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13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**

16 DON HENLEY, MIKE CAMPBELL  
 17 and DANNY KORTCHMAR,

Case No. SACV09-0481 JVS (RNBx)

18 Plaintiffs,

**SECOND SUPPLEMENTAL  
 19 DECLARATION OF JACQUELINE  
 20 CHARLESWORTH IN SUPPORT OF  
 21 PLAINTIFFS' MOTION FOR PARTIAL  
 22 SUMMARY JUDGMENT**

19 v.

21 CHARLES S. DEVORE and  
 22 JUSTIN HART,

Date: June 1, 2010  
 Time: 1:30 P.M.  
 Ctrm: Hon. James V. Selna

23 Defendants.

1 I, Jacqueline C. Charlesworth, pursuant to 28 U.S.C. § 1746, hereby declare:

2 1. I am a member of the Bar of the State of New York and am admitted *pro*  
3 *hac vice* before this Court. I am an attorney at the law firm Morrison & Foerster LLP,  
4 counsel for Plaintiffs Don Henley, Mike Campbell and Danny Kortchmar. I have  
5 personal knowledge of the matters stated herein, as well as the matters stated in my  
6 declaration submitted in support of Plaintiffs' motion for partial summary judgment,  
7 dated April 9, 2010 ("Charlesworth Declaration"), and could and would competently  
8 testify about the matters stated in the Charlesworth Declaration and herein.

9 2. I submit this declaration in response to Defendants' Evidentiary Objections,  
10 dated May 3, 2010, to provide further explanation of the exhibits attached to the  
11 Charlesworth Declaration, and to place additional documents before the Court.

12 3. Exhibits 1 and 2 to the Charlesworth Declaration are, respectively, true and  
13 correct copies of Don Henley's sound recordings of the musical works "The Boys of  
14 Summer" and "All She Wants to Do Is Dance" from the album *Building the Perfect*  
15 *Beast*, reproduced at my direction from the original compact disc. I note that these  
16 recordings are also attached as Exhibits B and F, respectively, to the Declaration of  
17 Charles DeVore ("DeVore Declaration"), and relied upon by Defendants.

18 4. Exhibits 3, 4 and 5 to the Charlesworth Declaration are, respectively, true  
19 and correct copies of the video "The Hope of November," the video "All She Wants to  
20 Do Is Tax," and an alternate version of the video "All She Wants to Do Is Tax" with an  
21 added disclaimer. These exhibits were all introduced at the December 4, 2009 deposition  
22 of Charles DeVore ("DeVore Dep.") as Exhibits 34, 35 and 36, respectively, and were all  
23 authenticated by Mr. DeVore. (Charlesworth Decl., Ex. 15 at 374-75 (DeVore Dep. at  
24 310:11-311:1)). I note that Exhibits 3 and 4 were also attached as Exhibits D and H,  
25 respectively, to the DeVore Declaration.

26 5. Exhibits 6 through 9 to the Charlesworth Declaration are, respectively, true  
27 and correct copies of the lyrics to "The Boys of Summer," "The Hope of November,"  
28 "All She Wants to Do Is Dance" and "All She Wants to Do Is Tax" included in the

1 expert report of Mark Rose, attached as Exhibit 1 to the Declaration of Mark Rose  
2 (“Rose Declaration”) and authenticated by Dr. Rose. (Rose Decl., ¶ 3, Ex. 1.) I note that  
3 copies of these documents are also attached as Exhibits C, E, G and I, respectively, to the  
4 DeVore Declaration.

5 6. Exhibits 10 and 11 to the Charlesworth Declaration are, respectively, true  
6 and correct copies of the copyright registration certificates for the musical compositions  
7 “The Boys of Summer” and “All She Want to Do Is Dance,” which were authenticated  
8 by Plaintiffs Henley, Campbell and Kortchmar. (Declaration of Don Henley (“Henley  
9 Decl.”) ¶ 5; Declaration of Mike Campbell (“Campbell Decl.”) ¶ 5; Declaration of  
10 Danny Kortchmar (“Kortchmar Decl.”) ¶ 5.)

