

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ISAAC HAYES ENTERPRISES, LLC,

et al.,

Plaintiffs,

v.

DONALD JOHN TRUMP, *et al.*,

Defendants.

Case No. 1:24-cv-03639-TWT

**OPPOSITION TO MOTION FOR EMERGENCY PRELIMINARY
INJUNCTION BY DEFENDANTS DONALD JOHN TRUMP AND
DONALD J. TRUMP FOR PRESIDENT 2024, INC.**

As this Court is aware, this action involves a claim by plaintiffs Isaac Hayes Enterprises, LLC and the Estate of Isaac Hayes against defendants, including former President Donald J. Trump and Donald J. Trump for President 2024, Inc. (collectively, the “Campaign”) for alleged infringement of the song “Hold On, I’m Coming” (the “Song”), which has been played at public events supporting President Trump’s candidacy. For purposes of opposing plaintiffs’ preliminary injunction motion, the Campaign adopts the facts and arguments set forth in the submission of defendant the Republican National Committee (“RNC”) (ECF Dkt. 26), and adds the below either for emphasis or to round out the factual record.

As the RNC submission makes eminently clear, plaintiffs have failed to meet any of the well-established requirements on which the extraordinary relief of a preliminary injunction must be grounded. See, *Eknes-Tucker v. Gov. of Ala.*, 80 F.4th 1205, 1219 (11th Cir. 2023) (citation omitted). Plaintiffs are not substantially likely to succeed on the merits of their claims because they have not even made a prima facie showing that they own the copyright at issue, and because they have provided the Court with no basis to rebut the documented defense that the use alleged was duly licensed. They have not shown, and could not show, the existence of irreparable harm, especially in light of their unreasonable delay in pursuing the equitable relief they are now seeking from this Court. They have failed to show that either a balancing of the harms or the public interest favors them.

For these reasons, and especially in light of the existence of substantial factual disputes regarding ownership that assuredly cannot be resolved in plaintiffs' favor on the present record, the Court should deny the relief sought.

STATEMENT OF FACTS

The Campaign, again, adopts the facts set out in the RNC opposition to the pending motion (ECF Dkt. 26) and draws the Court's attention to the substantial delay – since 2020 – on the part of plaintiffs in bringing this action. The Campaign also observes that, in addition to the RNC's compelling argument that plaintiffs'

conclusory claim of copyright ownership is not only unsupported by the record (ECF Dkt. 26, at pp. 9-10) but is also contradicted by the Declaration of Sam Moore – surviving half of the celebrated soul duo Sam and Dave whose voice is the voice of the Song, and who has first-hand familiarity with the facts concerning its provenance and ownership.

As Mr. Moore explains, the Song was co-written by Isaac Hayes and his then-partner in writing, David Porter in late 1965, who assigned their rights to STAX Records in 1966; such assignments by songwriters, as Mr. Moore explains, are virtually universal practice in popular music. Following a number of transactions over the decades, during which the rights to “Hold On, I’m Coming” were held or purchased by various publishers, they ended up being split between Universal Music Group Publishing (UMPG), which owns the majority of the rights, and Warner Chappel Music Publishing. Moore Decl. ¶¶ 12-20. For this reason, all licensing in commerce of “Hold On, I’m Coming,” including for commercials, movies, or television as a work protected by copyright, is controlled exclusively on behalf of UMPG and Warner Chappel by UMPG as the majority holder of the copyright interest. *Id.* ¶ 17.

Contrary, moreover, to the repeated assertions in the Amended Complaint that the Campaign’s use of the Song was at all times unlicensed, the Campaign obtained a Music License for Political Entities or Organizations effective

November 30, 2022 which authorized the Campaign’s use of “Hold On, I’m Coming.” Exh. A., Declaration of Justin Caporale. Plaintiffs’ complete omission of this fact, of which they are well aware, from the allegations of the Amended Complaint raise serious questions about not only the factual issue but their candor toward this Court.

Plaintiffs also make a claim of “false endorsement” under Section 43(a) of the Lanham Act, asserting that the Campaign’s uses of the Song “constitute using an indica [sic] of identity of the Songwriter in a manner that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendants with Songwriter; or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities.” Amended Compl. ¶ 100. But as Mr. Moore explains in his Declaration, other than specialized music historians and Isaac Hayes fans, few associate Isaac Hayes with “Hold On, I’m Coming.” Moore Decl. ¶ 19. Popular music fans pay little attention to songwriters and typically associate a musical recording with the performing artist who made that song famous. *Id.* at ¶¶ 20 -21.

