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FILED
LOS ANGELES SUPERIOR COURT

OCT 22 2008

JOHN M. CLARKE, CLERK
BY MARY GARCIA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BC400407

13 David Duchovny,

14 Plaintiff,

15 vs.

16 Daily Mail and General Trust plc, a foreign
17 public limited company; Associated
18 Newspapers, an unknown foreign entity;
19 the Daily Mail, an unknown foreign entity;
20 The Mail on Sunday, an unknown foreign
21 entity; Caroline Graham, an individual,
22 DOES 1 through 20,

20 Defendants.

CASE NO.

COMPLAINT FOR:

(1) DEFAMATION

(2) FALSE LIGHT INVASION OF PRIVACY

DEMAND FOR JURY TRIAL

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1 Plaintiff David Duchovny ("Duchovny" or "Plaintiff"), as and for his Complaint
2 against Defendants Daily Mail and General Trust plc, a public limited company entity registered
3 in England and Wales; Associated Newspapers, an unknown entity registered in England; the
4 Daily Mail, an online publication; Caroline Graham, an individual; and the Mail on Sunday, a
5 publication (jointly "Daily Mail") and Docs 1 through 20 inclusive (collectively, "Defendants"),
6 alleges as follows:

7 **INTRODUCTION**

8 1. Publications are getting it wrong more often than not these days. The zeal
9 to be the first to "post on-line" salacious and sensational gossip about public figures has
10 demonstrably compromised journalistic integrity to the detriment and damage of those who are
11 the subjects of the gossipmongering. Now, due to the increasing availability and use of the
12 Internet, we live in an age where information is distributed worldwide in a matter of seconds.
13 This immediate and international level of access to details about the private lives of non-public
14 and public figures, combined with the public's apparent thirst for salacious information,
15 necessarily imposes on the news media a greater responsibility to ensure that sources are reliable
16 and that stories are not prematurely published – or, nowadays, posted. Instead, to beat the
17 competition, some publications are posting stories even in the face of information that exposes
18 unreliable sources in the guise of news urgency even though the stories, that is, the gossip, have
19 no real timetable as they are not keyed to time sensitive events. This practice runs the risk of
20 posting false and defamatory stories that become instantaneously and internationally available,
21 disseminated and re-posted. This practice also increases the likelihood of even greater damages
22 when false and defamatory stories are posted due to the global publication of said stories. All
23 precautions are thrown to the wind in the reckless pursuit of profits. Such is the situation before
24 the Court in this matter.

25 2. In an on-line article posted on October 18, 2008, the Daily Mail published
26 false and defamatory claims that David Duchovny cheated on his wife with a tennis instructor
27 named Edit Pakay. This is false. It never happened. Daily Mail knew that the story was false, or
28 at the very least, it had to have entertained serious doubts about the credibility of its supposed

1 source in light of information it received the evening before publishing the story that its key
2 source was (a) explicitly denying the information contained in the story, (b) explicitly denying
3 having participated in an interview, (c) explicitly denying statements being attributed to her, and
4 most importantly, (d) explicitly and specifically denying a romantic or sexual relationship with
5 David Duchovny. Nevertheless, the Daily Mail went forward with the story – even after being
6 told point blank of its falsity. Predictably, publications worldwide have picked up the story and
7 re-published it over the last several days resulting in hundreds of articles repeating the false and
8 defamatory statements on the Daily Mail website about an alleged affair between David
9 Duchovny and a woman incorrectly reported as being his tennis instructor. By its intentional and
10 reckless conduct, Daily Mail has caused substantial harm to Duchovny, in complete disregard of
11 the truth and of even a semblance of journalistic integrity. This suit seeks to set the record
12 straight and obtain recompense for the injuries suffered by Duchovny.

13 **THE PARTIES**

14 3. Plaintiff David Duchovny is a long-time actor who has appeared in several
15 films and television series. He presently maintains a residence in California.

16 4. Plaintiff is informed and believes and based thereon alleges that Defendant
17 Associated Newspapers owns and/publishes the "Daily Mail," an online publication found at
18 www.dailymail.co.uk (the "Website"), that is based on the "Mail on Sunday," a publication also
19 owned and/or published by Associated Newspapers. Plaintiff is informed and believes, and based
20 thereon alleges, that Defendant Associated Newspapers is a division of Daily Mail and General
21 Trust plc. Plaintiff is informed and believes that the publication at issue in this action was
22 published by the Daily Mail on the Website and was both available to and targeted to readers in
23 the State of California and the County of Los Angeles. Moreover, the publication at issue was
24 authored by the Mail on Sunday's West Coast correspondent, a journalist based in its Los
25 Angeles bureau.

