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 16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**
 18 **SOUTHERN DIVISION**

19 DON HENLEY, MIKE CAMPBELL and
 20 DANNY KORTCHMAR,

21 Plaintiffs,

22 v.

23 CHARLES S. DEVORE and JUSTIN
 24 HART,

25 Defendants.

26
 27 _____
 28 CHARLES S. DEVORE and JUSTIN
 HART,

Counterclaimants,

v.

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

Counter-defendants.

Case No. SACV09-0481 JVS (RNBx)

**DEFENDANTS' ANSWER TO
 PLAINTIFFS' FIRST AMENDED
 COMPLAINT**

- 1
- 2 1. Defendants admit that this action concerns the songs “The Boys of Summer” and
- 3 “All She Wants to Do Is Dance.” Defendants deny all of the other allegations in
- 4 paragraph 1.
- 5 2. Defendants deny that they posted any infringing work anywhere and deny any
- 6 other allegations in paragraph 2.
- 7 3. Defendants admit they posted parody videos on YouTube and elsewhere. They
- 8 deny all other allegations in paragraph 3.
- 9 4. Defendants admit YouTube removed the Boys of Summer parody video and
- 10 refused to repost it despite their request. Defendants lack knowledge of facts
- 11 sufficient to admit or deny the remaining allegations in paragraph 4 and, on that
- 12 basis, Defendants deny them.
- 13 5. Defendants admit to having created and distributed a second parody video.
- 14 Defendants deny any other allegations in paragraph 5.
- 15 6. Defendants deny all allegations in paragraph 6.
- 16 7. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
- 17 paragraph 7 and, on that basis, Defendants deny them.
- 18 8. Paragraph 8 does not call for Defendants to admit or deny any allegations. What
- 19 Plaintiffs are pursuing is set forth in the complaint. Defendants do deny that
- 20 Plaintiffs are entitled to the relief set forth in paragraph 8 or any other relief.
- 21 9. Paragraph 9 does not call for Defendants to admit or deny any allegations.
- 22 Defendants do deny that Plaintiffs have stated or can state valid claims under the
- 23 statutes set forth in paragraph 9 or any other statute or common law doctrine.
- 24 10. Defendants admit that this Court has subject matter jurisdiction over this action.
- 25 11. Defendants admit that this Court has supplemental jurisdiction over the state-law
- 26 claim.
- 27 12. Defendants admit that this Court has personal jurisdiction over the Defendants.
- 28 13. Defendants admit that venue is proper.

- 1 14. 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 15. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
5 paragraph 15 and, on that basis, Defendants deny them.
- 6 16. Defendants admit Mike Campbell is a songwriter, recording artist, and producer.
7 Defendants lack knowledge of facts sufficient to admit or deny the location of
8 Campbell's residence.
- 9 17. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
10 paragraph 17 and, on that basis, Defendants deny them.
- 11 18. Defendants admit Danny Kortchmar is a songwriter, recording artist, and
12 producer. Defendants lack knowledge of facts sufficient to admit or deny the
13 location of Kortchmar's residence.
- 14 19. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
15 paragraph 19 and, on that basis, Defendants deny them.
- 16 20. Admitted.
- 17 21. Admitted.
- 18 22. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
19 paragraph 22 and, on this basis, deny them.
- 20 23. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
21 paragraph 23 and, on this basis, deny them.
- 22 24. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
23 paragraph 24 and, on this basis, deny them.
- 24 25. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
25 paragraph 25 and, on this basis, deny them.
- 26 26. Defendants admit that the album *Building the Perfect Beast* contained the songs
27 "The Boys of Summer" and "All She Wants to Do Is Dance." Defendants lack
28

1 knowledge of facts sufficient to admit or deny the remaining allegations in
2 paragraph 26 and, on this basis, deny them.

3 27. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
4 paragraph 27 and, on this basis, deny them.

5 28. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
6 paragraph 28 and, on this basis, deny them.

7 29. Defendants admit that at no time have they sought or obtained licenses related to
8 “The Boys of Summer” Or “All She Wants to Do Is Dance.” Defendants lack
9 knowledge of facts sufficient to admit or deny the remaining allegations in
10 paragraph 29 and, on this basis, deny them.

