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21 **UNITED STATES DISTRICT COURT**  
 22 **CENTRAL DISTRICT OF CALIFORNIA**

23 DON HENLEY, MIKE CAMPBELL  
 24 and DANNY KORTCHMAR,

25 Plaintiffs,

26 v.

27 CHARLES S. DEVORE and  
 28 JUSTIN HART,

Defendants.

Case No. SACV09-0481 JVS (RNBx)

**PLAINTIFFS' NOTICE OF MOTION  
 AND MOTION *IN LIMINE* NO. 1 TO  
 PRECLUDE DEFENDANTS FROM  
 TESTIFYING ON SUBJECTS AS TO  
 WHICH THEY LACK PERSONAL  
 KNOWLEDGE**

Pretrial Conference Date: July 19, 2010  
 Time: 11:00 a.m.  
 Ctrm: Hon. James V. Selna

Trial Date: August 3, 2010



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Federal Rules of Evidence 403 and 602, Plaintiffs Don Henley, Mike  
4 Campbell and Danny Kortchmar hereby submit this motion *in limine* to preclude  
5 Defendants Charles S. DeVore and Justin Hart from testifying on matters as to which  
6 they lack personal knowledge.

7 As reviewed in more detail below, DeVore has previously offered sworn  
8 testimony in this action concerning various matters outside his personal knowledge, in  
9 particular, purported activities and beliefs that DeVore attributes, without foundation,  
10 to Henley. Such speculative and unfounded testimony is improper and violates the  
11 basic tenet reflected in Federal Rule of Evidence 602. Moreover, any such testimony  
12 would be confusing and misleading to the jury, as well as prejudicial to Plaintiffs.  
13 Because Defendants have demonstrated a proclivity to offer such testimony, it is  
14 appropriate for this Court to enter an order excluding it from trial.

15 **II. RELEVANT BACKGROUND**

16 In this action, Defendants have purported to offer testimony regarding Henley’s  
17 alleged political beliefs and activities, as well as the general public’s perception of  
18 Henley, without any evidence that Defendants have personal knowledge as to any of  
19 these issues. DeVore, in particular, has made unsupported, unsubstantiated statements  
20 concerning Henley in a sworn declaration submitted in support of Defendants’ motion  
21 for summary judgment, including the following:

- 22 • “*Don Henley, while not the only entertainment celebrity to vocally*  
23 *support Ms. Boxer and other liberal politicians and causes, is one of*  
24 *the more prominent.*” (Declaration of Charles S. DeVore in Support of  
25 Defendants’ Motion for Summary Judgment, dated April 9, 2010, ¶ 3.)  
26 • “[A]n Orange County audience booed Henley for making liberal  
27 *political statements during a concert.*” (*Id.* ¶ 3.)  
28

- 1 • “*Henley and the other celebrities . . . fought so hard to get Mr. Obama*  
2 *elected.*” (*Id.* ¶ 6.)
- 3 • “*It is not unusual to hear complaints by liberal politicians and*  
4 *commentators that the American government is enmeshing the country*  
5 *in foreign conflicts for illegitimate reasons . . . . Our parody turns*  
6 *this line of attack on its head and directly targets Don Henley’s*  
7 *particular brand of politics.*” (*Id.* ¶ 9.)
- 8 • “. . . *the liberal, entertainment elite (of which Henley is proudly a*  
9 *member) . . .*” (*Id.*)
- 10 • “[A]ttacking the very politicians and policies that Mr. Henley is  
11 publicly identified with and has so vocally supported . . . .” (*Id.* ¶ 10.)
- 12 • “*Henley is of a group of celebrities who are associated in the public*  
13 *eye with Ms. Boxer, Mr. Obama and other prominent liberal*  
14 *politicians.*” (*Id.*)

15 DeVore has presented the above claims about Henley as statements of fact, based on  
16 his personal knowledge. But neither DeVore, nor Hart, has demonstrated any such  
17 personal knowledge. They have never met nor spoken with Henley, and have  
18 produced no evidence from which they could conclude that Henley has campaigned  
19 for, or provided “vocal support” to, Boxer or Obama (which Henley did not), let alone  
20 any evidence to demonstrate how Henley is perceived by the public, or with whom he  
21 is “associated in the public eye.” Such testimony is, at best, baseless conjecture, and at  
22 worst, knowingly false. In either case, it is plainly improper.

23 **III. DEFENDANTS SHOULD BE PRECLUDED FROM**  
24 **INTRODUCING ARGUMENT OR EVIDENCE REGARDING**  
25 **SUBJECTS ON WHICH THEY LACK PERSONAL KNOWLEDGE**

26 This Court should preclude Defendants’ testimony regarding subjects as to  
27 which Defendants have no basis in fact or personal knowledge. It is fundamental that  
28 “[a] witness may not testify to a matter unless evidence is introduced sufficient to

1 support a finding that the witness has personal knowledge of the matter.” Fed. R.  
2 Evid. 602.

3 Here, the risk is very real that Defendants may testify to matters beyond their  
4 personal knowledge at trial, because they have done so previously in this litigation. As  
5 noted above, a substantial portion of DeVore’s declaration in support of Defendants’  
6 motion for summary judgment consisted of testimony on matters concerning which he  
7 lacks personal knowledge. Courts routinely exclude testimony that is purely  
8 speculative and has no foundation in the personal knowledge of the witness. *See*  
9 *Sarantis v. ADP, Inc.*, No. CV-06-2153, 2006 U.S. Dist. LEXIS 67902, at \*25-27 (D.  
10 Ariz. Aug. 28, 2008) (granting motion *in limine* to preclude witness’s testimony as to  
11 matters of which she had no personal knowledge and were purely speculative); *United*  
12 *States v. Fabel*, No. CR06-041L, 2007 U.S. Dist. LEXIS 12030, at \*3 (W.D. Wash.  
13 Feb. 16, 2007) (granting motion *in limine* to preclude witnesses from speculating on  
14 matters beyond their personal knowledge); *see also Block v. City of Los Angeles*, 253  
15 F.3d 410, 419 (9th Cir. 2001) (finding it an abuse of discretion to consider testimony  
16 not made on personal knowledge); *Davis v. United States*, No. 07-0481-VAP (OPx),  
17 2010 U.S. Dist. LEXIS 7036, at \*9-10 (C.D. Cal. Jan. 28, 2010) (testimony based on  
18 thoughts of others, without foundation, is inappropriate).

19 Moreover, to permit DeVore or Hart to offer unfounded, speculative testimony  
20 about Henley or the other Plaintiffs would be misleading and confusing to the jury, and  
21 prejudicial to Plaintiffs. Federal Rule of Evidence 403 excludes evidence on grounds  
22 of prejudice, confusion or waste of time. *See* Fed. R. Evid. 403. In addition to causing  
23 confusion, Defendants’ attempts to offer nonprobative, speculative evidence at trial  
24 would be wasteful of the Court’s and jury’s time if Plaintiffs were required to object  
25 repeatedly thereto.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should preclude Defendants from testifying  
3 on matters as to which they lack personal knowledge, including those matters  
4 described above.

5 Dated: June 28, 2010

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