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LLC; GAWKER SALES, LLC; and MARK  
EBNER

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ERIC DANE and REBECCA  
GAYHEART,

Plaintiffs,

vs.

GAWKER MEDIA, LLC; GAWKER  
NEWS, LLC; GAWKER SALES,  
LLC; and MARK EBNER,

Defendants.

) Case No. **CV09-06912 GW(SHx)**

) **ANSWER OF DEFENDANTS**  
) **GAWKER MEDIA, LLC,**  
) **GAWKER NEWS, LLC, GAWKER**  
) **SALES, LLC AND MARK EBNER**  
) **TO COMPLAINT FOR**  
) **COPYRIGHT INFRINGEMENT**

) Complaint Filed: September 23, 2009

1 Defendants Gawker Media, LLC, Gawker News, LLC, Gawker Sales, LLC  
2 and Mark Ebner (collectively “the Gawker Defendants”), answering for themselves  
3 and no others, in response to the Complaint for Copyright Infringement filed by  
4 plaintiffs Eric Dane and Rebecca Gayheart, admit, deny, and allege as follows:

5 **THE PARTIES**

6 1. Answering paragraph 1 of the Complaint, the Gawker Defendants admit  
7 that plaintiff Eric Dane is a professional actor currently appearing in the television  
8 program “Grey’s Anatomy.” The Gawker Defendants are without sufficient  
9 knowledge or information to form a belief as to the truth of the remaining allegations  
10 in paragraph 1, and, on that basis, deny each and every remaining allegation  
11 contained in this paragraph.

12 2. Answering paragraph 2 of the Complaint, the Gawker Defendants are  
13 without sufficient knowledge or information to form a belief as to the truth of the  
14 allegations contained in this paragraph, and, on that basis, deny each and every such  
15 allegation.

16 3. Answering paragraph 3 of the Complaint, the Gawker Defendants admit  
17 that Gawker Media, LLC is a Delaware corporation with its principal place of  
18 business in the State of New York. Except as expressly admitted, the Gawker  
19 Defendants deny, generally and specifically, each and every of the remaining  
20 allegations in this paragraph.

21 4. Answering paragraph 4 of the Complaint, the Gawker Defendants deny,  
22 generally and specifically, each and every allegation in this paragraph.

23 5. Answering paragraph 5 of the Complaint, the Gawker Defendants admit  
24 that Gawker Sales, LLC is a New York corporation with its principal place of  
25 business in the State of New York.

26 6. Answering paragraph 6 of the Complaint, the Gawker Defendants admit  
27 that defendant Mark Ebner is an individual who resides in the County of Los  
28 Angeles, State of California. Except as expressly admitted, the Gawker Defendants

1 deny, generally and specifically, each and every of the remaining allegations in this  
2 paragraph.

3 7. Answering paragraph 7 of the Complaint, the Gawker Defendants deny,  
4 generally and specifically, each and every allegation in this paragraph.

### 5 **JURISDICTION AND VENUE**

6 8. Answering paragraph 8 of the Complaint, the Gawker Defendants aver  
7 that the allegations in this paragraph are argument and conclusions of law that require  
8 no answer.

9 9. Answering paragraph 9 of the Complaint, the Gawker Defendants aver  
10 that the allegations in this paragraph are argument and conclusions of law that require  
11 no answer.

### 12 **FACTUAL ALLEGATIONS**

13 10. Answering paragraph 10 of the Complaint, the Gawker Defendants  
14 deny, generally and specifically, each and every allegation in this paragraph.

15 11. Answering paragraph 11 of the Complaint, the Gawker Defendants  
16 admit that the copyright registration number for the Video is PAu 3-404-881. Except  
17 as expressly admitted, the Gawker Defendants deny, generally and specifically, each  
18 and every of the remaining allegations in this paragraph.

19 12. Answering paragraph 12 of the Complaint, the Gawker Defendants are  
20 without sufficient knowledge or information to form a belief as to the truth of  
21 Plaintiffs' allegations about their efforts to maintain the confidentiality of the Video,  
22 and, on that basis, generally and specifically deny those allegations. The Gawker  
23 Defendants further deny, generally and specifically, each and every other allegation  
24 in this paragraph.

25 13. Answering paragraph 13 of the Complaint, the Gawker Defendants  
26 admit that, on August 17, 2009, 3 minutes and 54 seconds of the Video was posted  
27 on gawker.com under the headline: "Dane's Anatomy: McSteamy, His Wife and a  
28 Fallen Beauty Queen's Naked Threesome." The Gawker Defendants further admit

1 that, on August 17, 2009, they received a letter from Plaintiffs' counsel, Martin D.  
2 Singer, demanding that the Gawker Defendants remove the Video from gawker.com  
3 and fleshbot.com. However, the Gawker Defendants specifically deny that Plaintiffs'  
4 authorization was needed to post the short clip from the Video. Except as expressly  
5 admitted, the Gawker Defendants deny, generally and specifically, each and every of  
6 the remaining allegations in this paragraph.

7 14. Answering paragraph 14 of the Complaint, the Gawker Defendants  
8 admit that they did not remove or block access to the Video in response to Mr.  
9 Singer's letter. The Gawker Defendants further admit that, on August 18, 2009, a  
10 clip from the Video was posted on fleshbot.com. The Gawker Defendants are  
11 without sufficient knowledge or information to form a belief as to the number of  
12 people who viewed the Video on fleshbot.com as of September 23, 2009, and, on that  
13 basis, specifically and generally deny that, as of September 23, 2009, the Video had  
14 attracted almost one million views at fleshbot.com. Except as expressly admitted, the  
15 Gawker Defendants deny, generally and specifically, each and every of the remaining  
16 allegations in this paragraph.

