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5 Attorneys for Defendant
 6 JOHN MCCAIN

7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 WESTERN DIVISION

11
 12 JACKSON BROWNE, an individual

13 Plaintiff,

14 vs.

15 JOHN MCCAIN, an individual; THE
 16 REPUBLICAN NATIONAL
 COMMITTEE, a non-profit political
 17 organization; THE OHIO REPUBLICAN
 PARTY; a non-profit political
 18 organization,

19 Defendants.

CASE NO. CV08-05334 RGK (Ex)

**DEFENDANT JOHN MCCAIN'S
 NOTICE OF MOTION AND
 SPECIAL MOTION TO STRIKE
 UNDER C.C.P. § 425.16**

Hearing:

Date: December 8, 2008

Time: 9:00 a.m.

Place: Courtroom 850

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 8, 2008, at 9:00 a.m., or as soon
3 thereafter as counsel may be heard, in Courtroom 850 of the above-entitled Court, the
4 Honorable R. Gary Klausner presiding, located at 255 East Temple Street, Los
5 Angeles, California 90012, Defendant John McCain (“McCain”) will and hereby does
6 move the Court for an order striking the fourth claim for relief in the Complaint filed
7 by Jackson Browne (“Browne”) under California’s anti-SLAPP statute, Code of Civil
8 Procedure § 425.16. This Motion is made following the conference of counsel
9 pursuant to Local Rule 7-3, which took place on October 6, 2008.

10 The Complaint’s fourth claim for relief is based on speech in connection with a
11 public issue or issue of public interest. Accordingly, this claim falls within the scope of
12 Section 425.16(e)(4) and, as such, the burden shifts to Browne to establish, with
13 competent and admissible evidence, a probability that he will prevail on that claim.
14 C.C.P. § 425.16(b)(1). Browne cannot satisfy his burden for the following reasons:


- 15 (1) Browne’s claim fails because the Political Video that is the subject of his
16 claim is non-commercial speech that relates to a matter of public interest;
- 17 (2) The Political Video that is the subject of his claim is subject to full and
18 stringent protection under the First Amendment, which bars the claim;
- 19 (3) The use of Browne’s voice in the Political Video was transformative thereby
20 precluding liability; and
- 21 (4) Browne cannot show that McCain used Browne’s voice.

22 This Motion is based on this Notice, the concurrently-filed Memorandum of
23 Points and Authorities, the concurrently-filed Notice of Motion and Motion to Dismiss
24 under Federal Rule of Civil Procedure 12(b)(6) and supporting Memorandum of Points
25 and Authorities, the concurrently-filed Declarations of Lincoln D. Bandlow, John
26 McCain, John McClelland and Jason Mauk, the concurrently-filed Request For
27 Judicial Notice, all papers, pleadings, records and files in this case, and on such other
28

1 evidence and/or argument as may be presented to the Court on the hearing on this
2 Motion.

3 McCain respectfully requests that the Court strike the fourth claim for relief in
4 Browne's Complaint with prejudice and without leave to amend.

5 Dated: November 17, 2008 SPILLANE SHAEFFER ARONOFF BANDLOW LLP

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7
8 By: 
9 Lincoln D. Bandlow

10 Attorneys for Defendant
11 JOHN MCCAIN
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