Finally, to the extent that plaintiffs’ allegations are meant to imply that Isaac Hayes would have been antipathetic to the use of the song by a Republican political campaign – even granting, contrary to the law, that he had power to decide how the Sam and Dave recording of the song would be used – Mr. Moore observes

that, having been a close friend of Mr. Hayes and having worked with him on a number of performances and projects involving prominent Republicans, such an inference is not justified by the record or the facts.

LEGAL STANDARD

It is well established that a preliminary injunction may only be granted where the moving party demonstrates (1) a substantial likelihood of success on the merits; 2) irreparable injury absent the issuance of an injunction; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the public interest favors the issuance of the injunction. *Eknes-Tucker, supra*, 80 F.4th at 1219 (quotation marks and citation omitted). As shown below, plaintiffs fail to meet even one of these requirements here, which is fatal to their application.

LEGAL ARGUMENT

The Campaign again adopts the arguments in the RNC's submissions and adds the following:

I. PLAINTIFFS HAVE NOT SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS.

A. Plaintiffs have not shown that they have an ownership interest in the copyright to the Song.

As the RNC's opposition observes, plaintiffs' allegation of copyright ownership relies on a Copyright Office record of a March 30, 2024 "Copyright

Assignment” from Isaac Hayes Enterprises, LLC to an entity called Primary Wave Music IP Fund 3, LP – thus demonstrating in a compelling fashion that plaintiffs assigned the copyright to a non-party. The Campaign has, in fact, repeatedly requested a copy of this document, and plaintiffs have refused to provide it. All the Court has to rely on is the exceedingly vague Verification signed by Isaac Hayes, III claiming to have “personal knowledge of the issues and facts and assertions” in the papers submitted by plaintiffs (Doc. 7, ¶ 4) in support of their motion, none of which actually documents plaintiffs’ ownership of the copyright in the Song. But it is well settled that “the actual language of the contract is the best evidence of the intent of the parties.” *Rose v. M/V “GULF STREAM FALCON”*, 186 F.3d 1345, 1350 (11th Cir. 1999). But parties and the Court are “not required to simply accept the averments in Defendants’ Affidavits and Declarations at face value” on summary judgment but are “entitled to conduct discovery to determine whether there exists a basis to challenge them,” *Ventrassist Pty Ltd. v. Heartware, Inc.*, 377 F. Supp. 2d 1278, 1288 (S.D. Fla. 2005) (“the most prudent means to determine who has copyright ownership in the Album is via the terms of the distribution agreement”; summary judgment). On a motion for a preliminary injunction, “courts generally agree that a plaintiff must offer some ‘affirmative proof of legal or beneficial ownership’” *Twins Special Co. v. Twins Special, LLC*, No. 23CV223-JO-DDL, 2023 WL 3565073, at *2 (S.D. Cal. Apr.

14, 2023) (denying injunction in the absence of sufficient proof of ownership, notwithstanding testimony of movant).

Not only is plaintiffs' evidence insufficient, but it is rebutted by both the implications of BMI's issuance of a license to the Campaign (Decl. of Justin Caporale, Ex. A) and the Declaration of Sam Moore, in which he explains, based on his intimate familiarity with the facts, exactly what the copyright history of the Song actually is. This is sufficient to deny plaintiffs' motion. See, *Dellacasa, LLC v. John Moriarty & Assocs. of Fla., Inc.*, No. 07-21659-CIV, 2008 WL 299024, at *16 (S.D. Fla. Feb. 1, 2008) ("Although the plaintiff's Certificate of Registration constitutes prima facie evidence of the validity of the copyright and of the facts stated in the certificate, the defendants have presented ample credible evidence rebutting the presumption that the plaintiff is the owner of the registered shop drawings"; denying injunction).

B. Plaintiffs have not rebutted the defense of the Campaign having a valid license.

A copyright infringement claim fails as a matter of law where the defendant has a license. *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 961 (11th Cir. 2009). License is an affirmative defense to infringement, and on a motion for a preliminary injunction, "a movant must demonstrate its likelihood of success of the merits at trial as to affirmative defenses, as well as to the element of the plaintiffs' prima facie case." *Ga. Television Co. v. TV News Clips of Atlanta, Inc.*,

718 F. Supp. 939, 947 (N.D. Ga. 1989). Plaintiffs have simply failed to address, much less overcome, the Campaign’s license defense, and for this reason cannot demonstrate a likelihood of success on the merits.

C. Use of the Song in online video content is fair use

The Campaign adopts and incorporates the RNC’s fair use argument that plaintiffs are not likely to succeed on a claim of infringement based on the presence of the Song in Campaign videos, essentially as background or incidental music, because they constitute fair use, and cannot possibly have an effect on the market value of the Song. See, *Katz v. Google Inc.*, 802 F.3d 1178, 1184 (11th Cir. 2015); *SOFA Entm’t, Inc. v. Dodger Prods., Inc.*, 709 F.3d 1273, 1278 (9th Cir. 2013) (television clip used in musical performance was transformative because it was not used for “its own entertainment value”).

