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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.

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

**DECLARATION OF CHARLES S.  
DEVORE IN SUPPORT OF  
DEFENDANTS' 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

18 AND RELATED COUNTERCLAIMS  
19

20  
21 I, Charles S. DeVore, declare as follows:

22 1. I am a California Assemblyman and a candidate for the United States Senate.  
23 Justin Hart is the Director of Internet Communications for my campaign. Together, we  
24 made videos by putting our lyrics to two well-known songs: "The Boys of Summer" and  
25 "All She Wants to Do Is Dance." I have personal knowledge of the facts stated in this  
26 declaration and, if called to do so, could and would testify competently thereto.

27 2. Our videos attack the policies of Barack Obama, Barbara Boxer, Al Gore, and  
28 others. They also take aim at the entertainment establishment in general and Don Henley

16482.1

1 as one of the poster boys for the liberal, entertainment elite. I am a candidate for the United  
2 States Senate in California, a “blue” state, and one dominated by the entertainment  
3 industry. As my supporters recognize, by challenging Senator Barbara Boxer, and the  
4 Democratic establishment more generally, I am necessarily challenging the Hollywood and  
5 entertainment elite, which with only a handful of exceptions has been outspoken and  
6 financially generous in its support of liberal issues and Democratic politicians, like Ms.  
7 Boxer. From my perspective and from the perspective of my supporters, the entertainment  
8 establishment is squarely behind the current Democratic administration and Ms. Boxer, and  
9 it will go to great lengths to defeat a conservative like me.

10 3. Don Henley, while not the only entertainment celebrity to vocally support Ms.  
11 Boxer and other liberal politicians and causes, is one of the more prominent. He is a well-  
12 known Democrat who has given a lot of money to Democratic politicians over the years—  
13 over \$750,000 to liberal candidates, to be exact, including \$9,000 to Barbara Boxer.  
14 Attached as Exhibit A are disclosure reports showing Mr. Henley’s political donations. He  
15 is also well-known throughout Southern California, which is my political base, for his  
16 involvement in Democratic politics. In fact, in a well-publicized incident a few years ago,  
17 an Orange County audience booed Henley for making liberal political statements during a  
18 concert. This incident was covered widely by the local media, including the Orange  
19 County Register. Thus, Don Henley is, for me and other politically active conservatives,  
20 inseparable from the Democratic political establishment. He and his friends in the  
21 entertainment industry have spent huge sums of money and used the powerful platform that  
22 fame and celebrity have given them in order to help elect Democratic politicians, including  
23 President Obama and Senator Boxer.

24 4. Our decision to parody songs performed by Don Henley was not accidental  
25 nor arbitrary; Justin Hart and I did not “merely use[ Henley’s songs] to get attention or to  
26 avoid the drudgery in working up something fresh.” Had that been our goal, we could have  
27 chosen from literally thousands of songs as popular as the songs we used, and frankly we  
28

1 could have chosen songs from a more contemporary artist that might have given us far  
2 more media coverage. But there would have been no political point to doing so.

3         5.       We carefully selected Don Henley because of his status as a liberal,  
4 entertainment icon. Not only that, but we also carefully selected the particular songs we  
5 used. Our first parody takes on Plaintiffs' "The Boys of Summer," which deals with  
6 important political themes. A true and correct copy of Mr. Henley's recording is attached  
7 hereto as Exhibit B. A copy of the lyrics of the song is attached as Exhibit C. The song's  
8 major theme is nostalgia. On the surface, it is a wistful look at an old romance, a fling  
9 between two kids, now grown, who have moved on with their lives. But the nostalgia is  
10 not just about an old romance. As Henley says, the second verse of the song—the one with  
11 the famous line about seeing "a Dead Head sticker on a Cadillac"—was about the essential  
12 failure of Sixties' politics: "I don't think we changed a damn thing, frankly.... After all our  
13 marching and shouting and screaming didn't work, we withdrew and became yuppies and  
14 got into the Me Decade." Thus, the song's nostalgia concerns not only the girl but also the  
15 leftist politics of the radical 60's, and the song's narrator bemoans how those efforts to  
16 create a better (more liberal) society have failed.

17         6.       Our parody video plays on these same themes and aims its mocking gaze at  
18 Henley and the other celebrities who fought so hard to get Mr. Obama elected. A copy of  
19 our parody video is attached hereto as Exhibit D. A copy of the lyrics that I wrote for the  
20 parody is attached as Exhibit E. Our parody substitutes Barack Obama for the narrator's  
21 love interest and has Henley (and other outspoken liberal celebrities) dreaming wistfully of  
22 the time before President Obama's election: "We will never forget those nights/ We  
23 wonder if it was a dream/ Remember how you made us crazy?/ Remember how we made  
24 you beam." The song asks whether the parties' naïve love affair can survive the  
25 circumstances since, particularly President Obama's broken promises and failure to deliver  
26 on the promised "hope." And, as in the original, the narrator bemoans how the efforts to  
27 create a better (more liberal) society have failed.

1           7.     Our second parody takes on “All She Wants To Do Is Dance.” A true and  
2 correct copy of Henley’s recording of the song is attached hereto as Exhibit F. A copy of  
3 the lyrics is attached as Exhibit G. “All She Wants To Do Is Dance” is about Americans’  
4 indifference to what Plaintiffs perceive to be the misconduct of the American government  
5 in a foreign, apparently Latin American, locale. In conjunction with the timing of the  
6 song’s release (the mid-80’s) and the images selected for the video, the criticism was very  
7 plain to me from the moment the song and video were released: Plaintiffs were criticizing  
8 the Reagan administration’s Central America policies. Indeed, soldiers in the video were  
9 dressed like Nicaraguan Contras. I was and am familiar with the Contras uniforms from  
10 my days working as an intelligence officer in the Reagan administration.

