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LMNO CABLE GROUP, INC.
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 LMNO CABLE GROUP, INC., a
12 California corporation,

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14 Plaintiff,

15 v.

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17 DISCOVERY COMMUNICATIONS,
18 LLC, a Delaware limited liability
company,

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20 Defendant.
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Case No. 2:16-cv-4543

COMPLAINT FOR

(1) COPYRIGHT INFRINGEMENT;

**(2) UNFAIR COMPETITION
[Lanham Act §43(A)];**

**(3) COMMON LAW TRADEMARK
INFRINGEMENT;**

**(4) BREACH OF WRITTEN
CONTRACT;**

**(5) BREACH OF CONTRACT
[Implied Covenant Of Good Faith And
Fair Dealing];**

**(6) BREACH OF IMPLIED-IN-FACT
CONTRACT;**

**(7) UNFAIR COMPETITION
[B.&P.C. §17200]**

(8) BREACH OF CONTRACT; AND

**(9) BREACH OF WRITTEN
CONTRACT.**

1 One of the foremost names in cable television production, Plaintiff LMNO Cable
2 Group, Inc. (“LMNO”) has a twenty-five year history of producing high-quality shows.
3 Some of LMNO’s early high-profile programs include: the CBS classic, *Kids Say the*
4 *Darndest Things*, FOX’s *Guinness World Records: Primetime*, and ABC’s *Behind*
5 *Closed Doors*. For more than a decade, LMNO has also produced successful shows
6 broadcast by Defendant Discovery Communications, LLC (“Discovery”), including *The*
7 *Little Couple* – which is now in its eighth season.

8 In late 2015, LMNO learned that it was the victim of a crime. LMNO discovered
9 that its accountant, who it entrusted with all of the books and records of the company,
10 had engaged in a long-running fraud and embezzlement scheme that included falsifying
11 the records of the company to hide hundreds of thousands of dollars in transfers to
12 himself. When this conduct came to light, the accountant stole the records of LMNO in
13 order to prevent LMNO from obtaining evidence against him, and attempted to extort
14 money from LMNO. In particular, the accountant demanded that LMNO pay him more
15 than \$800,000, or he would irreparably damage LMNO’s reputation and business by
16 taking his doctored books to LMNO’s largest customer and use his own fraudulent
17 creations to destroy LMNO’s business relationship.

18 LMNO chose to stand up for itself, and refused to pay this illegal ransom.
19 Instead, it reported the accountant to the authorities. In its darkest hour, however, what
20 LMNO did not count on was treachery. Instead of standing by the side of its long-time
21 business partner, Discovery saw an opportunity to enrich itself at LMNO’s expense.
22 Working with, and using documents prepared by a criminal extortionist, Discovery
23 chose this moment to manufacture bad faith claims surrounding the very books and
24 records that it had received from a criminal in a scheme to steal “*The Little Couple*”
25 television show from LMNO, and put LMNO out of business.

26 By this Complaint, LMNO seeks redress for Discovery’s brazen and unlawful
27 acts, which violate LMNO’s copyrights, LMNO’s contractual rights and both the federal
28 and state law of unfair competition.

1 **Jurisdiction and Venue**

2 1. This Court has jurisdiction over the subject matter of this action pursuant to
3 17 U.S.C. 501, 15 U.S.C. 1121, 28 U.S.C. 1331, 1338 and 1367(a). Venue is proper in
4 this District under 28 U.S.C. 1391(b) and 1400(a).

5 2. This Court has personal jurisdiction over Discovery because it conducts
6 substantial business in this district, including its contracts and other dealings with
7 LMNO at issue herein.

8
9 **The Parties**

10 3. LMNO is a California corporation with its principal place of business in
11 Los Angeles, California. LMNO is a full-service television production company, which
12 has produced Emmy Award-winning, hit programs for network, cable, and syndicated
13 television.

14 4. Discovery is a Delaware limited liability company with its principal place
15 of business in Silver Spring, Maryland. Discovery distributes television programming
16 through its cable television stations, including TLC.

17
18 **LMNO's History with Discovery**

19 5. Since approximately 1999, LMNO has been producing television programs
20 for distribution on Discovery's cable networks.

21 6. Through this relationship, LMNO has produced more than two dozen series
22 and innumerable specials that have been broadcast on Discovery's networks, including
23 *Unusual Suspects* (ID), *Amazing Medical Stories* (TLC), and *The Little Couple* (TLC).

24 7. Having recently completed its eighth season, LMNO's critically-acclaimed
25 and award-winning series *The Little Couple* has been the top-rated program on
26 Discovery's TLC network.

1 8. Following the success of *The Little Couple*, the LMNO-produced program
2 *7 Little Johnstons* premiered on TLC in March 2015. After a successful first season,
3 LMNO has been in the process of shooting the anticipated Season 2 of this series.

