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7 Attorneys for Jackson Browne

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 JACKSON BROWNE, an individual

13 Plaintiff,

14 vs.

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

18 Defendants.

CASE NO. CV 08-05334 RGK (Ex)
The Hon. R. Gary Klausner, presiding

**JOINT REPORT RE EARLY
MEETING OF COUNSEL**

[Fed. R. Civ. P. 26(f); Local Rule 26-1]

Sched. Conf.: April 20, 2009
Time: 9:00 a.m.
Room: 850 (Roybal)

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1 Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 26-1,
2 Plaintiff Jackson Browne (“Plaintiff”) and Defendants John McCain (“ McCain”)
3 and The Republican National Committee (“RNC”) (collectively, “Defendants”)
4 submit this Joint Report. Plaintiff and Defendants are collectively referred to herein
5 as the “Parties.”

6 Counsel for the Parties conferred pursuant to the applicable rules on March
7 11, 2009. Plaintiff was represented by the law firm of Kinsella Weitzman Iser
8 Kump & Aldisert LLP by Lawrence Iser and Gregory Gabriel. McCain was
9 represented by the law firm of Lathrop & Gage, LLP by Lincoln Bandlow and the
10 RNC was represented by the law firm of Klein, O’Neill and Singh LLP by Howard
11 Klein and Sang Dang.

12 1. MATTERS TO BE ADDRESSED PURSUANT TO FEDERAL RULE OF
13 CIVIL PROCEDURE 26(f)

14 1.1 Proposed Schedule

15 The Parties set out a detailed, proposed schedule as Exhibit A attached hereto.
16 Subject to the Court’s availability, the Parties agree that a jury trial should
17 commence approximately 5 months after the mandate of the Court of Appeals issues
18 in Defendants’ pending appeals in the Ninth Circuit. The Parties agree on all dates
19 set forth in Exhibit A.

20 1.2 Fed. R. Civ. P. 26(f)(3)(A): Initial Disclosures

21 The Parties will exchange initial disclosures on or before April 13, 2009.

22 1.3 Fed. R. Civ. P. 26(f)(3)(B): Scope of Discovery

23 The Parties do not believe that discovery should be conducted in phases.
24 Furthermore, the Parties do not believe that discovery should be limited to or
25 focused on particular issues.

26 The Parties anticipate that discovery will be needed on the issues framed by
27 the pleadings, including, without limitation: the creation and distribution of the
28 video that is the subject of this lawsuit, Plaintiff’s licensing revenues from his

1 musical compositions, including but not limited to, *Running on Empty*, all matters
2 pertaining to the trademark “likelihood of confusion” factors, all matters pertaining
3 to the trademark “artistic relevance” test, all matters pertaining to the copyright “fair
4 use” factors, all matters pertaining to the right of publicity “transformative use” test,
5 and the alleged agency relationship between the Ohio Republican Party (“ORP”),
6 McCain and the RNC.

7 Plaintiff intends to notice the deposition of McCain in order to obtain
8 testimony regarding the subject matter of the declaration submitted by McCain in
9 this case in support of his motion to strike pursuant to California’s anti-SLAPP
10 statute along with, among other things, his alleged involvement in the creation of the
11 video that is the subject of this lawsuit, his alleged involvement with advertisements
12 created to promote his campaign for President of the United States in 2008 and the
13 alleged agency relationship amongst McCain, his campaign, the ORP and the RNC.

14 McCain’s counsel has indicated that McCain should not have to appear for
15 deposition absent a showing by Plaintiff that there are any facts that contradict
16 McCain’s sworn declaration that he had no involvement in the creation and/or
17 distribution of the video that is the subject of this lawsuit and that he did not even
18 have knowledge of the video until after this lawsuit was filed.

19 1.4 Fed. R. Civ. P. 26(f)(3)(C): Electronically Stored Information
20 The Parties do not anticipate any issues regarding the production of
21 electronically stored information, but they will seek to resolve such issues in good
22 faith as they may arise.

23 1.5 Fed. R. Civ. P. 26(f)(3)(D): Privilege, Work Product, and
24 Protective Order

25 The Parties intend to file a joint protective order in order to maintain the
26 confidentiality of sensitive information disclosed in discovery by the Parties.