26 5. Plaintiff is informed and believes, and based thereon alleges, that
27 Defendant Caroline Graham, a reporter for the Mail on Sunday and by-lined author of the
28 publication at issue, is the West Coast correspondent for the Mail on Sunday and is based in the

1 State of California and the County of Los Angeles. Plaintiff is further informed and believes, and
2 based thereon, alleges, that Defendant Graham is a resident of the State of California and the
3 County of Los Angeles.

4 6. Plaintiff is informed and believes, and based thereon alleges, pursuant to
5 Code of Civil Procedure § 474, that the fictitiously named Defendants sued herein as Does 1
6 through 20, inclusive, and each of them, were in some manner responsible or legally liable for the
7 actions, events, transactions and circumstances alleged herein. The true names and capacities of
8 such fictitiously named Defendants, whether individual, corporate, associate, or otherwise, are
9 presently unknown to Plaintiff and Plaintiff will seek leave of the Court to amend this Complaint
10 to assert the true names and capacities of such fictitiously named Defendants when the same have
11 been ascertained. For convenience, each reference to "Defendants" shall include the Doe
12 Defendants, and each of them.

13 7. Plaintiff is informed and believes, and based thereon alleges, that
14 Defendants, and each of them, are and were at all times herein mentioned, the agents, servants,
15 employees, or joint venturers of each of the other Defendants, and at all times herein mentioned
16 were acting within the course and scope of said agency, employment, or service in furtherance of
17 the joint venture.

18 **THE FALSE AND DEFAMATORY PUBLICATIONS**

19 8. On October 18, 2008, Daily Mail published an article accusing David
20 Duchovny of infidelity and specifically reported that David Duchovny had a "full-blown sexual
21 affair" with Edit Pakay, a tennis instructor (the "Story"). The complete text of the Story, posted
22 on October 18, 2008 at 10:08 p.m., is contained in true and correct print-outs from the website,
23 annexed hereto as Exhibit A, headlined "'An affair? I'm not going to deny it': Tennis coach tells
24 of her close friendship with 'sex addict' David Duchovny as he splits from wife."

25 9. The Story falsely alleged that Ms. Pakay and Duchovny had a "full blown
26 sexual affair." The Story falsely alleged that Duchovny sought out Ms. Pakay to be his tennis
27 instructor and that the "professional relationship ... quickly turned into a love match." The Story
28 falsely portrays Ms. Pakay and Duchovny as being in an intimate romantic relationship in which

1 each is in love with the other. The Story falsely reports that Duchovny said he is going to leave
2 his wife for Ms. Pakay and that he is struggling with his alleged relationship with Ms. Pakay. The
3 Story also published portions of a purported interview with Ms. Pakay in which she speaks of her
4 relationship with Duchovny.

5 **THE DAILY MAIL POSTS THE STORY IN THE FACE OF DIRECTLY**
6 **CONTRADICTIONARY INFORMATION**

7 10. The Daily Mail published the Story despite receiving information, prior to
8 publishing it, that Ms. Pakay denied having a romantic or sexual relationship with Duchovny. In
9 the face of contradictory information that directly called into question the veracity of the Story,
10 Daily Mail pressed forward and published it anyway by posting the Story making it
11 internationally and immediately accessible.

12 11. On Friday, October 17, 2008, at or about 2:30 p.m., Caroline Graham, a
13 reporter for Defendant The Mail on Sunday, e-mailed Duchovny's publicist advising that The
14 Mail on Sunday planned to run a story on Sunday "about David Duchovny's romantic
15 relationship with his tennis instructor Edit Pakay." Ms. Graham inquired whether Duchovny had
16 any comment and advised that she had a deadline of midnight that same evening -- mere hours
17 later.

18 12. Duchovny's publicist, receiving the request after the close of business but
19 cognizant of the midnight deadline imposed by Ms. Graham, responded to Ms. Graham and
20 informed Ms. Graham that she should contact Duchovny's attorney before printing anything.