11 7. Exhibit 21 to the Charlesworth Declaration is a true and correct copy of  
12 certain agreements entered into by Danny Kortchmar, which were authenticated by Mr.  
13 Kortchmar. (Kortchmar Decl. ¶ 8.)

14 8. Exhibits 22, 23, 25 and 54 to the Charlesworth Declaration are true and  
15 correct copies of articles written by Chuck DeVore obtained from Internet sources. Each  
16 of these documents was introduced as an exhibit at the DeVore Deposition, and each was  
17 authenticated by Mr. DeVore. (Charlesworth Decl., Ex. 15 at 174-76, 251, 276-77, 285-  
18 86 (DeVore Dep. at 110:21-112:6, 187:10-22, 212:16-213:3, 221:16-222:24).)

19 9. Exhibit 24 to the Charlesworth Declaration is a true and correct copy of an  
20 article from the publication, Daily Pilot, available at  
21 <http://www.dailypilot.com/dailyblogger/panderson/?p=166>. I visited the website  
22 [www.dailypilot.com](http://www.dailypilot.com) and caused the article to be printed. The printout accurately  
23 represents the article as it appeared on the website. This document was introduced as  
24 Exhibit 13 at the deposition of Charles DeVore.

25 10. Exhibit 26 to the Charlesworth Declaration is a true and correct copy of an  
26 article written by Chuck DeVore on Big Hollywood, available at  
27 <http://bighollywood.breitbart.com/cdevore/2010/04/05/henley-lawsuit-update/>. I visited  
28 the website <http://bighollywood.breitbart.com> and examined the article. I then caused

1 the article to be saved and printed. The contents of Exhibit 26 accurately represent the  
2 article as it appeared on the website.

3 11. Exhibits 27 through 37, 43 through 45, and 47 through 50 to the  
4 Charlesworth Declaration are true and correct copies of documents produced by  
5 Defendants. Each of these documents was introduced as an exhibit at the DeVore  
6 Deposition and/or the deposition of Justin Hart (“Hart Dep.”), and was authenticated by  
7 Mr. DeVore and/or Mr. Hart. (Charlesworth Decl., Ex. 15 at 100-01, 154-56, 189-90,  
8 193, 243-44, 248-50, 362-64 (DeVore Dep. at 36:5-37:5, 90:1-92:18, 125:18-126:17,  
9 129:23, 179:4-180:2, 184:3-186:20, 298:21-300:10), Ex. 16 at 421-23, 531-32, 553, 538,  
10 550-51, 559, 561, 611-12, 643-44, 673 (Hart Dep. at 42:22-44:5, 152:3-153:17, 154:7-  
11 15, 159:6-21, 171:13-172:16, 180:2-18, 182:5-13, 232:6-233:2, 264:16-265:9, 294:7-  
12 22).)

13 12. Exhibits 38 and 52 to the Charlesworth Declaration are true and correct  
14 copies of correspondence sent by or on behalf of Don Henley, which were authenticated  
15 by Mr. Henley in his declaration. (Henley Decl. ¶¶ 17, 21.)

16 13. Exhibits 39 through 42 and 53 to the Charlesworth Declaration are true and  
17 correct copies of correspondence that I personally sent or received.

18 14. Exhibit 46 to the Charlesworth Declaration is a true and correct copy of a  
19 posting by Justin Hart on <http://techrepublican.com/blog/justin-hart>, dated March 27,  
20 2008. This document was introduced as an exhibit at the deposition of Justin Hart, and  
21 was authenticated by Mr. Hart. (Charlesworth Decl., Ex. 16 at 417-18 (Hart Dep. at  
22 38:25-39:25).)

23 15. Exhibit 51 to the Charlesworth Declaration is a true and correct copy of  
24 iTunes Store Terms and Conditions as of December 19, 2009, which was available at  
25 <http://www.apple.com/legal/itunes/us/terms.html>. On or about December 19, 2009, I  
26 viewed these Terms and Conditions on the [www.apple.com](http://www.apple.com) website, and caused to be  
27 printed copies of those pages. This document was introduced as Exhibit 61 at the  
28 deposition of Justin Hart.