4 9. Capitalizing on the success of LMNO's true-crime series *Unusual Suspects*,
5 which has now completed eight seasons on ID, LMNO's *Killer Confessions* premiered
6 in 2015. LMNO has also recently completed shooting the first season of the anticipated
7 series *Speaking for the Dead*.

8
9 **LMNO's Accountant**

10 10. For many years, LMNO's accounting (including its internal books and
11 records) was performed by a small accountancy firm and its founding partner. In early
12 2012, the founding partner died, and the firm was taken over by his son.

13 11. The son held himself out to be a licensed CPA, fully capable of performing
14 the services that the father had performed for many years. LMNO accepted the son's
15 representations, and allowed him full access and control over LMNO's books and
16 records. For years, this purported accountant was in charge of every aspect of the
17 company's books, including its check and cost records, and its tax returns.

18 12. In late 2015, LMNO discovered that its accountant had committed
19 numerous acts of malfeasance. He had embezzled money from the company by paying
20 himself unauthorized checks, and then covered up this theft by altering the company's
21 books to hide the existence and/or details of the payment. He failed to properly keep
22 the company's books in a number of respects, either as part of his scheme to hide his
23 embezzlement or through general malpractice. He failed to file tax returns. LMNO
24 discovered that, despite written representations, he was never actually a licensed CPA.

25 13. When the malfeasance came to light, the accountant sought to hide the
26 evidence of his unlawful conduct by confiscating all of LMNO's books and records, and
27 refusing to return them. The accountant (hereinafter "the Criminal Extortionist")
28 attempted to extort money from LMNO by demanding that LMNO pay him more than

1 \$800,000, or he would ruin LMNO’s business relationships by taking his own doctored
2 books to LMNO’s customers and suggesting that LMNO had acted improperly in its
3 accounting – when, in fact, the Criminal Extortionist had created the books and records
4 in the first place, and the veracity of their contents could not be verified in light of his
5 misconduct.

6 14. LMNO refused to bow to this criminal scheme. It did not pay the
7 demanded ransom. Instead, LMNO retained legal counsel and ultimately reported the
8 Criminal Extortionist to the federal authorities.

9 15. In a last ditch effort to hide the evidence of his misconduct, the Criminal
10 Extortionist tried to dispose of LMNO’s accounting records by throwing them in
11 dumpsters and hiring someone to purposefully mix the papers so that the records could
12 not be recreated. LMNO discovered the remains of its books and records in this
13 condition:



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Discovery’s Work With The Criminal Extortionist

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25 16. On information and belief, the Criminal Extortionist contacted Discovery
26 and offered to provide Discovery with stolen records that he had taken from LMNO,
27 including records that he had intentionally doctored to hide his own embezzlement and
28 malfeasance. Rather than report the Criminal Extortionist’s unlawful conduct to

1 LMNO, on information and belief, Discovery accepted the stolen information from the
2 Criminal Extortionist, and sought to use it for its own benefit.

3 17. On information and belief, Discovery communicated with and acted in
4 concert with the Criminal Extortionist to manufacture false claims against LMNO
5 relating to the very accounting records that the Criminal Extortionist had doctored and
6 then stolen.

7 18. On information and belief, as part of this scheme, Discovery sought to use
8 the stolen records, and other information gleaned from its dealings with the Criminal
9 Extortionist, for the purpose of creating leverage against LMNO in a bad faith attempt
10 to steal LMNO's shows, including *The Little Couple*.

11 19. On information and belief, as part of this scheme, Discovery asserted that
12 LMNO had failed to maintain books and records for the various shows that LMNO was
13 producing for Discovery, despite the fact that Discovery knew full well that the books
14 and records had been stolen by the Criminal Extortionist who was working with
15 Discovery.

16 20. On information and belief, Discovery sought to use this scheme to steal the
17 crown jewel of LMNO's current productions – *The Little Couple*.

18 21. On information and belief, Discovery had recognized for some time that
19 *The Little Couple* was a highly valuable television show, and that Discovery could
20 realize substantially greater economic value if it owned and produced the show itself –
21 in other words, if it could somehow take the show away from LMNO.

22 22. On information and belief, Discovery seized the opportunity presented to it
23 by the Criminal Extortionist and sought to force LMNO to hand over the rights to the
24 show that LMNO had created and carefully nurtured for years.

25
26 **Discovery's Scheme to Steal *The Little Couple***

27 23. LMNO created the original concept for *The Little Couple* in the fall of
28 2008. Originally entitled "The Little Big Year," LMNO envisioned a show featuring

1 the professional and family tribulations of a newly married couple who both have a
2 form of skeletal dysplasia, more commonly known as dwarfism. In late 2008, LMNO
3 produced a television pilot of this program entitled “*The Little Couple: Just Married.*”

4 24. Because Discovery was distributing several LMNO-produced shows,
5 LMNO offered the series to Discovery, which agreed to distribute the show. In
6 November 2008, LMNO and Discovery entered into an original contract pursuant to
7 which Discovery was granted certain distribution rights to exhibit the show on its cable
8 television channel.