21 13. On Friday, October 17, 2008, at or about 8:30 p.m. -- well after the close of
22 business and shortly before the midnight deadline, Ms. Graham e-mailed Duchovny's attorney
23 and invited a response to the story "we are planning to run in Sunday's newspaper relating to
24 David Duchovny's romantic relationship with his tennis coach Edit Pakay." Less than an hour
25 later, Duchovny's attorney responded via e-mail and voicemail and informed Ms. Graham that
26 there is no romantic relationship and that Ms. Pakay had confirmed to him that she had never had
27 a romantic relationship with David Duchovny. He warned Ms. Graham that to print otherwise
28 would be false and defamatory.

1 Duchovny and that Duchovny is leaving his wife because of Ms. Pakay were made by each of the
2 Defendants in a grossly irresponsible manner and negligently, with want of due care.

3 29. Plaintiff alleges that Defendants are not protected under or subject to the
4 provisions of California Civil Code section 48a. Nevertheless, and without conceding the
5 application of that statute to these Defendants or this publication, Plaintiff alleges that a demand
6 for a retraction of the Story and the accusations of an affair between Ms. Pakay and David
7 Duchovny was made by e-mail dated and transmitted on October 20, 2008. On October 21, 2008,
8 the Daily Mail removed the Story from its website temporarily.

9 30. By the time the Daily Mail removed the Story from the Website, several
10 news publications had picked up the Story and were running the Republications on their online
11 websites as well. Defendants' conduct resulted in the Republications which caused additional
12 and further damage to David Duchovny.

13 31. As a direct and proximate result of the above-described conduct by
14 Defendants, plaintiff David Duchovny has suffered general and special damages in an amount to
15 be determined at trial but believed to be no less than One Million Dollars (\$1,000,000.00),
16 including without limitation, damage to Plaintiff's reputation, career and standing in the
17 community.

18 32. Upon information and belief, Plaintiff David Duchovny alleges that each
19 Defendant's conduct was done with oppression, fraud and malice and that, therefore, the conduct
20 of each Defendant justifies an award of punitive and exemplary damages.

21 33. Upon information and belief, Plaintiff alleges that, unless enjoined and
22 restrained by the Court, Defendants will republish, repeat and continue to disseminate the Story
23 and the accusations of an affair between Ms. Pakay and David Duchovny, all to the continuing
24 injury of Plaintiff; that such continued republication, repetition and dissemination of the
25 defamatory and offensive falsehoods will cause irreparable harm to Plaintiff by damaging his
26 reputation and adversely affecting his career and business efforts as well as his personal
27 relationships. Upon information and belief, Plaintiff alleges that he lacks an adequate remedy at
28 law insofar as damages will be very difficult to calculate for such on-going injuries. By reason of

1 the foregoing. Plaintiff is entitled to a permanent injunction enjoining and restraining Defendants,
2 and each of them, and all persons acting in concert with them, from republishing, repeating,
3 distributing or otherwise disseminating the Story and the accusations of infidelity to the extent
4 such are found in this Action to be false.

5 **SECOND CAUSE OF ACTION**

6 [For False Light Invasion of Privacy]

7 [By David Duchovny Against All Defendants]

8 34. Plaintiff David Duchovny repeats and realleges each and every allegation
9 contained in Paragraphs 1 through 33, inclusive, above, as if fully set forth herein.

10 35. The Story as a whole and each of the accusations of an affair between Ms.
11 Pakay and David Duchovny and that Duchovny is leaving his wife because of Ms. Pakay were
12 widely publicized by the Defendants.

13 36. The Story as a whole and each of the accusations of an affair between Ms.
14 Pakay and David Duchovny and that Duchovny is leaving his wife because of Ms. Pakay are
15 false.

16 37. The Story as a whole and each of the accusations of an affair between Ms.
17 Pakay and David Duchovny and that Duchovny is leaving his wife because of Ms. Pakay are of
18 and concerning David Duchovny and persons who read the Story reasonably understood the
19 references therein to be references to Plaintiff David Duchovny.

20 38. To the extent that all or any part of the Story as a whole or any of the
21 accusations of an affair between Ms. Pakay and David Duchovny and that Duchovny is leaving
22 his wife because of Ms. Pakay are found not to be defamatory of David Duchovny, the Story, and
23 the accusations of infidelity were understood in such a way as to place Plaintiff David Duchovny
24 in a false light which would be highly offensive to a reasonable person.

