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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUL 25 2012

John A. Clarke, Executive Officer/Clerk
BY Mary Flores, Deputy

6 Attorneys for Sofia Vergara, Sofia Vergara
7 Enterprises, Inc., Jesse Tyler Ferguson, Cape and
8 Helmet, Inc., Eric Stonestreet, Eric Stonestreet,
9 Inc., Julie Bowen, Apparently So, Inc., Ty
10 Burrell, Desert Whale Productions, Inc., Ed
11 O'Neill, and Edcat Corp.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12 CENTRAL DISTRICT

14 SOFIA VERGARA, SOFIA VERGARA
15 ENTERPRISES, INC., JESSE TYLER
16 FERGUSON, CAPE AND HELMET, INC.,
17 ERIC STONESTREET, ERIC
18 STONESTREET, INC., JULIE BOWEN,
19 APPARENTLY SO, INC., TY BURRELL,
20 DESERT WHALE PRODUCTIONS, INC.,
21 ED O'NEILL, AND EDCAT CORP.,

CASE NO. BC488786

**FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

Judge: Hon. Fredrick C. Shaller
Dept.: 46
Room: 601

Plaintiffs,

Action Filed: July 24, 2012

vs.

21 TWENTIETH CENTURY FOX
22 INTERNATIONAL TELEVISION, INC.,
23 DBA TWENTIETH CENTURY FOX
24 TELEVISION, A UNIT OF TWENTIETH
25 CENTURY FOX FILM CORP.,

Defendant.

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1 Plaintiffs Sofia Vergara and Sofia Vergara Enterprises, Inc., Jesse Tyler Ferguson and
2 Cape and Helmet, Inc., Eric Stonestreet and Eric Stonestreet, Inc., Julie Bowen and Apparently
3 So, Inc., Ty Burrell and Desert Whale Productions, Inc., and Ed O'Neill and Edcat Corp.
4 (collectively "Plaintiffs"), allege as follows:

5 **THE PARTIES**

6 1. Plaintiff Sofia Vergara is an individual residing in Los Angeles, California; an
7 actress; and the President of Sofia Vergara Enterprises, Inc., which is a lender of Ms. Vergara's
8 services.

9 2. Plaintiff Sofia Vergara Enterprises, Inc. is a corporation organized and existing
10 under the laws of the State of Florida, and is and was at all times mentioned herein qualified to do
11 business in California.

12 3. Plaintiff Jesse Tyler Ferguson is an individual residing in Los Angeles, California;
13 an actor; and the President of Cape and Helmet, Inc., which is a lender of Mr. Ferguson's services.

14 4. Plaintiff Cape and Helmet, Inc. is a corporation organized and existing under the
15 laws of the State of California, and is and was at all times mentioned herein qualified to do
16 business in California.

17 5. Plaintiff Eric Stonestreet is an individual residing in Los Angeles, California; an
18 actor; and the President of Eric Stonestreet, Inc., which is a lender of Mr. Stonestreet's services.

19 6. Plaintiff Eric Stonestreet, Inc. is a corporation organized and existing under the
20 laws of the State of Illinois, and is and was at all times mentioned herein qualified to do business
21 in California.

22 7. Plaintiff Julie Bowen is an individual residing in Los Angeles, California; an
23 actress; and the President of Apparently So, Inc., which is a lender of Ms. Bowen's services.

24 8. Plaintiff Apparently So, Inc. is a corporation organized and existing under the laws
25 of the State of California, and is and was at all times mentioned herein qualified to do business in
26 California.

27 9. Plaintiff Ty Burrell is an individual residing in Los Angeles, California; an actor;
28 and the President of Desert Whale Productions, Inc., which is a lender of Mr. Burrell's services.

1 10. Plaintiff Desert Whale Productions, Inc. is a corporation organized and existing
2 under the laws of the State of Delaware, and is and was at all times mentioned herein qualified to
3 do business in California.

4 11. Plaintiff Ed O'Neill is an individual residing in Los Angeles, California; an actor;
5 and the President of Edcat Corp., which is a lender of Mr. O'Neill's services.

6 12. Plaintiff Edcat Corp. is a corporation organized and existing under the laws of the
7 State of Delaware, and is and was at all times mentioned herein qualified to do business in
8 California.

9 13. Defendant Twentieth Century Fox International Television, Inc, doing business as
10 Twentieth Century Fox Television ("Fox"), is a unit of Twentieth Century Fox Film Corp., with a
11 principal place of business at 10201 West Pico Boulevard, Los Angeles, California 90035.

