

**Confidential – Subject to Protective Order**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

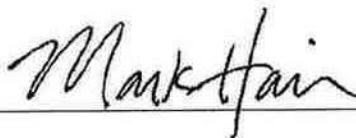
<p>SHEPARD FAIREY and OBEY GIANT ART, INC., Plaintiffs,  v. THE ASSOCIATED PRESS, Defendant and Counterclaim Plaintiff,  v. SHEPARD FAIREY, OBEY GIANT ART, INC., OBEY GIANT LLC, STUDIO NUMBER ONE, INC., and ONE 3 TWO, INC. (d/b/a OBEY CLOTHING), Counterclaim Defendants.</p>
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Civil Action No. 1:09-cv-01123-AKH

**EXPERT REPORT OF  
MARK L. HAIR, CPA**

**(FED. R. CIV. P. 26(a)(2)(B))**

Respectfully submitted this 2<sup>nd</sup> day of November 2010:



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**EXHIBIT A TO ONE 3 TWO'S  
OPPOSITION TO AP'S  
MOTION IN LIMINE NO. 2**

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sale of the Obama Merchandise, I take issue with Ms. Kedrowski's inclusion of products donated free of charge within her Direct Revenue total.

23. In her report, Ms. Kedrowski states that Section 504a(1) of The Copyright Act of 1976 discusses profits in relation to "the infringer's gross revenue."<sup>17</sup> However, within her calculation of the gross revenue amount, Ms. Kedrowski incorrectly includes \$161,351 of costs related to the Obama Special Projects. This amount is comprised of: (i) donations to various entities supporting the Obama campaign; and (ii) the wholesale price of shirts that were given away to promote the Obama campaign.<sup>18</sup> To justify the inclusion of these expenditures in her calculation of gross revenue, Ms. Kedrowski poses the hypothetical that "in the normal course of business, had Obey Clothing sold these items rather than donated these items, Obey Clothing would have generated revenue."<sup>19</sup> However, I understand that the term gross revenue in this instance relates to revenue amounts that were *actually* generated, not amounts which *could* have been generated under a hypothetical scenario which did not occur.<sup>20</sup> As a result, Ms. Kedrowski overstates gross revenue amount by \$161,351 related to the donation of the Obama Merchandise and profits.

24. Additionally, certain of the Obama Special Project expenditures were for services, rather than the donation of physical products. As such, these services could not have been "sold" in the normal course of business, as proposed by Ms. Kedrowski. For example, One 3 Two paid Alloy marketing \$15,000 for the distribution of flyers related to

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17 Kedrowski Report, p. 55.

18 OTT 027506; Broders Deposition, pp. 212-223, 234-242; and Kedrowski Report, p. 58.

19 Kedrowski Report, p. 58.

20 *On Davis v. the Gap, Inc.* 246 F.3d 152 (2nd Cir. 2001); and discussions with Counsel.