

FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

8 Attorneys for Plaintiffs
 9 ERIC DANE and REBECCA GAYHEART

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12
 13 ERIC DANE, an individual; and
 14 REBECCA GAYHEART, an
 individual,

15 Plaintiffs,

16 v.

17 GAWKER MEDIA, LLC, a
 18 Delaware corporation; GAWKER
 NEWS, LLC, a Delaware
 corporation; GAWKER SALES,
 19 LLC, a New York corporation; and
 MARK EBNER, an individual,

20 Defendants.

CV09 06912

ASW

CASE NO.

COMPLAINT FOR COPYRIGHT
INFRINGEMENT

DEMAND FOR JURY TRIAL

21
 22 Plaintiffs ERIC DANE and REBECCA GAYHEART allege as follows:

25 THE PARTIES

26 1. Plaintiff Eric Dane ("Dane") is, and at all times relevant hereto was,
 27 an individual residing in the County of Los Angeles County, State of California.
 28 Dane is a professional actor currently starring on the Emmy Award-winning

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1 television series *Grey's Anatomy*.

2 2. Plaintiff Rebecca Gayheart ("Gayheart") is, and at all times relevant
3 hereto was, an individual residing in the County of Los Angeles County, State of
4 California. Gayheart is a professional actress and is married to Dane. Dane and
5 Gayheart are collectively referred to herein as "Plaintiffs."

6 3. Defendant Gawker Media, LLC is, and at all times relevant hereto was,
7 a Delaware corporation with its principal place of business in the State of New
8 York.

9 4. Defendant Gawker News, LLC is, and at all times relevant hereto was,
10 a Delaware corporation with its principal place of business in the State of New
11 York.

12 5. Defendant Gawker Sales, LLC is, and at all times relevant hereto was,
13 a New York corporation with its principal place of business in the State of New
14 York. Gawker Media, LLC, Gawker News, LLC and Gawker Sales, LLC are
15 collectively referred to herein as "Gawker."

16 6. Defendant Mark Ebner ("Ebner") is, and at all times relevant hereto
17 was, an individual residing in the County of Los Angeles County, State of
18 California. Plaintiffs are informed and believe that Ebner provides stories to various
19 tabloid publications, including but not limited to Gawker. All defendants are
20 sometimes collectively referred to herein as "Defendants."

21 7. Plaintiffs are informed and believe and based thereon allege that
22 Defendants, and each of them, were and are the agents, employees, partners,
23 joint-venturers, co-conspirators, owners, principals, and/or employers of the
24 remaining Defendants, and each of them are, and at all times herein mentioned
25 were, acting within the course and scope of that agency, partnership, employment,
26 conspiracy, ownership and/or joint venture. Plaintiffs are further informed and
27 believe and based thereon allege that the acts and conduct herein alleged of each
28 such Defendant were known to, authorized by and/or ratified by the other

1 Defendants, and each of them.

2

3 **JURISDICTION AND VENUE**

4 8. The Court has exclusive subject matter jurisdiction of this action
5 pursuant to 28 U.S.C. Sections 1331 and 1338.

6 9. Venue is proper pursuant to 28 U.S.C. Sections 1391(b) and 1400(a).

7

8 **FACTUAL ALLEGATIONS**

9 10. In or around 2008, Plaintiffs authored a highly personal and private
10 video recording of themselves and a woman named Kari Ann Peniche (the
11 “Video”). The Video is approximately 12 minutes long and depicts intimate
12 moments and conversations among the three. Plaintiffs, who were partially and
13 sometimes fully disrobed in the Video, recorded it behind locked doors in Peniche’s
14 bedroom.

15 11. Pursuant to 37 C.F.R. Sections 202.21(g)(1)(ii) and 202.21 (2)(i)–(iv),
16 Plaintiffs timely registered with the United States Copyright Office their rights as
17 the authors and owners of the Video. The copyright registration number is PAu 3-
18 404-881.

19 12. Despite efforts by Plaintiffs and Peniche to maintain the confidentiality
20 of the Video, defendant Ebner boasts that he somehow obtained a copy of it and,
21 without Plaintiffs’ permission and against their wishes, delivered it to Gawker with
22 the expectation that Gawker would further disseminate the Video, which it did
23 indeed do.

24 13. On or about August 17, 2009, Gawker posted almost four full minutes
25 of the Video without authorization from Plaintiffs on one of its weblogs,
26 Defamer.com, under the titillating headline “Dane’s Anatomy: McSteamy, His Wife
27 and a Fallen Beauty Queen’s Naked Threesome.” Later that same day, Plaintiffs’
28 legal counsel served Gawker with a takedown notice pursuant to the Digital

1 Millennium Copyright Act demanding that it immediately remove and cease and
2 desist and refrain from exploiting, publishing, posting, displaying, distributing, or
3 otherwise using or disseminating the Video on any of its websites or otherwise
4 through any venue or medium.

