

**Exhibit 58**  
**to the Declaration Of**  
**Brendan T. Kehoe, Esq.**  
**In Support Of The**  
**Associated Press' Motion**  
**For Summary Judgment**

Claudia Ray/New  
York/Kirkland-Ellis  
10/01/2009 11:01 AM

To anthony.falzone@stanford.edu  
cc Dale Cendali/New York/Kirkland-Ellis@K&E, Brendan T.  
Kehoe/New York/Kirkland-Ellis@K&E, Julie Ahrens  
<jahrens@stanford.edu>, Joseph Gratz  
bcc  
Subject Fairey v. AP and Garcia

Dear Tony -- I'm writing to follow up on our meet and confer on Tuesday. First, with respect to scheduling Shepard Fairey's deposition, none of your scheduling proposals (including splitting the deposition between two attorneys, trying to fit two days into one, and taking the depo in LA) are acceptable. Regarding your proposal to make Mr. Fairey available on Thursday, October 29th, as we have explained to you several times, Thursdays generally do not work for us because Dale teaches at Harvard Law School that day. You had previously confirmed Mr. Fairey's deposition for Tuesday, September 29th and Wednesday, September 30th. We agreed to reschedule the deposition at your request to accommodate your client's travel schedule, but we cannot agree to a schedule that interferes with our taking of the deposition in the manner you have proposed. As for your suggestion that it would be inconvenient for Mr. Fairey, the plaintiff in this action, to have to prep on a weekend day for a Tuesday deposition, there surely are other days during the four weeks between now and October 27th when you could meet with Mr. Fairey regarding his deposition. Given that Mr. Fairey does not appear to be unavailable on the 27th, and that we only moved the deposition from the previously agreed dates to accommodate your client's schedule, we must insist that the deposition go ahead on the dates we have proposed. If you cannot offer us Tuesday/Wednesday dates during the period of fact discovery, we will have to seek Judge Hellerstein's assistance on this matter.

Regarding the ESI issues, in August we identified four electronic files titled "BARACK BTMP 3.tif," "BARACK BTMP 4.tif," "BARACK BTMP 5.tif," and "BARACK BTMP 6.tif" that were related to the creation of the Obama Posters. Joe told us on August 28th and again on September 3rd that you would look for them and get back to us as to whether the files exist and/or are recoverable, but we still have not heard back about this. In the meantime, we have determined the filepath for these documents. In an effort to move this issue forward, here are the file paths:

/Volumes/UBER\_VAULT\_DRIVE/UBER\_VAULT/01 User/SNO Jobs 3/0\_NumberOne Employee  
Personal/Shepard/OBEY/ART SHOWS/NEW ART 2008/OBAMA/BARACK BTMP 3.tif

/Volumes/UBER\_VAULT\_DRIVE/UBER\_VAULT/01 User/SNO Jobs 3/0\_NumberOne Employee  
Personal/Shepard/OBEY/ART SHOWS/NEW ART 2008/OBAMA/BARACK BTMP 4.tif

/Volumes/UBER\_VAULT\_DRIVE/UBER\_VAULT/01 User/SNO Jobs 3/0\_NumberOne Employee  
Personal/Shepard/OBEY/ART SHOWS/NEW ART 2008/OBAMA/BARACK BTMP 5.tif

/Volumes/UBER\_VAULT\_DRIVE/UBER\_VAULT/01 User/SNO Jobs 3/0\_NumberOne Employee  
Personal/Shepard/OBEY/ART SHOWS/NEW ART 2008/OBAMA/BARACK BTMP 6.tif

You can see that one of the top level directories is "SNO Jobs 3." Please confirm that you have searched this file directory for responsive materials and let us know whether the "BARACK BTMP" files exist or have been deleted or destroyed.

Third, regarding the Saks documents, we understand that you have agreed to produce documents related to the press and promotional materials for the Saks campaign, including documents related to the display of use of the *Hope* poster and communications with EMG and Saks, which we agree is acceptable on this issue.

Fourth, with respect to Studio Number One's licensing documents, we understand that you are still refusing to produce these materials despite the fact that the documents Fairey has produced and Olivia Perches' testimony last week both demonstrate that Studio Number One was actively involved in the reproduction, distribution, licensing, and use of the Obama Posters, including for purely commercial purposes. There appears to be little or no basis for distinguishing between Studio Number One and Obey Giant Art, Inc. (whose licensing documents you have already produced) on this issue. Nonetheless, in an effort to make some progress on this issue as well, we propose that you produce only Studio Number One's "license in" documents since 2006, as the parties have previously defined that term. We do not see any plausible burden argument regarding these materials, given your representation that there are only a handful of licenses.

Fifth, although you agreed in early August to produce the documents we requested regarding Fairey's other works, you have not yet produced them. Please do so. Also, based on our discussion yesterday, it appears that you want The AP to produce documents located after a reasonably diligent search reflecting licenses, if any, to the works identified in Paragraph 4 of Fairey's Affirmative Defenses. On this issue, we are willing to produce documents sufficient to reflect such licensing information and answer Fairey's RFAs on this issue. We would agree to do this as a courtesy without waiving all objections to relevance and scope. Please confirm that this is satisfactory on this issue.

C.

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