

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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.

And

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.

ECF

No. 09 Civ. 1123 (AKH)

JURY TRIAL DEMAND

**ANSWER AND AFFIRMATIVE DEFENSES BY COUNTERCLAIM DEFENDANT
ONE 3 TWO, INC. d/b/a OBEY CLOTHING TO THE ASSOCIATED PRESS'S
FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Counterclaim Defendant One 3 Two, Inc. d/b/a Obey Clothing (“One 3 Two”) hereby responds to the Counterclaims contained in Defendant, Counterclaim Plaintiff and Cross-claim

Plaintiff/Defendant The Associated Press's ("The AP") First Amended Answer, Affirmative Defenses and Counterclaims ("First Amended Counterclaims") filed on November 12, 2009, by admitting, denying and alleging as follows:

GENERAL DENIAL

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, except as specifically identified below, Counterclaim Defendant One 3 Two generally denies each and every allegation in The Associated Press's First Amended Counterclaims, including any and all allegations that it has engaged in any wrongful conduct, and it denies that it has any liability in this matter. Where the allegations in the First Amended Counterclaims are not directed at One 3 Two, no response is required and no response has been provided below. Any lack of response should not be construed as an admission by One 3 Two that the facts alleged or the characterizations asserted in those paragraphs are accurate.

SPECIFIC RESPONSES TO INDIVIDUAL ALLEGATIONS

52. Answering paragraph 52, this paragraph uses the overbroad defined term "Counterclaim Defendants" and "Fairey" (each of which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged, except that it admits that One 3 Two sold clothing bearing an image of President Barack Obama that had been provided to it by other Counter-defendants (the "Obama Clothing") and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

53. Answering paragraph 53, One 3 Two states that Exhibit A speaks for itself and denies the allegations in the paragraph to the extent they try to characterize Exhibit A. The remaining allegations in this paragraph state legal conclusions to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies these allegations.

54. Answering paragraph 54, One 3 Two states that the image contained in this paragraph speaks for itself and denies the allegations in the paragraph to the extent they try to characterize the image. Further, this paragraph uses the overbroad defined term “Counterclaim Defendants” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged, except that it admits that any actions taken by Counterclaim Defendants were protected, and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

55. Answering paragraph 55, One 3 Two denies each and every allegation, except that it admits that it has manufactured and sold Obama Clothing and has earned revenues from those sales.

56. Answering paragraph 56, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. The remaining allegations in this paragraph state a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies these allegations.

57. Answering paragraph 57, One 3 Two denies each and every allegation, except that it admits that it has manufactured and sold Obama Clothing without the words “hope” or “progress” and has earned revenues from those sales.

58. Answering paragraph 58, this paragraph uses the overbroad defined terms “Counterclaim Defendants” and “Fairey” (each of which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

59. Answering paragraph 59, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

60. Answering paragraph 60, One 3 Two denies each and every allegation in this paragraph.

61. Answering paragraph 61, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

62. Answering paragraph 62, the allegations in this paragraph state a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies these allegations.

63. Answering paragraph 63, The AP’s allegation that “[t]he rule of law that Fairey argues here essentially would permit someone to take and commercialize a content owner’s property without attribution or reasonable compensation, undermining the long-established practice of using such revenue streams to support the ongoing creation of new content,” states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation. One 3 Two lacks sufficient information to admit or deny all other allegations contained in this paragraph, and on that basis denies each and every such allegation.

64. Answering paragraph 64, The AP’s allegation that “[t]o create such a rule harming content owners is unnecessary as licensing programs already exist that strike a fair balance between the rights of the original content owner and the newcomer who wishes to use existing content to make a derivative work,” states a legal conclusion to which no responsive pleading is

necessary, but to the extent any response is required, One 3 Two denies this allegation. Further, this paragraph uses the overbroad defined terms “Counterclaim Defendants” and “Fairey” (each of which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

65. Answering paragraph 65, One 3 Two denies each and every allegation in this paragraph.

66. Answering paragraph 66, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

67. Answering paragraph 67, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

68. Answering paragraph 68, One 3 Two admits the allegations contained in this paragraph.

69. Answering paragraph 69, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

70. Answering paragraph 70, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

71. Answering paragraph 71, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

72. Answering paragraph 72, these allegations state a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two admits that the Court has subject matter jurisdiction.

73. Answering paragraph 73, these allegations state a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two admits that this Court has personal jurisdiction over One 3 Two in this matter.

74. Answering paragraph 74, these allegations state a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two admits venue is proper in this District.