11 30. Admitted.

12 31. Defendants admit that DeVore uses the internet to raise funds for political
13 campaigns. Defendants admit that Hart participates in some or all of those
14 efforts. Defendants lack knowledge of facts sufficient to admit or deny the
15 remaining allegations in paragraph 31 and, on this basis, deny them.

16 32. Defendants admit that DeVore posted an article on “Big Hollywood” and that the
17 article contained lyrics written by DeVore. Defendants deny the remaining
18 allegations of paragraph 32.

19 33. Defendants admit that DeVore included a link on “Big Hollywood” to a video
20 made by Defendants. Defendants deny the remaining allegations of paragraph 33.

21 34. Defendants admit that Hart speaks the quoted words in the video posted on “Big
22 Hollywood.” Defendants deny the remaining allegations of paragraph 34.

23 35. Defendants admit that at the end of the video posted on “Big Hollywood” the
24 words “Time for Chuck DeVore” appear and that a campaign ad notice also
25 appears. Defendants deny the remaining allegations of paragraph 35.

26 36. Defendants admit that they posted the Boys of Summer parody video on
27 YouTube and made it available on the internet. They deny the remaining
28 allegations of paragraph 36.

1 37. Denied.

2 38. Defendants admit that YouTube removed their parody video from its website.
3 Defendants deny the remaining allegations of paragraph 38.

4 39. Admitted.

5 40. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
6 paragraph 40 and, on this basis, deny them.

7 41. Defendants admit that DeVore posted the quoted language on “Big Hollywood.”
8 Defendants deny the remaining allegations of paragraph 41.

9 42. Defendants admit that DeVore made the parody video available on
10 www.chuck76.com. Defendants deny the remaining allegations of paragraph 42.

11 43. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
12 paragraph 43 and, on this basis, deny them.

13 44. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
14 paragraph 44 and, on this basis, deny them.

15 45. Defendants admit that DeVore created a second parody video. Defendants deny
16 the remaining allegations of paragraph 45.

17 46. Denied.

18 47. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
19 paragraph 47 and, on this basis, deny them.

20 48. Admitted.

21 49. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
22 paragraph 49 and, on this basis, deny them.

23 50. Defendants admit that YouTube removed (for a time) the second parody video.

24 51. Defendants admit that they asked YouTube to repost the second parody video.

25 52. Defendants lack knowledge of facts sufficient to admit or deny the allegations in
26 paragraph 52 and, on this basis, deny them.

27 53. Defendants admit the second parody video was reposted and that the disclaimer
28 quoted in paragraph 53 appeared at the beginning of the video. Defendants lack

- 1 knowledge of facts sufficient to admit or deny the remaining allegations in
2 paragraph 53 and, on this basis, deny them.
- 3 54. Admitted.
- 4 55. Denied.
- 5 56. Defendants admit that Plaintiffs lawsuit is driven by their distaste of Chuck
6 DeVore's political positions and political speech. Defendants lack knowledge of
7 facts sufficient to admit or deny the remaining allegations in paragraph 56 and, on
8 this basis, deny them..
- 9 57. Denied.
- 10 58. Denied.
- 11 59. Denied.
- 12 60. Denied.
- 13 61. Defendants incorporated any denials made to the allegations set forth in
14 paragraphs 1 through 60 as if set forth fully herein.
- 15 62. Denied.
- 16 63. Denied.
- 17 64. Denied.
- 18 65. Denied.
- 19 66. Denied.
- 20 67. Denied.
- 21 68. Denied.
- 22 69. Defendants incorporated any denials made to the allegations set forth in
23 paragraphs 1 through 68 as if set forth fully herein.
- 24 70. Denied.
- 25 71. Denied.
- 26 72. Denied.
- 27 73. Denied.
- 28 74. Denied.

