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8 Attorney for Plaintiffs
9 ROGER NICHOLS; and
10 Three Eagles Music, a division
11 of Roger Nichols Music, Inc.

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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16

17 ROGER NICHOLS, an individual; and
18 THREE EAGLES MUSIC, a Division
19 of Roger Nichols Music, Inc.

20 Plaintiffs,

21 vs.

22 CLUB FOR GROWTH ACTION, a
23 Super Political Action Committee

24 Defendant.

Case No.: _____

COMPLAINT FOR:
(1) COPYRIGHT INFRINGEMENT;
AND
(2) VIOLATION OF THE LANHAM
ACT §1125(a) - FALSE
ASSOCIATION OR
ENDORSEMENT

25 Plaintiffs Roger Nichols (“Nichols”) and Three Eagles Music, a division of
26 Roger Nichols Music, Inc., (“Three Eagles Music”) (collectively “Plaintiffs”) bring
27 this complaint against Club for Growth Action, a conservative super political action
28 committee, and allege as follows:

INTRODUCTION

1
2 1. This action arises out of the theft by Defendant Club for Growth Action
3 (the “Club”) of Nichol’s well-known and valuable song *Times of Your Life* (the
4 “Composition”). Defendant’s infringing conduct is unauthorized, willful, and
5 damages not only the Composition, but its well-known composer. The use was
6 particularly egregious because the Club, acting out of its desire to draw attention to its
7 political agenda, utilized the Composition – a sweet and melancholy song about
8 cherishing the moments of one’s life – to make a derivative work that was a bitter
9 attack advertisement. In particular, the Club made a distinct effort to draw an
10 association between the Composition and its well-known composer, on the one hand,
11 and the Club and its positions, on the other hand, by using a singer that was clearly
12 impersonating the style of Paul Anka, the world-famous singer who performed the
13 most well-recognized version of the Composition, to mimic the original recording.
14 The Club then used this recording to produce and distribute an audiovisual
15 commercial featuring Nichols’ song (the “Commercial”), not to comment on or
16 criticize the Composition in any way, but simply to piggyback on the recognizable
17 nature and fame of the Composition to draw attention to the Club’s attack on Russell
18 Dana “Russ” Feingold, a Democrat from Wisconsin running for a seat in the United
19 States Senate.

20 2. The infringing Commercial was posted on YouTube and aired on
21 broadcast and cable stations throughout Wisconsin. The Club has also publicized its
22 political efforts through multiple media outlets, such as Politico, Right Wisconsin,
23 Facebook and many others, despite having not obtained a license or otherwise
24 received (or even sought) permission for the use of the Composition in the
25 Commercial as required by the United States Copyright Act and the Lanham Act. In
26 making and distributing the Commercial on television and on the Internet, the Club
27 has willfully and intentionally appropriated and/or violated Plaintiffs’ exclusive rights.
28

1 3. The Composition is also associated with Nichol’s identity, persona, and
2 professional reputation. In making and distributing the Commercial, the Club has
3 willfully, intentionally and falsely associated Nichols, and his well-known song that is
4 itself uniquely associated with him, in a political attack ad. Such close identification
5 of Nichols with the Club and its political affiliations and positions is an egregious,
6 intentional, and false association that must be stopped.

7 4. Plaintiffs, who are careful of what particular uses are made of the
8 Composition and particularly whether the Composition can be associated with a
9 political issue, selectively license their exclusive copyrights. They did not authorize
10 the Club to use their copyrighted musical work. They do not endorse the Club or its
11 political views, and do not wish their work to be associated with the Club for Growth,
12 its affiliates, or any of the campaigns or controversies it might be associated with or
13 campaigns it seeks to denigrate.

14 5. In bringing this action, Plaintiffs seek (1) a declaration that the Club has
15 infringed on his rights under the Copyright Act 17 U.S.C. §101 *et seq.* and the
16 Lanham Act, 15 U.S.C. §1051 *et seq.*; (2) preliminary and permanent injunctive relief
17 to halt the Club’s continuing violation of Plaintiff’s intellectual property rights; (3)
18 damages; and (4) attorneys’ fees and costs.

