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7 Attorneys for Defendant,  
 8 THE REPUBLICAN NATIONAL COMMITTEE

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

13 JACKSON BROWNE, an individual

14 Plaintiff,

15 vs.

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

19 Defendants.

CASE NO. CV08-05334 RGK (Ex)

**REPLY IN SUPPORT OF  
 DEFENDANT REPUBLICAN  
 NATIONAL COMMITTEE'S  
 SPECIAL MOTION TO STRIKE  
 UNDER C.C.P. § 425.16**

Hearing:  
 Date: February 2, 2009  
 Time: 9:00 a.m.  
 Place: Courtroom 850

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 Defendant Republican National Committee (“the RNC”) hereby joins the Reply  
4 of Defendant John McCain (“McCain”) in Support of McCain’s Special Motion to  
5 Strike under CCP §425.16. The RNC hereby adopts and incorporates herein the  
6 Memorandum of Points and Authorities in McCain’s Reply. The RNC adds the  
7 following points in its Reply.

8 Plaintiff Browne filed this lawsuit against the RNC without any admissible  
9 evidence that the RNC had anything to do with creating or distributing the Political  
10 Video. Browne merely asserts that the RNC “does not contend that it had no  
11 involvement in the creation of the Commercial,” as if to excuse himself from  
12 presenting evidence on this point. Opp. at 18 n.10. The RNC, in fact, denies that it  
13 had any involvement in the creation or distribution of the Political Video. It is not the  
14 RNC’s burden to prove a negative. It is, instead, Browne’s burden, as plaintiff, to  
15 present evidence tending to prove such involvement. He has not done so. With no  
16 admissible evidence that the RNC had any such involvement, Browne falsely asserts  
17 that the RNC should be held personally responsible for any act done by any person that  
18 might somehow “promote McCain’s candidacy.” There is no authority for such a  
19 proposition.

20 Furthermore, Browne concedes that, to prevail on his right of publicity claim,  
21 he must show that the RNC made a use of Browne’s identity. Opp. at 6. There is no  
22 evidence, however, that the RNC made any use of Browne’s identity, because, *inter*  
23 *alia*, the RNC played no part in the creation or dissemination of the Political Video.  
24 Lacking any relevant evidence, Browne contends, in effect, that the RNC can be held  
25 strictly liable for the acts of anyone who might have been acting to “promote  
26 McCain’s candidacy.” Opp. at 19. There is no authority for this position, the adoption

1 of which would dramatically chill political debate in clear violation of the letter and  
2 spirit of the First Amendment.

3         Browne’s right of publicity claim is based on the apparently novel and  
4 unprecedented theory that one’s voice identifies not just the “owner” of the voice, but  
5 the political views of that person. This claim is based on the unwarranted assumption,  
6 unsupported by any competent evidence, that anyone viewing the Political Video  
7 would come to the conclusion that Browne had “flipped” his political views 180  
8 degrees, from Democrat to Republican. In fact, the evidence presented by Browne, to  
9 the extent it proves anything, shows that Browne’s political views are so widely  
10 known, and so much a part of his public persona, that it strains belief to conclude that  
11 anyone viewing the Political Video would believe he had switched his political  
12 allegiance.

13         For the reasons set forth above and in the Motion, the Court should grant the  
14 Special Motion to Strike Under C.C.P. § 425.16 and strike Browne’s fourth claim for  
15 common law misappropriation of right of publicity.

16  
17 Dated: January 21, 2009

KLEIN, O’NEILL & SINGH, LLP

18  
19 By: /s/ Howard J. Klein

20         Howard J. Klein  
21         Attorneys for Defendant  
22         Republican National Committee  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on January 21, 2009 I electronically filed the foregoing with  
3 the Clerk of the Court using the CM/ECF system which will send notification of the  
4 filing to all counsel of record.

5  
6 /s/ Howard J. Klein

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