

1 HOWARD J. KLEIN (NO. 77029)  
 hjklein@koslaw.com  
 2 THEODORE P. LOPEZ (NO. 191328)  
 tlopez@koslaw.com  
 3 SANG N. DANG (NO. 214558)  
 sdang@koslaw.com  
 4 **KLEIN, O'NEILL & SINGH, LLP**  
 43 Corporate Park  
 5 Suite 204  
 Irvine, CA 92606  
 6 Telephone: 949-955-1920  
 Facsimile: 949-955-1921

7 Attorneys for Defendant,  
 8 THE REPUBLICAN NATIONAL  
 COMMITTEE

9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**  
 12 **WESTERN DIVISION – LOS ANGELES**

KLEIN, O'NEILL & SINGH, LLP  
 43 CORPORATE PARK, SUITE 204  
 IRVINE, CALIFORNIA 92606  
 TEL 949.955.1920 • FAX 949.955.1921

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  
 18 REPUBLICAN PARTY, a non-profit political  
 organization

19 Defendants.  
 20  
 21

CASE NO. CV-08-05334 RGK (Ex)

**DEFENDANT'S EVIDENTIARY  
 OBJECTIONS TO THE  
 DECLARATIONS OF DONALD  
 MILLER, JONATHAN NOYES AND  
 JONATHAN P. STEINSAPIR FILED  
 IN SUPPORT OF PLAINTIFF'  
 CONSOLIDATED OPPOSITION TO  
 DEFENDANT'S MOTIONS TO  
 DISMISS**

Date: February 2, 2009  
 Time: 9:00 am  
 Judge: Hon. R. Gary Klausner  
 Place: Courtroom 850

1 Defendant Republican National Committee hereby objects to the following portions of the  
2 Declarations of Donald Miller, Jonathan P. Steinsapir and Jonathan Noyes submitted by Plaintiff  
3 Jackson Browne in support of the consolidated opposition of Plaintiff to special motions to strike  
4 under C.C.P. § 425.16 filed by Defendants; and consolidated opposition to Defendant's motions  
5 to dismiss pursuant to FRCP 12(b)(2), (3) & (6); or transfer pursuant to 28 U.S.C. §§ 1404(a) &  
6 1406(a).

7  
8 **OBJECTIONS TO THE DECLARATION OF DONALD MILLER**

9  
10 1. **PARAGRAPH 2:**

11 "While Plaintiff has licensed *Running on Empty* for use in motion pictures such as *Forrest*  
12 *Gump*, he has never licensed *Running on Empty* for use in a commercial or advertising."

13 DEFENDANT'S OBJECTION: **Defendant objects to this assertion as not based on**  
14 **personal knowledge, and lacking foundation.**

15  
16 2. **PARAGRAPH 5:**

17 "Plaintiff's vocal style is distinctive, his voice earnest and endearing. The uniqueness of  
18 Plaintiff's voice is difficult to put into words, however, the most apt written description of  
19 Plaintiff's voice that I have read came from a 1972 *Rolling Stone* article, a true and correct copy  
20 of which is attached hereto as Exhibit D."

21 DEFENDANT'S OBJECTION: **Defendant objects to this assertion as containing**  
22 **personal opinion, hearsay, and lacking foundation.**

23  
24 3. **PARAGRAPH 6:**

25 "Neither the Ohio Republican Party, the Republican National Committee or Senator John  
26 McCain ("Defendants") sought or received permission to use *Running on Empty* in any campaign  
27 advertisement. Typically, when a third party wants to use a composition by an artist that I  
28 manage, a request is made, and if approved the song is licensed for a monetary fee. Plaintiff did

1 not receive compensation, monetary or otherwise, from Defendants for their use of *Running on*  
2 *Empty* in the commercial at issue in this litigation.”

3 DEFENDANT’S OBJECTION: **Defendant objects to this assertion as not based on**  
4 **personal knowledge, hearsay and lacking foundation.**

5  
6 **OBJECTIONS TO THE DECLARATION OF JONATHAN P. STEINSAPIR**

7  
8 4. **PARAGRAPH 2:**

9 “A simple search showed that Defendant Republican National Committee has sought  
10 protection for at least 118 marks....”

11 DEFENDANT’S OBJECTION: **Defendant objects to this assertion as irrelevant and**  
12 **lacking proper foundation.**

13  
14 5. **PARAGRAPH 3:**

15 “Attached as Exhibit B hereto is a true and correct copy of Registration No. 1,994,455  
16 (Aug. 20, 1996) for the trademark and service mark GOPTV, which names Defendant Republican  
17 National Committee as the registrant. Among other things, the Registration notes a “first use in  
18 commerce” for “political booklets and posters” and for “television programming...in the fields of  
19 politics.” I downloaded the attached copy of this certificate from the PTO’s website on January  
20 7, 2009. ”

21 DEFENDANT’S OBJECTION: **Defendant objects to this entire paragraph and the**  
22 **accompanying exhibit as irrelevant, hearsay and lacking proper foundation. The paragraph**  
23 **misstates the evidence as Exhibit B does not purport to show a “copy of Registration No.**  
24 **1,994,455 (Aug. 20, 1996) for the trademark and service mark GOPTV.”**

