

Anthony T. Falzone (admitted pro hac vice)  
Julie A. Ahrens (JA0372)  
Stanford Law School  
Center for Internet and Society  
559 Nathan Abbott Way  
Stanford, CA 94305  
Telephone: (650) 736-9050  
Facsimile: (650) 723-4426  
Email: falzone@stanford.edu

Mark Lemley (admitted pro hac vice)  
Joseph C. Gratz (admitted pro hac vice)  
Durie Tangri LLP  
332 Pine Street, Suite 200  
San Francisco, CA 94104  
Telephone: (415) 362-6666  
Email: mlemley@durietangri.com

*Attorneys for Plaintiffs and Counterclaim Defendants*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY and OBEY GIANT ART,  
INC.,

Plaintiffs,

-against-

THE ASSOCIATED PRESS,

Defendant and Counterclaim  
Plaintiff,

-against-

SHEPARD FAIREY, OBEY GIANT ART, INC.,  
OBEY GIANT LLC and STUDIO NUMBER ONE,  
INC.

Counterclaim Defendants,

And

Case No.: 09-01123 (AKH)

ECF Case

**MOTION TO AMEND**  
**PLEADINGS**

MANNIE GARCIA,

Defendant, Counterclaim  
Plaintiff and Cross-claim  
Plaintiff/Defendant,

v.

SHEPARD FAIREY AND OBEY GIANT ART,  
INC.,

Counterclaim Defendants,

And

THE ASSOCIATED PRESS,

Cross-claim  
Plaintiff/Defendant.

Plaintiffs-Counterclaim Defendants Shepard Fairey (“Fairey”) and Obey Giant Art, Inc. and Counterclaim Defendants Obey Giant LLC and Studio Number One, Inc. by and through their attorneys, respectfully request leave to amend the following pleadings: (A) Plaintiffs Fairey and Obey Giant Art, Inc.’s Complaint; (B) Plaintiffs-Counterclaim Defendants Fairey and Obey Giant Art, Inc. and Counterclaim Defendants Obey Giant LLC and Studio Number One Inc.’s Answer and Affirmative Defenses to the Counterclaims of Defendant The Associated Press (“The AP”); and (C) Plaintiffs-Counterclaim Defendants Fairey and Obey Giant Art, Inc. and Counterclaim Defendants Obey Giant LLC and Studio Number One Inc.’s Answer, Affirmative Defenses, and Counterclaims to the Counterclaims of Defendant Mannie Garcia (“Garcia”). Plaintiffs and Counterclaim Defendants (“Plaintiffs”) move to amend these pleadings to reflect new information Plaintiffs’ counsel first learned on October 2, 2009 relating to the identity of the photograph Mr. Fairey used as a reference to create the Obama Works at

issue in this case. The pleadings, with redlining indicating the proposed amendments, are attached to this motion as Exhibits A through C, respectively. The AP stated that it would not oppose this motion as long as Plaintiffs provide the Court with a full explanation as to why the amendment is necessary. Mr. Garcia's counsel informed Plaintiffs' counsel that Mr. Garcia does not oppose the motion so long as he is granted an additional 60 days for discovery.

In Plaintiffs' original complaint for declaratory judgment and in their answers to claims alleged against them by The AP and Mannie Garcia, Plaintiffs alleged that Mr. Fairey used a photograph of George Clooney and Barack Obama (identified in the original Complaint as the "Garcia Photograph" and identified by The AP in its Counterclaims as the "Clooney Photograph") as a photographic reference to create the illustration of Barack Obama that appears in the Obama Works at issue in this case. In addition, Plaintiffs denied that Mr. Fairey used a photograph of Barack Obama alone (identified by The AP in its counterclaims as the "Obama Photograph") as the photographic reference he used.

On October 2, 2009, counsel for Plaintiffs learned new information revealing that Plaintiffs' assertions were incorrect. Mr. Fairey was apparently mistaken about the photograph he used when his original complaint for declaratory relief was filed on February 9, 2009. After the original complaint was filed, Mr. Fairey realized his mistake. Instead of acknowledging that mistake, Mr. Fairey attempted to delete the electronic files he had used in creating the illustration at issue. He also created, and delivered to his counsel for production, new documents to make it appear as though he had used the Clooney photograph as his reference.

On October 9, 2009, Plaintiffs' counsel sent a letter to counsel for The AP and counsel for Mannie Garcia notifying them of the situation and of the need to amend Plaintiffs' pleadings accordingly. Plaintiffs' counsel enclosed proposed amendments with that letter, and

specifically advised counsel for The AP and Mr. Garcia that Plaintiffs no longer contend Mr. Fairey used the Clooney Photograph in creating the Obama Works at issue in this case and that Plaintiffs do not deny he used the Obama Photograph. In this letter, Plaintiffs' counsel also informed opposing counsel that Plaintiffs no longer contend that certain documents Plaintiffs produced in discovery (bearing Bates numbers FAIREY00669 through FAIREY00672) were used in the creation of the Obama Works, and that Mr. Fairey had created these documents in 2009, after the original complaint was filed in this matter. Plaintiffs' counsel also produced additional documents (bearing Bates numbers FAIREY104735 through FAIREY104766) and explained that Mr. Fairey had attempted to delete some or all of these documents at or around the same time he created the documents bearing Bates numbers FAIREY00669 through FAIREY00672, but that he had been unsuccessful in deleting all copies of them. Finally, the letter corrected certain misstatements Plaintiffs' counsel had previously made (understanding them to have been true at the time) while meeting and conferring on discovery.

Plaintiffs therefore respectfully request that the Court grant their motion to amend their pleadings in light of the information above.

DATED: October 16, 2009

Respectfully Submitted,

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/s/

Anthony T. Falzone (admitted *pro hac vice*)  
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Stanford Law School  
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