9 25. Over the course of many years, Discovery has ordered additional seasons
10 of *The Little Couple*, each of which is documented by additional contracts that relate to
11 each specific set of episodes for an individual season.

12 26. In negotiating agreements for a season of television shows, Discovery
13 would generally tell LMNO how much it was willing to pay to obtain the right to
14 distribute that particular season of shows. In the early years, Discovery would
15 sometimes offer to pay a percentage of the negotiated and agreed upon “budget amount”
16 for a show, which represented the parties’ mutual understanding of the value of the
17 episodes. In later years, Discovery would be even more direct and simply offer to pay a
18 flat fee to LMNO for each episode that LMNO would produce and then deliver to
19 Discovery for exhibition on Discovery’s channels.

20 27. So, for example, when Discovery negotiated with LMNO for Season 7 of
21 *The Little Couple*, the agreement (which was always drafted by Discovery’s legal
22 department) states that “The parties acknowledge and agree that for the Season 7
23 Additional Episodes, [Discovery’s] Budget Contribution shall be a **Flat Fee of USD**
24 **\$127,035 per half-hour Episode.**” Discovery and LMNO agreed and understood that
25 the “Flat Fee” payment was a negotiated price per-episode that Discovery offered and
26 agreed to pay irrespective of the actual cost of the episode.

27 28. In some of the most recent shows and seasons, Discovery’s “flat fee”
28 language was even more explicit. So, for example, in the production and distribution

1 contract for *Speaking For The Dead*, the payment clause calls for Discovery to pay to “a
2 **‘Flat Fee’ equal to ... \$380,000 per episode. Accordingly: Producer is responsible**
3 **for all overages ... and retains all underages (i.e., savings).”**

4 29. Thus, it was agreed, understood and explicit in both the contract documents
5 and the course of dealing between Discovery and LMNO that Discovery was paying a
6 set price – a “**flat fee**” – for the right to receive and distribute each of the contracted
7 episodes, and that LMNO bore the risk of cost overruns, but also the benefit of cost
8 savings that might accrue because of LMNO’s work as the producer of the shows.

9 30. When Discovery concocted its scheme to steal *The Little Couple* show
10 from LMNO, it took advantage of the fact that it knew (from its communication with
11 the Criminal Extortionist) that the Criminal Extortionist had stolen all of LMNO’s
12 original books and records, and dumped them so LMNO could not readily access the
13 records. Moreover, because the Criminal Extortionist had doctored the books in order
14 to hide his own malfeasance, LMNO could not be certain which portions of the
15 scattered pages of its records were even reliable.

16 31. On information and belief, Discovery seized on this information – which it
17 only had because it was acting in concert with a criminal, and because it had received
18 stolen property from that criminal – and demanded that LMNO turn over all of its
19 historical accounting records as part of a surprise audit demand that it sprung on LMNO
20 without any of the notice required in the parties’ contracts. Of course, Discovery was
21 aware that LMNO could not provide immediate access to the books and records because
22 the Criminal Extortionist had stolen the records and left them in disarray.

23 32. Next, Discovery asserted that LMNO had improperly charged Discovery
24 for many of the shows that LMNO had produced, when in fact, Discovery’s own
25 contracts (drafted by its own in-house lawyers) specified that Discovery was paying a
26 “flat fee” per episode, which would not be adjusted up or down based on costs.

27 33. Discovery’s actions were all designed to drum up the pretense of a contract
28 dispute, so that Discovery could claim to “terminate” the contracts and distance itself

1 from LMNO. On June 17, 2016, Discovery did exactly that: sending notices of
2 termination on six different series, including *The Little Couple*, *7 Little Johnstons*, *Killer*
3 *Confessions*, *Speaking For The Dead*, *Unusual Suspects* and *Hollywood & Crime*.
4 Tellingly, Discovery purported to terminate shows on which it had never even seen the
5 books, shows that were newly in production for which current reports had not yet been
6 made, shows that were finished and delivered four years ago, and shows on which it had
7 refused to sign a written contract.

8 34. In reality, all of this was a smokescreen for what Discovery was really
9 after: the ability to steal *The Little Couple* and produce the show behind LMNO's back.

10 35. Without telling LMNO, on information and belief, Discovery secretly
11 began shooting new episodes of *The Little Couple* on its own more than a month ago as
12 part of its scheme to take the show.

13 36. On information and belief, Discovery has secretly told the actors on the
14 show not to communicate with LMNO about Discovery's plans.