### 17 CLAIM

#### 18 **(By Plaintiffs For Copyright Infringement Against All Defendants)**

19 15. Answering paragraph 15, the Gawker Defendants reincorporate their  
20 responses to the allegations contained in paragraphs 1 through 14 as if fully stated  
21 herein.

22 16. Answering paragraph 16 of the Complaint, the Gawker Defendants  
23 deny, generally and specifically, each and every of the remaining allegations in this  
24 paragraph.

25 17. Answering paragraph 17 of the Complaint, the Gawker Defendants  
26 admit that Plaintiffs did not authorize the reproduction, adaptation, distribution,  
27 performance or other use of the short clip from the Video on gawker.com or  
28 fleshbot.com. Except as expressly admitted, the Gawker Defendants specifically

1 deny that Plaintiffs' authorization was needed to reproduce, adapt, distribute, perform  
2 or otherwise use the short clip from the Video, and generally deny each and every of  
3 the remaining allegations in this paragraph.

4 18. Answering paragraph 18 of the Complaint, the Gawker Defendants aver  
5 that the allegations in this paragraph are argument and conclusions of law that require  
6 no answer, and, to the extent this paragraph contains allegations of fact, they are  
7 denied.

8 19. Answering paragraph 19 of the Complaint, the Gawker Defendants aver  
9 that the allegations in this paragraph are argument and conclusions of law that require  
10 no answer, and, to the extent this paragraph contains allegations of fact, they are  
11 denied.

12 20. Answering paragraph 20 of the Complaint, the Gawker Defendants aver  
13 that the allegations in this paragraph are argument and conclusions of law that require  
14 no answer, and, to the extent this paragraph contains allegations of fact, they are  
15 denied.

16 21. Paragraph 21 of the Complaint was stricken by the Court on  
17 December 14, 2009, and therefore requires no answer.

18 22. Answering paragraph 22 of the Complaint, the Gawker Defendants aver  
19 that the allegations in this paragraph are argument and conclusions of law that require  
20 no answer, and, to the extent this paragraph contains allegations of fact, they are  
21 denied.

22 23. Paragraph 23 of the Complaint was stricken by the Court on  
23 December 14, 2009, and therefore requires no answer.

24  
25 **ADDITIONAL AND AFFIRMATIVE DEFENSES**

26 By alleging the matters set forth in the additional and affirmative defenses  
27 below, the Gawker Defendants do not allege or admit that they have the burden of  
28

1 proof and/or persuasion with respect to any of these matters. The Gawker  
2 Defendants allege as follows:

3 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

4 1. The Complaint, and each of its claims for relief, fails to state a claim  
5 against the Gawker Defendants upon which relief can be granted.

6 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

7 2. The Complaint is barred, in whole or in part, because the Gawker  
8 Defendants' conduct was reasonable, justified, and in good faith.

9 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

10 3. The Complaint is barred, in whole or in part, because the Gawker  
11 Defendants have not acted with the requisite degree of intent or fault.

12 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

13 4. The Complaint is barred, in whole or in part because use of the Video  
14 was a fair use protected under 17 U.S.C. § 107.

15 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

16 5. The Complaint is barred, in whole or in part, because any damages  
17 allegedly suffered by Plaintiffs were either wholly or in part the legal fault of  
18 persons, firms, corporations, or entities other than the Gawker Defendants, and that  
19 legal fault reduces the percentage of responsibility, if any, which is to be borne by the  
20 Gawker Defendants.

21 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

22 6. The Complaint is barred, in whole or in part, because Plaintiffs'  
23 damages, if any, are vague, uncertain, imaginary, and speculative.

24 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

25 7. The Complaint is barred, in whole or in part, by the doctrines of  
26 estoppel and waiver.

1                                   **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

2           8.     The Complaint is barred, in whole or in part, by the doctrine of unclean  
3 hands.

4                                   **NINTH SEPARATE AND ADDITIONAL DEFENSE**

5           9.     Plaintiffs cannot meet the requisite standards for an injunction, and are  
6 not entitled to this form of relief.

7                                   **TENTH SEPARATE AND ADDITIONAL DEFENSE**

8           10.    The Complaint is barred, in whole or in part, by the First and Fourteenth  
9 Amendments to the United States Constitution.

10                                  **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

11           11.    Plaintiffs' prayer for injunctive relief is barred, in whole or in part,  
12 because it would represent an unconstitutional prior restraint.

13                                  **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

14           12.    The Gawker Defendants have insufficient knowledge or information  
15 upon which to form a belief as to whether they may have additional, as yet unstated,  
16 separate defenses available to them. The Gawker Defendants reserve the right to  
17 assert additional separate defenses in the event discovery indicates that such defenses  
18 would be appropriate.

19           WHEREFORE, the Gawker Defendants pray for relief as follows:

20           1.     That Plaintiffs take nothing by reason of the Complaint in this matter,  
21 and that judgment be rendered in favor of Gawker Media, LLC, Gawker News, LLC,  
22 Gawker Sales, LLC and Mark Ebner, and each of them, and against Plaintiffs;

23           2.     That Gawker Media, LLC, Gawker News, LLC, Gawker Sales, LLC and  
24 Mark Ebner, and each of them, be awarded costs of suit incurred in defense of this  
25 matter, including reasonable attorneys' fees and costs under 17 U.S.C. § 505; and  
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3. For such other relief as the Court deems just and proper.

DATED: December 23, 2009

DAVIS WRIGHT TREMAINE LLP  
ALONZO WICKERS IV  
KAREN A. HENRY

By: \_\_\_\_\_ / s / \_\_\_\_\_  
Karen A. Henry

Attorneys for Defendants  
GAWKER MEDIA, LLC; GAWKER  
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and MARK EBNER