25 39. Upon information and belief, Plaintiff David Duchovny alleges that the
26 Story as a whole and each of the accusations of an affair between Ms. Pakay and David
27 Duchovny and that Duchovny is leaving his wife because of Ms. Pakay were made by each of the
28 Defendants with knowledge of their falsity or with reckless disregard for their truth or falsity.

1 40. Upon information and belief, Plaintiff David Duchovny alleges that the
2 Story as a whole and each of the accusations of an affair between Ms. Pakay and David
3 Duchovny and that Duchovny is leaving his wife because of Ms. Pakay were made by each of the
4 Defendants in a grossly irresponsible manner and negligently, with want of due care.

5 41. Plaintiff alleges that Defendants are not protected under or subject to the
6 provisions of California Civil Code section 48a. Nevertheless, and without conceding the
7 application of that statute to these Defendants or this publication, Plaintiff alleges that a demand
8 for a retraction of the Story and the accusations of an affair between Ms. Pakay and David
9 Duchovny was made to the Daily Mail, by e-mail transmitted on October 20, 2008.

10 42. Defendants' conduct resulted in the Republications which caused
11 additional and further damage to David Duchovny.

12 43. As a direct and proximate result of the above-described conduct by
13 Defendants, plaintiff David Duchovny has suffered general and special damages in an amount to
14 be determined at trial but believed to be no less than One Million Dollars (\$1,000,000.00),
15 including damage to Plaintiff's reputation, career and standing in the community.

16 44. Upon information and belief, Plaintiff David Duchovny alleges that each
17 Defendant's conduct was done with oppression, fraud and malice and that, therefore, the conduct
18 of each Defendant justifies an award of punitive and exemplary damages.

19 45. Upon information and belief, Plaintiff alleges that, unless enjoined and
20 restrained by the Court, Defendants will republish, repeat and continue to disseminate the Story
21 and the accusations of an affair between Ms. Pakay and David Duchovny, all to the continuing
22 injury of Plaintiff; that such continued republication, repetition and dissemination of the
23 defamatory and offensive falsehoods will cause irreparable harm to Plaintiff by damaging his
24 reputation and adversely affecting his career and business efforts as well as his personal
25 relationships. Upon information and belief, Plaintiff alleges that he lacks an adequate remedy at
26 law insofar as damages will be very difficult to calculate for such on-going injuries. By reason of
27 the foregoing, Plaintiff is entitled to a permanent injunction enjoining and restraining Defendants,
28 and each of them, and all persons acting in concert with them, from republishing, repeating,

1 distributing or otherwise disseminating the Story or the accusations of infidelity to the extent such
2 are found in this Action to be false.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment as follows:

5 **AS TO THE FIRST CAUSE OF ACTION FOR LIBEL:**

- 6 1. For actual and compensatory damages in an amount to be determined at the
7 trial of this action, but believed not to be less than One Million Dollars (\$1,000,000.00);
8 2. For exemplary and punitive damages;
9 3. For a permanent injunction.

10 **AS TO THE SECOND CAUSE OF ACTION FOR FALSE LIGHT INVASION OF PRIVACY:**

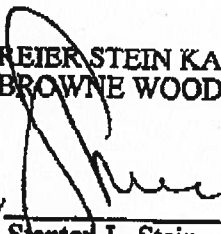
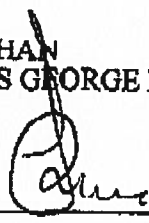
- 11 4. For actual and compensatory damages in an amount to be determined at the
12 trial of this action, but believed not to be less than One Million Dollars (\$1,000,000.00);
13 5. For exemplary and punitive damages;
14 6. For a permanent injunction.

15 **AS TO ALL CLAIMS AND CAUSES OF ACTION:**

- 16 7. For costs of suit herein incurred;
17 8. For reasonable attorneys' fees;
18 9. For interest on any monetary award to plaintiffs at the legal rate;
19 10. For such other and further relief as this Court may deem just and proper.

20
21 DATED: October 23, 2008

DREIER, STEIN, KAHAN
BROWNE WOODS GEORGE LLP

22
23
24 By  
25 Stanton L. Stein
26 Attorneys for Plaintiff
27 David Duchovny
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all matters so triable.

DATED: October 22, 2008

DREIER STEIN KAHAN
BROWNE WOODS GEORGE LLP

By *Staten L. Stein*
Staten L. Stein
Attorneys for Plaintiff
David Duchovny

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