

PUBLIC VERSIONUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKSHEPARD FAIREY AND OBEY GIANT
ART, INC.,

Plaintiffs,

v.

THE ASSOCIATED PRESS,

Defendant and Counterclaim
Plaintiff,

v.

SHEPARD FAIREY, OBEY GIANT ART,
INC., OBEY GIANT LLC, STUDIO
NUMBER ONE, INC., and ONE 3 TWO,
INC. (d/b/a OBEY CLOTHING),

Counterclaim Defendants.

ECF

Case No. 09-01123 (AKH)

**DECLARATION OF ROBYN C. CROWTHER IN SUPPORT OF COUNTERCLAIM
DEFENDANT ONE 3 TWO, INC.'S MOTION FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

I, Robyn C. Crowther declare and state:

1. I am a shareholder in the law firm of Caldwell Leslie & Proctor, PC. I am an attorney admitted to practice in the state of California and have been admitted *pro hac vice* to practice before this Court. I am one of the counsel of record for Counterclaim Defendant One 3 Two, Inc. d/b/a Obey Clothing ("One 3 Two") in this action and make this Declaration in support of One 3 Two's Motion for Summary Judgment. I have personal knowledge of the facts stated herein, and could and would testify competently thereto if called as a witness in this matter.

2. Attached hereto as Exhibit "I" is a true and correct copy of the "Obama Progress" poster created by Shepard Fairey that is at issue in this litigation, which is authenticated at page 30:3-21 of the deposition of Fairey taken on March 16, 2010.

3. Attached hereto as Exhibit "J" is a true and correct copy of the "Obama Hope" poster created by Shepard Fairey that is at issue in this litigation, which is authenticated at page 30:3-21 of the deposition of Fairey taken on March 16, 2010.

4. Attached hereto as Exhibit "K" is a true and correct copy of the photograph taken by Associated Press photographer Mannie Garcia which Fairey used as a reference and that is at issue in this litigation, which is authenticated at page 31:8-23 of the deposition of Fairey taken on March 16, 2010.

5. Attached hereto as Exhibit "L" is a true and correct copy of a Huffington Post online article dated October 13, 2008 documenting an interview with Shepard Fairey and Yosi Sergant and discussing the widespread popularity of the iconic Obama Image. I obtained this article on or about January 5, 2011 from the website http://www.huffingtonpost.com/ben-arnon/how-the-obama-hope-poster_b_133874.html.

6. Attached hereto as Exhibit "M" is a true and correct copy of an A.V. Club online article dated June 10, 2009, documenting an interview with Shepard Fairey and describing the nature of Fairey's street art. I obtained this article on or about January 4, 2011 from the website <http://www.avclub.com/articles/shepard-fairey,28943/>.

7. Attached hereto as Exhibit "N" are true and correct copies of excerpts of the deposition of Regan Donald Juncal, which was taken in this action on March 23, 2010 and August 26, 2010, in Los Angeles, California.

8. Attached hereto as Exhibit "O" are true and correct copies of excerpts of the deposition of Frank Shepard Fairey, which was taken in this action on March 16-18, 2010 and July 30, 2010 in New York, New York, and on March 28, 2010 in Los Angeles, California.

9. Attached hereto as Exhibit "P" are true and correct copies of excerpts of the deposition of Christopher Broders, which was taken in this action on March 16, 2010, in Los Angeles, California.

10. Attached hereto as Exhibit "Q" are true and correct copies of excerpts of the deposition of Adam Van Berckelaer, which was taken in this action on March 11, 2010 and August 26, 2010, in Los Angeles, California.

11. Attached hereto as Exhibit "R" are true and correct copies of excerpts of the deposition of the Associated Press' designated expert, Kathleen M. Kedrowski, which was taken in this action on December 14 and 15, 2010, in New York, New York.

12. Attached hereto as Exhibit "S" are true and correct copies of excerpts of the deposition of Mannie Garcia, which was taken in this action on March 4 and 5, 2010, in Washington, D.C..

13. Attached hereto as Exhibit "T" is a true and correct copy of the Preliminary Expert Report of Kathleen M. Kedrowski, an expert designated by the AP, which was produced to counsel for One 3 Two on October 1, 2010. Although Ms. Kedrowski also submitted two additional reports on November 2, 2010 and December 1, 2010, the Preliminary Expert Report is the only report which discusses One 3 Two's alleged indirect profits.

14. Attached hereto as Exhibit "U" is a true and correct copy of the Expert Report of Marita Sturken, Ph.D., an expert designated by Shepard Fairey, which was produced to counsel for One 3 Two on October 1, 2010.

15. Attached hereto as Exhibit "V" is a true and correct copy of the Expert Report Laurie Dahlberg, Ph.D., an expert designated by the Associated Press, which was produced to counsel for One 3 Two on November 2, 2010.

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed on January 5, 2011, at Los Angeles, California.


ROBYN C. CROWTHER