Barquist

Attorneys for Plaintiffs  
DON HENLEY, MIKE CAMPBELL  
and DANNY KORTCHMAR

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**CERTIFICATE OF SERVICE BY MAIL**  
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 555 West Fifth Street, Los Angeles, California 90013-1024; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**FIRST AMENDED COMPLAINT; DEMAND FOR JURY TRIAL**

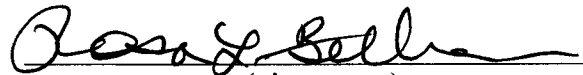
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 555 West Fifth Street, Los Angeles, California 90013-1024, in accordance with Morrison & Foerster's ordinary business practices:

Christopher Arledge  
John Tehranian  
One LLP  
535 Anton Boulevard, Suite 850  
Costa Mesa, California 92626

I declare under penalty of perjury that the above is true and correct.

Executed at Los Angeles, California, this 30th day of September, 2009.

Rosa L. Beltran  
(typed)

  
(signature)