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9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION
 12

13 JACKSON BROWNE., an individual

CASE # CV08-05334 RGK (Ex)

14 Plaintiff,

**DEFENDANT JOHN MCCAIN'S
 NOTICE OF MOTION AND
 MOTION TO DISMISS UNDER
 FRCP 12(b)(6)**

15 vs.

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

Hearing:
 Date: December 8, 2008
 Time: 9:00 a.m.
 Place: Courtroom 850

20 Defendants.
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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 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for
7 an order dismissing the Complaint, and each claim for relief contained therein, filed by
8 Plaintiff Jackson Browne (“Browne”).

9 This Motion is made following the conference of counsel pursuant to Central
10 District Local Rule 7-3, which took place on October 6, 2008 and is made on the
11 following grounds:


- 12 1. Browne’s first and second claims for relief for Copyright Infringement
13 and Vicarious Copyright Infringement, respectively, both under 17
14 U.S.C. § 106(4), fail as a matter of law under the fair use doctrine;
- 15 2. Browne’s third claim for relief, for violation of Lanham Act § 43(a), 15
16 U.S.C. §1125(a), fails to state a claim upon which relief can be granted
17 for the following independent reasons:
 - 18 a. The Lanham Act does not apply to political speech, such as that
19 contained in the Political Video that is the subject of this action;
 - 20 b. The claim is barred as a matter of law under the First
21 Amendment and “artistic relevance” test;
 - 22 c. The claim is barred because there can be no likelihood that
23 consumers would be confused into believing that the Political
24 Video that is the subject of this action was sponsored by or
25 affiliated with Browne;
- 26 3. Browne’s fourth claim for relief, for common law violation of
27 Browne’s right of publicity, fails to state a claim upon which relief can
28 be granted for the following independent reasons:

- a. Browne’s claim fails because the Political Video that is the subject of his claim is non-commercial speech that relates to a matter of public interest;
- b. The Political Video that is the subject of his claim is subject to full and stringent protection under the First Amendment, which bars the claim;
- c. The use of Browne’s voice in the Political Video was transformative thereby precluding liability; and
- d. Browne cannot show that McCain used Browne’s voice.

The foregoing grounds are addressed in detail in the concurrently-filed Memorandum of Points and Authorities. This Motion is based on this Notice, the Memorandum of Points and Authorities, the concurrently-filed Request For Judicial Notice (“RFJN”), the concurrently-filed Notice of Motion and Special Motion to Strike Under C.C.P. § 425.16 and its supporting Memorandum of Points and Authorities, on all papers, pleadings, records and files in this case, on all other matters of which judicial notice may be taken, and on such other evidence and/or argument as may be presented to the Court on the hearing of this Motion.

McCain respectfully requests that the Court dismiss Browne’s Complaint, and each claim for relief contained therein, with prejudice.

Dated: November 17, 2008 SPILLANE SHAEFFER ARONOFF BANDLOW LLP

By: 
Lincoln D. Bandlow

Attorneys for Defendant
JOHN MCCAIN