

ORIGINAL
AL030
90035

D46
Frederick C. Shaller

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
2 Jeffery D. McFarland (Bar No. 157628)
3 jeffmcfarland@quinnemanuel.com
4 Colin B. Vandell (Bar No. 240653)
5 colinvandell@quinnemanuel.com
6 865 South Figueroa Street, 10th Floor
7 Los Angeles, California 90017-2543
8 Telephone: (213) 443-3000
9 Facsimile: (213) 443-3100

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUL 24 2012

John A. Clarke, Executive Officer/Clerk
BY Cristina Grijalva Deputy
Cristina Grijalva

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, and Desert Whale Productions, Inc.

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

BC488786

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 AND DESERT WHALE PRODUCTIONS,
21 INC.,

CASE NO.

COMPLAINT FOR DECLARATORY
RELIEF

Plaintiffs,

vs.

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

Defendant.

CIT/CASE: BC488786 LEA/DEF#:
RECEIPT #: CCH195707028
DATE PAID: 07/24/12 09:16:28 AM
PAYMENT: \$435.00 0310
RECEIVED:
CHECK: 435.00
CASH:
CHANGE:
CARD:

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., and Ty Burrell and Desert Whale Productions, Inc. (collectively "Plaintiffs"), allege as
4 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. Defendant Twentieth Century Fox International Television, Inc, doing business as
5 Twentieth Century Fox Television ("Fox"), is a unit of Twentieth Century Fox Film Corp., with a
6 principal place of business at 10201 West Pico Boulevard, Los Angeles, California 90035.

7
GENERAL ALLEGATIONS

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

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

25 14. *Modern Family* has been a breakout critical and financial success. That success,
26 however, has been built upon a collection of illegal contracts: The *Modern Family* cast's
27 employment agreements with Twentieth Century Fox Television ("Fox"), the production company
28 behind the show, violate the "Seven-Year Rule" under California Labor Code section 2855(a).

1 That provision dictates that contracts to render personal service "may not be enforced beyond
2 seven years from the commencement of service under it." Cal. Labor Code § 2855(a); see also De
3 Haviland v. Warner Bros. Pictures, 67 Cal. App. 2d 225, 235 (1944) ("Seven years of time is fixed
4 as the maximum time for which [employees] may contract for their services without the right to
5 change employers or occupations").

6 15. Five of the six central cast members of *Modern Family*, together with those cast
7 members' affiliated lender corporations (collectively "Plaintiffs"), have brought this action for
8 declaratory relief: Sofia Vergara and Sofia Vergara Enterprises, Inc., Jesse Tyler Ferguson and
9 Cape and Helmet, Inc., Eric Stonestreet and Eric Stonestreet, Inc., Julie Bowen and Apparently
10 So, Inc., and Ty Burrell and Desert Whale Productions, Inc.

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

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

18 18. Plaintiffs seek a judicial declaration that the Agreements are illegal and void under
19 California law.

20 **A. Sofia Vergara.**

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

24 20. Ms. Vergara has been contractually bound under her current employment
25 agreement since March 22, 2007. On that date, Sofia Vergara Enterprises, Inc. and American
26 Broadcasting Companies, Inc. ("ABC") executed a holding agreement for the services of Ms.
27 Vergara (the "Vergara Holding Agreement," attached hereto as Exhibit 1 together with other
28 documents incorporated by and into the Vergara Holding Agreement: a signed Inducement, Test

1 Option Agreement [with "Exhibit A" as a header], Standard Terms and Conditions, and a Rider to
2 the Test Option Agreement [the "Test Option Agreement Rider"].)

3 21. Under the Vergara Holding Agreement, ABC paid Sofia Vergara Enterprises
4 \$450,000 for having sole rights to Ms. Vergara's services in a television series of ABC's choice for
5 one year after ABC released Ms. Vergara from her employment agreement regarding the
6 television series *Knights of Prosperity*. (Vergara Holding Agreement, ¶¶ 1(a), 2(a).)