75. Answering paragraph 75, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

76. Answering paragraph 76, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

77. Answering paragraph 77, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

78. Answering paragraph 78, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

79. Answering paragraph 79, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

80. Answering paragraph 80, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

81. Answering paragraph 81, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

82. Answering paragraph 82, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

83. Answering paragraph 83, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

84. Answering paragraph 84, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

85. Answering paragraph 85, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

86. Answering paragraph 86, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

87. Answering paragraph 87, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

88. Answering paragraph 88, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. One 3 Two lacks sufficient information to admit or deny the remaining allegations contained in this paragraph, and on that basis denies each and every such allegation.

89. Answering paragraph 89, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. One 3 Two lacks sufficient information to admit or deny the remaining allegations contained in this paragraph, and on that basis denies each and every such allegation.

90. Answering paragraph 90, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

91. Answering paragraph 91, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

92. Answering paragraph 92, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

93. Answering paragraph 93, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

94. Answering paragraph 94, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. One 3 Two lacks sufficient information to admit or deny the remaining allegations contained in this paragraph, and on that basis denies each and every such allegation.

95. Answering paragraph 95, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

96. Answering paragraph 96, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

97. Answering paragraph 97, One 3 Two states that the images referred to in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. One 3 Two lacks sufficient information to admit or deny the remaining allegations contained in this paragraph, and on that basis denies each and every such allegation.

98. Answering paragraph 98, One 3 Two states that Exhibit B speaks for itself and denies the allegations in the paragraph to the extent they try to characterize Exhibit B. One 3 Two lacks sufficient information to admit or deny denies the remaining allegations contained in this paragraph, and on that basis denies each and every such allegation.

99. Answering paragraph 99, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

100. Answering paragraph 100, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

101. Answering paragraph 101, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

102. Answering paragraph 102, this paragraph uses the overbroad defined term “Faurey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

103. Answering paragraph 103, this paragraph uses the overbroad defined term “Faurey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

104. Answering paragraph 104, this paragraph uses the overbroad defined term “Faurey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

105. Answering paragraph 105, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. Further, this paragraph uses the overbroad defined term “Faurey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

106. Answering paragraph 106, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. Further, this paragraph uses the overbroad defined term “Faurey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

107. Answering paragraph 107, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

108. Answering paragraph 108, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

109. Answering paragraph 109, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged, except that it admits that One 3 Two sold the product in the image entitled “2006 Obey Design,” and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

110. Answering paragraph 110, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

111. Answering paragraph 111, this paragraph uses the overbroad defined terms “Counterclaim Defendants” and “Fairey” (each of which includes each of the Counterclaim

Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

112. Answering paragraph 112, this paragraph uses the overbroad defined terms “Counterclaim Defendants” and “Fairey” (each of which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

113. Answering paragraph 113, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

114. Answering paragraph 114, this paragraph uses the overbroad defined terms “Counterclaim Defendants” and “Fairey” (each of which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

115. Answering paragraph 115, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

116. Answering paragraph 116, One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in the paragraph to the extent they try to characterize the images. Further, this paragraph uses the overbroad defined terms “Counterclaim Defendants” and “Fairey” (each of which includes each of the Counterclaim Defendants, including

One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

117. Answering paragraph 117, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

118. Answering paragraph 118, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

119. Answering paragraph 119, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

120. Answering paragraph 120, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

121. Answering paragraph 121, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

122. Answering paragraph 122, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies

the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

123. Answering paragraph 123, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

124. Answering paragraph 124, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

125. Answering paragraph 125, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

126. Answering paragraph 126, this paragraph uses the overbroad defined term “Counterclaim Defendants” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

127. Answering paragraph 127, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

128. Answering paragraph 128, The AP’s allegation that Fairey’s conduct constitutes “unclean hands that should also estop Fairey from claiming that his misappropriation of The AP’s Obama Photo is fair use, free for him to take without having obtained a license,” states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is

required, One 3 Two denies this allegation. Further, this paragraph uses the overbroad defined terms “Counterclaim Defendants” and “Fairey” (each of which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

129. Answering paragraph 129, The AP’s allegation that Fairey “created the Infringing Works by misappropriating an image that belonged to someone else, in this case a photograph copyrighted by The AP,” states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

130. Answering paragraph 130, this paragraph uses the overbroad defined term “Counterclaim Defendants” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

131. Answering paragraph 131, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

132. Answering paragraph 132, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies

the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

133. Answering paragraph 133, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

134. Answering paragraph 134, One 3 Two denies each and every allegation contained in this paragraph.

135. Answering paragraph 135, One 3 Two denies each and every allegation contained in this paragraph.

136. Answering paragraph 136, One 3 Two denies each and every allegation contained in this paragraph.

137. Answering paragraph 137, One 3 Two lacks sufficient information to admit or deny the allegations contained in this paragraph, and on that basis denies each and every such allegation.