II. PLAINTIFFS HAVE NOT SHOWN IRREPARABLE HARM

“A showing of irreparable harm is the sine qua non of injunctive relief.” *Northeastern Fla. Chapter of the Ass’n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir.1990). Yet plaintiffs have made virtually no effort at demonstrating irreparable harm – which, per the rule of *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006), may not be presumed – is a required showing on a preliminary injunction motion. See *Peter Letterese and Assocs., Inc. v. World Inst. of Scientology Enterprises*, 533 F.3d 1287, 1323 (11th

Cir. 2008) (“As the Supreme Court [in eBay] has observed, a permanent injunction does not automatically issue upon a finding of copyright infringement”).

Furthermore, a “delay in seeking a preliminary injunction of even only a few months – though not necessarily fatal – militates against a finding of irreparable harm.” *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016). *See also, Tiber Lab'ys, LLC v. Hawthorn Pharms., Inc.*, 527 F. Supp. 2d 1373, 1381 (N.D. Ga. 2007) (where the movant unduly delayed in bringing suit, “thereby negating the idea of irreparability,” a preliminary injunction should not issue). The Amended Complaint itself acknowledges that plaintiffs have been aware that the Song was being played in connection with President Trump’s campaign events since 2020. Amended Compl. ¶¶ 9, 44. Their four-year delay in seeking relief is simply inexcusable.

III. THE BALANCING OF HARMS DOES NOT FAVOR PLAINTIFFS

Having failed to demonstrate the existence of any irreparable harm at all, plaintiffs cannot demonstrate that the balance of harms favors them here. *See, Wilf v. Bd. of Regents of the Univ. Sys. of Georgia*, No. 1:09-CV-1877-RLV, 2009 WL 10658152, at *3 (N.D. Ga. Sept. 29, 2009) (absent a showing of “irreparable harm” balance of the hardships does not weigh in plaintiff’s favor). On the defendants’ side, meanwhile, the relief sought would unquestionably result in harm because it would be a restriction of defendants’ expression rights, affecting “core political

speech” for which “the importance of First Amendment protections is at its zenith.” *Meyer v. Grant*, 486 U.S. 414, 422, 425 (1988) (quotations omitted) and which would “unquestionably constitute [] irreparable injury” to defendants. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

IV. THE PUBLIC INTEREST DOES NOT FAVOR PLAINTIFFS

As the RNC submission makes clear, “free political speech” is in the public interest. *Shrink Missouri Gov’t PAC v. Adams*, 151 F.3d 763, 765 (8th Cir. 1998), and the public interest in political speech is heightened during a presidential election, *see Elrod*, 427 U.S. at 374 n.29. Plaintiffs demand that Campaign videos that have already been posted online be removed because of the risk of irreparable harm they have not shown and based on rights they have not proved they possess cannot possibly be in the public interest.

Additionally, the rights of third parties are legitimately considered as part of the “public interest” prong on a preliminary injunction motion – and as the Moore Declaration makes clear, the effect on him of this litigation has already been harsh and decidedly undeserved. The public interest does not favor the relief sought by plaintiffs here.

CONCLUSION

For these foregoing reasons, the Court should deny Plaintiffs’ Motion for an Emergency Preliminary Injunction.

Date: August 31, 2024

Respectfully submitted,

/s/ William Bradley Carver, Sr.
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*Attorney for Donald J. Trump and
Donald J. Trump for President, 2024, Inc.*

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), counsel hereby certifies that this document has been prepared using Times New Roman 14-point font, as approved by Local Rule 5.1(C).

/s/ William Bradley Carver, Sr.
William Bradley Carver, Sr.

*Attorney for Donald J. Trump and
Donald J. Trump for President, 2024, Inc.*

CERTIFICATE OF SERVICE

I certify that on August 31, 2024, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court via CM/ECF, which shall cause service on all counsel of record.

/s/ William Bradley Carver, Sr.
William Bradley Carver, Sr.

*Attorney for Donald J. Trump and
Donald J. Trump for President, 2024, Inc.*

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DECLARATION OF SAM MOORE

1. I am Sam Moore, a citizen of the United States of America living in Coral Gables, Florida.

2. The plaintiff in this matter has made the biography and legacy of Isaac Hayes the focus point of this litigation, but Isaac's is not the only significant biography and legacy involved in this matter.

3. I was born October 12, 1935, so I am 88 years of age. I have been an internationally famous singer for approximately 60 years, having achieved renown as the lead tenor voice of the highly successful 1960's soul recording duo "Sam & Dave."

