

PUBLIC VERSION

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 ROBYN C. CROWTHER IN SUPPORT OF COUNTERCLAIM
DEFENDANT ONE 3 TWO, INC.'S OPPOSITION TO COUNTERCLAIMANT THE
ASSOCIATED PRESS'S MOTION FOR 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 Opposition to Counterclaimant the Associated Press'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 "A" is a true and correct copy of excerpts of the deposition of Counterclaimant Mannie Garcia ("Garcia Depo."), which was taken in this action on March 4 and 5, 2010, in Washington, D.C.

3. Attached hereto as Exhibit "B" is a true and correct copy of Exhibit 52 to the Garcia Depo., which is authenticated at page 218:14-16 of the deposition of Mr. Garcia taken on March 4, 2010.

4. Attached hereto as Exhibit "C" is a true and correct copy of Exhibit 94 to the Garcia Depo., which is authenticated at pages 65:20 – 71:9 of the deposition of Mr. Garcia taken on March 5, 2010.

5. Attached hereto as Exhibit "D" is a true and correct copy of Exhibit 101 to the Garcia Depo., which is authenticated at pages 194:18 – 195:14 of the deposition of Mr. Garcia taken on March 5, 2010.

6. Attached hereto as Exhibit "E" is a true and correct copy of Exhibit 102 to the Garcia Depo., which is authenticated at pages 251:18 – 252:20 of the deposition of Mr. Garcia taken on March 5, 2010.

7. Attached hereto as Exhibit "F" is a true and correct copy of Exhibit 104 to the Garcia Depo., which is authenticated at page 256:4-15 of the deposition of Mr. Garcia taken on March 5, 2010.

8. Attached hereto as Exhibit "G" is a true and correct copy of excerpts of the deposition of Jim Gerberich ("Gerberich Depo."), a 30(b)(6) witness designated by the AP, which was taken in this action on September 25, 2009 and March 31, 2010 in New York, New York.

9. Attached hereto as Exhibit "H" are true and correct copies of Exhibits 15A-15B, to the Gerberich Depo., which are authenticated at pages 16:16 – 17:24 of the deposition of Mr. Gerberich taken on March 31, 2010.

10. Attached hereto as Exhibit "I" are true and correct copies of exhibits 23A-23B to the Gerberich Depo., which are authenticated at pages 93:24 – 95:22 of the deposition of Mr. Gerberich taken on March 31, 2010.

11. Attached hereto as Exhibit "J" is a true and correct copy of excerpts of the deposition of Laura Malone ("Malone Depo."), a 30(b)(6) witness designated by the AP, which was taken in this action on September 15, 2009, in New York, New York.

12. Attached hereto as Exhibit "K" is a true and correct copy of Exhibit 12 to the Malone Depo., which is authenticated at pages 16-19 and 149:24 – 150:17 of the deposition of Ms. Malone taken on September 15, 2009.

13. Attached hereto as Exhibit "L" is a true and correct copy of excerpts of the deposition of Farah DeGrave ("DeGrave Depo."), a 30(b)(6) witness designated by the AP, which was taken in this action on March 23, 2010, in New York, New York.

14. Attached hereto as Exhibit "M" is a true and correct copy of Exhibit 2 to the DeGrave Depo., which is authenticated at pages 14:13 – 16:16 of the deposition of Ms. DeGrave taken on March 23, 2010.

15. Attached hereto as Exhibit "N" is a true and correct copy of excerpts of the deposition of Ken Dale ("Dale Depo."), a 30(b)(6) witness designated by the AP, which was taken in this action on March 26, 2010, in New York, New York.

16. Attached hereto as Exhibit "O" is a true and correct copy of excerpts of the deposition of Plaintiff and Counterclaim Defendant Frank Shepard Fairey ("Fairey Depo."),

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.