138. Answering paragraph 138, this paragraph uses the overbroad defined terms “Counterclaim Defendants” and “Fairey” (each of which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

139. Answering paragraph 139, One 3 Two denies each and every allegation contained in this paragraph.

140. Answering paragraph 140, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies

the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

141. Answering paragraph 141, One 3 Two states that the image contained in this paragraph speaks for itself and denies the allegations in the paragraph to the extent they try to characterize the image. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

142. Answering paragraph 142, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

143. Answering paragraph 142, The AP’s allegations that Fairey and his related entities “defrauded the U.S. Copyright Office by failing to state in The Application to register the copyright in the Infringing Works (Reg. Nos. VA0001651320, VA0001651318 and VA0001651319) that they were actually derivate works of The AP’s Obama Photo. To obtain a copyright registration, applicants must disclose, and exclude from the registration application, any pre-existing material or material not owned by The Applicant —i.e., applicants must disclose whether the work is wholly new or rather is a derivative work based on a pre-existing work,” and that Fairey’s conduct “constitutes fraud on the Copyright Office, further demonstrating Fairey’s cavalier attitude towards the intellectual property rights of others and disregard for the copyright laws,” state legal conclusions to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies these allegations. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged

in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

144. Answering paragraph 144, The AP's allegations that Fairey has a "practice of misappropriating the works of others," and that "he was required to obtain permission and give appropriate credit," state legal conclusions to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies these allegations. One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations in this paragraph to the extent they try to characterize the images. Further, this paragraph uses the overbroad defined term "Fairey" (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

145. Answering paragraph 145, One 3 Two admits that it did not sell or distribute merchandise incorporating the image reproduced in paragraph 144 and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

146. Answering paragraph 146, this paragraph uses the overbroad defined term "Fairey" (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

147. Answering paragraph 147, The AP's allegation that "third party Rolling Stone had properly licensed the photo from The AP," states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation. One 3 Two states that the images contained in this paragraph speak for themselves and denies the allegations to the extent they seek to characterize the images. Further, this paragraph uses the overbroad defined term "Fairey" (which includes each of the Counterclaim Defendants, including

One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

148. Answering paragraph 148, The AP's allegations that Fairey comprehends "when a license is needed to create a derivative work," and "[i]f Fairey had approached The AP for a license for the Obama Photo to create the Infringing Works, as he should have done, it would have been similarly easy for him to license," state legal conclusions to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies these allegations. Further, this paragraph uses the overbroad defined term "Fairey" (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

149. Answering paragraph 149, this paragraph uses the overbroad defined term "Fairey" (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

150. Answering paragraph 150, this paragraph uses the overbroad defined term "Fairey" (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

151. Answering paragraph 151, this paragraph uses the overbroad defined term "Fairey" (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

152. Answering paragraph 152, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

153. Answering paragraph 153, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

154. Answering paragraph 154, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

155. Answering paragraph 155, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

156. Answering paragraph 156, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

157. Answering paragraph 157, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

158. Answering paragraph 158, One 3 Two states that Exhibit C speaks for itself and denies the allegations to the extent they try to characterize Exhibit C. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

159. Answering paragraph 159, One 3 Two states that Exhibit C speaks for itself and denies the allegations to the extent they try to characterize Exhibit C. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

160. Answering paragraph 160, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

161. Answering paragraph 161, the AP’s allegation that “Fairey’s wrongdoing constitutes fraud upon the Court as it undermines the integrity of the judicial system, in particular the discovery process among the parties,” states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

162. Answering paragraph 162, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

163. Answering paragraph 163, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

164. Answering paragraph 164, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

165. Answering paragraph 165, The AP’s allegation that “Fairey believed his misrepresentations would also allow him and his companies to avoid financial liability for copyright infringement,” states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

166. Answering paragraph 166, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

167. Answering paragraph 167, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

168. Answering paragraph 168, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

169. Answering paragraph 169, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

170. Answering paragraph 170, One 3 Two states that Exhibit D speaks for itself and denies the allegations to the extent they seek to characterize Exhibit D. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations. Answering sub-paragraphs 170(a) through 170(d), One 3 Two states that Exhibit D speaks for itself and denies the allegations in each of the sub-paragraphs to the extent they seek to characterize Exhibit D.

