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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY and OBEY GIANT
ART, INC.,

Plaintiffs,

v.

THE ASSOCIATED PRESS,

Defendant and Counterclaim
Plaintiff,

v.

SHEPARD FAIREY, et al.,

Counterclaim Defendants

Case No.: 09 CIV 01123 (AKH)

ECF CASE

**DECLARATION OF JOHN DAVID
AKE**

I, JOHN DAVID AKE, hereby declare as follows:

1. I have worked in the news and photography industry for over twenty-five years and am currently the Assistant Chief of Bureaus for Photos for the Associated Press (“AP”) in the Washington, D.C. bureau. I started as a full-time AP employee in October 1997 as the administrative photo editor for the Chicago bureau. Previous to working for the AP, I was a freelance photographer under contract to Reuters, and a staff photographer for Agence France-Press, United Press International, and Littleton Independent.

2. I submit this declaration in support of the AP's Motion for Summary Judgment against Obey Clothing based on my personal knowledge of the facts and statements contained herein.

About the AP

3. With its headquarters in New York City, the AP employs approximately 3,600 people in approximately 300-plus locations around the world.

4. Two-thirds of the AP's employees are newsgatherers, which includes photographers.

5. The AP maintains a bureau in all fifty states and has more bureaus internationally than any other U.S. news organization.

6. The AP is the only U.S. news organization today with a permanent presence in Pyongyang, North Korea and Port-au-Prince, Haiti, among others. AP is also the only U.S. news organization that maintains a full-service bureau in Kabul, Afghanistan. Though other news organizations have closed their bureaus in Kabul to focus on the war in Iraq, AP has not wavered in its commitment to cover the wars in both Iraq and Afghanistan despite the enormous costs required to do that.

About the News Industry

7. Over the past several years, I have observed that the news industry is facing sharp declines in revenue, which I attribute in large part to the rise of online news. Online news generates far less revenue than the printed news because the advertising rates for online news are much lower.

8. To adjust for declining revenue, U.S. news outlets have had to cut back on their newsgathering operations, including closing domestic and foreign bureaus.

9. The *Washington Post*, for example, closed its last domestic bureaus in November 2009. Similarly, many major U.S. newspapers, including the *Baltimore Sun*, the *Boston Globe*, the *Chicago Tribune*, *Newsday*, and the *Philadelphia Inquirer*, as well as magazines such as *BusinessWeek*, and *Time*, have closed some or all of their U.S. and foreign bureaus.

10. Thus, many news organizations depend on the AP's presence throughout the U.S. and around the world to report the news.

About the AP's Photography

11. Beginning with its first Pulitzer Prize in 1922, the AP has been awarded 49 Pulitzers to date, more than any other news organization in the categories in which it competes. The AP has received 30 of these Pulitzers for its photography, more than any other news organization.

12. AP's reporters and photographers frequently work in dangerous locations where they risk injury and death in the line of duty. The AP's Wall of Honor, found on its Web site and in its New York City newsroom, honors the many AP journalists and photographers who have died in the line of duty while covering the most significant stories of their times.

13. Since launching AP Images in 2005, which is AP's photo-licensing platform, AP has sought to increase the amount of image content that is available for licensing.

14. To accomplish this, the AP has made a number of practical changes to ensure that the AP generates a steady stream of content for licensing through AP Images. For example,

Washington-based staff photographers, whom I oversee, are required to archive all of the images they create onto company-supplied external hard disks. Photographers are required to go back through their assignments and re-edit to add additional images to AP Images' archive of images. Often the entire assignment is sent to AP Images where photo editors edit and transfer the images to AP Images' archive of images. Under previous practice, many of the images were deleted when the camera recording disks were reused for the next assignment.

15. Another change is that AP emphasizes to its photographers that they should not only cover the news of the day, but should also to look beyond the news of the day to create additional photographs for an unlimited variety of potential future licensing uses.

16. The result is that AP Images is able to offer a vastly greater selection of images than those transmitted over the wire service to subscription members.

17. These efforts have increased the overall amount of content available through AP Images, which is able to offer content for licensing beyond what is used for AP's news-reporting operations

18. Thus, since the creation of AP Images, the overall number of photographs created by AP has increased, as has the overall number of images available for licensing.

19. I declare under penalty of perjury that the foregoing is accurate to the best of my knowledge.

Executed this 6th day of January 2011 at New York, New York.

A handwritten signature in blue ink, appearing to read 'JDA', written over a horizontal line.

JOHN DAVID AKE