- 1 75. Denied.
- 2 76. Denied.
- 3 77. Defendants incorporated any denials made to the allegations set forth in
- 4 paragraphs 1 through 76 as if set forth fully herein.
- 5 78. Denied.
- 6 79. Denied.
- 7 80. Denied.
- 8 81. Denied.
- 9 82. Denied.
- 10 83. Denied.
- 11 84. Denied.
- 12 85. Denied.
- 13 86. Defendants incorporated any denials made to the allegations set forth in
- 14 paragraphs 1 through 85 as if set forth fully herein.
- 15 87. Denied.
- 16 88. Denied.
- 17 89. Denied.
- 18 90. Denied.
- 19 91. Denied.
- 20 92. Denied.
- 21 93. Denied.
- 22 94. Defendants incorporated any denials made to the allegations set forth in
- 23 paragraphs 1 through 93 as if set forth fully herein.
- 24 95. Denied.
- 25 96. Denied.
- 26 97. Denied.
- 27 98. Denied.
- 28 99. Denied.

- 1 100. Denied.
- 2 101. Denied.
- 3 102. Defendants incorporated any denials made to the allegations set forth in
- 4 paragraphs 1 through 101 as if set forth fully herein.
- 5 103. Denied.
- 6 104. Denied.
- 7 105. Denied.
- 8 106. Denied.
- 9 107. Denied.
- 10 108. Denied.
- 11 109. Denied.
- 12 110. Denied.
- 13 111. Defendants incorporated any denials made to the allegations set forth in
- 14 paragraphs 1 through 110 as if set forth fully herein.
- 15 112. Denied.
- 16 113. Denied.
- 17 114. Denied.
- 18 115. Denied.
- 19 116. Denied.
- 20 117. Denied.
- 21 118. Denied.
- 22 119. Denied.
- 23 120. Defendants incorporated any denials made to the allegations set forth in
- 24 paragraphs 1 through 119 as if set forth fully herein.
- 25 121. Denied.
- 26 122. Denied.
- 27 123. Denied.
- 28

AFFIRMATIVE DEFENSES¹

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

1. The Complaint fails to state any claims upon which relief can be granted.
2. The claims of the Complaint are barred, in whole or in part, due to estoppel, unclean hands, waiver and/or laches.
3. The claims of the Complaint are barred by Plaintiffs' fraud.
4. The claims of the Complaint are barred by license, consent, and acquiescence.
5. The claims of the Complaint are barred by the failure to mitigate damages.
6. The claims of the Complaint are barred or unenforceable by the doctrine of fraud on the United States Copyright Office.
7. The claims of the Complaint are barred or unenforceable by the doctrine of copyright misuse.
8. The claims of the Complaint are barred by the doctrine of copyright fair use and trademark fair use principles.
9. The claims of the Complaint are barred by the invalidity of the copyright and/or copyright registration in question.
10. The claims of the Complaint are barred by Plaintiffs' lack of standing.
11. The claims of the Complaint are barred by the First Amendment to the United States Constitution and the relevant provisions of the California Constitution.
12. The claims of the Complaint are limited by innocent infringer principles.
13. The Complaint is barred, in whole or in part, because the material allegedly used is in the public domain, and therefore is not subject to copyright protection.
14. The Complaint is barred, in whole or in part, because even if some copyrighted material allegedly owned by Plaintiffs was used by Defendants, which Defendants deny, those materials were not original works of authorship and therefore are

¹ By including the following affirmative defenses, Defendants do not concede that

1 not subject to copyright protection.

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

5 16. The Complaint, to the extent that it seeks punitive and/or statutory damages
6 against Defendants violates Defendants' right to procedural and substantive due process
7 under the Fifth and Fourteenth Amendments to the United States Constitution and Article I,
8 Section 7 of the California Constitution because, among other things, the alleged wrongful
9 conduct at issue here is not sufficiently reprehensible to warrant any punitive damage
10 recovery and/or any assessment of statutory damages would grossly exceed any actual
11 damages to Plaintiffs. Therefore, Plaintiffs cannot recover statutory and/or punitive
12 damages against Defendants in this case.

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

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

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28 they bear the burden of proof or persuasion on any of them.

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

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

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

PRAYER FOR RELIEF

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

Dated: October 5, 2009 **ONE LLP**

By: /s/ Christopher W. Arledge
Christopher W. Arledge
Attorneys for Defendants, Charles S. DeVore and
Justin Hart