4. As a 2021 article in the Chicago Tribune put it, "Combining Moore's soaring tenor and Prater's gritty baritone proved unstoppable." Sam & Dave was voted into the Rock & Roll Hall of Fame in 1992.

5. Songwriters are, by definition, essential to the creation of a song and, of course, initially own the song's copyright. Typically, however, they assign the publishing rights to their

song to a music publisher, which then markets, promotes and places the song with an artist who can enable it to generate revenue.

6. A song's copyright is invaluable if this process succeeds, but if it does not, it is sadly not worth the paper it was written on.

7. One of the many songs I recorded with my former partner Dave Prater Jr. at the STAX Records studio in Memphis, Tennessee was "Hold On, I'm Coming," which is the subject matter of this litigation.

8. Therefore, it is my "soaring tenor" voice in the master recording of "Hold On, I'm Coming" that has been played at numerous Trump rallies from one end of the United States to the other since 2022.

9. Thus, it is not only my voice, but my name, my identity, and the brand and trademarks associated with them, which are held by a trust controlled by my wife, that the public associates with "Hold On, I'm Coming" – at least as much, if not more, than the name of Isaac Hayes.

10. This is not merely a sentimental matter. For decades, "Hold On, I'm Coming" has been generated, more than any other, significant revenue for all of us, including the heirs of Isaac Hayes in his capacity as a co-writer with my David Porter.

11. In fact, the matter of the plaintiffs' rights to the copyrighted work here is not as they would have the Court believe. The rights to "Hold On, I'm Coming" have been held or purchased by several major catalogs, or music copyright portfolios, over the years, and are presently shared by Universal Music Group Publishing (UMPG), which owns the majority of the rights, and Warner Chappel Music Publishing.

12. There is no dispute that that song was co-written by Isaac Hayes and his then-partner in writing, David Porter, in late 1965. They assigned their rights to STAX in 1966. UMPG acquired the rights to all of those STAX copyrights when they purchased a successor in interest, Rondor Music Group, in 2000. UMPG acquired the rights to all of those STAX copyrights when it purchased Rondor Music Group from Herb Alpert and Jerry Moss in 2000.

13. STAX Records never owned the master recording of any of the songs that Dave and I recorded in Memphis. We were signed to Atlantic Records and “loaned out“ by Atlantic to its Memphis-based southern distribution production arm in late 1965.

14. Isaac Hayes was the arranger and producer of the Sam & Dave recording session of “Hold On, I’m Coming,” which became a worldwide hit after it was released on March 14, 1966 on the STAX Record Label. An album also titled “Hold On, I’m Coming” was released in April 1966 and it rose to number one on the Billboard Rhythm and Blues chart.

15. Dave and I were never signed as recording artists to STAX Records. We were “loaned out “to STAX by Jerry Wexler, the head of Atlantic’s A&R department, At the time STAX was Atlantic Records, Southern Production entity. Atlantic Recording Corporation was the label distributor.

16. After a dispute between STAX and Atlantic, all the master recordings created during the distribution agreement with Atlantic became the property of Atlantic. Those recordings included those of recording artists such as Rufus Thomas, Karla Thomas, Booker T and the MG’s, Otis Redding, and others.

17. For this reason, all licensing in commerce to this day, anywhere in the world, for the use of the composition – words and music – of “Hold On, I’m Coming,” including for

commercials, movies, or television as a work protected by copyright, is controlled exclusively on behalf of UMPG and Warner Chappel by UMPG as the majority holder of the copyright interest

18. Returning to the issue of the image or reputation of Isaac Hayes raised by the plaintiffs, the voice of Isaac Hayes has never been included in any recording with Dave and myself of “Hold On, I’m Coming.”

19. I intend no disrespect to Isaac’s memory in saying this, but based on my experience in the music industry and my personal involvement and association with “Hold On, I’m Coming,” it is my observation that other than popular music historians and Isaac Hayes fans, the public is not aware of Isaac’s role in as a co-writer of “Hold On, I’m Coming” – or, for that matter, any song. Popular music fans do not care about authorship; rather, they listen to and are moved by the music and associate it with the artist or artists perform the work.

20. The best example of this is probably “My Way,” a song universally associated with Frank Sinatra. Very few music fans realize that that Paul Anka wrote the song and based it on a melody from a French song in the public domain; indeed, in 2024 very few music fans even know Paul Anka’s name, although he wrote some of the most successful popular musical compositions of the 20th century. Similarly, few people realize that Barbra Streisand and Elvis Presley never wrote any of their songs.