17. Attached hereto as Exhibit "P" is a true and correct copy of Exhibit 32 to the Fairey Depo., which is authenticated at pages 256:24 – 257:10 of the deposition of Mr. Fairey taken on March 16, 2010.

18. Attached hereto as Exhibit "Q" is a true and correct copy of Exhibit 87 to the Fairey Depo., which is authenticated at page 535:17-21 of the deposition of Mr. Fairey taken on March 17, 2010.

19. Attached hereto as Exhibit "R" is a true and correct copy of Exhibit 201 to the Fairey Depo., which is authenticated at page 796:17-24 of the deposition of Mr. Fairey taken on March 18, 2010.

20. Attached hereto as Exhibit "S" is a true and correct copy of Exhibit 202 to the Fairey Depo., which is authenticated at page 796:17-24 of the deposition of Mr. Fairey taken on March 18, 2010.

21. Attached hereto as Exhibit "T" is a true and correct copy of Exhibit 203 to the Fairey Depo., which is authenticated at page 796:17-24 of the deposition of Mr. Fairey taken on March 18, 2010.

22. Attached hereto as Exhibit "U" is a true and correct copy of Exhibit 204 to the Fairey Depo., which is authenticated at page 796:17-24 of the deposition of Mr. Fairey taken on March 18, 2010.

23. Attached hereto as Exhibit "V" is a true and correct copy of Exhibit 205 to the Fairey Depo., which is authenticated at page 796:17-24 of the deposition of Mr. Fairey taken on March 18, 2010.

24. Attached hereto as Exhibit "W" is a true and correct copy of Exhibit 222 to the Fairey Depo., which is authenticated at page 883:3-17 of the deposition of Mr. Fairey taken on March 18, 2010.

25. Attached hereto as Exhibit "X" is a true and correct copy of excerpts of the deposition of Mike Essl ("Essl Depo."), an expert witness designated by the AP, which was taken in this action on November 22, 2010, in New York, New York.

26. Attached hereto as Exhibit "Y" is a true and correct copy of excerpts of the deposition of Amanda Fairey, which was taken in this action on September 18, 2009, in New York, New York; on March 28, 2010, in Los Angeles, California; and on July 27, 2010, in New York, New York.

27. Attached hereto as Exhibit "Z" is a true and correct copy of excerpts of the deposition of Olivia Perches, which was taken in this action on September 22 and 23, 2010 and March 26, 2010, in New York, New York.

28. Attached hereto as Exhibit "AA" is a true and correct copy of excerpts of the deposition of William Landes, an expert witness designated by the AP, which was taken in this action on December 8, 2010, in New York, New York.

29. Attached hereto as Exhibit "BB" is a true and correct copy of excerpts of the deposition of Regan Donald Juncal, a 30(b)(6) witness designated by One 3 Two, which was taken in this action on March 23, 2010 and August 26, 2010, in Los Angeles, California.

30. Attached hereto as Exhibit "CC" is a true and correct copy of excerpts of the deposition of Christopher Broders, a 30(b)(6) witness designated by One 3 Two, which was taken in this action on March 16, 2010, in Los Angeles, California.

31. Attached hereto as Exhibit "DD" is a true and correct copy of excerpts of the deposition of Adam Van Berckelaer, a 30(b)(6) witness designated by One 3 Two, which was taken in this action on March 11, 2010 and August 26, 2010, in Los Angeles, California.

32. Attached hereto as Exhibit "EE" is a true and correct copy of the first page of Exhibit 43B of the deposition of Mr. Van Berckelaer, One 3 Two's "Obama Commission Report," OTT 028260, which is authenticated at pages 433:15 – 435:1 of the deposition of Mr. Van Berckelaer taken on August 26, 2010, in Los Angeles, California. A more legible copy of the first page of this Exhibit, which was generated by colleagues under my supervision, is also included for the Court's ease of reference.

33. Attached hereto as Exhibit "FF" is a true and correct copy of excerpts of the deposition of Laurie Dahlberg, an expert witness designated by the AP, which was taken in this action on December 10, 2010, in New York, New York.