12 **GENERAL ALLEGATIONS**

13 14. Since its debut on ABC in the fall of 2009, *Modern Family* has been one of the
14 most successful shows on television. A scripted comedy about three interrelated families, it
15 became the top-rated new sitcom on broadcast television in 2009, and in the subsequent two
16 seasons has been the third-rated sitcom on broadcast television. *Modern Family* also has won a
17 bevy of awards, including the Emmy Award for Outstanding Comedy Series in 2010 and 2011; 14
18 nominations (the most of any sitcom) for the upcoming 2012 Emmy Awards, including
19 Outstanding Comedy Series; the Golden Globe Award for Best Television Series – Musical or
20 Comedy in 2012; and Peabody Awards for being one of the Top 10 Television Programs from
21 2009 through 2011.

22 15. *Modern Family* is the model of an ensemble comedy. The series revolves around
23 three families interconnected through Jay Pritchett (Ed O'Neill) and his children, Claire Dunphy
24 (Julie Bowen) and Mitchell Pritchett (Jesse Tyler Ferguson). Jay is married to a much younger
25 woman – his second wife, Gloria (Sofia Vergara) – and lives with the very passionate Gloria and
26 her son Manny. Claire is a diligent homemaker mother married to Phil Dunphy (Ty Burrell), a
27 real estate agent always aiming to be a "cool dad" to his and Claire's three children. Finally,
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1 Mitchell is a serious and worrying attorney who, with his longtime (and far more carefree) partner
2 Cameron Tucker (Eric Stonestreet), has adopted a Vietnamese baby, Lily.

3 16. *Modern Family* has been a breakout critical and financial success. That success,
4 however, has been built upon a collection of illegal contracts: The *Modern Family* cast's
5 employment agreements with Twentieth Century Fox Television ("Fox"), the production company
6 behind the show, violate the "Seven-Year Rule" under California Labor Code section 2855(a).
7 That provision dictates that contracts to render personal service "may not be enforced beyond
8 seven years from the commencement of service under it." Cal. Labor Code § 2855(a); see also De
9 Haviland v. Warner Bros. Pictures, 67 Cal. App. 2d 225, 235 (1944) ("Seven years of time is fixed
10 as the maximum time for which [employees] may contract for their services without the right to
11 change employers or occupations").

12 17. All six central cast members of *Modern Family*, together with those cast members'
13 affiliated lender corporations (collectively "Plaintiffs"), have brought this action for declaratory
14 relief: Sofia Vergara and Sofia Vergara Enterprises, Inc., Jesse Tyler Ferguson and Cape and
15 Helmet, Inc., Eric Stonestreet and Eric Stonestreet, Inc., Julie Bowen and Apparently So, Inc., Ty
16 Burrell and Desert Whale Productions, Inc., and Ed O'Neill and Edcat Corp.

17 18. Each Plaintiff has an employment agreement with Fox, which has produced
18 *Modern Family* since production of the show began in 2009. Fox sells *Modern Family* to ABC,
19 which broadcasts the show to the public.

20 19. Plaintiffs' employment agreements (the "Agreements") are personal service
21 contracts which bind Plaintiffs to work on *Modern Family* (and preclude them from other work)
22 beyond seven years after the execution of the Agreements, which marked the commencement of
23 Plaintiffs' services under the Agreements.

24 20. Plaintiffs seek a judicial declaration that the Agreements are illegal and void under
25 California law.

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1 A. Sofia Vergara.

2 21. Sofia Vergara has played Gloria on Modern Family since the show's premiere on
3 September 23, 2009. Ms. Vergara has received critical acclaim for her role, including Emmy
4 nominations for Outstanding Supporting Actress in a Comedy Series in 2010, 2011 and 2012.

5 22. Ms. Vergara has been contractually bound under her current employment
6 agreement since March 22, 2007. On that date, Sofia Vergara Enterprises, Inc. and American
7 Broadcasting Companies, Inc. ("ABC") executed a holding agreement for the services of Ms.
8 Vergara (the "Vergara Holding Agreement," attached hereto as Exhibit 1 together with other
9 documents incorporated by and into the Vergara Holding Agreement: a signed Inducement, Test
10 Option Agreement [with "Exhibit A" as a header], Standard Terms and Conditions, and a Rider to
11 the Test Option Agreement [the "Test Option Agreement Rider"].).

12 23. Under the Vergara Holding Agreement, ABC paid Sofia Vergara Enterprises
13 \$450,000 for having sole rights to Ms. Vergara's services in a television series of ABC's choice for
14 one year after ABC released Ms. Vergara from her employment agreement regarding the
15 television series *Knights of Prosperity*. (Vergara Holding Agreement, ¶¶ 1(a), 2(a).)

