

EXHIBIT C

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

<p style="text-align: center;">1</p> <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,</p> <p>vs.</p> <p>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>Reported by: Adrienne M. Mignano, RPR</p>	<p style="text-align: center;">3</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>
<p style="text-align: center;">2</p> <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 style="text-align: center;">4</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>



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<p style="text-align: center;">65</p> <p>1 DeGrave</p> <p>2 just to be within industry standards.</p> <p>3 Something that is really important to us.</p> <p>4 Q Does it matter to AP what</p> <p>5 competitors' prices are?</p> <p>6 A It does matter to AP what our</p> <p>7 competitors are charging.</p> <p>8 Q Are there any other factors that</p> <p>9 you need to consider besides what</p> <p>10 competitors are charging, how it is going</p> <p>11 to be used, the size, what markets?</p> <p>12 A I mean, is there a specific</p> <p>13 document that you're referring to?</p> <p>14 MS. RAY: Objection to form.</p> <p>15 Q No, I'm asking you what the</p> <p>16 factors are that you consider when you --</p> <p>17 (Phone line disconnects)</p> <p>18 MS. RAY: Why don't we take a</p> <p>19 minute and she'll call back in.</p> <p>20 THE VIDEOGRAPHER: The time is</p> <p>21 1:39 and we're going off the record.</p> <p>22 (Thereupon, a recess was taken,</p> <p>23 and then the proceedings continued as</p> <p>24 follows:)</p> <p>25 THE VIDEOGRAPHER: The time is</p>	<p style="text-align: center;">67</p> <p>1 DeGrave</p> <p>2 client, does the sales rep make the final</p> <p>3 decision about the price?</p> <p>4 A I mean, is this before or after</p> <p>5 the guide was done for them?</p> <p>6 Q When was the guide done?</p> <p>7 A I'm going to say -- I would have</p> <p>8 to check. It was either done in 2008 or</p> <p>9 2009. I don't recall exactly. It was a</p> <p>10 lengthy process.</p> <p>11 Q Before that, before there was</p> <p>12 any internal pricing guide, did the sales</p> <p>13 rep make the pricing decision?</p> <p>14 A It depends on the situation. If</p> <p>15 a sales rep was not sure because the</p> <p>16 scenario was different or unique, they</p> <p>17 would speak to their management team.</p> <p>18 Q And the management team would</p> <p>19 then make the decision?</p> <p>20 A There would be a discussion,</p> <p>21 sure, about what is the right price of</p> <p>22 this license based on the usage.</p> <p>23 Q Well, taking a look at Exhibit</p> <p>24 6, can you give me an idea why this</p> <p>25 particular license that Time Out got was</p>
<p style="text-align: center;">66</p> <p>1 DeGrave</p> <p>2 1:40 and we're back on the record.</p> <p>3 BY MS. STERN:</p> <p>4 Q So, Farah, I have been asking</p> <p>5 you what the factors are that you consider</p> <p>6 when you price a photograph, and whether</p> <p>7 there are any others that you haven't</p> <p>8 mentioned.</p> <p>9 Are there others?</p> <p>10 A There are others, yeah, depends</p> <p>11 on the usage.</p> <p>12 Q Is there any guideline that you</p> <p>13 have that you work with to help price a</p> <p>14 photograph, any written instructions, any</p> <p>15 charts?</p> <p>16 MS. RAY: Objection. Form.</p> <p>17 A There is an internal pricing</p> <p>18 guide that we did create to assist the</p> <p>19 sales reps.</p> <p>20 MS. STERN: Claudia, do you know</p> <p>21 if the internal pricing has been</p> <p>22 produced?</p> <p>23 MS. RAY: I believe it has been</p> <p>24 produced, yeah.</p> <p>25 Q So when a sales rep works with a</p>	<p style="text-align: center;">68</p> <p>1 DeGrave</p> <p>2 priced at \$75?</p> <p>3 A Can I give you -- I'm sorry,</p> <p>4 what?</p> <p>5 Q Why is it \$75?</p> <p>6 MS. RAY: Objection to form.</p> <p>7 Lack of foundation. Calls for</p> <p>8 speculation.</p> <p>9 Q What are the factors here that</p> <p>10 set it at \$75?</p> <p>11 If you were reviewing Yvette</p> <p>12 Reyes' decision, would you say it was a</p> <p>13 good one, \$75 was an appropriate price?</p> <p>14 MS. RAY: Objection, calls for</p> <p>15 speculation. Objection, form.</p> <p>16 A Well, the license stipulates</p> <p>17 that it say nonexclusive, one time</p> <p>18 editorial use for a specific section of</p> <p>19 their magazine. It seems like a</p> <p>20 reasonable price to me. It is U.S. rights</p> <p>21 only. In English. It seems like a</p> <p>22 reasonable price to me.</p> <p>23 Q Okay.</p> <p>24 If Yvette had set it at \$100,</p> <p>25 would she have been within her discretion?</p>