21. Because of this dynamic, and of course because of the law of copyright, it is understood that a songwriter – and especially one who does not own a song’s copyright – has no power over who performs that song and where it may be performed. This is certainly all the more true with respect to the artist who recorded a song that has earned Gold and Platinum Records and provided a substantial source of income for its writers and their heirs.

22. That in essence is what is happening to me as a result of this action by the son of my deceased, dear friend Isaac Hayes.

23. I must point out to this Court that at the Democratic National Convention broadcast, when Congressman Jamie Raskin of California was introduced to the audience at United Center in Chicago, the recording of "Hold On, I'm Coming" embodying my performance with Dave was played to play him onto the stage.

24. Finally, I wish to bring to the Court's attention that there is good reason for it to reject the presumptions suggested by the plaintiffs concerning the political views of Isaac Hayes.

25. In fact, during his life Isaac Hayes, my wife Joyce and I traveled to Columbia, South Carolina to perform at the 20th High School Reunion of Lee Atwater when he was Chairman of the Republican National Committee. Isaac also participated in an album project for Lee Atwater with Billy Preston, Chuck Jackson, Carla Thomas and myself. Isaac did not view Republicans or the Republican Party negatively while he was alive.

26. If this Court were to impose the injunction sought by plaintiffs here, I might be prohibited and possibly forever foreclosed from appearing personally and performing "Hold On, I'm Coming" live at a Trump event, during or after the election.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on August 30, 2024

A handwritten signature in black ink that reads "Sam Moore". The signature is written in a cursive, flowing style.

SAM MOORE

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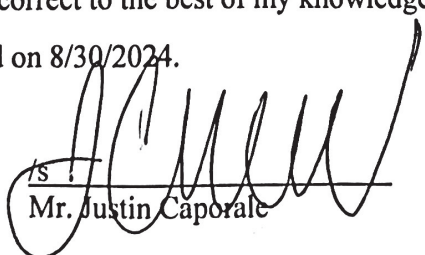
DECLARATION OF JUSTIN CAPORALE

1. My name is Justin Caporale. I am the Deputy Campaign Manager of Donald J. Trump for President 2024, Inc. (the "Campaign").
2. In my role, I oversee operations and production for the Campaign's live events, including the music that is played.
3. Attached as Exhibit A to this Declaration is a true copy of a BMI Music License for Political Entities or Organizations dated November 30, 2022 which authorized the Campaign's use of "Hold On, I'm Coming."
4. I can also confirm that, out of respect for the pending litigation, the Campaign will no longer play "Hold On, I'm Coming" at its events and that Defendant Donald J. Trump has agreed not to make public use of this song in his personal capacity as well.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 8/30/2024.

By:


/s/ Mr. Justin Caporale



Music License for Political Entities or Organizations

1. DEFINITIONS

- (a) **"LICENSEE"** shall mean the entity or organization described on Page 4 herein which sponsors political Events.
- (b) **"Event"** shall mean a convention that includes an assemblage of delegates, representatives and/or members of an organization(s) convened for a common purpose, a meeting which includes individuals assembled together for purposes of communicating information to each other (i.e. panels, seminars, symposiums, convocations, conferences, caucuses, forums, assemblies, congresses, and institutes) or otherwise transacting the business of LICENSEE. An Event shall not last for more than fourteen (14) consecutive days. An Event may include a concert which is sponsored, conducted, endorsed or approved by LICENSEE, unless the concert is open to members of the general public who are not affiliated with the LICENSEE.
- (c) **"Function"** shall include any activity conducted, sponsored, endorsed or approved by LICENSEE occurring in connection with an Event, including, but not limited to, meals, plenary sessions, breakouts, meetings, receptions, concerts, cocktail parties, dinners, dances, dinner-dances, seminars, or any other similar spectator or participatory activity.
- (d) **"Attendees"** shall mean the number of persons present where any live, recorded or audio-visual music is performed or played at each of LICENSEE's Events or Functions whether or not any admission charge, registration fee or other payment is required to be made in connection with the attendance. Attendee shall not include those required to produce the Event or Function, such as LICENSEE's employees working at the Event or Function, exhibitor personnel, administrative, service contractor and temporary personnel, or credentialed members of the press. In the case of a political campaign or convention where live or recorded music is performed on the exhibit floor, the number of Attendees shall be the total number of persons registered at the political campaign / convention. If no music is performed on the exhibit floor, the number of Attendees shall mean the total attendance at each Event or Function held during the political campaign or convention at which music is performed. In the case of a meeting which does not have an exhibit floor and consists only of a series of Events or Functions, the number of Attendees shall be the total attendance at each Event or Function at which music is performed, with the number not to exceed the total registered attendance of the entire meeting.

