

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, 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 JEANNE A. FUGATE IN SUPPORT OF COUNTERCLAIM  
DEFENDANT ONE 3 TWO, INC.'S MOTION TO REDACT CERTAIN  
CONFIDENTIAL PORTIONS OF ITS SUMMARY JUDGMENT PAPERS FOR  
PURPOSES OF THE PUBLIC FILE**

I, Jeanne A. Fugate, 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 to Redact Certain Confidential Portions of Its Summary Judgment Papers for Purposes of the Public File, and to File a Non-redacted Version of Those Papers Under Seal. 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. This firm first learned of the settlement between Shepard Fairey and the Fairey entities and the Associated Press on January 2, 2011. When One 3 Two filed its summary

judgment papers on January 7, 2011, we understood that the fact of the settlement had not yet been made public and should therefore be kept confidential.

3. Prior to filing the redacted, public version of One 3 Two's summary judgment papers on January 7, 2011, I, together with my colleague, Laurie C. Martindale, participated in several telephonic conferences and exchanged several emails with the Associated Press's counsel Brendan T. Kehoe and Brett J. Broadwater regarding the parties' proposed redactions to their respective summary judgment papers. We reached an agreement regarding what redactions contained in the parties' memoranda and statements pursuant to Local Rule 56.1 were appropriate under the terms of the Stipulated Amended Protective Order entered into by the parties and endorsed by this Court on April 12, 2010, and filed on April 13, 2010. We did not discuss whether specific exhibits would be redacted, but generally agreed that pursuant to the Protective Order, the redaction of entire exhibits that were marked "Confidential" would generally be appropriate.

4. The deposition transcript of Mannie Garcia attached as Exhibit "S" to the Declaration of Robyn C. Crowther filed in support of One 3 Two, Inc.'s Motion for Summary Judgment, or, in the Alternative, Partial Summary Judgment ("Motion for Summary Judgment"), does not contain One 3 Two's proprietary information. Rather, it was submitted under seal pursuant to the terms of the Stipulated Amended Protective Order ("Protective Order") because it was marked "Confidential," by Mr. Garcia's counsel.

5. Exhibit "D" to the Declaration of Christopher Broders filed in support of One 3 Two's Motion for Summary Judgment is an email chain which includes correspondence between Mr. Broders and Fairey's companies. Part of this email chain was also produced by Fairey and marked "Confidential" by Fairey's counsel. Accordingly, it was submitted under seal pursuant to the Protective Order.

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 13, 2011, at Los Angeles, California.

  
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JEANNE A. FUGATE