

EXHIBIT C

**TO THE AP'S
MOTION IN LIMINE NO. 4
TO LIMIT THE OPINION
TESTIMONY OF NEIL
ZOLTOWSKI**

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<p>IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK</p> <p>-----</p> <p>SHEPARD FAIREY and OBEY ART, INC., Plaintiffs, vs. 09-CV-01123</p> <p>THE ASSOCIATED PRESS, Defendant and Counterclaim Plaintiff, vs. SHEPARD FAIREY, OBEY GIANT ART, INC., OBEY GIANT LLC, and STUDIO NUMBER ONE, INC., Counterclaim Defendants.</p> <p>-----</p> <p>DEPOSITION OF FARAH DeGRAVE TUESDAY, MARCH 23, 2010 12:21 p.m.</p>	<p>1 2 A P P E A R A N C E S: 3 JONES DAY P.C. 4 Attorneys for Shepard Fairey 5 51 Louisiana Avenue NW 6 Washington, DC 20001 7 BY: KATHRYN STERN, ESQ. 8 9 KIRKLAND & ELLIS, PC 10 Attorneys for Associated Press 11 601 Lexington Avenue 12 New York, New York 10022 13 BY: CLAUDIA RAY, ESQ. 14 15 CALDWELL, LESLIE and PROCTOR 16 Attorneys for 132 17 1000 Wilshire Boulevard 18 Suite 600 19 Los Angeles, CA 90017 20 BY: LAUREN MARTINDALE, ESQ. (Via Telephone) 21 22 A L S O P R E S E N T: 23 ADELINE GARCIA, Videographer 24 KAREN KAISER, Associated Press 25</p>
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<p>1 2 3 4 5 6 March 23, 2010 7 12:21 p.m. 8 New York, New York 9 10 DEPOSITION of FARAH DeGRAVE, held 11 at the offices of Jones Day, 222 East 41st 12 Street, New York, New York, pursuant to 13 Notice, before Adrienne M. Mignano, a Notary 14 Public of the State of New York. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 IT IS HEREBY STIPULATED AND AGREED, by 4 and between the attorneys for the respective 5 parties herein, that filing and sealing of 6 the transcript be waived, and the same are 7 hereby waived. 8 IT IS FURTHER STIPULATED AND AGREED 9 that all objections, except as to the form 10 of the question, shall be reserved to the 11 time of the trial. 12 IT IS FURTHER STIPULATED AND AGREED 13 that the within deposition may be sworn to 14 and signed before any officer authorized to 15 administer an oath, with the same force and 16 effect as if signed and sworn to before the 17 Court. 18 19 20 21 22 23 24 25</p>

