

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKSHEPARD 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 JOINT MOTION TO
REDACT CERTAIN CONFIDENTIAL PORTIONS OF SUMMARY JUDGMENT
PAPERS AND OPPOSITION PAPERS FOR PURPOSES OF THE PUBLIC RECORD**

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 this Joint Motion to Redact Certain Confidential Portions of Summary Judgment Papers and Opposition Papers for Purposes of the Public File, and to File a Non-redacted Version of Those Papers Under Seal (“Joint Motion to Redact”). 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. Prior to filing the redacted, public versions of our summary judgment papers on January 7, 2011 and opposition papers on January 27, 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 and opposition papers. We reached an agreement regarding what redactions contained in the parties' memoranda in support of and in opposition to summary judgment and statements pursuant to Local Rule 56.1 and responses thereto 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 generally 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 be appropriate.

Summary Judgment Papers

3. The redactions in One 3 Two's memorandum in support of summary judgment and statement pursuant to Local Rule 56.1 are limited to financial, proprietary, and personal information, and information regarding the settlement between the AP and Fairey which was not public at the time those papers were filed.

4. The licensing agreements attached as Exhibits "A," "B," and "C," to the Declaration of Christopher Broders ("Broders Decl.") in support of One 3 Two's Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment (the "Motion for Summary Judgment") were submitted under seal for the reasons set forth in the Declaration of Regan Donald Juncal attached to One 3 Two's Motion to Redact filed on January 13, 2011.

5. The email chain attached as Exhibit "D" to the Broders Decl. filed in support of One 3 Two's Motion for Summary Judgment was submitted under seal pursuant to the Stipulated Amended Protective Order ("Protective Order") because it was marked "Confidential" by One 3 Two and Shepard Fairey.

6. The "look book" attached as Exhibit "H" to the Declaration of Regan Donald Juncal ("Juncal Decl.") in support of One 3 Two's Motion for Summary Judgment was submitted under seal pursuant to the Protective Order because it was marked "Confidential" by One 3 Two.

7. The deposition transcript excerpts attached as Exhibits “N-S” to the Declaration of Robyn C. Crowther (“Crowther Decl.”) filed in support of One 3 Two’s Motion for Summary Judgment were submitted under seal pursuant to the terms of the Protective Order because they were marked “Confidential” by various parties.

8. The expert reports attached as Exhibits “T-V” to the Crowther Decl. filed in support of One 3 Two’s Motion for Summary Judgment were submitted under seal pursuant to the terms of the Protective Order because they were marked “Confidential” by various parties.

Opposition Papers

9. The redactions in One 3 Two’s memorandum in opposition and statement pursuant to Local Rule 56.1 are limited to financial and proprietary information of the parties.

10. The deposition transcript excerpts and deposition exhibits attached as Exhibits “A, B, D-P, R-V, X-JJ, and VV” to the Declaration of Robyn C. Crowther filed in support of One 3 Two’s Opposition to The Associated Press’ Motion for Summary Judgment (“Crowther Opp. Decl.”) were submitted under seal pursuant to the terms of the Protective Order because they were marked “Confidential,” by various parties.

11. The expert reports attached as Exhibits “NN-SS” to the Crowther Opp. Decl. were submitted under seal pursuant to the terms of the Protective Order because they were marked “Confidential,” by various parties.

12. Shepard Fairey’s Second Supplemental Responses to the AP’s Interrogatory Nos. 15-23 attached as Exhibit “YY” to the Crowther Opp. Decl. was submitted under seal pursuant to the terms of the Protective Order because it contains Fairey’s confidential financial information.

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 28, 2011, at Los Angeles, California.



JEANNE A. FUGATE