2. BMI GRANT

- (a) BMI hereby grants to LICENSEE a non-exclusive license to perform, present or cause the live and/or recorded performance during Events or Functions, or by means of internet or intranet transmissions from LICENSEE's website, of all musical works of which BMI shall have the right to grant public performance licenses during the Term hereof. Notwithstanding the foregoing, one or more work(s) or catalog(s) of works by one or more BMI songwriter(s) may be excluded from this license if notice is received by BMI that such BMI songwriter(s) objects to the use of their copyrighted work(s) for the intended uses by LICENSEE. BMI shall provide written notice to LICENSEE of any such exclusion. Any performance by LICENSEE of any excluded work(s) or catalog(s) of works at any Event or Function following receipt of such notice shall not be covered by the grant under, and shall be deemed a material breach of, this Agreement, even if the venue or establishment at which the Event or Function takes place is separately licensed to publicly perform the work(s) or catalog(s) of works. LICENSEE shall not rely on, or use as a defense, any such separate license in any legal action or claim arising out of any performance of such excluded work(s).
- (b) This license does not include: (i) dramatic rights, the right to perform dramatico-musical works in whole or in substantial part, the right to present individual works in a dramatic setting or the right to use the music licensed hereunder in any other context which may constitute an exercise of the "grand rights" therein; or (ii) the right to broadcast, telecast or otherwise transmit, other than via the internet or intranet, the performances licensed hereunder to persons outside of any premises at which an Event or Function occurs.
- (c) This license grants permission for the public performance of musical works in the BMI repertoire. LICENSEE may be responsible for securing other rights including, but not limited to, synchronization, master use and mechanical rights, particularly if a specific musical work is used frequently or in a manner by which it becomes associated with the campaign (i.e. theme song).

3. CUSTOMER OUTREACH

LICENSEE agrees to accept from time to time pre-recorded telephone messages from BMI that may contain information regarding LICENSEE's account.

4. FEES

LICENSEE agrees to pay BMI for each Contract Year of the Agreement a license fee based upon LICENSEE's actual total number of Attendees for that calendar year as set forth on the report required pursuant to Paragraph 5 as follows:

Calendar Year
2022

Per Attendee Rate
\$.06

- (a) For each year after 2022, the per Attendee rate shall be an adjustment of the rate for the previous calendar year based upon the percentage increase in the United States Consumer Price Index (National, All Items) ("CPI") between September of the year which is two years before such year and September of the preceding year, rounded to the nearest penny (for example, the rate for the year 2023 shall be an adjustment of the rate for the year 2022, based upon the percentage increase in the CPI between September 2021 and September 2022). BMI shall inform LICENSEE of the annual per Attendee rate for the upcoming Contract Year by the end of the prior Contract Year.
- (b) The Minimum Annual Fee billed and payable for 2022 shall be \$170.00. The Minimum Annual Fee for each year after 2022 shall be an adjustment of the Minimum Annual Fee for the previous calendar year based upon the percentage increase in the CPI between September of the year which is two years before such year and September of the preceding year, rounded to the nearest dollar.

5. REPORTING OF EVENTS

- (a) Upon signing this Agreement, LICENSEE shall pay the Minimum Annual Fee. For each subsequent Contract Year, LICENSEE shall pay the Minimum Annual Fee for that Contract Year by January 20th. LICENSEE shall also submit quarterly reports and payments for Events or Functions which were presented during the current calendar quarter. For each quarterly period, reports and payments shall be due on the twentieth (20th) day of January, April, July and October of each year of this Agreement for all Events or Functions presented by LICENSEE during the prior calendar quarter. Should LICENSEE fail to report and submit payments to BMI within thirty (30) days after the specified date, then BMI will apply estimated billings to the account based on either LICENSEE's prior year's corresponding quarter figures, or reports from a reliable, published, third-party industry source, whichever is higher. BMI shall give written notice to LICENSEE of the estimated fee calculated. LICENSEE shall have thirty (30) days after such written notice by BMI to submit the report. If BMI does not receive the report from LICENSEE within those thirty (30) days, BMI and LICENSEE agree that BMI's Estimated License Fee shall then be established as the Actual License Fee for the period unreported by LICENSEE. BMI and LICENSEE further agree that such established Actual License Fee (subject to adjustment by audit) shall also become the Estimated License Fee for the following contract period. LICENSEE agrees to waive its right to file its report for any period in which BMI's Estimated License Fee becomes the Actual License Fee. Any differences between the estimated and the actual reported fee shall be payable by LICENSEE when the report is submitted. If BMI's estimated fee is greater than the actual reported fee, then LICENSEE's account shall be credited with the difference, provided however that LICENSEE's Annual License Fee shall not fall below the Minimum Annual Fee.
- (b) Upon payment of license fees to BMI, LICENSEE shall furnish to BMI a statement, on forms available from BMI, signed by an officer or auditor of LICENSEE, setting forth all performances of *all* Events or Functions occurring during the applicable calendar quarter. Such statement shall include the location of each Event or Function, the number of Attendees for each Event or Function, and the dates of each Event or Function. A statement shall be furnished to BMI by LICENSEE for each calendar quarter during the Term of the Agreement, regardless of whether or not any performances occurred during that calendar quarter.