<p>1 DeGrave 2 just to be within industry standards. 3 Something that is really important to us. 4 Q Does it matter to AP what 5 competitors' prices are? 6 A It does matter to AP what our 7 competitors are charging. 8 Q Are there any other factors that 9 you need to consider besides what 10 competitors are charging, how it is going 11 to be used, the size, what markets? 12 A I mean, is there a specific 13 document that you're referring to? 14 MS. RAY: Objection to form. 15 Q No, I'm asking you what the 16 factors are that you consider when you -- 17 (Phone line disconnects) 18 MS. RAY: Why don't we take a 19 minute and she'll call back in. 20 THE VIDEOGRAPHER: The time is 21 1:39 and we're going off the record. 22 (Thereupon, a recess was taken, 23 and then the proceedings continued as 24 follows: 25 THE VIDEOGRAPHER: The time is</p>	<p>1 DeGrave 2 client, does the sales rep make the final 3 decision about the price? 4 A I mean, is this before or after 5 the guide was done for them? 6 Q When was the guide done? 7 A I'm going to say -- I would have 8 to check. It was either done in 2008 or 9 2009. I don't recall exactly. It was a 10 lengthy process. 11 Q Before that, before there was 12 any internal pricing guide, did the sales 13 rep make the pricing decision? 14 A It depends on the situation. If 15 a sales rep was not sure because the 16 scenario was different or unique, they 17 would speak to their management team. 18 Q And the management team would 19 then make the decision? 20 A There would be a discussion, 21 sure, about what is the right price of 22 this license based on the usage. 23 Q Well, taking a look at Exhibit 24 6, can you give me an idea why this 25 particular license that Time Out got was</p>
<p>1 66 2 DeGrave 3 1:40 and we're back on the record. 4 BY MS. STERN: 5 Q So, Farah, I have been asking 6 you what the factors are that you consider 7 when you price a photograph, and whether 8 there are any others that you haven't 9 mentioned. 10 A Are there others? 11 A There are others, yeah, depends 12 on the usage. 13 Q Is there any guideline that you 14 have that you work with to help price a 15 photograph, any written instructions, any 16 charts? 17 MS. RAY: Objection. Form. 18 A There is an internal pricing 19 guide that we did create to assist the 20 sales reps. 21 MS. STERN: Claudia, do you know 22 if the internal pricing has been 23 produced? 24 MS. RAY: I believe it has been 25 produced, yeah. Q So when a sales rep works with a</p>	<p>1 68 2 DeGrave 3 priced at \$75? 4 A Can I give you -- I'm sorry, 5 what? 6 Q Why is it \$75? 7 MS. RAY: Objection to form. 8 Lack of foundation. Calls for 9 speculation. 10 Q What are the factors here that 11 set it at \$75? 12 If you were reviewing Yvette 13 Reyes' decision, would you say it was a 14 good one, \$75 was an appropriate price? 15 MS. RAY: Objection, calls for 16 speculation. Objection, form. 17 A Well, the license stipulates 18 that it say nonexclusive, one time 19 editorial use for a specific section of 20 their magazine. It seems like a 21 reasonable price to me. It is U.S. rights 22 only. In English. It seems like a 23 reasonable price to me. 24 Q Okay. 25 If Yvette had set it at \$100, would she have been within her discretion?</p>



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<p style="text-align: center;">69</p> <p>1 DeGrave 2 MS. RAY: Objection. Calls for 3 speculation. 4 A Possibly. 5 Q What about at \$50. If you saw 6 that she charged only \$50, would you have 7 had a concern about that or would that be 8 fine? 9 MS. RAY: Same objection. 10 A It depends. 11 Q So it just depends? 12 A Yeah, it depends on the license. 13 It depends on how the client is using it. 14 It depends on that conversation that 15 you're having with the client, sure. 16 Q So it could have been 50 or it 17 could have been 100? 18 A Sure. 19 Q It could have been 150? 20 A It's possible. 21 Q And if she had got \$250, would 22 that have been allowable? Would AP let 23 her set the price as high as \$250 for this 24 license? 25 MS. RAY: Objection. Calls for</p>	<p style="text-align: center;">71</p> <p>1 DeGrave 2 Q Before the internal pricing 3 guideline, could she? 4 A No. 5 Q And was there any limit, any 6 reason for her to think she couldn't go 7 beyond a certain price? 8 A Well, as a sales rep, she 9 understands the industry and she is aware 10 of what her competitors are charging. 11 So, I mean, based on her 12 experience, based on what the client is 13 telling her, she would set the price 14 accordingly. 15 Q If she got the idea that the 16 client would pay any amount, would AP 17 allow her to charge a price way above 18 market? 19 A AP doesn't work that way, no. 20 Q If the client asked for a 21 special deal, would a sales rep be 22 authorized to give them a discount? 23 MS. RAY: Objection. Calls for 24 speculation. 25 A Well, a special deal and a</p>
<p style="text-align: center;">70</p> <p>1 DeGrave 2 speculation. Objection to form. 3 A It wouldn't be typical. 4 Q So this price looks typical? 5 A For this usage for this license, 6 sure. 7 Q Okay. 8 But if she had set it at \$250 9 and Time Out Chicago had paid \$250 and it 10 was an atypical price, would that have 11 been any cause for concern by her 12 supervisor? 13 MS. RAY: Objection, form. It 14 calls for speculation. It's 15 hypothetical. 16 A If she had set the price at 17 \$250, would that have been -- 18 Q Would that have been cause for 19 concern? 20 MS. RAY: Same objection. Calls 21 for speculation. 22 Q Let me rephrase this. 23 Can Yvette Reyes set the price 24 as high as she chooses? 25 A No.</p>	<p style="text-align: center;">72</p> <p>1 DeGrave 2 discount could be two different things. 3 So which are you asking? 4 Q I'll ask about both. 5 A Okay. 6 Q Tell me about a special deal. 7 MS. RAY: Objection. Form. 8 A In any sense? 9 Q Does that ever happen? Does a 10 sales rep ever give an unusually low price 11 because someone asked for it? 12 MS. RAY: Objection. Form. 13 Lack of foundation. Calls for 14 speculation. 15 A If a client comes to us and 16 wants to set up a specific deal, they know 17 that they are going to be purchasing X 18 number of photos over X amount of time, 19 sure, we would take a look and try to work 20 with them to fit within their budget, 21 absolutely. That is not unheard of. 22 Q Okay, so you could negotiate 23 with them? 24 A Absolutely. 25 Q Does a client and the sales rep</p>