19 **PARTIES**

20 6. Plaintiff Roger Nichols is a composer and songwriter. He is a resident of
21 Bend, Oregon.

22 7. Plaintiff Three Eagles Music, a Division of Roger Nichols Music, Inc. is
23 an Oregon corporation.

24 8. Defendant Club for Growth Action, is a super political action committee,
25 located in Washington, DC that seeks to influence political decisions in virtually every
26 one of the United States.
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28

1 **JURISDICTION**

2 9. This action arises under the Copyright Act 17 U.S.C. §101 *et seq.* and the
3 Lanham Act, 15 U.S.C. §1051 *et seq.*

4 10. This Court has original “federal question” subject matter jurisdiction of
5 this action under 28 U.S.C. §§ 1331 and 1338(a) and (b) and diversity jurisdiction
6 under 28 U.S.C. §1332(a)(1) and §1367(a). This action is between citizens of
7 different states and the amount in controversy exceeds \$75,000.00.

8 12. This Court has personal jurisdiction over the Club. Personal jurisdiction
9 is proper under Fed. R. Civ. Proc. 4. On information and belief, the Club conducts
10 continuous and systematic business in the state of California and in this district. The
11 Club has extensively endorsed, fundraised for, and donated to candidates in
12 approximately 23 different political races in California, spending approximately
13 \$300,000 on such candidates between the year 2000 and 2014. The Club solicits and
14 accepts millions of dollars in donations from California residents. The Club conducts
15 meetings and holds conferences in California. The Club produces political ads viewed
16 by California residents.

17 **FACTUAL BACKGROUND**

18 15. Three Eagles Music, a division of Roger Nichols Music, Inc. owns the
19 copyright to the musical composition *Times of Your Life*, which has been registered
20 with the United States Copyright Office, registration number EU599114.

21 16. Nichols, a successful composer and songwriter, is the well-known
22 composer of many beloved songs recorded by popular award-winning artists such as
23 The Carpenters, Three Dog Night, Paul Anka, Barbra Streisand, Art Garfunkel, Ann
24 Murray, and Johnny Mathis. Nichols’ music has been recorded by over 5,000 artists
25 worldwide. He has co-written many songs with famed lyricist Paul Williams, a
26 Grammy award winning songwriter, including *We’ve Only Just Begun*, *Rainy Days*
27 *and Mondays*, *I Won’t Last A Day Without You* and *Let Me Be The One*. Nichols has
28 three gold records, two Grammy nominations, and one Emmy nomination to his credit

1 and he was inducted into the Grammy Hall of Fame in 1998 in recognition of his
2 recordings “of lasting quality or historical significance.” Over the span of his career,
3 his music has been featured in both television and film, reaching audiences around the
4 world for nearly 50 years. An extensive list of his musical credits can be found on
5 IMDb.com.

6 17. *Times of Your Life* is one of Nichols’ most famous and easily recognized
7 musical compositions. Recorded in 1975 by singer Paul Anka, the single quickly
8 became a hit in the United States. The song reached number one on the *Billboard*
9 Easy Listening chart, number seven on the *Billboard* Hot 100 chart, and remained on
10 the “Top 40” list for 12 weeks in 1976, resulting in a Gold Record for Paul Anka. The
11 song was further popularized by Kodak in its “This Old House” commercial, one of its
12 most iconic commercial advertising campaigns during the 1970s. The lyrics of the
13 Composition’s chorus (“Remember? Do you remember?”) are distinct and easily
14 recognizable as the tune from the Kodak commercials of that decade.

15 18. As such, *Times of Your Life* is considered a 70’s classic and is associated
16 with a certain type of retrospective and sentimental feeling. It is a song meant to
17 evoke nostalgia and positive emotion. Most recently, the cable television network
18 AMC used the song as the soundtrack for the series finale trailer of the Emmy Award
19 winning show *Mad Men*, setting a montage of the series’ most memorable moments to
20 the Composition. The *Mad Men* finale trailer sparked wide discussion by critics and
21 fans online. The Composition was the subject of many articles reviewing the song’s
22 significance as it relates to the show, including reviews in online media outlets such as
23 *Variety*, *The Wall Street Journal*, and Bustle.com.