6. STATE OR LOCAL TAX

In the event that the payment of any license fee to BMI by LICENSEE pursuant to this Agreement causes BMI to become liable to pay any state or local tax which is based upon the license fees received by BMI from LICENSEE, LICENSEE agrees to pay to BMI the full amount of such tax together with license fee payment(s) as invoiced by BMI; provided, however, that BMI shall make reasonable efforts to be exempted or excused from paying such tax, and BMI is permitted by law to pass through such tax to LICENSEE.

7. LATE PAYMENT CHARGE

BMI may impose a late payment charge of one and one half percent (1½%) per month from the date any payment or report was due on any payment that is received by BMI more than thirty (30) days after the due date.

8. VERIFICATION OF / FAILURE TO REPORT

- (a) BMI is entitled to verify the information submitted by LICENSEE in its report under Paragraph 5, by any source, including the examination of LICENSEE's books and records. As such, LICENSEE is required to retain such books and records for a period of not less than three (3) years after the calendar year contained in LICENSEE's report, copies of which books and records shall be turned over to BMI upon its request. If after such examination, BMI is still unable to verify said information, BMI shall be entitled to unilaterally assess LICENSEE a reasonable annual fee using any source.
- (b) In the event LICENSEE fails to submit a report as required under Paragraph 5 within thirty (30) days after BMI has given LICENSEE written notice of its failure to do so, BMI shall be entitled to unilaterally assess LICENSEE a reasonable annual fee using any source, including an examination of LICENSEE's books and records as set forth above.

9. OKLAHOMA RATE CHANGE NOTICE

BMI shall notify LICENSEE of any rate change thirty (30) days prior to the expiration date of this Agreement.

10. COLORADO 3 BUSINESS DAY REVIEW

LICENSEE shall have the right to rescind the Agreement for a period of three (3) business days after the execution of the Agreement.

11. OFFER OF COMPARABLE AGREEMENT

In the event that BMI, at any time during the Term of this Agreement, shall, for the same class and category as LICENSEE, issue licenses granting rights similar to those in this Agreement on a more favorable basis, BMI shall, for the balance of the Term, offer LICENSEE a comparable agreement.

12. CANCELLATION OF ENTIRE CATEGORY

BMI shall have the right to cancel this Agreement along with the simultaneous cancellation of the agreements of all other licensees of the same class and category as LICENSEE, as of the end of any month during the Term, upon sixty (60) days advance written notice.

13. WITHDRAWAL OF WORKS

BMI reserves the right at its discretion to withdraw from the license granted hereunder any musical work as to which any legal action has been instituted or a claim made that BMI does not have the right to license the performing rights in such work or that such work infringes another composition.

14. INDEMNITY BY BMI

BMI agrees to indemnify, save harmless and defend LICENSEE, its officers and employees, from and against any and all claims, demands or suits that may be made or brought against them or any of them with respect to the performance of any musical works licensed under this Agreement. Such indemnity shall be limited to musical works which are licensed by BMI at the time of LICENSEE's performances. BMI will, upon reasonable written request, advise LICENSEE whether particular musical works are available for performance as part of BMI's repertoire. LICENSEE shall provide the title and the writer/composer of each musical composition requested to be identified. LICENSEE agrees to give BMI immediate notice of any such claim, demand or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit.

15. BREACH OR DEFAULT/WAIVER

Upon any breach or default of the terms and conditions of this Agreement, BMI shall have the right to cancel this Agreement, but any such cancellation shall only become effective if such breach or default continues for thirty (30) days after the date of BMI's written notice to LICENSEE thereof. The right to cancel shall be in addition to any and all other remedies which BMI may have. No waiver by BMI of full performance of this Agreement by LICENSEE in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement in accordance with the terms of this Paragraph.

16. ARBITRATION

All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to the American Arbitration Association in the City, County and State of New York for arbitration under its then prevailing arbitration rules. The arbitrator(s) to be selected as follows: Each of the parties shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days following the giving of such notice by one party the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are so appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon the third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but need not be, entered in any court having jurisdiction. Such award shall include the fixing of the costs, expenses and attorneys' fees of arbitration, which shall be borne by the unsuccessful party.

