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JUDGE GARDEPIL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**10 CIV 8782**

HARPERCOLLINS PUBLISHERS LLC,

Plaintiff,

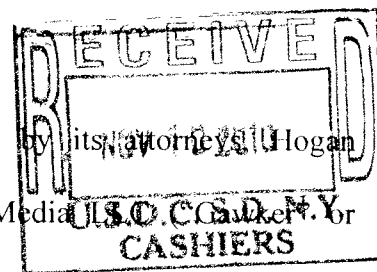
Case No. \_\_\_\_\_

– against –

COMPLAINT

GAWKER MEDIA LLC,

Defendant.



Plaintiff HarperCollins Publishers LLC (“HarperCollins”), by its attorneys, Hogan Lovells US LLP, for its Complaint against defendant Gawker Media LLC (“Defendant”) herein alleges as follows:

**NATURE OF THE ACTION**

1. This action is brought against Defendant for copyright infringement in violation of the Copyright Act, 17 U.S.C. § 101 et seq.

**PARTIES**

2. Plaintiff HarperCollins is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 10 East 53rd Street, New York, New York 10022. HarperCollins is in the business of publishing and selling books.

3. Defendant Gawker Media LLC is a limited liability company with a place of business at 210 Elizabeth Street, Fourth Floor, New York, New York 10012. Gawker is in the business of publishing and distributing a weblog to the public at the URL [www.gawker.com](http://www.gawker.com).

4. This action is brought against Defendant for copyright infringement in violation of the Copyright Act, 17 U.S.C. § 101 *et seq.*

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 17 U.S.C. § 101 *et seq.* and 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction of Gawker pursuant to N.Y. CPLR § 301 and 302(a). Gawker is headquartered in this District, has consented to receive process in this District, regularly transacts business in this District, contracts to supply goods and services in this District and owns, uses and possesses real property in this District.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(a), 1391(b), and 1400(a), because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because the Defendant is subject to personal jurisdiction and may be found in this District.

### **Facts**

8. HarperCollins is scheduled to release the book *America By Heart* by Sarah Palin (The “Book”) on November 23, 2010, with the official publication date of December 1, 2010.

9. The Book is an original work that is copyrightable. HarperCollins has the exclusive rights to publish, reproduce and distribute the Book in all languages throughout the world, including the right to publish it electronically.

10. HarperCollins filed a pre-registration application in *America by Heart* with the United States Copyright Office on November 19, 2010 and paid all fees associated with the registration. A copy of the registration receipt is annexed hereto as Exhibit A.

11. Preregistration with the United States Copyright Office has been completed for the Book under the number PRE 000004046. A copy of the Preregistration Notice is annexed hereto as Exhibit B.

12. Upon information and belief, Defendant obtained a copy of some or all of the pages of *America By Heart* on November 17, 2010. Defendant then posted exact copies of 21 full pages of the Book to its website under the title "Sarah Palin's New Book: Leaked Excerpts" at the URL <http://gawker.com/5692353/sarah-palins-new-book-leaked-excerpts> (the "Web Page").

13. The Web page reads, in part:

Well, look what popped up five days early: leaks from Sarah Palin's forthcoming memoir/manifesto, *America By Heart*, in which the reality TV matriarch rants against "talent deprived" reality TV stars, lauds daughter Bristol's chastity, and celebrates not aborting Trig.

Our favorite Wasilla-obsessed blog Palingates was the first to post excerpts from *America By Heart*. The book is currently in distribution centers, awaiting its official release on Tuesday. We got our hands on some of the pages, too! Here's an annotated guide to our favorite parts, featuring rants against the media and new material about Bristol and Levi.

14. The Web Page is attached hereto as Exhibit C.

15. A visitor to the Web Page can click on the images of the pages of the book to enlarge them. The images then appear in a form identical to the pages in the book.

16. The Web Page contains little to no commentary on the Book.

17. On November 17, 2010, Christopher L. Goff, wrote to Defendant demanding that it take down and cease to publish the 21 pages of the Book.

18. Defendant refused to take the pages of the Book down and the images of the pages of the Book remain available to the general public at the URL:

<http://gawker.com/5692353/sarah-palins-new-book-leaked-excerpts>

19. On November 18, 2010, Gawker posted an article entitled <http://gawker.com/5693797/sarah-palin-is-mad-at-us-for-leaking-pages-from-her-book?skyline=true&s=i> , which links to the original Web Page and announces Defendant's intention to continue to publish the infringing materials.

### **AS AND FOR A FIRST CAUSE OF ACTION**

(Copyright Infringement)

20. Plaintiff repeats and realleges the allegations of paragraphs 1 through 19 of this Complaint as if fully set forth herein.

21. *America by Heart* an original creative work that is copyrightable. HarperCollins owns the exclusive rights in the Book and has filed a pre-registration application for the Book.

22. Defendant infringed the copyright by publishing and distributing copies of the Book without permission and disseminating it publicly via the Internet.

23. Defendant's infringement is willful in nature; indeed, Defendant acknowledges on the Web Page that it is publishing a "leaked" copy of the Book.

24. Defendant's publication of the Book is not a fair use.

25. Defendant's use of the Book without consent was commercial in nature, and therefore was presumptively unfair.

26. Defendant intends to continue to disseminate the Book in the future, thus continuing to infringe the copyright.

27. By reason of the foregoing act of copyright infringement and the likelihood of continued copyright infringement by Defendant, HarperCollins has sustained and will continue to sustain substantial damages in an amount presently unknown but to be determined at trial.

28. Further, by reason of the Defendant's infringement and threatened future infringement, HarperCollins has sustained and, if the Defendant's acts are not enjoined, will continue to sustain irreparable harm for which no adequate remedy at law exists.

**WHEREFORE**, Plaintiff respectfully prays that this Court grant Judgment to Plaintiff as to the above causes of action, as follows:

1. The Defendant be held to have infringed the copyright in the Book;
2. The Defendant be held to have willfully infringed the Copyright;
3. Immediately and permanently enjoining and restraining Defendant, its officers, agents, servants, employees, and those in active concert or participation with them or any of them, from any further copyright infringement of the Book; and
4. Requiring Defendant to deliver up to Plaintiff for destruction any and all goods in their possession or under their control, including but not limited to master copies of the Book that infringe on the copyright; and
5. Immediately and permanently enjoining and restraining Defendant from any future unauthorized use of the Book; and

6. Awarding Plaintiff damages, including without limitation statutory damages, compensatory damages, and/or punitive damages for the infringement of the copyright in an amount presently unknown but to be determined at trial; and

7. Requiring Defendant to account to HarperCollins for any and all profits derived by them through activities which infringe the copyright; and

8. Requiring Defendant to disgorge any fees, profits, or money to Plaintiff by which it has been unjustly enriched; and

9. Granting Plaintiff its costs and disbursements of this action, including reasonable attorneys' fees; and

10. Awarding Plaintiff pre-judgment and post-judgment interest on each and every damage award; and

11. Granting such other, further, or different relief as the Court deems just and proper.

Dated: November 19, 2010

Respectfully submitted,

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LLC*