171. Answering paragraph 171, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

172. Answering paragraph 172, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

173. Answering paragraph 173, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

174. Answering paragraph 174, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

175. Answering paragraph 175, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

176. Answering paragraph 176, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

177. Answering paragraph 177, The AP’s allegation that “[t]he AP intends to oppose any such request because, among other things, it would significantly prejudice The AP as it would take new counsel a substantial amount of time to come up to speed,” states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation. Further, this paragraph uses the overbroad defined term “Fairey” (which

includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

178. Answering paragraph 178, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

179. Answering paragraph 179, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

180. Answering paragraph 180, One 3 Two admits that merchandise based on Counterclaim Defendants’ work can be purchased at shop.obeyclothing.com and that such merchandise is sold through distributors and retailers. One 3 Two denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

181. Answering paragraph 181, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

182. Answering paragraph 182, One 3 Two states that the image contained in this paragraph speaks for itself and denies the allegations in the paragraph to the extent they try to characterize the image. Further, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

183. Answering paragraph 183, this paragraph uses the overbroad defined term “Counterclaim Defendants” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

184. Answering paragraph 184, this paragraph uses the overbroad defined term “Counterclaim Defendants” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged, except that it admits that it obtained revenue for selling the Obama Clothing, and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

185. Answering paragraph 185, this paragraph uses the overbroad defined term “Counterclaim Defendants” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged, except that it admits that it obtained revenue for selling the Obama Clothing, and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

186. Answering paragraph 186, this paragraph uses the overbroad defined term “Fairey” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

187. Answering paragraph 187, The AP’s allegations in this paragraph state legal conclusions to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies these allegations.

188. Answering paragraph 188, this paragraph uses the overbroad defined term “Counterclaim Defendants” (which includes each of the Counterclaim Defendants, including One 3 Two). One 3 Two denies the allegations to the extent they claim that One 3 Two engaged in the conduct alleged and denies that it has information or knowledge sufficient to form a belief as to the remaining allegations.

As to the First Counterclaim

189. One 3 Two repeats and realleges its responses in each of the preceding paragraphs.

190. Answering paragraph 190, One 3 Two denies each and every allegation in this paragraph.

191. Answering paragraph 191, One 3 Two denies each and every allegation in this paragraph.

As to the Second Counterclaim

192. Answering paragraph 192, One 3 Two repeats and realleges its responses in each of the preceding paragraphs.

193. Answering paragraph 193, One 3 Two denies each and every allegation in this paragraph.

194. Answering paragraph 194, One 3 Two denies each and every allegation in this paragraph.

195. Answering paragraph 195, One 3 Two denies each and every allegation in this paragraph.

196. Answering paragraph 196, One 3 Two denies each and every allegation in this paragraph.

197. Answering paragraph 197, One 3 Two denies each and every allegation in this paragraph.

As to the Third Counterclaim

198. Answering paragraph 198, One 3 Two repeats and realleges its responses in each of the preceding paragraphs.

199. Answering paragraph 199, One 3 Two denies each and every allegation in this paragraph.

200. Answering paragraph 200, The AP's allegation states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation.

201. Answering paragraph 201, The AP's allegation The AP's allegation states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two admits that there is a justiciable controversy regarding the parties' respective rights and obligations.

202. Answering paragraph 202, One 3 Two denies each and every allegation in this paragraph.

203. Answering paragraph 203, The AP's allegation states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation.

204. Answering paragraph 204, The AP's allegation states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation.

As to the Fourth Counterclaim

205. Answering paragraph 205, One 3 Two repeats and realleges its responses in each of the preceding paragraphs.

206. Answering paragraph 206, One 3 Two lacks sufficient information to admit or deny the allegation contained in this paragraph, and on that basis denies this allegation.

207. Answering paragraph 207, The AP's allegation states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation.

208. Answering paragraph 208, One 3 Two denies each and every allegation in this paragraph.

209. Answering paragraph 209, One 3 Two denies each and every allegation in this paragraph.

210. Answering paragraph 210, The AP's allegation states a legal conclusion to which no responsive pleading is necessary, but to the extent any response is required, One 3 Two denies this allegation.

211. Answering paragraph 211, One 3 Two denies each and every allegation in this paragraph.

212. Answering paragraph 212, One 3 Two denies each and every allegation in this paragraph.

RESPONSE TO PRAYER FOR RELIEF

213. Answering paragraphs (a) through (m) of the prayer for relief, One 3 Two denies that The AP is entitled to the relief sought in these paragraphs and denies that The AP is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses, and without conceding that they bear the burden of proof as to any of these issues, One 3 Two asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

214. The AP's First Amended Counterclaims, and each cause of action alleged therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

215. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

216. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

217. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

218. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

219. The AP's First Amended Counterclaims, and each cause of action alleged therein, is s barred because The AP's alleged copyright registration is invalid or enforceable due to the failure to comply with the requirements of Title 17 of the United States Code.