34. Attached hereto as Exhibit "GG" is a true and correct copy of excerpts of the deposition of Marita Sturken, an expert witness designated by Fairey, which was taken in this action on November 24, 2010, in New York, New York.

35. Attached hereto as Exhibit "HH" is a true and correct copy of excerpts of the deposition of James Danziger, which was taken in this action on July 14, 2009, in New York, New York.

36. Attached hereto as Exhibit "II" is a true and correct copy of excerpts of the deposition of Kathleen M. Kedrowski, an expert witness designated by the AP ("Kedrowski Depo."), which was taken in this action on December 14 and 15, 2010, in New York, New York.

37. Attached hereto as Exhibit "JJ" is a true and correct copy of Exhibit 6 to the Kedrowski Depo., which is authenticated at pages 106:9-25 and 110:18-23 of the deposition of Ms. Kedrowski taken on December 14, 2010, in New York, New York.

38. Attached hereto as Exhibits "KK," "LL" and "MM" are true and correct copies of the images attached to the Permanent Injunction and Order of Dismissal With Prejudice filed on December 20, 2007 in the United States District Court for the District of Hawaii in *Reece v. Island Treasures Art Gallery*, Case No. 06cv00489, and the Order itself, which I caused to be accessed via PACER. I caused these images to be resized by colleagues under my supervision to fit within One 3 Two's opposing memorandum.

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

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

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

42. Attached hereto as Exhibit "QQ" is a true and correct copy of the Expert Report of John C. Jarosz, an expert designated by Fairey, which was produced to counsel for One 3 Two on October 1, 2010.

43. Attached hereto as Exhibit "RR" is a true and correct copy of the Expert Report of Frank Cost, an expert designated by Fairey, which was produced to counsel for One 3 Two on October 1, 2010.

44. Attached hereto as Exhibit "SS" is a true and correct copy of Exhibit 7-A to the Expert Report of Mark Hair, an expert designated by One 3 Two, which was produced to counsel on November 2, 2010.

45. On January 24, 2011, colleagues under my supervision visited the AP Images homepage, at <http://www.apimages.com/uns/splash/default.aspx?url=products/default.html>. The homepage of the AP Images website states, “Search our online database of over 6 million images....” Attached hereto as Exhibit “TT” is a true and correct copy of a printout from the AP Images website homepage containing this language.

46. Attached hereto as Exhibit “UU” is a true and correct copy of the third-party subpoena served by the AP on One 3 Two on or about August 19, 2009, which this office received on August 21, 2009. I was retained to represent One 3 Two on or around August 21, 2009 and, to my knowledge, the subpoena was the first time that my client had any involvement whatsoever in this lawsuit.

47. Attached hereto as Exhibit “VV” is a true and correct copy of Exhibit 5 to the Deposition of Gregory Payan, a 30(b)(6) witness designated by the AP, which is authenticated at pages 7:12 – 11:12 and 19:24 – 20:14 of the deposition of Mr. Payan taken on April 6, 2010, in New York, New York, which is included as part of this Exhibit.

48. Attached hereto as Exhibit “WW” is a true and correct copy of a letter sent from AP’s counsel, Dale Cendali, to this Court, on which I and other counsel of record were copied, on May 14, 2010, regarding Mr. Garcia’s conduct.

49. Attached hereto as Exhibit “XX” is a true and correct copy of a letter from William W. Fisher III sent to this Court, on which I and other counsel of record were copied, on August 22, 2010, regarding the Stipulation Regarding Chain of Custody of “Rubylith” Transparencies.

50. Attached hereto as Exhibit "YY" is a true and correct copy of Fairey's Second Supplemental Responses to the AP's Interrogatory Nos. 15-23, which were received by my office on or about April 19, 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 26 2011, at Los Angeles, California.

Robyn C. C.
ROBYN C. CROWTHER