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



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<p style="text-align: center;">133</p> <p>1 DeGrave</p> <p>2 A Whatever it is our price book</p> <p>3 says.</p> <p>4 Q As someone who is experienced</p> <p>5 with these things, supposing you had to</p> <p>6 give someone a price, a client was asking</p> <p>7 you right now, I would like to do 25,000,</p> <p>8 what kind of price can I expect from you</p> <p>9 for that?</p> <p>10 MS. RAY: Objection. Calls for</p> <p>11 speculation.</p> <p>12 MS. STERN: That's exactly what</p> <p>13 I'm calling for.</p> <p>14 MS. RAY: Just so we understand</p> <p>15 each other.</p> <p>16 A Well, if a client was asking me</p> <p>17 for a price, I would go to my pricing</p> <p>18 book. If I was at a client's location, I</p> <p>19 would say why don't we jump on the Getty</p> <p>20 site and see what they are charging. And</p> <p>21 we would come up with a price, you know,</p> <p>22 that was similar to that.</p> <p>23 But, again, if I'm going to</p> <p>24 issue a license, I'm going to go to my</p> <p>25 pricing book and give them a number. It</p>	<p style="text-align: center;">135</p> <p>1 DeGrave</p> <p>2 Q Okay.</p> <p>3 So it is not that obvious to you</p> <p>4 what it would be; it's not that clear?</p> <p>5 MS. RAY: Objection to form.</p> <p>6 Misstates her testimony.</p> <p>7 A What I would say to you is that</p> <p>8 the price would be quite reasonable based</p> <p>9 on the fact that a thousand is only</p> <p>10 costing you \$550 and 5,000 is only costing</p> <p>11 you \$590. Obviously, 25,000 T-shirts are</p> <p>12 not going to be cost prohibitive.</p> <p>13 Q I completely agree. The pricing</p> <p>14 is stellar. It is completely</p> <p>15 unobjectionable.</p> <p>16 I'm only trying to ask you to</p> <p>17 get a sense of whether it is at all</p> <p>18 predictable because you seem to have no</p> <p>19 idea what 25,000 T-shirts would cost.</p> <p>20 MS. RAY: Objection. Misstates</p> <p>21 her testimony. Argumentative.</p> <p>22 A It is predictable. I'm telling</p> <p>23 you that price exists somewhere in a</p> <p>24 pricing guideline.</p> <p>25 Q And you're going to need to go</p>
<p style="text-align: center;">134</p> <p>1 DeGrave</p> <p>2 is a license. It is not just -- it is not</p> <p>3 a random piece of document. It is a</p> <p>4 license; it's important.</p> <p>5 Q So for 25,000 T-shirts, I'm your</p> <p>6 client, I'm asking for a number now, would</p> <p>7 you be able to give me a number now?</p> <p>8 A I probably would call up my</p> <p>9 office, hey, tell me what this costs.</p> <p>10 Let's get an exact number for her.</p> <p>11 Q Okay.</p> <p>12 So then you couldn't make the</p> <p>13 decision yourself? Based on this, you</p> <p>14 couldn't decide what to do next?</p> <p>15 MS. RAY: Objection. Misstates</p> <p>16 her testimony. Objection to form.</p> <p>17 A I'm saying that there is pricing</p> <p>18 that exists. I would refer to the pricing</p> <p>19 to give them a price.</p> <p>20 Q Okay.</p> <p>21 But that pricing guide was</p> <p>22 produced in 2008, 2009, so it wasn't that</p> <p>23 long ago. Do you have any idea what</p> <p>24 25,000 T-shirts would cost?</p> <p>25 A Not off the top of my head, no.</p>	<p style="text-align: center;">136</p> <p>1 DeGrave</p> <p>2 look at the book to find out?</p> <p>3 A I would absolutely go look in a</p> <p>4 book. We created that guide specifically</p> <p>5 for that.</p> <p>6 Q And this, the pricing that you</p> <p>7 see here for the mideast Israeli</p> <p>8 Palestinian caption photo, 590 is</p> <p>9 definitely in accord with the pricing</p> <p>10 book? You know that?</p> <p>11 MS. RAY: Objection to form.</p> <p>12 A Elisa is one of our best sales</p> <p>13 reps. I have no doubt that if this is the</p> <p>14 price that she put on there, this is the</p> <p>15 price that is in the book, and, you know,</p> <p>16 it seems like a reasonable price to me.</p> <p>17 Q Okay.</p> <p>18 So it is because you trust Elisa</p> <p>19 and not because you're sure this is the</p> <p>20 right price?</p> <p>21 MS. RAY: Objection to form.</p> <p>22 Asked and answered.</p> <p>23 A It is a couple of things. I</p> <p>24 trust Elisa. I know she is using the</p> <p>25 guide that we provided her, and I know</p>