16 24. The Vergara Holding Agreement provides ABC an exclusive option to compel Ms.
17 Vergara to render services as a "Series regular" in a to-be-named television series for six seasons,
18 or seven seasons if the series "has a so-called 'Mid-Season'" start. (Test Option Agreement, ¶ 2
19 ["Options for Additional Contract Years"].) ABC would simply exercise its option for each
20 season by providing "written notice to [Ms. Vergara] at any time on or before June 30 of the
21 Contract Year immediately preceding the Contract Year for which such option is exercised." (*Id.*)

22 25. On October 7, 2008, ABC informed Ms. Vergara that it was exercising its
23 "Program Option" under the Vergara Holding Agreement to compel Ms. Vergara to render
24 services in the pilot episode (and subsequent episodes and seasons, at ABC's choosing) of *My*
25 *American Family*, which subsequently was renamed as *Modern Family*. (See Letter from ABC to
26 Sofia Vergara et al., dated 10/7/08, attached hereto as Exhibit 2.)

27 26. On October 10, 2008, Sofia Vergara Enterprises, Inc. and ABC executed an
28 amendment to the Vergara Holding Agreement (the "Vergara Program Option Amendment"),

1 memorializing ABC's exercise of its Program Option on October 7, 2008, for Ms. Vergara to
2 render services on *Modern Family*. (The Vergara Program Option Amendment is attached hereto
3 as Exhibit 3.)

4 27. At some point prior to June 18, 2009, ABC assigned the Vergara Holding
5 Agreement to Twentieth Century Fox Television ("Fox"), which had become the company
6 responsible for production of *Modern Family*.

7 28. On June 18, 2009, Fox exercised its option to compel Ms. Vergara to render
8 services on *Modern Family* for the "Initial Order of the Series for the First Contract Year."
9 Subsequently, Fox exercised its options to compel Ms. Vergara's continued services on *Modern*
10 *Family* for the first through fourth contract years, with a full slate of 24 episodes for the first
11 through third contract years. The fourth season of *Modern Family* has not yet begun filming.

12 29. On November 5, 2009, Fox faxed a purported amendment of the Vergara Holding
13 Agreement to Ms. Vergara, entitled "Standard Terms to Holding Agreement with Pilot and Series
14 Options" (the "Fox Standard Terms," attached hereto as Exhibit 4). The Fox Standard Terms
15 added further requirements and restrictions to Ms. Vergara's then-existing employment agreement.
16 The Fox Standard Terms were not and have not been signed by Fox or Ms. Vergara. (The Vergara
17 Holding Agreement [with its affiliated materials in Exhibit 1] and Fox Standard Terms
18 collectively are referred to as the Vergara Agreement.)

19 30. Tappings for each season of *Modern Family* have begun in the summer and run
20 through the spring, show broadcasts have begun in late September and run through late May, and
21 publicity and related services by the *Modern Family* cast, including Ms. Vergara, have occurred
22 year-round.

23 31. Under the Vergara Agreement, Ms. Vergara's per-episode compensation for a
24 "Casting Project" like *Modern Family* is capped at a 5% increase per year for the second through
25 seventh contract years, and may only further be increased by ABC (and now Fox) at its exclusive
26 discretion. (Vergara Holding Agreement, § 4(a)(xiv); Test Option Agreement, ¶ 3 ("Series
27 Compensation".))

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1 32. The Vergara Agreement also requires Ms. Vergara to, at Fox's demand, engage in
2 numerous non-episode-based services for *Modern Family*, "for the purpose of advertising,
3 promoting, publicizing or otherwise exploiting" the television series, affiliated networks or other
4 exhibitors, and so on. (Standard Terms and Conditions, ¶¶ 2 ("Promotion of Series"), 4(d)
5 ("Publicity Services").)