24 19. At no time has the Club obtained, or attempted to obtain, a license,
25 authorization, or other permission to use or exploit *Times of Your Life* in the manner
26 described herein, or to capitalize on Nichols’ reputation as a songwriter for the
27 purpose of promoting their political agenda. In fact, Nichols has never licensed his
28 works to support any type of political causes or organizations. Nichols has

1 specifically worked to create a professional reputation and legacy that is held in high
2 regard and free from controversy.

3 20. On or about September 22, 2015, the Club began its unauthorized use of
4 the Composition in an attack ad against former Democratic Senator Russ Feingold.
5 The Club used a recorded version of the Composition with altered lyrics criticizing
6 Feingold's past voting record on certain controversial political issues.

7 21. The 30-second Commercial is set in its entirety to the musical notes and
8 melody of the Composition, while certain phrases flash across the screen criticizing
9 Feingold's "liberal record" and painting him as "yesterday's liberal." Although some
10 of the song lyrics were altered to comment specifically on Feingold's political record,
11 the Commercial used the original lyrics of the Composition's chorus, distinctly
12 repeating the refrain "Remember? Do you remember?" several times. The singer
13 featured in the Commercial is clearly imitating the sound of Paul Anka, who is
14 uniquely associated with having performed the Composition.

15 22. At the conclusion of the Commercial, with the recording of the
16 Composition still playing, a standard campaign ad notice appears which states "Club
17 for Growth Action is responsible for the content of this advertising. Paid for by Club
18 for Growth Action" even though no payment has been made to, nor permission sought
19 from, Plaintiffs for the music in the Commercial.

20 23. On or about September 22, 2015, the Club launched a \$700,000 ad buy
21 against Feingold, purchasing a significant amount of airtime for the Commercial to be
22 shown on broadcast and cable stations throughout Wisconsin. The Club also
23 distributed the Commercial by posting it on the Internet video sharing platform
24 YouTube. Since then, a variety of Internet websites such as Politico.com have
25 brought further attention to the ad by writing articles about and sharing the link to the
26 Commercial on YouTube, which has nearly 23,000 views as of November 5, 2015.
27 The Club's website Clubforgrowth.org, its Facebook.com page, Twitter.com page,
28

1 and other social media platforms have also directed viewers to the Commercial and to
2 other attack ads produced by the Club that the Club places on YouTube.

3 24. The Club's unauthorized appropriation of the Composition and
4 substantive use of the chorus lyrics take from the very heart of the original work,
5 capitalizing on the public's familiarity with the tune solely to further the Club's
6 political agenda and purposes. The purpose and nature of the copying is not
7 educational or historical in any way. The Commercial's use of the music and lyrics of
8 the Composition does not comment or criticize the style, technique, genre, or subject
9 matter of the original work, but instead attacks Feingold in order to portray him in a
10 negative light to the general public. Viewers accessing the Commercial on YouTube
11 or watching it on television could easily conclude that the Composition was used with
12 Nichols' permission, even though it was not. Viewers might also conclude that
13 Nichols' is a political supporter of the Club, even though he is not, or that Nichols has
14 expressed a position adverse to Russ Feingold, which he has not.

15 25. Nichols does not wish to have his creative work used by the Club in its
16 political attack ads or in any other way. He does not want the public to believe he
17 might be associated with or endorse the Club or its social and political views. He does
18 not want to become associated with any controversy surrounding the Club or any
19 political races the Club may become involved in. Any further exploitation of the
20 Composition in the above-described manner will cause Nichols' creative work to
21 become associated with the Club in the public mind, an association which is patently
22 false and misleading.

23 27. In particular, Nichols is concerned with the publicity the Club has
24 recently received in national headlines for its connection to GOP presidential
25 candidate Donald Trump. As a presidential candidate, Trump has been the subject of
26 intense public scrutiny, with some of his more controversial statements generating
27 negative publicity. For many members of the general public, the first time they have
28 ever heard of the Club has been in connection to the controversy surrounding Donald

1 Trump. Nichols does not want his work or reputation to be associated with the Club
2 for Growth, Donald Trump, or any controversial political or social views associated
3 with them or their supporters.