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

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

18 24. On October 10, 2008, Sofia Vergara Enterprises, Inc. and ABC executed an
19 amendment to the Vergara Holding Agreement (the "Vergara Program Option Amendment"),
20 memorializing ABC's exercise of its Program Option on October 7, 2008, for Ms. Vergara to
21 render services on *Modern Family*. (The Vergara Program Option Amendment is attached hereto
22 as Exhibit 3.)

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

26 26. On June 18, 2009, Fox exercised its option to compel Ms. Vergara to render
27 services on *Modern Family* for the "Initial Order of the Series for the First Contract Year."
28 Subsequently, Fox exercised its options to compel Ms. Vergara's continued services on *Modern*

1 Family for the first through fourth contract years, with a full slate of 24 episodes for the first
2 through third contract years. The fourth season of *Modern Family* has not yet begun filming.

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

10 28. Tapings for each season of *Modern Family* have begun in the summer and run
11 through the spring, show broadcasts have begun in late September and run through late May, and
12 publicity and related services by the *Modern Family* cast, including Ms. Vergara, have occurred
13 year-round.

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

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

24 31. By its terms, the Vergara Agreement has significantly limited Ms. Vergara's
25 employment rights. Since March 22, 2007, Ms. Vergara has been limited in the services she can
26 provide, particularly after the *Modern Family* series was picked up by Fox in 2009. (See Standard
27 Terms and Conditions, ¶ 3 ("Exclusivity"); Fox Standard Terms, ¶ 7 ("Exclusivity").) With
28 limited exceptions, Ms. Vergara's services are "exclusive to [Fox] in Television in radio."

1 (Standard Terms and Conditions, ¶ 3(b).) During the periods of time "in which Fox requires the
2 services of [Ms. Vergara] per Contract Year," Ms. Vergara's services "shall be [wholly] exclusive
3 to Fox." (Fox Standard Terms, ¶ 7.) Moreover, the Vergara Agreement requires Ms. Vergara's
4 services in television to be fully exclusive to Fox until the conclusion of Fox's option for such
5 services on June 30, 2015. (*Id.*; Test Option Agreement, ¶ 1.) And when Ms. Vergara *is* allowed
6 to pursue additional employment options under the Vergara Agreement, she only may do so after
7 "first notifying Fox and obtaining Fox's consent thereto." (Fox Standard Terms, ¶ 7(a).)

8 32. The Vergara Holding Agreement continues to serve as Ms. Vergara's employment
9 agreement with respect to her services regarding *Modern Family*. Because the Holding
10 Agreement commenced on March 22, 2007, it is barred under the Seven-Year Rule (Cal. Labor
11 Code § 2855(a)) from binding Ms. Vergara beyond March 22, 2014. In fact, however, the
12 Holding Agreement binds Ms. Vergara for six full seasons of *Modern Family*, through June 30,
13 2015. (See Test Option Agreement, ¶ 1 ("Contract Year[s] will mean the 12 month period
14 commencing upon the expiration of the preceding Contract Year," which ends on June 30), ¶ 2
15 (ABC [and now Fox] has an exclusive six-season option).) The Vergara Agreement therefore is
16 illegal and void.

17 **B. Jesse Tyler Ferguson.**

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

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

1 35. The Ferguson Option Agreement is a Fox form agreement, substantively identical
2 to form agreements used by Fox with Eric Stonestreet, Julie Bowen and Ty Burrell except for
3 episodic compensation amounts.

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

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

13 38. The Ferguson Agreement also requires Mr. Ferguson to engage in numerous unpaid
14 "publicity" and "related services" for *Modern Family*. (Ferguson Option Agreement, § III,
15 "Publicity & Related Services".)