6 33. By its terms, the Vergara Agreement has significantly limited Ms. Vergara's
7 employment rights. Since March 22, 2007, Ms. Vergara has been limited in the services she can
8 provide, particularly after the *Modern Family* series was picked up by Fox in 2009. (See Standard
9 Terms and Conditions, ¶ 3 ("Exclusivity"); Fox Standard Terms, ¶ 7 ("Exclusivity").) With
10 limited exceptions, Ms. Vergara's services are "exclusive to [Fox] in Television in radio."
11 (Standard Terms and Conditions, ¶ 3(b).) During the periods of time "in which Fox requires the
12 services of [Ms. Vergara] per Contract Year," Ms. Vergara's services "shall be [wholly] exclusive
13 to Fox." (Fox Standard Terms, ¶ 7.) Moreover, the Vergara Agreement requires Ms. Vergara's
14 services in television to be fully exclusive to Fox until the conclusion of Fox's option for such
15 services on June 30, 2015. (Id.; Test Option Agreement, ¶ 1.) And when Ms. Vergara is allowed
16 to pursue additional employment options under the Vergara Agreement, she only may do so after
17 "first notifying Fox and obtaining Fox's consent thereto." (Fox Standard Terms, ¶ 7(a).)

18 34. The Vergara Holding Agreement continues to serve as Ms. Vergara's employment
19 agreement with respect to her services regarding *Modern Family*. Because the Holding
20 Agreement commenced on March 22, 2007, it is barred under the Seven-Year Rule (Cal. Labor
21 Code § 2855(a)) from binding Ms. Vergara beyond March 22, 2014. In fact, however, the
22 Holding Agreement binds Ms. Vergara for six full seasons of *Modern Family*, through June 30,
23 2015. (See Test Option Agreement, ¶ 1 ("Contract Year[s] will mean the 12 month period
24 commencing upon the expiration of the preceding Contract Year," which ends on June 30), ¶ 2
25 (ABC [and now Fox] has an exclusive six-season option).) The Vergara Agreement therefore is
26 illegal and void.

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1 **B. Jesse Tyler Ferguson.**

2 35. Jesse Tyler Ferguson has played Mitchell on *Modern Family* since the show's
3 premiere on September 23, 2009. Mr. Ferguson has received critical acclaim for his role,
4 including Emmy nominations for Outstanding Supporting Actor in a Comedy Series in 2010, 2011
5 and 2012.

6 36. Mr. Ferguson has been contractually bound under his current employment
7 agreement since January 23, 2009. On that date, Cape and Helmet Inc. and Twentieth Century
8 Fox Television ("Fox") executed an option agreement for the services of Mr. Ferguson on *My*
9 *American Family*, later renamed as *Modern Family*. (The "Agreement for Test with Pilot and
10 Series Options" [the "Ferguson Option Agreement"], a rider to that agreement, and an affiliated
11 soundtrack album agreement [collectively the "Ferguson Agreement"] is attached hereto as
12 Exhibit 5.)

13 37. The Ferguson Option Agreement is a Fox form agreement, substantively identical
14 to form agreements used by Fox with Eric Stonestreet, Julie Bowen, Ty Burrell and Ed O'Neill
15 except for episodic compensation amounts.

16 38. The Ferguson Agreement provides Fox an exclusive option to compel Mr.
17 Ferguson to render services on the pilot of *Modern Family*, and then up to seven contract years of
18 the series. (Ferguson Option Agreement, § II ["Player grants Fox exclusive, irrevocable,
19 consecutive, dependent options to require Player to render services in each Contract Year of the
20 Series"].) Fox would simply exercise its option for each contract year by "June 30 of the
21 applicable year." (*Id.*)

22 39. Under the Ferguson Agreement, Mr. Ferguson's compensation is capped at a 4%
23 increase per year after the second contract year, and may only further be increased by Fox "at its
24 sole election." (Ferguson Option Agreement, § II, "Guarantee/Episodic Compensation".)

25 40. The Ferguson Agreement also requires Mr. Ferguson to engage in numerous unpaid
26 "publicity" and "related services" for *Modern Family*. (Ferguson Option Agreement, § III,
27 "Publicity & Related Services".)

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1 41. By its terms, the Ferguson Agreement has significantly limited Mr. Ferguson's
2 employment rights. Since January 23, 2009, Mr. Ferguson has, with very limited exceptions, been
3 precluded from providing any services on "television and series programming" outside of *Modern*
4 *Family*. (Ferguson Option Agreement, § III, "Exclusivity".) Further, he is barred from having
5 "outstanding commitments which will materially interfere with the complete performance of all of
6 [Mr. Ferguson's] obligations," and is further barred from "enter[ing] into any commitment which
7 materially conflicts or interferes with [Mr. Ferguson's] obligations to Fox (which shall at all times
8 be in first position) or with any rights granted to Fox pursuant to [the Ferguson Agreement]." (*Id.*)

9 42. Fox has exercised its option for Mr. Ferguson's services for a full 24-episode slate
10 for each of the first three seasons of *Modern Family*, with tapings beginning in the summer and
11 running through the spring, show broadcasts beginning in late September and running through late
12 May, and publicity and related services by the *Modern Family* cast, including Mr. Ferguson,
13 occurring year-round. Fox also has now exercised its option for Mr. Ferguson's services for the
14 upcoming fourth season of *Modern Family*, which has not yet begun filming.