4 28. Plaintiffs derive income and economic value from licensed uses of their
5 copyrighted musical compositions. The association of Nichols or his Composition
6 with the Club, Donald Trump, or any other related political controversies will make
7 his works less attractive to be licensed for other legitimate, income-producing
8 purposes, such as for use in film or television.

9 29. Plaintiffs have been irreparably harmed by the Club's infringing actions
10 and will continue to be so harmed if the Club is not enjoined from further using and
11 exploiting *Times of Your Life*. The Club should therefore be enjoined from engaging
12 in any further conduct that falsely suggests any support or association between
13 Plaintiffs and their creative works, on the one hand, and the Club, on the other.

14 **FIRST CAUSE OF ACTION**

15 **(Direct Copyright Infringement)**

16 30. Plaintiffs reallege and incorporate each and every allegation set forth in
17 paragraphs 1 through 29 as though fully set forth herein.

18 31. The Club's unauthorized reproduction of, preparation of a derivative
19 work based upon, distribution to the public of, and public performance of Three
20 Eagles Music's copyrighted Composition in the Commercial infringes on Three
21 Eagles Music's exclusive rights in violation of the Copyright Act, 17 U.S.C. §101 *et*
22 *seq.*

23 32. Each unauthorized reproduction, derivative work, distribution to the
24 public of, and public performance of Three Eagles Music's copyrighted Composition
25 constitutes an individual act of infringement of Plaintiffs' exclusive rights in violation
26 of the Copyright Act, 17 U.S.C. §101 *et seq.*

1 33. The Club's conduct has been, and continues to be, intentional, willful,
2 and with full knowledge of Three Eagles Music's copyright interests and the
3 infringement thereof.

4 34. The foregoing acts by the Club constitute willful, direct infringement of
5 Three Eagles Music's exclusive rights in the Composition.

6 35. Pursuant to 17 U.S.C. §504(c), as a direct and proximate result of the
7 Club's infringement of Three Eagles Music's exclusive rights, Three Eagles Music is
8 entitled to recover statutory damages in the maximum amount for the work infringed.
9 Alternatively, at Three Eagles Music's election, pursuant to 17 U.S.C. §504(b), it is
10 entitled to recover actual damages, in an amount to be proven at trial but which is
11 estimated to exceed \$1,000,000.

12 36. The Club is causing, and unless enjoined by the Court, will continue to
13 cause, irreparable harm to Three Eagles Music for which it has no adequate remedy at
14 law.

15 37. Three Eagles Music is further entitled to attorneys' fees and full costs
16 pursuant to 17 U.S.C. §505, and prejudgment interest according to law.

17 **SECOND CAUSE OF ACTION**

18 **(Federal Trademark Infringement – False Association or Endorsement)**

19 38. Plaintiffs reallege and incorporate each and every allegation set forth in
20 paragraphs 1 through 37 as though fully set forth herein.

21 39. Nichols is a famous singer and songwriter. The well-known hit song
22 *Times of Your Life* is associated with Nichols and suggests Nichols identity and
23 persona in the mind of the public.

24 40. The Club's use of the Composition in connection with the Commercial
25 was in commerce, specifically for campaign, publicity, and to encourage donations in
26 the furtherance of the Club's political interests.

27 41. The Club knew or should have known that the unauthorized use of the
28 Composition and Nichols' identity by incorporating a well-known song associated

1 with him in their Commercial, was likely to cause confusion or mistake by the public
2 regarding whether Nichols has endorsed, is affiliated, connected to, or associated with,
3 or has approved of the message and content of the Commercial and/or the Club, in
4 violation of the Lanham Act, 15 U.S.C. §1125 (a).

5 59. Due to the Club's unauthorized use of Nichols' identity and persona
6 through the use of his Composition in the Commercial, Nichols has suffered damages
7 and will continue to suffer damages.

8 60. The Club's conduct has been and continues to be intentional, willful, and
9 with full knowledge of the violation of Nichols' rights.

10 61. The Club is causing and, unless enjoined by the Court, will continue to
11 cause, Nichols irreparable harm for which he has no adequate remedy at law.

