


FILED

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

7 Attorneys for Plaintiffs  
8 **ERIC DANE and REBECCA GAYHEART**

9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

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

CASE NO. **CV09 06912**

AJW

15 Plaintiffs,

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

16 v.

**DEMAND FOR JURY TRIAL**

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

20 Defendants.

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ORIGINAL

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23 Plaintiffs ERIC DANE and REBECCA GAYHEART allege as follows:

24  
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

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.

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**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).

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**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.

13  
14 **CLAIM**

15 **(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.

19 16. As alleged hereinabove, in or around August 2009 Defendants began  
20 willfully reproducing, adapting, distributing and performing the Video in the United  
21 States and around the world despite Plaintiffs' unequivocal demands that they refrain  
22 from doing so. Unless enjoined and restrained, Defendants' conduct threatens to  
23 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.

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**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;

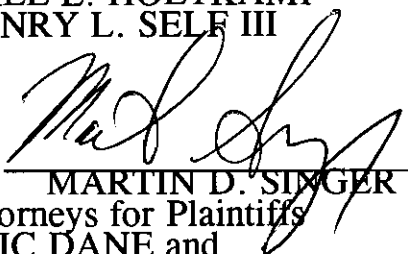
6           5. For interest at the maximum legal rate; and

7           6. For such other and further relief as the Court may deem proper.

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DATE: September 23, 2009

LAVELY & SINGER  
PROFESSIONAL CORPORATION  
MARTIN D. SINGER  
Yael E. HOLTKAMP  
HENRY L. SELF III

By: 

MARTIN D. SINGER  
Attorneys for Plaintiffs  
ERIC DANE and  
REBECCA GAYHEART

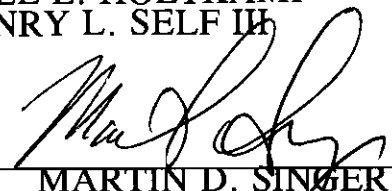
**DEMAND FOR JURY TRIAL**

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Plaintiffs Eric Dane and Rebecca Gayheart reserve their rights to a trial by jury.

DATE: September 23, 2009

LAVELY & SINGER  
PROFESSIONAL CORPORATION  
MARTIN D. SINGER  
Yael E. HOLTKAMP  
HENRY L. SELF II

By:   
MARTIN D. SINGER  
Attorneys for Plaintiffs  
ERIC DANE and  
REBECCA GAYHEART

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself) ERIC DANE, an individual; and REBECCA GAYHEART, an individual DEFENDANTS GAWKER MEDIA, LLC, a Delaware corporation; GAWKER NEWS, LLC, a Delaware corporation; GAWKER SALES, LLC, a New York corporation; and MARK EBNER, an individual

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) MARTIN D. SINGER (BAR NO. 78166) Yael Holtkamp (BAR NO. 200399) HENRY L. SELF III (BAR NO. 223153) LAVELY & SINGER, P.C. (310) 556-3501 2049 Century Park East, Suite 2400 Los Angeles, California 90067 Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) PTF DEF Citizen of This State 1 1 Incorporated or Principal Place of Business in this State 4 4 Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5 Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. ORIGIN (Place an X in one box only.) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: [X] Yes [ ] No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: [ ] Yes [X] No MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Copyright infringement (17 U.S.C. § 501)

VII. NATURE OF SUIT (Place an X in one box only.) OTHER STATUTES CONTRACT REAL PROPERTY TORTS PERSONAL INJURY TORTS PERSONAL PROPERTY BANKRUPTCY CIVIL RIGHTS IMMIGRATION PRISONER PETITIONS FORECLOSURE PENALTY LABOR PROPERTY RIGHTS SOCIAL SECURITY FEDERAL TAX SUITS

FOR OFFICE USE ONLY: Case Number: CV09 06912 AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or elosed?  No  Yes

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
  - B. Call for determination of the same or substantially related or similar questions of law and fact; or
  - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
  - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	New York, Delaware

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

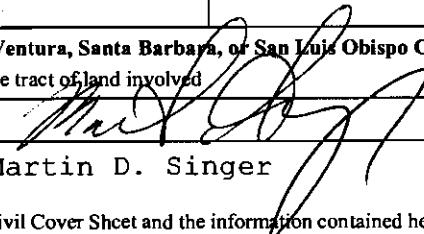
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note:** In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

  
Martin D. Singer

Date September 23, 2009

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))