15 43. The Ferguson Agreement continues to serve as Mr. Ferguson's employment
16 agreement with respect to his services regarding *Modern Family*. Because the Ferguson
17 Agreement commenced on January 23, 2009, it is barred under the Seven-Year Rule (Cal. Labor
18 Code § 2855(a)) from binding Mr. Ferguson beyond January 23, 2016. In fact, however, the
19 Ferguson Agreement binds Mr. Ferguson for the pilot plus seven full seasons of *Modern Family*,
20 through June 30, 2016, while precluding Mr. Ferguson from pursuing other work during that time.
21 (See Ferguson Option Agreement, § II (agreement compels Mr. Ferguson's services for the pilot
22 plus seven contract years, which begin on June 30 of the applicable year).) The Ferguson
23 Agreement therefore is illegal and void.

24 **C. Eric Stonestreet.**

25 44. Eric Stonestreet has played Cameron on *Modern Family* since the show's premiere
26 on September 23, 2009. Mr. Stonestreet has received critical acclaim for his role, including the
27 Emmy award for Outstanding Supporting Actor in a Comedy Series in 2010, and Emmy
28 nominations for Outstanding Supporting Actor in a Comedy Series in 2011 and 2012.

1 45. Mr. Stonestreet has been contractually bound under his current employment
2 agreement since February 3, 2009. On that date, Eric Stonestreet, Inc. and Twentieth Century Fox
3 Television ("Fox") executed an option agreement for the services of Mr. Stonestreet on *My*
4 *American Family*, later renamed as *Modern Family*. (The "Agreement for Test with Pilot and
5 Series Options" [the "Stonestreet Option Agreement"], a rider to that agreement, and an affiliated
6 soundtrack album agreement [collectively the "Stonestreet Agreement"] is attached hereto as
7 Exhibit 6.)

8 46. The Stonestreet Option Agreement is a Fox form agreement, substantively identical
9 to form agreements used by Fox with Jesse Tyler Ferguson, Julie Bowen, Ty Burrell and Ed
10 O'Neill except for episodic compensation amounts.

11 47. The Stonestreet Agreement provides Fox an exclusive option to compel Mr.
12 Stonestreet to render services on the pilot of *Modern Family*, and then up to seven contract years
13 of the series. (Stonestreet Option Agreement, § II ["Player grants Fox exclusive, irrevocable,
14 consecutive, dependent options to require Player to render services in each Contract Year of the
15 Series"].) Fox would simply exercise its option for each contract year by "June 30 of the
16 applicable year." (*Id.*)

17 48. Under the Stonestreet Agreement, Mr. Stonestreet's compensation is capped at a
18 4% increase per year after the second contract year, and may only further be increased by Fox "at
19 its sole election." (Stonestreet Option Agreement, § II, "Guarantee/Episodic Compensation".)

20 49. The Stonestreet Agreement also requires Mr. Stonestreet to engage in numerous
21 unpaid "publicity" and "related services" for *Modern Family*. (Stonestreet Option Agreement, §
22 III, "Publicity & Related Services".)

23 50. By its terms, the Stonestreet Agreement has significantly limited Mr. Stonestreet's
24 employment rights. Since February 3, 2009, Mr. Stonestreet has, with very limited exceptions,
25 been precluded from providing any services on "television and series programming" outside of
26 *Modern Family*. (Stonestreet Option Agreement, § III, "Exclusivity".) Further, he is barred from
27 having "outstanding commitments which will materially interfere with the complete performance
28 of all of [Mr. Stonestreet's] obligations," and is further barred from "enter[ing] into any

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1 commitment which materially conflicts or interferes with [Mr. Stonestreet's] obligations to Fox
2 (which shall at all times be in first position) or with any rights granted to Fox pursuant to [the
3 Stonestreet Agreement]." (Id.)

4 51. Fox has exercised its option for Mr. Stonestreet's services for a full 24-episode slate
5 for each of the first three seasons of *Modern Family*, with tapings beginning in the summer and
6 running through the spring, show broadcasts beginning in late September and running through late
7 May, and publicity and related services by the *Modern Family* cast, including Mr. Stonestreet,
8 occurring year-round. Fox also has now exercised its option for Mr. Stonestreet's services for the
9 upcoming fourth season of *Modern Family*, which has not yet begun filming.

