

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)

**MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION TO REDACT CERTAIN  
CONFIDENTIAL PORTIONS OF SUMMARY JUDGMENT PAPERS FOR PURPOSES  
OF THE PUBLIC FILE**

**I. INTRODUCTION**

Counterclaimant the Associated Press (the “AP”) and Counterclaim Defendant One 3 Two, Inc. d/b/a Obey Clothing (“One 3 Two”) (collectively, “the parties”) hereby submit this memorandum of law in support of their Joint Motion to Redact Certain Confidential Portions of Summary Judgment Papers for Purposes of the Public File, and to File a Non-redacted Version of Those Papers Under Seal (“Joint Motion to Redact”). A protective order entered into by the parties and endorsed by this Court requires that material designated as “Confidential” or “Highly Confidential” be filed under seal. Pursuant to the procedures set forth in that protective order, and, after meeting and conferring, both parties sought to manually file non-redacted versions of

their summary judgment papers and opposition papers under seal and electronically file public, redacted versions of those papers. Pursuant to Rule 4.A. of this Court's Individual Rules, the parties hereby request that the Court accept their proposed redactions and deem the documents submitted to the Clerk under seal to be a sealed filing. The proposed redactions were made pursuant to the protective order entered into by the parties and are narrowly tailored to protect confidential, proprietary, and personal information.

## **II. THE STIPULATED AMENDED PROTECTIVE ORDER REQUIRES CONFIDENTIAL INFORMATION TO BE REDACTED**

On April 12, 2010, this Court endorsed the Stipulated Amended Protective Order (Docket No. 127) entered into to by the parties in this case (the "Protective Order"). The Protective Order provides that certain material may be designated by the parties as "Confidential Information." Protective Order ¶ 2. "Confidential Information" may include, among other things, documents or deposition transcripts containing "confidential, personal, privileged or proprietary information." *Id.* Confidential Information that is particularly sensitive, private, or competitively valuable may be further designated as "Highly Confidential - Attorneys' Eyes Only." The Protective Order sets forth a procedure for filing Confidential Information and requires the parties to redact Confidential Information included in public filings and to simultaneously file a non-redacted version with a request that it be treated as a "Sealed Document." *Id.* ¶ 19.

In accordance with the terms of the Protective Order, the parties sought to file their summary judgment papers under seal on January 7, 2011, and opposition papers under seal on January 28, 2011. The parties also electronically filed redacted, public versions of those papers in which each party redacted a limited amount of material that had been designated as "Confidential." Prior to filing their redacted papers, counsel met and conferred and reached an agreement regarding what information contained in the parties' memoranda of law and

statements pursuant to Local Rule 56.1 should be redacted pursuant to the terms of the Protective Order. Declaration of Jeanne A. Fugate (“Fugate Declaration”) ¶ 3; Declaration of Brendan Kehoe dated January 28, 2011 (“Kehoe Decl.”) ¶¶ 2-6. The parties request that the redacted versions of their summary judgment papers that were electronically filed on January 7, 2011, and opposition papers that were electronically filed on January 27, 2011, be accepted as the public versions.

### **III. THE REDACTION OF THE CONFIDENTIAL INFORMATION AT ISSUE IS AUTHORIZED BY FEDERAL LAW**

Although there is a presumption of public access to judicial documents, Federal Rule of Civil Procedure 26(c) authorizes District Courts, upon a showing of good cause, to require that “a deposition be sealed” or “that trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.” Fed. R. Civ. P. 26(c)(1)(F) and 26(c)(1)(G). In addition, this Court’s Individual Rules authorize sealing when “it is essential to preserve higher values and is narrowly tailored to serve that interest.”

Individual Rule 4.A.

Here, as set forth in the Declarations of Jeanne A. Fugate dated January 13, 2011 and January 28, 2011, and the Declaration of Brendan T. Kehoe dated January 28, 2011, the parties have redacted financial and other information that has been designated Confidential Information. For example, information regarding One 3 Two’s revenues, costs, and profits is confidential proprietary information that could cause substantial harm to One 3 Two’s business if made public. Declaration of Regan Donald Juncal in Support of One 3 Two, Inc.’s Motion to Redact filed on January 13, 2011, ¶ 3. Similarly, financial information regarding the AP’s image licensing business and the prices for image licenses is proprietary, the disclosure of which could cause significant competitive harm to the AP’s business if such information is made public.

Kehoe Decl. ¶ 4.



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