12 62. Nichols is further entitled to attorney' fees and full costs pursuant to 15
13 U.S.C. §1117, and prejudgment interest according to law.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for the following relief:

16 **FIRST CAUSE OF ACTION**

17 1. For a declaration that:

18 (a) through its conduct, the Club has willfully and directly infringed the
19 copyright in the musical work *Times of Your Life* by their unauthorized
20 reproduction off, creation of a derivative work based upon, and
21 distribution to the public in violation of Three Eagles Music's exclusive
22 rights under 17 U.S.C. §101 *et seq.*;

23 (b) through its conduct, the Club has willfully and contributorily infringed
24 the copyright in the musical work *Times of Your Life* by the Club's
25 unauthorized reproduction of, creation of a derivative work based upon,
26 and distribution to the public in violation of Three Eagles Music's
27 exclusive rights under 17 U.S.C. §101 *et seq.*;

1 (c) through its conduct, the Club has willfully and vicariously infringed the
2 copyright in the musical work *Times of Your Life* by the Club's
3 unauthorized reproduction off, creation of a derivative work based upon,
4 and distribution to the public in violation of Three Eagles Music's
5 exclusive rights under 17 U.S.C. §101 *et seq.*;

6 2. For a preliminary and permanent injunction enjoining the Club and its
7 agents, servants, employees, officers, attorneys, successors, licensees,
8 partners, and assigns, and all persons acting in concert with them:

9 (a) from all further infringing conduct in connection with the
10 Composition and/or the Commercial;

11 (b) from all further infringement of any copyrighted musical work owned
12 or controlled by Plaintiffs; and

13 (c) requiring removal of the Commercial from all places where it has
14 been stored and/or made available and destruction of any and all
15 copies of the Commercial;

16 3. For an award of statutory damages to Three Eagles Music pursuant to the
17 Copyright Act in the amount of \$150,000 for the willful infringement of
18 Three Eagles Music's work *Times of Your Life*, or at Three Eagles Music's
19 election, actual damages and profits as permitted under the Copyright Act, in
20 an amount to be determined at trial;

21 4. For prejudgment interest according to law;

22 5. For an order awarding Three Eagles Music its attorney fees, together with
23 the costs and disbursements of this action; and

24 6. For such other relief as the Court deems just and proper.

25 **SECOND CAUSE OF ACTION**

26 1. For a declaration that:

27 (a) through its conduct, the Club improperly used Nichols' identity and
28 persona by creating the false impression that Nichols has endorsed, is affiliated,

1 connected to or associated with, or has approved of the message and views of
2 the Commercial or he Club, in violation of the Lanham Act, 15 U.S.C.
3 §1125 (a).

4 2. For a preliminary and permanent injunction enjoining the Club and its
5 agents, servants, employees, officers, attorneys, successors, licensees, partners,
6 and assigns, and all persons acting in concert with them:

7 (a) from all further unlawful conduct in connection with the
8 Commercial and/or the Composition;

9 (b) from improperly suggesting or implying an association with
10 Nichols or his creative works in violation of the Lanham Act, 15 U.S.C.
11 §1125 (a);

12 (c) requiring removal of the Commercial from all places where it has
13 been stored and/or made available and destruction of any and all copies of the
14 Commercial;

15 3. For an award of the Club’s profits and damages according to proof, for
16 their violations of the Lanham Act, 15 U.S.C. §1125 (a), in an amount to be
17 determined at trial;

18 4. For prejudgment interest according to law;

19 5. For an order awarding Nichols his attorney fees, together with the costs
20 and disbursements of this action; and

21 6. For such other relief as the Court deems just and proper.

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23 Dated: November 17, 2015

FOX ROTHSCHILD LLP

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By /s/ Lincoln Bandlow
Lincoln Bandlow
Attorneys for Plaintiffs Roger Nichols and
Three Eagles Music, a division of Roger
Nichols Music, Inc.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs Roger Nichols and Three Eagles Music, a division of Roger Nichols Music Inc., demand a trial by jury on all issues so triable in this action.

Dated: November 17, 2015

FOX ROTHSCHILD LLP

By /s/ Lincoln Bandlow
Lincoln Bandlow
Attorneys for Plaintiffs
Roger Nichols and Three Eagles Music, a
Division of Roger Nichols Music, Inc.