10 52. The Stonestreet Agreement continues to serve as Mr. Stonestreet's employment
11 agreement with respect to his services regarding *Modern Family*. Because the Stonestreet
12 Agreement commenced on February 3, 2009, it is barred under the Seven-Year Rule (Cal. Labor
13 Code § 2855(a)) from binding Mr. Stonestreet beyond February 3, 2016. In fact, however, the
14 Stonestreet Agreement binds Mr. Stonestreet for the pilot plus seven full seasons of *Modern*
15 *Family*, through June 30, 2016, while precluding Mr. Stonestreet from pursuing other work during
16 that time. (See Stonestreet Option Agreement, § II (agreement compels Mr. Stonestreet's services
17 for the pilot plus seven contract years, which begin on June 30 of the applicable year).) The
18 Stonestreet Agreement therefore is illegal and void.

19 **D. Julie Bowen.**

20 53. Julie Bowen has played Claire on *Modern Family* since the show's premiere on
21 September 23, 2009. Ms. Bowen has received critical acclaim for her role, including the Emmy
22 award for Outstanding Supporting Actress in a Comedy Series in 2011, and Emmy nominations
23 for Outstanding Supporting Actress in a Comedy Series in 2010 and 2012.

24 54. Ms. Bowen has been contractually bound under her current employment agreement
25 since February 25, 2009. On that date, Apparently So, Inc. and Twentieth Century Fox Television
26 ("Fox") executed an option agreement for the services of Ms. Bowen on *My American Family*,
27 later renamed as *Modern Family*. (The "Agreement for Test with Pilot and Series Options" [the
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1 "Bowen Option Agreement"], a rider to that agreement, and an affiliated soundtrack album
2 agreement [collectively the "Bowen Agreement"] is attached hereto as Exhibit 7.)

3 55. The Bowen Option Agreement is a Fox form agreement, substantively identical to
4 form agreements used by Fox with Jesse Tyler Ferguson, Eric Stonestreet, Ty Burrell and Ed
5 O'Neill except for episodic compensation amounts.

6 56. The Bowen Agreement provides Fox an exclusive option to compel Ms. Bowen to
7 render services on the pilot of *Modern Family*, and then up to seven contract years of the series.
8 (Bowen Option Agreement, § II ["Player grants Fox exclusive, irrevocable, consecutive,
9 dependent options to require Player to render services in each Contract Year of the Series".]) Fox
10 would simply exercise its option for each contract year by "June 30 of the applicable year." (*Id.*)

11 57. Under the Bowen Agreement, Ms. Bowen's compensation is capped at a 4%
12 increase per year commencing with the second contract year, and may only further be increased by
13 Fox "at its sole election." (Bowen Option Agreement, § II, "Guarantee/Episodic Compensation".)

14 58. The Bowen Agreement also requires Ms. Bowen to engage in numerous unpaid
15 "publicity" and "related services" for *Modern Family*. (Bowen Option Agreement, § III,
16 "Publicity & Related Services".)

17 59. By its terms, the Bowen Agreement has significantly limited Ms. Bowen's
18 employment rights. Since February 25, 2009, Ms. Bowen has, with very limited exceptions, been
19 precluded from providing any services on "television and series programming" outside of *Modern*
20 *Family*. (Bowen Option Agreement, § III, "Exclusivity".) Further, she is barred from having
21 "outstanding commitments which will materially interfere with the complete performance of all of
22 [Ms. Bowen's] obligations," and is further barred from "enter[ing] into any commitment which
23 materially conflicts or interferes with [Ms. Bowen's] obligations to Fox (which shall at all times be
24 in first position) or with any rights granted to Fox pursuant to [the Bowen Agreement]." (*Id.*)

25 60. Fox has exercised its option for Ms. Bowen's services for a full 24-episode slate for
26 each of the first three seasons of *Modern Family*, with tapings beginning in the summer and
27 running through the spring, show broadcasts beginning in late September and running through late
28 May, and publicity and related services by the *Modern Family* cast, including Ms. Bowen,

1 occurring year-round. Fox also has now exercised its option for Ms. Bowen's services for the
2 upcoming fourth season of *Modern Family*, which has not yet begun filming.