SEVENTH AFFIRMATIVE DEFENSE

220. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred by the First Amendment to the United States Constitution.

EIGHTH AFFIRMATIVE DEFENSE

221. Any damages and profits sought by The AP are limited, in whole or in part, pursuant to 17 U.S.C. § 504(b) and exclude deductible expenses and any elements of profit attributable to factors other than the alleged infringement of The AP's copyrighted work.

NINTH AFFIRMATIVE DEFENSE

222. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred because One 3 Two's use of the subject material constitutes fair use.

TENTH AFFIRMATIVE DEFENSE

223. The AP's First Amended Counterclaims, and each cause of action alleged therein, is barred because One 3 Two's use of the subject material is de minimis.

ELEVENTH AFFIRMATIVE DEFENSE

224. Any statutory damages sought by The AP pursuant to 17 U.S.C. § 504 are limited, in whole or in part, because any alleged infringement was not committed willfully and One 3 Two was not aware and had no reason to believe that its acts constituted an infringement of copyright.

TWELFTH AFFIRMATIVE DEFENSE

225. As to each and all of the claims for relief based on alleged infringement of alleged copyrights allegedly owned by The AP, the AP is barred from recovering damages based on such alleged infringement in violation of 17 U.S.C. § 1202, or such damages should be reduced, because any infringement by One 3 Two was innocent and without notice or knowledge of The AP's purported rights.

THIRTEENTH AFFIRMATIVE DEFENSE

226. As to each and all of the claims for relief based on alleged infringement of alleged copyrights owned by The AP, The AP's actions constitute misuse of their alleged copyrights.

FOURTEENTH AFFIRMATIVE DEFENSE

227. To the extent that The AP is entitled to recover from One 3 Two, One 3 Two is entitled to equitable indemnity from other persons and parties causing or contributing to such damages.

FIFTEENTH AFFIRMATIVE DEFENSE

228. Because there was no primary violation of the Copyright Act, 17 U.S.C. § 101, et seq., One 3 Two cannot be held vicariously or secondarily liable.

SIXTEENTH AFFIRMATIVE DEFENSE

229. The AP failed to mitigate their damages, if there were any, which One 3 Two expressly denies.

SEVENTEENTH AFFIRMATIVE DEFENSE

230. The damages alleged in The AP's First Amended Counterclaims are impermissibly remote and speculative, and, therefore, The AP is barred from the recovery of any such damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

231. The AP's claims are barred by the doctrine of justification and privilege, in that all actions by One 3 Two were lawful and were fair and reasonable under all circumstances.

NINETEENTH AFFIRMATIVE DEFENSE

232. One 3 Two reserves the right to assert additional affirmative defenses that may arise in the course of discovery or during any trial of this matter.

PRAYER FOR RELIEF

WHEREFORE, One 3 Two prays as follows:

1. The AP take nothing by reason of its Complaint;
2. That judgment be rendered in favor of One 3 Two;
3. That One 3 Two be awarded its costs of suit incurred in the defense of this action, including reasonable attorneys' fees to the extent such fees are authorized; and

4. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Counterclaim Defendant One 3 Two d/b/a Obey Clothing hereby demands trial by jury in this action.

Dated: New York, New York
December 4, 2009

Respectfully submitted,

By: /s/ Theresa Trzaskoma
Theresa Trzaskoma
Charles Michael
Brune & Richard LLP
80 Broad Street
New York, NY 10004
Tel: (212) 668-1900
Fax: (212) 668-0315
ttrzaskoma@bruneandrichard.com
cmichael@bruneandrichard.com

Robyn C. Crowther (*pro hac vice
admission pending*)
Jeanne A. Fugate (*pro hac vice
admission pending*)
Laurie C. Martindale (*pro hac vice
admission pending*)
Caldwell Leslie & Proctor, P.C.
1000 Wilshire Boulevard, Suite 600
Los Angeles, CA 90017-2463
Telephone: (213) 629-9040
Facsimile: (213) 629-9022
crowther@caldwell-leslie.com
fugate@caldwell-leslie.com
martindale@caldwell-leslie.com

*Counsel for Counterclaim Defendant
One 3 Two, Inc. (d/b/a Obey Clothing)*