11           8.     In the Plaintiffs’ not-so-subtle attack on the U.S. government’s policies—  
12 policies that I helped to implement during the Reagan administration—the song asserts that  
13 the American government was inserting itself into Central American politics and enriching  
14 itself through immoral policies that are causing or at least contributing to violence in that  
15 region while the people there simply demanded that America get out of their business. And  
16 the American people—personified by the girl who ignores the tragedy unfolding around  
17 here and only wants to dance—are apathetic, showing no regard for their government’s  
18 malicious conduct.

19           9.     It is not unusual to hear complaints by liberal politicians and commentators  
20 that the American government is enmeshing the country in foreign conflicts for illegitimate  
21 reasons; this has been a staple of American politics since at least Vietnam and has  
22 continued through Reagan’s Central American policies and Bush’s Mideast policies. Our  
23 parody turns this line of attack on its head and directly targets Don Henley’s particular  
24 brand of politics. A copy of our video is attached hereto as Exhibit H. A copy of the lyrics  
25 to our parody is attached hereto as Exhibit I. The problem is not that the American  
26 government is inserting itself into foreign countries for illegitimate reasons; the problem is  
27 that the American government, through Barbara Boxer and her colleagues in Washington—  
28 and with the support of the liberal, entertainment elite (of which Henley is proudly a

1 member)—are inserting themselves into the American economy and enriching the  
2 government and certain special interests through immoral tax policies that are causing a  
3 decrease in the American standard of living. Like the foreign citizens who seemingly  
4 demand that America get out of their affairs in Plaintiff's original composition, American  
5 citizens demand that the liberal politicians get out of their affairs in Defendants' parody.  
6 And, like the woman in the original song who shows no regard for the problems around  
7 here and just wants to dance, Barbara Boxer shows no regard for the problems she and her  
8 colleagues have caused; she just wants to tax.

9       10. Our parodies were intended to, and we believe were successful at, targeting  
10 Mr. Henley's songs quite directly. By taking Mr. Henley's original songs—which were  
11 infused with political meaning—and giving them a very different political meaning, all  
12 while attacking the very politicians and policies that Mr. Henley is publicly identified with  
13 and has so vocally supported, our parody songs clearly transform the original works into  
14 something different. Indeed, the very decision to target Don Henley was a critical, creative  
15 decision. If we had merely wanted to use a popular tune in order to avoid having to write  
16 our own composition—which would not have been a problem, since Mr. Hart does  
17 sometimes compose music—we could have chosen any number of compositions. As  
18 Henley himself concedes, he has written 30-40 songs as popular as the two in question, and  
19 we could have chosen from thousands of songs written over the last 25 years that were just  
20 as popular and famous. We chose Henley's work because Henley is of a group of  
21 celebrities who are associated in the public eye with Ms. Boxer, Mr. Obama and other  
22 prominent liberal politicians.

23       11. It is also important to understand that our parody videos were core political  
24 speech. Our videos were not and are not sold or offered for sale. They were only available  
25 for free on the internet and were used in a Senate campaign to reach voters with my  
26 political message.

27       12. We created the videos by adding my new lyrics to the original musical  
28 compositions. To parody the original works properly—that is, to express the political point

1 I was making and target Mr. Henley and his political allies—we needed to use the  
2 underlying musical compositions. Moreover, practically speaking it would not be possible  
3 to use only a portion of the song. Using only the first 30 seconds, for example, would have  
4 required us either to switch in mid-song to a new musical composition entirely—which  
5 would have been confusing and would have diluted the parodic impact of the work—or we  
6 would have had to cut our parody short, which would not have allowed us to convey all of  
7 the political and parodic points they wished to make.

8 13. It is nonsensical to suggest that consumers will see our parody videos as  
9 substitutes for the original works. First, our songs are not sold on CD's, on iTunes or  
10 anywhere else, so it would seem impossible for them to fulfill the market niche of the  
11 originals. In addition, and probably more importantly, our versions are not intended to be  
12 and never will be Top 40 hits. Don Henley is a superstar performer. Justin Hart is an  
13 amateur singer; I have little musical ability. Our goal was not to create pop hits, and  
14 certainly not to create art better than the originals. We used karaoke tracks and a non-  
15 professional singer to make blunt, but important political statements. Thus, our videos are  
16 clearly not Grammy-award winning in quality and were not intended to be and are not good  
17 enough to be substitutes for the professional recordings of Don Henley.

18 14. In making our videos, we did not use anything related to Henley's persona.  
19 We did not use his voice, his picture, his image, his name, or anything else. We did not try  
20 to mimic or copy him. We simply re-recorded versions of songs that he had recorded, only  
21 with new lyrics that inverted their original meanings.

22 15. Justin Hart and I never intended to mislead the public into believing that  
23 Henley sponsored or endorsed the parody videos. We wanted to mock Henley, not claim  
24 his support. In fact, few things could be worse for me than for people to believe that Don  
25 Henley supports my campaign. I am a conservative Republican candidate running in a  
26 Republican primary. The primary focus of his campaign is to show voters that I am the  
27 only true conservative in this race. Henley, by contrast, is a well-known Democrat whose  
28 involvement in Democratic causes is well known in Southern California. Henley's

1 endorsement would not help me in my race; it would be terrible. I would immediately have  
2 to distance myself from Henley's endorsement were people to believe that he had in fact  
3 endorsed me.

4 I declare under penalty of perjury under the laws of the United States of America that  
5 the foregoing is true and correct to the best of my knowledge. Executed this 8 day of  
6 April, 2010, at IRVINE, California.

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Charles S. DeVore