3 61. The Bowen Agreement continues to serve as Ms. Bowen's employment agreement
4 with respect to her services regarding *Modern Family*. Because the Bowen Agreement
5 commenced on February 25, 2009, it is barred under the Seven-Year Rule (Cal. Labor Code §
6 2855(a)) from binding Ms. Bowen beyond February 25, 2016. In fact, however, the Bowen
7 Agreement binds Ms. Bowen for the pilot plus seven full seasons of *Modern Family*, through June
8 30, 2016, while precluding Ms. Bowen from pursuing other work during that time. (See Bowen
9 Option Agreement, § II (agreement compels Ms. Bowen's services for the pilot plus seven contract
10 years, which begin on June 30 of the applicable year).) The Bowen Agreement therefore is illegal
11 and void.

12 **E. Ty Burrell.**

13 62. Ty Burrell has played Phil on *Modern Family* since the show's premiere on
14 September 23, 2009. Mr. Burrell has received critical acclaim for his role, including the Emmy
15 award for Outstanding Supporting Actor in a Comedy Series in 2011, and Emmy nominations for
16 Outstanding Supporting Actor in a Comedy Series in 2010 and 2012.

17 63. Mr. Burrell has been contractually bound under his current employment agreement
18 since January 16, 2009. On that date, Desert Whale Productions, Inc. and Twentieth Century Fox
19 Television ("Fox") executed an option agreement for the services of Mr. Burrell on *My American*
20 *Family*, later renamed as *Modern Family*. (The "Agreement for Test with Pilot and Series
21 Options" [the "Burrell Option Agreement"], a rider to that agreement, and an affiliated soundtrack
22 album agreement [collectively the "Burrell Agreement"] is attached hereto as Exhibit 8.)

23 64. The Burrell Option Agreement is a Fox form agreement, substantively identical to
24 form agreements used by Fox with Jesse Tyler Ferguson, Eric Stonestreet, Julie Bowen and Ed
25 O'Neill except for episodic compensation amounts.

26 65. The Burrell Agreement provides Fox an exclusive option to compel Mr. Burrell to
27 render services on the pilot of *Modern Family*, and then up to seven contract years of the series.
28 (Burrell Option Agreement, § II ["Player grants Fox exclusive, irrevocable, consecutive,

1 dependent options to require Player to render services in each Contract Year of the Series"].) Fox
2 would simply exercise its option for each contract year by "June 30 of the applicable year." (Id.)

3 66. Under the Burrell Agreement, Mr. Burrell's compensation is capped at a 4%
4 increase per year after the second contract year, and may only further be increased by Fox "at its
5 sole election." (Burrell Option Agreement, § II, "Guarantee/Episodic Compensation".)

6 67. The Burrell Agreement also requires Mr. Burrell to engage in numerous unpaid
7 "publicity" and "related services" for *Modern Family*. (Burrell Option Agreement, § III,
8 "Publicity & Related Services".)

9 68. By its terms, the Burrell Agreement has significantly limited Mr. Burrell's
10 employment rights. Since January 16, 2009, Mr. Burrell has, with very limited exceptions, been
11 precluded from providing any services on "television and series programming" outside of *Modern*
12 *Family*. (Burrell Option Agreement, § III, "Exclusivity".) Further, he is barred from having
13 "outstanding commitments which will materially interfere with the complete performance of all of
14 [Mr. Burrell's] obligations," and is further barred from "enter[ing] into any commitment which
15 materially conflicts or interferes with [Mr. Burrell's] obligations to Fox (which shall at all times be
16 in first position) or with any rights granted to Fox pursuant to [the Burrell Agreement]." (Id.)

17 69. Fox has exercised its option for Mr. Burrell's services for a full 24-episode slate for
18 each of the first three seasons of *Modern Family*, with tapings beginning in the summer and
19 running through the spring, show broadcasts beginning in late September and running through late
20 May, and publicity and related services by the *Modern Family* cast, including Mr. Burrell,
21 occurring year-round. Fox also has now exercised its option for Mr. Burrell's services for the
22 upcoming fourth season of *Modern Family*, which has not yet begun filming.

23 70. The Burrell Agreement continues to serve as Mr. Burrell's employment agreement
24 with respect to his services regarding *Modern Family*. Because the Burrell Agreement
25 commenced on January 16, 2009, it is barred under the Seven-Year Rule (Cal. Labor Code §
26 2855(a)) from binding Mr. Burrell beyond January 16, 2016. In fact, however, the Burrell
27 Agreement binds Mr. Burrell for the pilot plus seven full seasons of *Modern Family*, through June
28 30, 2016, while precluding Mr. Burrell from pursuing other work during that time. (See Burrell

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1 Option Agreement, § II (agreement compels Mr. Burrell's services for the pilot plus seven contract
2 years, which begin on June 30 of the applicable year.) The Burrell Agreement therefore is illegal
3 and void.

