

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)

**COUNTERCLAIM DEFENDANT ONE 3 TWO, INC.'S NOTICE OF MOTION IN
LIMINE NO. 4 TO EXCLUDE THE OPINION OF THE ASSOCIATED PRESS'S
DESIGNATED EXPERT WILLIAM M. LANDES****TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that upon the accompanying memorandum of law, Counterclaim Defendant One 3 Two, Inc. d/b/a Obey Clothing (“One 3 Two”) will move, before the honorable Alvin K. Hellerstein, United States District Judge at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., Courtroom 14D, New York, New York 10007, on March 16, 2011 at 10:00 a.m., to exclude testimony and reports of Plaintiff The Associated Press’s (the “AP”) expert, William M. Landes. One 3 Two moves *in limine* to exclude this evidence on grounds that Landes’s testimony, which is otherwise irrelevant at this stage of litigation, has never been designated or expressed opinions on apportionment of damages with

respect to One 3 Two and cannot be used for such purpose now. *See* Fed. R. Civ. P. 26(a)(2)(B)(i); Fed. R. Civ. P. 37. To the extent that Landes's reports do address the issue of apportionment, those opinions are inadmissible under Federal Rules of Evidence 702, 703 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993).

Dated February 25, 2011
Los Angeles, California

Respectfully submitted,

By: /s/ Robyn C. Crowther

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