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<p>1 DeGrave 2 that this is a reasonable price for what 3 they are asking for. 4 Q Okay. 5 If she hadn't had the guide, 6 would she have come anywhere near this 7 price? 8 A Probably. 9 Q And can you without the guide 10 give me any idea, any prediction, because 11 we're both going to go look at it later, 12 what 25,000 T-shirts would cost? Are you 13 able to predict that without looking at 14 the guide? 15 MS. RAY: Objection to form. 16 A Why would I need to predict it 17 if I have the guide. 18 Q I'm curious if you have any 19 institutional knowledge sufficient to give 20 me an estimate of what 25,000 T-shirts 21 would cost. 22 MS. RAY: Same objections. 23 A I just want to make clear for 24 you that in à la carte pricing, because 25 you're answering a plethora of questions</p>	<p>1 DeGrave 2 price memorized, but it is something 3 that -- 4 Q Did you use the Getty site as a 5 reference -- do you think Elisa used the 6 Getty site as a reference for this pricing 7 here? 8 MS. RAY: Objection to form. 9 A It's possible she did. I don't 10 know. 11 MS. STERN: The next exhibit I 12 would like to mark is this. 13 (Whereupon, AP Photo of Shepard 14 Fairey and his Hope Poster, was marked 15 as Exhibit 14 for identification, as 16 of this date.) 17 BY MS. STERN: 18 Q Farah, was this photograph for 19 sale on AP Images? Can you tell that from 20 this exhibit whether it was or not? 21 A It looks like it was, yes. 22 MS. STERN: Next exhibit, number 23 15. 24 (Whereupon, Photo of Shepard 25 Fairey with Obama Hope Poster, was</p>
<p>138</p> <p>1 DeGrave 2 that are specific to how it is being used, 3 there are literally millions of 4 combinations in terms of how a price is 5 going to come about. There are millions. 6 If you print one, if you print 7 five, if you print it over five years, 8 over 10 years, what's the size, I mean, so 9 I feel like it is unrealistic for you to 10 say to me tell me specifically what 25,000 11 T-shirts would cost. That's why we 12 created the guide, because there are so 13 many -- you know, we have spent so much 14 time creating this guide. 15 I mean, if I was at a client's 16 or if you wanted to, I would say why don't 17 you look at the Getty site, let's take a 18 look, because all of the criteria we're 19 talking about is essentially there. And 20 we would definitely use the Getty site as 21 a reference to say, well, what is the 22 industry charging right now for this. 23 So I'm not trying to be 24 argumentative with you. And I just want 25 you to understand that I don't have that</p>	<p>140</p> <p>1 DeGrave 2 marked as Exhibit 15 for 3 identification, as of this date.) 4 Q Farah, what about this photo, 5 another photo of Shepard Fairey with the 6 Obama Hope Poster. 7 Was this for sale on AP Images? 8 A Yes. 9 Q Can you estimate what the price 10 for licensing this photo would be for a 11 one time use? 12 A Editorially how? It is an 13 editorial usage, so how specifically? 14 Q Let's say an article in a 15 newspaper regarding the creation of the 16 Hope Poster. 17 A Is it a member or not? 18 Q Okay. Tell me for the member 19 and then tell me not. 20 A If they are a member and it runs 21 on the wire, that is part of their 22 package. If they want to come back and 23 use it, and it is not part of their 24 membership, not part of the package that 25 they have, they need to come to AP Images</p>



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