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

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

28

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

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

12 C. Eric Stonestreet.

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

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

24 44. The Stonestreet Option Agreement is a Fox form agreement, substantively identical
25 to form agreements used by Fox with Jesse Tyler Ferguson, Julie Bowen and Ty Burrell except for
26 episodic compensation amounts.

27 45. The Stonestreet Agreement provides Fox an exclusive option to compel Mr.
28 Stonestreet to render services on the pilot of *Modern Family*, and then up to seven contract years

1 of the series. (Stonestreet Option Agreement, § II ["Player grants Fox exclusive, irrevocable,
2 consecutive, dependent options to require Player to render services in each Contract Year of the
3 Series".]) Fox would simply exercise its option for each contract year by "June 30 of the
4 applicable year." (*Id.*)

5 46. Under the Stonestreet Agreement, Mr. Stonestreet's compensation is capped at a
6 4% increase per year after the second contract year, and may only further be increased by Fox "at
7 its sole election." (Stonestreet Option Agreement, § II, "Guarantee/Episodic Compensation".)

8 47. The Stonestreet Agreement also requires Mr. Stonestreet to engage in numerous
9 unpaid "publicity" and "related services" for *Modern Family*. (Stonestreet Option Agreement, §
10 III, "Publicity & Related Services".)

11 48. By its terms, the Stonestreet Agreement has significantly limited Mr. Stonestreet's
12 employment rights. Since February 3, 2009, Mr. Stonestreet has, with very limited exceptions,
13 been precluded from providing any services on "television and series programming" outside of
14 *Modern Family*. (Stonestreet Option Agreement, § III, "Exclusivity".) Further, he is barred from
15 having "outstanding commitments which will materially interfere with the complete performance
16 of all of [Mr. Stonestreet's] obligations," and is further barred from "enter[ing] into any
17 commitment which materially conflicts or interferes with [Mr. Stonestreet's] obligations to Fox
18 (which shall at all times be in first position) or with any rights granted to Fox pursuant to [the
19 Stonestreet Agreement]." (*Id.*)

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

26 50. The Stonestreet Agreement continues to serve as Mr. Stonestreet's employment
27 agreement with respect to his services regarding *Modern Family*. Because the Stonestreet
28 Agreement commenced on February 3, 2009, it is barred under the Seven-Year Rule (Cal. Labor

1 Code § 2855(a)) from binding Mr. Stonestreet beyond February 3, 2016. In fact, however, the
2 Stonestreet Agreement binds Mr. Stonestreet for the pilot plus seven full seasons of *Modern*
3 *Family*, through June 30, 2016, while precluding Mr. Stonestreet from pursuing other work during
4 that time. (See Stonestreet Option Agreement, § II (agreement compels Mr. Stonestreet's services
5 for the pilot plus seven contract years, which begin on June 30 of the applicable year).) The
6 Stonestreet Agreement therefore is illegal and void.

7 **D. Julie Bowen.**

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

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

18 53. The Bowen Option Agreement is a Fox form agreement, substantively identical to
19 form agreements used by Fox with Jesse Tyler Ferguson, Eric Stonestreet and Ty Burrell except
20 for episodic compensation amounts.

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

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

1 56. The Bowen Agreement also requires Ms. Bowen to engage in numerous unpaid
2 "publicity" and "related services" for *Modern Family*. (Bowen Option Agreement, § III,
3 "Publicity & Related Services".)

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

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

18 59. The Bowen Agreement continues to serve as Ms. Bowen's employment agreement
19 with respect to her services regarding *Modern Family*. Because the Bowen Agreement
20 commenced on February 25, 2009, it is barred under the Seven-Year Rule (Cal. Labor Code §
21 2855(a)) from binding Ms. Bowen beyond February 25, 2016. In fact, however, the Bowen
22 Agreement binds Ms. Bowen for the pilot plus seven full seasons of *Modern Family*, through June
23 30, 2016, while precluding Ms. Bowen from pursuing other work during that time. (See Bowen
24 Option Agreement, § II (agreement compels Ms. Bowen's services for the pilot plus seven contract
25 years, which begin on June 30 of the applicable year).) The Bowen Agreement therefore is illegal
26 and void.