5 14. In brazen disregard for Plaintiffs' legal rights and personal privacy,
6 Gawker not only refused to comply with their reasonable request but went on to
7 maliciously distribute an uncensored copy of the Video, gratuitously including nude
8 shots of all participants, the following day on another of its websites, a pornographic
9 destination called Fleshbot.com. "Eric Dane, Rebecca Gayheart, And Kari Ann
10 Peniche's Uncensored Sex Tape" has already attracted almost one million views at
11 Fleshbot alone and, as a direct consequence of Defendants' despicable misconduct,
12 is now available on countless other adult sites on the Internet.

CLAIM

(By Plaintiffs For Copyright Infringement Against All Defendants)

16 15. Plaintiffs repeat, reallege and incorporate by reference each and every
17 allegation contained in Paragraphs 1 through 14, inclusive, as though fully set forth
18 herein.

16. As alleged hereinabove, in or around August 2009 Defendants began
willfully reproducing, adapting, distributing and performing the Video in the United
States and around the world despite Plaintiffs' unequivocal demands that they refrain
from doing so. Unless enjoined and restrained, Defendants' conduct threatens to
further infringe Plaintiffs' copyright interests.

24 17. At no time have Plaintiffs authorized Defendants to reproduce, adapt,
25 distribute, perform or otherwise use the Video in any manner whatsoever.

26 18. By reason of Defendants' past and continuing infringement, Plaintiffs
27 have sustained and will continue to sustain substantial injury, loss and damage.

28 19. Plaintiffs are entitled to recover from Defendants the damages sustained

1 by Plaintiffs as a result of Defendants' acts of copyright infringement. Plaintiffs are
2 at present unable to ascertain the full extent of the monetary damage they have
3 suffered by reason of Defendants' acts of copyright infringement, but Plaintiffs are
4 informed and believe, and on the basis of such information and belief allege, that
5 Plaintiffs have sustained such damage in an amount exceeding \$1,000,000.

6 20. Plaintiffs are further entitled to recover from Defendants the gains,
7 profits and advantages Defendants have obtained as a result of their acts of copyright
8 infringement. Plaintiffs are at present unable to ascertain the full extent of the
9 gains, profits and advantages Defendants have obtained by reason of their acts of
10 copyright infringement, but Plaintiffs are informed and believe, and on the basis of
11 such information and belief allege, that Defendants have obtained such gains, profits
12 and advantages in an amount exceeding \$1,000,000.

13 21. Alternatively, Plaintiffs are entitled to recover an award of statutory
14 damages for Defendants' willful acts of copyright infringement.

15 22. Further irreparable harm to Plaintiffs is imminent as a result of
16 Defendants' conduct, and Plaintiffs are without an adequate remedy at law.
17 Plaintiffs are entitled to an injunction restraining Defendants, their officers,
18 directors, agents, employees, representatives and all persons acting in concert with
19 them from engaging in further such acts of copyright infringement.

20 23. Plaintiffs are further entitled to recover from Defendants an award of
21 their attorneys' fees and costs.

22
23 **PRAYER FOR RELIEF**

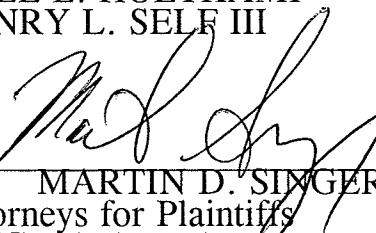
24 Wherefore, Plaintiffs pray judgment against Defendants, and each of them,
25 as follows:

26 1. For actual damages and Defendants' profits in an amount exceeding
27 \$1,000,000 to be determined at trial;
28 2. For statutory damages in an amount at the discretion of the Court;

1 3. For a preliminary injunction and a permanent injunction enjoining
2 Defendants and their agents, servants, and employees, and all persons acting under,
3 in concert with, or for them from continuing to reproduce, adapt, distribute,
4 perform or otherwise use the Video in any manner whatsoever;
5 4. For attorneys' fees and costs of suit herein incurred;
6 5. For interest at the maximum legal rate; and
7 6. For such other and further relief as the Court may deem proper.

8
9 DATE: September 23, 2009

LAVELY & SINGER
PROFESSIONAL CORPORATION
MARTIN D. SINGER
Yael E. Holtkamp
Henry L. Self III

12 By: 
13 MARTIN D. SINGER
14 Attorneys for Plaintiffs
15 ERIC DANE and
16 REBECCA GAYHEART

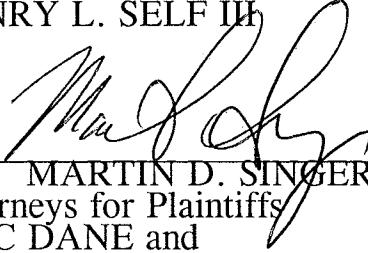
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1 **DEMAND FOR JURY TRIAL**
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3 Plaintiffs Eric Dane and Rebecca Gayheart reserve their rights to a trial by
4 jury.
5

6 DATE: September 23, 2009
7

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