25  
26 6. **PARAGRAPH 4:**

27 “Attached as Exhibit B hereto is a true and correct copy of Registration No. 1,980,493  
28 (June 18, 1996) for the trademark and service mark RISING TIDE, which names Defendant

1 Republican National Committee as the registrant. Among other things, the Registration notes a  
2 “first use in commerce” for “television programming...in the field of politics.” I downloaded the  
3 attached copy of this certificate from the PTO’s website on January 7, 2009. ”

4 DEFENDANT’S OBJECTION: **Defendant objects to this entire paragraph and the**  
5 **accompanying exhibit as irrelevant, hearsay and lacking proper foundation.**

6  
7 7. PARAGRAPH 5:

8 “Attached as Exhibit C hereto is a true and correct copy of Registration No. 3,333,658  
9 (Nov. 13, 2007) for the stylized service mark MCCAIN, which names John McCain 2008 – The  
10 Exploratory Committee, Inc., as registrant. Among other things, the Registration notes a “first  
11 use in commerce” for “political campaign services, namely fundraising in the field of politics.” I  
12 downloaded the attached copy of this certificate from the PTO’s website on January 7, 2009. ”

13 DEFENDANT’S OBJECTION: **Defendant objects to this entire paragraph and the**  
14 **accompanying exhibit as irrelevant, hearsay and lacking proper foundation.**

15  
16 8. PARAGRAPH 6:

17 “Attached as Exhibit D hereto is a true and correct copy of Registration No. 3,395,543  
18 (Mar. 11, 2008) for the service mark MCCAIN SPACE, which names John McCain 2008 – The  
19 Exploratory Committee, Inc., as registrant. Among other things, the Registration notes a “first  
20 use in commerce” for an online message board “in the field of national policy and matters of  
21 interest to the national electorate.” I downloaded the attached copy of this certificate from the  
22 PTO’s website on January 7, 2009. ”

23 DEFENDANT’S OBJECTION: **Defendant objects to this entire paragraph and the**  
24 **accompanying exhibit as irrelevant, hearsay and lacking proper foundation.**

25  
26 **OBJECTIONS TO THE DECLARATION OF JONATHAN NOYES**

27  
28 9. PARAGRAPH 2:

1 “At that time, the Huffington Post was streaming the advertisement along with an article  
2 discussing its content.”

3 DEFENDANT’S OBJECTION: **Defendant objects to this assertion as being**  
4 **unsubstantiated, and lacking proper foundation.**

5  
6 10. PARAGRAPH 3:

7 “On January 6, 2009, I created an account on youtube.com which is a prerequisite to  
8 posting video content on the website....I was required to read YouTube’s terms of service and  
9 acknowledge my agreement with these terms by clicking a box.... Attached hereto as Exhibit A  
10 are true and correct images from youtube.com reflecting its requirement to acknowledge  
11 agreement to the terms of service, as well as the actual terms of service.”

12 DEFENDANT’S OBJECTION: **Defendant objects to this entire paragraph and the**  
13 **accompanying exhibit as irrelevant, lacking proper foundation, and being based on hearsay.**  
14 **Youtube.com’s stated terms of service on January 6, 2009 are irrelevant to what**  
15 **youtube.com’s terms of service were on or about July/August, 2008.**

16  
17 11. PARAGRAPH 6:

18 “Attached hereto as Exhibit E is a true and correct copy of screen images from  
19 www.youtube.com reflecting 138 videos posted by the ORP.”

20 DEFENDANT’S OBJECTION: **Defendant objects to this assertion and the**  
21 **accompanying exhibit as irrelevant and lacking proper foundation.**

22  
23 12. PARAGRAPH 7:

24 “ On January 6, 2009, I accessed the ORP’s website at www.orp.org and followed the  
25 links to Ohio GOP TV where the ORP maintains links to the video content it posts on  
26 www.youtube.com. Attached hereto as Exhibit F is a true and correct copy of a screen image  
27 from http://www.ohiogop.org/gop\_tv.”

28 DEFENDANT’S OBJECTION: **Defendant objects to this paragraph and**

1 accompanying exhibit as irrelevant, and lacking proper foundation.

2

3 13. PARAGRAPH 8:

4 “Attached hereto as Exhibit G is a true and correct copy of an article from the Cleveland  
5 Plain Dealer newspaper dated April 29, 2008, discussing the organization “McCain Victory  
6 Ohio.”

7 DEFENDANT’S OBJECTION: **Defendant objects to this paragraph and**  
8 **accompanying exhibit as irrelevant, hearsay and lacking proper foundation.**

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11 DATED: January 21, 2009

KLEIN, O’NEILL & SINGH, LLP

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By /s/ Howard J. Klein

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Howard J. Klein

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Attorney for Defendant,

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THE REPUBLICAN NATIONAL COMMITTEE

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**CERTIFICATE OF SERVICE**

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

/s/ Howard J. Klein  
Howard J. Klein

KLEIN, O'NEILL & SINGH, LLP  
43 CORPORATE PARK, SUITE 204  
IRVINE, CALIFORNIA 92606  
TEL 949.955.1920 • FAX 949.955.1921

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