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<p style="text-align: center;">137</p> <p>1 DeGrave</p> <p>2 that this is a reasonable price for what</p> <p>3 they are asking for.</p> <p>4 Q Okay.</p> <p>5 If she hadn't had the guide,</p> <p>6 would she have come anywhere near this</p> <p>7 price?</p> <p>8 A Probably.</p> <p>9 Q And can you without the guide</p> <p>10 give me any idea, any prediction, because</p> <p>11 we're both going to go look at it later,</p> <p>12 what 25,000 T-shirts would cost? Are you</p> <p>13 able to predict that without looking at</p> <p>14 the guide?</p> <p>15 MS. RAY: Objection to form.</p> <p>16 A Why would I need to predict it</p> <p>17 if I have the guide.</p> <p>18 Q I'm curious if you have any</p> <p>19 institutional knowledge sufficient to give</p> <p>20 me an estimate of what 25,000 T-shirts</p> <p>21 would cost.</p> <p>22 MS. RAY: Same objections.</p> <p>23 A I just want to make clear for</p> <p>24 you that in à la carte pricing, because</p> <p>25 you're answering a plethora of questions</p>	<p style="text-align: center;">139</p> <p>1 DeGrave</p> <p>2 price memorized, but it is something</p> <p>3 that --</p> <p>4 Q Did you use the Getty site as a</p> <p>5 reference -- do you think Elisa used the</p> <p>6 Getty site as a reference for this pricing</p> <p>7 here?</p> <p>8 MS. RAY: Objection to form.</p> <p>9 A It's possible she did. I don't</p> <p>10 know.</p> <p>11 MS. STERN: The next exhibit I</p> <p>12 would like to mark is this.</p> <p>13 (Whereupon, AP Photo of Shepard</p> <p>14 Fairey and his Hope Poster, was marked</p> <p>15 as Exhibit 14 for identification, as</p> <p>16 of this date.)</p> <p>17 BY MS. STERN:</p> <p>18 Q Farah, was this photograph for</p> <p>19 sale on AP Images? Can you tell that from</p> <p>20 this exhibit whether it was or not?</p> <p>21 A It looks like it was, yes.</p> <p>22 MS. STERN: Next exhibit, number</p> <p>23 15.</p> <p>24 (Whereupon, Photo of Shepard</p> <p>25 Fairey with Obama Hope Poster, was</p>
<p style="text-align: center;">138</p> <p>1 DeGrave</p> <p>2 that are specific to how it is being used,</p> <p>3 there are literally millions of</p> <p>4 combinations in terms of how a price is</p> <p>5 going to come about. There are millions.</p> <p>6 If you print one, if you print</p> <p>7 five, if you print it over five years,</p> <p>8 over 10 years, what's the size, I mean, so</p> <p>9 I feel like it is unrealistic for you to</p> <p>10 say to me tell me specifically what 25,000</p> <p>11 T-shirts would cost. That's why we</p> <p>12 created the guide, because there are so</p> <p>13 many -- you know, we have spent so much</p> <p>14 time creating this guide.</p> <p>15 I mean, if I was at a client's</p> <p>16 or if you wanted to, I would say why don't</p> <p>17 you look at the Getty site, let's take a</p> <p>18 look, because all of the criteria we're</p> <p>19 talking about is essentially there. And</p> <p>20 we would definitely use the Getty site as</p> <p>21 a reference to say, well, what is the</p> <p>22 industry charging right now for this.</p> <p>23 So I'm not trying to be</p> <p>24 argumentative with you. And I just want</p> <p>25 you to understand that I don't have that</p>	<p style="text-align: center;">140</p> <p>1 DeGrave</p> <p>2 marked as Exhibit 15 for</p> <p>3 identification, as of this date.)</p> <p>4 Q Farah, what about this photo,</p> <p>5 another photo of Shepard Fairey with the</p> <p>6 Obama Hope Poster.</p> <p>7 Was this for sale on AP Images?</p> <p>8 A Yes.</p> <p>9 Q Can you estimate what the price</p> <p>10 for licensing this photo would be for a</p> <p>11 one time use?</p> <p>12 A Editorially how? It is an</p> <p>13 editorial usage, so how specifically?</p> <p>14 Q Let's say an article in a</p> <p>15 newspaper regarding the creation of the</p> <p>16 Hope Poster.</p> <p>17 A Is it a member or not?</p> <p>18 Q Okay. Tell me for the member</p> <p>19 and then tell me not.</p> <p>20 A If they are a member and it runs</p> <p>21 on the wire, that is part of their</p> <p>22 package. If they want to come back and</p> <p>23 use it, and it is not part of their</p> <p>24 membership, not part of the package that</p> <p>25 they have, they need to come to AP Images</p>



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