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9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 DON HENLEY, MIKE CAMPBELL, and
 12 DANNY KORTCHMAR

13 Plaintiffs,

14 v.

15 CHARLES S. DEVORE and JUSTIN
 16 HART,

17 Defendants.

18 AND RELATED COUNTERCLAIMS
 19

Case No. SACV09-0481 JVS (RNBx)
 Hon. James V. Selna

**DEFENDANTS' STATEMENT OF
 UNCONTROVERTED FACTS IN
 SUPPORT OF MOTION FOR
 SUMMARY JUDGMENT OR, IN THE
 ALTERNATIVE, PARTIAL
 SUMMARY JUDGMENT AS TO
 EACH CAUSE OF ACTION IN
 PLAINTIFFS' FIRST AMENDED
 COMPLAINT**

Date: May 17, 2010
 Time: 1:30 p.m.
 Courtroom: 10C

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**STATEMENT OF UNCONTROVERTED FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

1 **I. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON**
 2 **PLAINTIFFS' COPYRIGHT CLAIMS UNDER THE FAIR USE DOCTRINE**

3 A. First Fair Use Factor

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
1. Not applicable. Whether a work is transformative parody is a question of law. <i>Mattel, Inc. v. Walking Mountain Productions</i> , 353 F.3d 792 (9 th Cir. 2004).	The original songs and lyrics are Exhibits B, C, F, and G. The parody videos and Defendants' lyrics are Exhibits D, E, H, and I. For the proper context for the parodies, see DeVore Declaration ("DeVore Decl.") at ¶¶ 2-10.
2. Defendants' videos constitute political speech.	DeVore Decl., ¶ 2-11; Arledge Decl. Exh. 1 (Henley Deposition) at 68:5-10.

13 B. Second Fair Use Factor

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
3. Not applicable.	

17 C. Third Fair Use Factor

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
4. Defendants needed to use full-length versions of the songs in order to make all of their political points and make them intelligibly.	DeVore Decl., ¶ 12.

24 D. Fourth Fair Use Factor

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
5. Defendants' videos had no effect upon the potential market for or value of	DeVore Decl., ¶ 13; Arledge Decl., Exh. 1 at 9:4-13, 82:8-15; 91:1-9, 103:20 to 104:14,

1 2 3 4	Plaintiffs' copyrighted works	120:22 to 121:4; Arledge Decl., Exh. 4 at 14:15 to 16:4 and 82:7 to 83:1; Arledge Decl., Exh. 5 at 52:8-18, 103:9-21, 110:19 to 111:14, 117:2 to 118:4, and 135:18-25.
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6 **II. DEFENDANTS ARE ENTITLED TO PARTIAL SUMMARY JUDGMENT**
7 **ON THE ISSUE OF WHETHER THE ALLEGED INFRINGEMENT WAS**
8 **WILLFUL**

9	UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
10 11 12 13 14	6. Defendants' works are protected by the fair use doctrine, and even if this Court concludes otherwise, a reasonable person could believe Defendants' works are transformative parodies	See Nos. 1 through 5 above
15 16	7. Defendants intended to create parodies of Plaintiffs' original works	DeVore Decl., ¶¶ 4-12.

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18 **III. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON**
19 **PLAINTIFFS' CONTRIBUTORY AND VICARIOUS COPYRIGHT CLAIMS**
20 **UNDER THE FAIR USE DOCTRINE**

21	UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
22 23 24	8. The only allegedly infringing works in this case are the two parody videos produced by Defendants	Arledge Decl., ¶ 2.
25 26 27 28	9. The same facts supporting the fair use factors described above apply equally to, and are therefore incorporated into,	See Nos. 1 through 5 above

1 this section

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3 **IV. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON**
4 **HENLEY'S LANHAM ACT CLAIM**

5 A. Henley has no evidence to support a necessary element of his claim

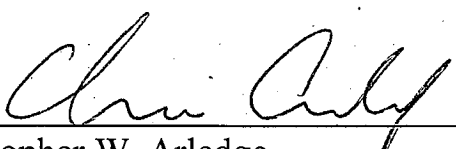
UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
7 10. Defendants have not 8 misappropriated a distinctive attribute of 9 Henley's.	Arledge Decl., Exh. 1 at 104:2-5, 119:24 to 120:2; Arledge Decl., Exh. 2; DeVore Decl., ¶ 14.

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13 B. Henley cannot prove actual malice

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
14 11. Henley is a public figure.	First Amended Complaint, ¶¶ 25, 26.
17 12. Defendants' videos are non- 18 commercial speech.	DeVore Decl., ¶ 2-11; Arledge Decl. Exh. 1 (Henley Deposition) at 68:5-10.
19 13. Defendants did not intend to cause 20 (or were not recklessly indifferent to 21 their causing) public confusion as to 22 Henley's sponsorship, endorsement or 23 affiliation with Chuck DeVore or his 24 campaign	DeVore Decl., ¶ 10-12, 15; Arledge Decl., Exh. 1 at 59:8 to 62:2, 64:19 to 65:1.

1 Dated: April 9, 2010

2 **ONE LLP**

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4 By: 
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6 Attorneys for Defendants, Charles S. DeVore and
7 Justin Hart
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