27 //

28 //

03/29/12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E. Ty Burrell.

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

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

62. The Burrell Option Agreement is a Fox form agreement, substantively identical to form agreements used by Fox with Jesse Tyler Ferguson, Eric Stonestreet and Julie Bowen except for episodic compensation amounts.

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

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

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

66. By its terms, the Burrell Agreement has significantly limited Mr. Burrell's employment rights. Since January 16, 2009, Mr. Burrell has, with very limited exceptions, been precluded from providing any services on "television and series programming" outside of *Modern*

07/24/13
00287.06640/4741401

1 *Family*. (Burrell Option Agreement, § III, "Exclusivity".) Further, he is barred from having
2 "outstanding commitments which will materially interfere with the complete performance of all of
3 [Mr. Burrell's] obligations," and is further barred from "enter[ing] into any commitment which
4 materially conflicts or interferes with [Mr. Burrell's] obligations to Fox (which shall at all times be
5 in first position) or with any rights granted to Fox pursuant to [the Burrell Agreement]." (*Id.*)

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

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

21 **FIRST CAUSE OF ACTION**

22 **(Declaratory Relief)**

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

24 69. Plaintiffs re-allege and incorporate by reference each and every allegation
25 contained in paragraphs 1-68.

26 70. An actual and immediate controversy has arisen and now exists between Plaintiffs
27 and Fox regarding the legality and effect of the employment agreement (the "Agreements")

28

1 between Plaintiffs and Fox related to Plaintiffs' services rendered in connection with the television
2 series *Modern Family*.

3 71. Plaintiffs seek a declaration of their rights under California Code of Civil
4 Procedure section 1060, that the Agreements violate the Seven-Year Rule under California Labor
5 Code section 2855(a), and therefore are illegal and wholly void. See Cal. Labor Code § 2855(a)
6 (personal service contracts are barred from having terms beyond seven years); Downey Venture v.
7 LMI Ins. Co., 66 Cal. App. 4th 478, 511 (1998) ("An illegal contract is void; it cannot be estopped
8 to deny its validity"); Homami v. Iranzadi, 211 Cal. App. 3d 1104, 1109-10 (1989) ("The general
9 principle is well established that a contract founded on an illegal consideration, or which is made
10 for the purpose of furthering any matter or thing prohibited by statute, or to aid or assist any party
11 therein, is void. This rule applies to every contract which is founded on a transaction malum in se,
12 or which is prohibited by a statute on the ground of public policy.").

13 72. A judicial declaration is necessary and appropriate at this time in order that the
14 parties ascertain their rights and obligations to each other and to avoid the hardship caused on the
15 parties by a protracted dispute and further delay, particularly in light of the upcoming *Modern*
16 *Family* season slated to begin filming this summer.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs respectfully request the following relief:

19 1. A declaratory judgment that the Agreements exceed terms of seven years, and
20 violate the Seven-Year Rule under California Labor Code section 2855(a);

21 2. A declaratory judgment that the Agreements are wholly void;

22 3. All costs and attorneys' fees associated with bringing this suit; and

23 4. Such other and further relief as this Court may determine to be just and proper.

24 //

25 //

26 //

27 //

28 //

5/7/24/12

1 DATED: July 24, 2012

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

2
3
4 By 

Jeffery D. McFarland

Attorneys for Sofia Vergara, Sofia Vergara
Enterprises, Inc., Jesse Tyler Ferguson, Cape and
Helmet, Inc., Eric Stonestreet, Eric Stonestreet,
Inc., Julie Bowen, Apparently So, Inc., Ty
Burrell, and Desert Whale Productions, Inc.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DEADLINE.COM

07/24/12

00287.06640/4741401