27 1.6 Fed. R. Civ. P. 26(f)(3)(E): Changes to FRCP/Local Rule
28 Limitations on Discovery

1 The Parties do not believe it is necessary to alter the limitations regarding
2 discovery set forth in the Federal Rules of Civil Procedure or the Local Rules and do
3 not believe any other limitations on discovery need be ordered, with the exception
4 that McCain's counsel believes that Plaintiff must show good cause to conduct the
5 deposition of McCain as set forth above.

6 1.7 Fed. R. Civ. P. 26(f)(3)(F): Other Orders

7 Separate from a stipulated Protective Order discussed above, the Parties do
8 not believe that there are other orders that the Court should issue under Rule 26(c)
9 or under Rule 16(b) and (c).

10 2. MATTERS TO BE ADDRESSED PURSUANT TO L. R. 26-1(a)-(f)

11 2.1 Local Rule 26-1(a): Complex Case

12 The Parties do not believe this is a complex case or that the Manual For
13 Complex Litigation should be utilized.

14 2.2 Local Rule 26-1(b): Motion Schedule

15 Plaintiff anticipates filing a summary judgment motion and/or summary
16 adjudication motion after the completion of discovery.

17 Defendants anticipate filing a Motion for Summary Judgment and/or
18 Summary Adjudication within the prescribed schedule (attached as Exhibit A).

19 As set out in Exhibit A, the parties agree that dispositive motions shall be
20 noticed for a hearing to occur no later than 37 days before trial.

21 The parties further agree that all Fed.R.Civ.P. 56 motions, whenever filed,
22 shall be filed and personally served with a minimum of 42 days' notice; that the
23 opposition will be filed and personally served 21 days thereafter; and that the reply
24 will be filed and personally served 14 days thereafter.

25 2.3 Local Rule 26-1(c): Settlement and Settlement Mechanism

26 The Parties have engaged and are continuing to engage in settlement
27 discussions, which have been unsuccessful to date. Pursuant to Central L.R. 16-15,
28 the parties select settlement procedure No. 3 and will participate in a private

1 mediation.

2 2.4 Local Rule 26-1(d): Trial Estimate.

3 The parties estimate a trial length of 7-10 days.

4 2.5 Local Rule 26-1(e): Additional Parties

5 Plaintiff intends to add McCain's campaign entity, John McCain 2008, Inc. as
6 an additional party.

7 2.6 Local Rule 26-1(f): Expert Witnesses and Expert Discovery

8 The Parties propose that Federal Rule of Civil Procedure 26(a)(2) govern
9 expert discovery in this matter and agree that expert discovery should proceed
10 according to the schedule set forth in Exhibit A.

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12 DATED: March 25, 2009

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

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By: /s/ Lawrence Y. Iser

Lawrence Y. Iser

Attorneys for Plaintiff Jackson Browne

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18 Dated: March 24, 2009

LATHROP & GAGE LLP

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By: 

Lincoln D. Bandlow

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Attorneys for Defendant John McCain

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1 DATED: March 25, 2009

KLEIN O'NEILL & SINGH, LLP

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By: /s/ Howard Klein
Howard Klein
Attorneys for Defendant The Republican
National Committee

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EXHIBIT A: PROPOSED SCHEDULE

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<u>Event</u>	<u>Proposed Date</u>
Initial Expert Disclosures:	120 days before trial
Rebuttal Expert Disclosures:	90 days before trial
Discovery Cut-Off (Fact and Expert):	65 days before trial
Meeting of Counsel Before Final Pre-Trial Conference	40 days before final pre-trial conference
Dispositive Motions Hearing Cut-Off:	30 days before the trial
Final Pre-trial Conference:	7 days before trial
Jury Trial:	5 months after the mandate of the Court of Appeals issues in Defendants' pending appeals in the Ninth Circuit.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was filed electronically pursuant to Local Rule L.R. 5-3.3. Parties may access this filing through the Court's case management electronic filing system. Notice of this filing will be sent to all counsel of record by the Court's electronic filing system on March 25, 2009.

/s/Lawrence Y. Iser

Lawrence Y. Iser