17. NOTICES

Unless otherwise stated herein, all notices, if any, under this Agreement shall be in writing and deemed given upon "mailing," when sent by ordinary first-class U.S. mail to the party intended, at its mailing address herein stated, or any other address which either party may designate. Any such notices sent to BMI shall be to the attention of the Vice President, Licensing Department at 10 Music Square East, Nashville, TN 37203. Any notice sent to LICENSEE shall be to the attention of the person signing this Agreement on behalf of LICENSEE or such other person as LICENSEE may designate to BMI in writing.

18. MISCELLANEOUS

This Agreement constitutes the entire understanding between the parties, shall not be binding until signed by both parties, and cannot be waived or added to or modified orally, and no waiver, addition or modification shall be valid unless in writing and signed by the parties. The rights of LICENSEE are not assignable. This Agreement, its validity, construction and effect, shall be governed by the laws of the State of New York. The fact that any provisions contained herein are found by a court of competent jurisdiction to be void or unenforceable shall not affect the validity or enforceability of any other provisions. All headings in this Agreement are for the purpose of convenience and shall not be considered to be part of this Agreement.

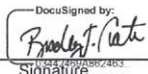
DocuSign Envelope ID: BBD58AAC-6CDD-405A-A47B-A23C8C27D8FC

19. TERM OF AGREEMENT

The initial Term of this annual Agreement shall begin on the first day of (month/year) 11/2022 and end on the last day of December 2023, and shall continue on a year-to-year basis thereafter for a period not to exceed four (4) years unless cancelled earlier by either party as of the end of the initial Term or any subsequent one (1) year Term (herein sometimes referred to as a "Contract Year") upon thirty (30) days advance notice to the other party. Notwithstanding the foregoing, in the event that LICENSEE is obtaining this license for political Events and Functions during a political campaign (e.g., candidate for specific government office), or during a term of office, this Agreement shall automatically expire upon expiration, termination or dissolution of such political campaign or term.

AGREEMENT**November 30, 2022**

THIS AGREEMENT, made at New York, N.Y. on (Date Will Be Entered by BMI Upon Execution) November 23, 2022 | 4:09 p between BROADCAST MUSIC, INC. (hereinafter called BMI), a state of New York corporation with its principal offices at 7 World Trade Center, 250 Greenwich Street, New York, N.Y. 10007-0030 and the entity described below and referred to thereafter as "LICENSEE" or "You:"

<u>LEGAL NAME</u> Donald J. Trump for President 2024, Inc. (Name of Individual, Corporation, LLC, LLP, Partnership, or Government Entity, etc.) <u>TRADE NAME</u> (Doing business under the name of) <u>PLEASE COMPLETE LEGAL INFORMATION BELOW</u> Legal Structure <u>527 Political Organization</u> (Individual, Corporation, LLC, LLP, Partnership, Government Entity or Other) State of Incorporation <u>DE</u> Federal Tax ID No. <u>92-1042779</u> Partners' Names (If Partnership) 1. _____ 2. _____ 3. _____ <u>IF LEGAL STRUCTURE IS A GOVERNMENT ENTITY, PLEASE INDICATE BELOW</u> Local, State, or Federal _____ Municipality Name _____ (City/State)	<u>BUSINESS ADDRESS</u> P.O. Box 13570 (Street Address) Arlington VA 22219 (City) (State) (Zip) 202.341.9950 (Phone) (Phone 2) (Contact Name) (Title) sgast@compasslegal.org (Email Address) (Web Address) <u>MAILING ADDRESS</u> (if different from Licensed Premises) _____ (Street Address) _____ (City) (State) (Zip) _____ (Contact Name) (Title) _____ (Contact Phone) (Contact Phone 2) _____ (Email Address – if different from above)						
TO BE COMPLETED BY LICENSEE By signing this Agreement, you represent that you have the authority to bind LICENSEE and that you have read, understood and agree to all of the terms and conditions herein.  DocuSigned by: Signature Bradley Crate, Treasurer Print Name / Title bcrate@redcurve.net Signatory Email Address (if different from above) Please Sign & Return this <u>Entire</u> License Agreement & Payment to: BMI, Licensing Dept 10 Music Square E., Nashville, TN 37203 Or Online at www.bmi.com/licensing	FOR ADMINISTRATIVE USE ONLY TO BE COMPLETED BY BMI BROADCAST MUSIC INC.  David Levin Senior Vice President, Licensing <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 33%; text-align: center;">FOR BMI USE ONLY</td> <td style="width: 33%; text-align: center;">POL1</td> <td style="width: 33%; text-align: center;">LI-2021/DEC</td> </tr> <tr> <td colspan="3" style="text-align: center; padding: 10px;"> 81142912 Customer Number </td> </tr> </table>	FOR BMI USE ONLY	POL1	LI-2021/DEC	81142912 Customer Number		
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