4 **F. Ed O'Neill.**

5 71. Ed O'Neill has played Jay on *Modern Family* since the show's premiere on
6 September 23, 2009. Mr. O'Neill has received critical acclaim for his role, including Emmy
7 nominations for Outstanding Supporting Actor in a Comedy Series in 2011 and 2012.

8 72. Mr. O'Neill has been contractually bound under his current employment agreement
9 since February 6, 2009. On that date, Edcat Corp. and Twentieth Century Fox Television ("Fox")
10 executed an option agreement for the services of Mr. O'Neill on *My American Family*, later
11 renamed as *Modern Family*. (The "Agreement for Pilot with Series Options" [the "O'Neill Option
12 Agreement"], a rider to that agreement, and an affiliated soundtrack album agreement [collectively
13 the "O'Neill Agreement"] is attached hereto as Exhibit 9.)

14 73. The O'Neill Option Agreement is a Fox form agreement, substantively identical to
15 form agreements used by Fox with Jesse Tyler Ferguson, Eric Stonestreet, Julie Bowen and Ty
16 Burrell except for episodic compensation amounts.

17 74. The O'Neill Agreement provides Fox an exclusive option to compel Mr. O'Neill to
18 render services on the pilot of *Modern Family*, and then up to seven contract years of the series.
19 (O'Neill Option Agreement, § II ["Player grants Fox exclusive, irrevocable, consecutive,
20 dependent options to require Player to render services in each Contract Year of the Series".]) Fox
21 would simply exercise its option for each contract year by "June 30 of the applicable year." (*Id.*)

22 75. Under the O'Neill Agreement, Mr. O'Neill's compensation is capped at a 4%
23 increase per year after the second contract year, and may only further be increased by Fox "at its
24 sole election." (O'Neill Option Agreement, § II, "Guarantee/Episodic Compensation".)

25 76. The O'Neill Agreement also requires Mr. O'Neill to engage in numerous unpaid
26 "publicity" and "related services" for *Modern Family*. (O'Neill Option Agreement, § III,
27 "Publicity & Related Services".)

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1 77. By its terms, the O'Neill Agreement has significantly limited Mr. O'Neill's
2 employment rights. Since February 6, 2009, Mr. O'Neill has, with very limited exceptions, been
3 precluded from providing any services on "television and series programming" outside of *Modern*
4 *Family*. (O'Neill Option Agreement, § III, "Exclusivity".) Further, he is barred from having
5 "outstanding commitments which will materially interfere with the complete performance of all of
6 [Mr. O'Neill's] obligations," and is further barred from "enter[ing] into any commitment which
7 materially conflicts or interferes with [Mr. O'Neill's] obligations to Fox (which shall at all times be
8 in first position) or with any rights granted to Fox pursuant to [the O'Neill Agreement]." (*Id.*)

9 78. Fox has exercised its option for Mr. O'Neill's services for a full 24-episode slate for
10 each of the first three seasons of *Modern Family*, with tapings beginning in the summer and
11 running through the spring, show broadcasts beginning in late September and running through late
12 May, and publicity and related services by the *Modern Family* cast, including Mr. O'Neill,
13 occurring year-round. Fox also has now exercised its option for Mr. O'Neill's services for the
14 upcoming fourth season of *Modern Family*, which has not yet begun filming.

15 79. The O'Neill Agreement continues to serve as Mr. O'Neill's employment agreement
16 with respect to his services regarding *Modern Family*. Because the O'Neill Agreement
17 commenced on February 6, 2009, it is barred under the Seven-Year Rule (Cal. Labor Code §
18 2855(a)) from binding Mr. O'Neill beyond February 6, 2016. In fact, however, the O'Neill
19 Agreement binds Mr. O'Neill for the pilot plus seven full seasons of *Modern Family*, through June
20 30, 2016, while precluding Mr. O'Neill from pursuing other work during that time. (See O'Neill
21 Option Agreement, § II (agreement compels Mr. O'Neill's services for the pilot plus seven contract
22 years, which begin on June 30 of the applicable year).) The O'Neill Agreement therefore is illegal
23 and void.

24 **FIRST CAUSE OF ACTION**

25 **(Declaratory Relief)**

26 **(Cal. Code Civ. Proc. § 1060; Cal. Labor Code § 2855(a))**

27 80. Plaintiffs re-allege and incorporate by reference each and every allegation
28 contained in paragraphs 1-79.

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1 DATED: July 25, 2012

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

2
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