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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 JAMES
GERBERICH**

I, JAMES GERBERICH, hereby declare as follows:

1. I have worked at the Associated Press (“AP”) for over 24 years. I was hired by the AP in 1986, as staff photographer in San Francisco, California. I am currently the Global Director of Customer Support. Prior to that I was the Director of Product Development since AP Images launched in late 2005.

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

herein, including my personal knowledge of how AP Images works and how AP Images' records are kept.

About AP Images

3. AP Images' photo-archive database (the "AP Images Archive") has over 8.6 million unique images.

4. AP Images typically adds more than 4,000 photographs a day to the AP Images Archive.

5. Of the more than 8.6 million images in the AP Images Archive, approximately 16%, or approximately 1.36 million, were downloaded at least once in all of 2009.

6. Of the approximately 1.36 million images downloaded in 2009, approximately 67 were downloaded more than 200 times.¹

7. Thus, the number of images that are licensed multiple times is relatively small.

8. The images that are commercially successful are important as they help to fund the entire business.

9. It is difficult, if not impossible, however, for the AP to determine in advance which images will be successful in generating substantial revenues.

¹ These estimates do not include the number of AP customers with subscription agreements who may have received images in the AP Images Archive when these images were transmitted over the AP's news-wire service.

The AP's Policy Regarding Copyright and Caption Information

10. Pursuant to AP policy, all AP images, including Obama Photo, are distributed or licensed to the AP's members and customers with a caption that identifies the AP as the copyright owner of the work and the name of the photographer who made the image.

11. AP members and customers are required to credit the AP as the copyright owner of the photograph when the member or customer displays the image, including on the Internet.

12. There are several different ways that the AP's members and customers may identify the AP as the copyright owner of an image on the Internet, including by (i) using a digital logo (which some people may refer to as a watermark), (ii) as part of the image's digital metadata, and/or (iii) in the caption of the photograph.

13. The AP's customers often include digital logo on AP images that are displayed on the Internet to identify the AP as the copyright owner of the work.

14. 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.



JAMES GERBERICH