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

13 JACKSON BROWNE., an individual
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CASE # CV08-05334 RGK (Ex)

15 Plaintiff,

**JOINT REQUEST FOR
 JUDICIAL NOTICE IN
 SUPPORT OF DEFENDANTS'
 MOTIONS TO DISMISS UNDER
 FRCP 12(b)(6)**

16 vs.

17 JOHN MCCAIN, an individual; THE
 REPUBLICAN NATIONAL
 18 COMMITTEE, a non-profit political
 organization; THE OHIO REPUBLICAN
 19 PARTY, a non-profit political
 organization,
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Hearing:
 Date: December 8, 2008
 Time: 9:00 a.m.
 Place: Courtroom 850

21 Defendants.
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1 Pursuant to Federal Rule of Evidence 201, Defendants John McCain, Ohio
2 Republican Party and Republican National Committee (collectively “Defendants”)
3 respectfully requests that this Court take judicial notice of the following documents:

4 1. A DVD copy of the Ohio Republican Party Political Video that is the
5 subject of this action (the “Political Video”), which was referenced and described in
6 the Complaint (¶ 2) filed by plaintiff Jackson Browne (“Browne”), was identified and
7 authenticated in the concurrently-filed Declaration of John McClelland as Exhibit 1,
8 and was filed under separate cover pursuant to the Court’s manual filing procedures.

9 2. A compact disc of the Song *Running On Empty* which was referenced in
10 the Complaint (¶¶ 2 and 13), was identified and authenticated in the concurrently-filed
11 Declaration of John McClelland as Exhibit 2, and was filed under separate cover
12 pursuant to Court’s manual filing procedures.

13 3. Articles and news stories identified, authenticated and attached to the
14 concurrently-filed Declaration of Lincoln D. Bandlow as Exhibits 5-20.

15 These documents are properly subject to judicial notice under Federal Rule of
16 Evidence 201(a) and (b) (judicial notice may be taken of “adjudicative facts” “not
17 subject to reasonable dispute in that it is either (1) generally known within the
18 territorial jurisdiction of the court or (2) capable of accurate and ready determination
19 by resort to sources whose accuracy cannot reasonably be questioned”). *Hunt v. Check*
20 *Recovery Systems, Inc.*, 478 F.Supp.2d 1157, 1160 (N.D.Cal. 2007).

21 When considering a motion to dismiss, the Court may consider exhibits
22 submitted or referenced in the complaint and matters that may be judicially noticed
23 pursuant to Federal Rule of Evidence 201. *Pegasus Holdings v. Veterinary Centers of*
24 *America, Inc.*, 38 F. Supp. 2d 1158, 1160 (C.D. Cal. 1998). “Documents specifically
25 referred to in a complaint, though not physically attached to the pleading, may be
26 considered where authenticity is unquestioned.” *Daly v. Viacom, Inc.*, 238 F. Supp. 2d
27 1118, 1121-22 (N.D. Cal. 2002) (court considered television program referenced in,
28 but not attached to complaint); *Burnett v. Twentieth Century Fox Film Corp.*, 491 F.

1 Supp. 2d 962, 966 (C.D. Cal. 2007) (reviewing two works referenced in the complaint
2 on Motion to Dismiss).

3 Here, the song *Running On Empty* from the Browne album of the same name
4 and the Political Video are at issue in the case and are specifically referenced in
5 paragraphs 13 and 2 of the Complaint, respectively, but are not attached. Defendant
6 Ohio Republican Party concurrently filed a true and correct copy of a DVD of the
7 Political Video at issue and a CD of the song *Running On Empty*. See McClelland
8 Decl., Exhibits 1 and 2. Since Browne specifically referred to and relies upon the
9 Political Video and the Song, it is appropriate for the Court to take judicial notice of
10 these items.

11 It is also appropriate for federal courts to take judicial notice of articles and
12 news stories relevant to the proceedings, such as the articles and news stories
13 concerning the use of the term “running on empty.” See *Show-World Center, Inc. v.*
14 *Walsh*, 438 F.Supp. 642, 654 (D.C.N.Y. 1977) (“This court takes judicial notice of the
15 fact that defendants' campaign against sex oriented establishments in the midtown area
16 of the Borough of Manhattan...has received widespread publicity in the community
17 via newspaper publicity and television news stories”); *Allen v. City and County of*
18 *Honolulu*, 58 Haw. 432, 438, 571 P.2d 328, 331 (Hawaii 1977) (court took judicial
19 notice of news stories). Defendant John McCain concurrently filed true and correct
20 copies of several relevant news stories. See Bandlow Decl., Exhibits 5-20.

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23 Dated: November 17, 2008

SPILLANE SHAEFFER ARONOFF BANDLOW LLP

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25 By: 


26 Lincoln D. Bandlow
27 Attorneys for Defendant
28 JOHN MCCAIN

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DATED: November 17, 2008 GRUNSKY, EBEL, FARRAR & HOWELL

By 
Rebecca Connolly, Attorneys for Defendant The
Ohio Republican Party

Dated: November 17, 2008 KLEIN, O'NEILL & SINGH, LLP

By: 
Howard Klein
Attorneys for Defendant
REPUBLICAN NATIONAL COMMITTEE