15 37. On information and belief, Discovery has begun leaking to the press and
16 people in the television industry the information that it obtained from the Criminal
17 Extortionist in an effort to damage LMNO's reputation, and prevent LMNO from
18 standing up for its ownership of the show.

19 38. Discovery's actions, as alleged herein, were wrongful, and in violation of
20 LMNO's ownership rights under Copyright law, as well as LMNO's rights under
21 contract and unfair competition law.

22 39. Discovery's actions have irreparably damaged the business and reputation
23 of an award-winning family-owned business in Los Angeles. As result of Discovery's
24 actions, LMNO has been forced to lay off certain staff, and cut short the production of
25 two shows at a cost of hundreds of thousands of dollars. By this Complaint, LMNO
26 seeks redress for Discovery's wrongful conduct as alleged herein.

FIRST CLAIM FOR RELIEF

Copyright Infringement

[17 U.S.C. § 501 et seq.]

40. LMNO repeats and realleges each of the allegations set forth in paragraphs 1 through 39, above, as though set forth in full herein.

41. LMNO is the creator, registered owner and author of the copyrighted works in consisting of the many seasons of *The Little Couple* (the “Copyrighted Programs”), and therefore is entitled to the exclusive rights under copyright law associated with each of these works, including all rights set forth in 17 U.S.C. § 106 with respect thereto.

42. LMNO has registered copyrights with the United States Copyright Office for the episodes of the Copyrighted Programs. LMNO’s registered copyrights include, *inter alia*, Registration Numbers PA0001848149, PA0001918249, PA0001918243, PA0001908739, and PA0001908886.

43. Discovery has unlawfully infringed on LMNO’s copyrights in the Copyrighted Programs and the related creative material authored by LMNO in connection with the creation of Copyrighted Programs in at least the following ways:

44. Discovery has unlawfully, and without permission or authority, copied portions of the Copyrighted Programs, and used those portions to create unauthorized derivative works consisting of reassembled footage taken verbatim from different portions of the Copyrighted Programs, rearranged and repackaged by Discovery as a three-hour show entitled *The Little Couple: The Adoption Years* (“the Infringing Episode”).

45. Without authorization, Discovery distributed and broadcast, or caused to be broadcast, the Infringing Episode in violation of LMNO’s rights under copyright law.

46. Discovery further wrongfully claimed ownership in the Infringing Episode, despite having full knowledge that all of the original footage was part of the Copyrighted Programs owned by LMNO.

1 47. In early 2016, LMNO created a story outline and treatment for a proposed
2 special episode of *The Little Couple* that included a trip to Scotland and England.
3 LMNO's outline and treatment described all of the major features of the proposed
4 episode, including the locations, story-lines and likely edits. Like all of the episodes of
5 *The Little Couple*, the proposed special episode incorporates elements, themes,
6 characters, prior story lines, and the format and structure that have been created by
7 LMNO in connection with the Copyrighted Programs. In short, the proposed special
8 would be a derivative work of both (a) the prior Copyright Programs and (b) the story
9 outline and treatment devoted to the proposed special itself. LMNO has filed an
10 application to register the copyright for the story outline and treatment for the proposed
11 special episode with the United States Copyright Office, Application Case No. 1-
12 3715342338.

13 48. LMNO disclosed the story outline and treatment to Discovery, and
14 proposed that LMNO produce the special episode as a "one-off" television special.

15 49. Discovery agreed to LMNO's proposal, and informed LMNO that it would
16 pay LMNO for the right to distribute the proposed special.

17 50. Once Discovery launched its scheme to steal *The Little Couple*, however,
18 Discovery changed course and informed LMNO that it would only pay for the right to
19 distribute the proposed special if LMNO agreed to sign over all ownership rights in the
20 proposed special to Discovery. LMNO (which had created the show and the proposed
21 special, and owned all of the episodes over the course of eight seasons) naturally refused
22 to give up the ownership rights in the special. Discovery then cancelled its order for
23 the special, and instructed LMNO to take no further actions with respect to the
24 production of the proposed special.

25 51. Without informing LMNO, however, Discovery secretly arranged to shoot
26 the proposed special episode of *The Little Couple* without LMNO's knowledge, consent
27 or participation.
28

1 52. On information and belief, Discovery has shot the footage for the special
2 Scotland and England episode of *The Little Couple*, and edited that footage into a
3 special program (“the Infringing Special”) that it intends to air as part of the culmination
4 of its scheme to steal *The Little Couple* from LMNO.

5 53. The Infringing Special constitutes an unauthorized derivative work of the
6 Copyrighted Programs and the story outline and treatment authored by LMNO, and thus
7 infringes LMNO’s rights under copyright law.

8 54. On information and belief, Discovery has gone even further and has
9 secretly commenced filming new episodes of *The Little Couple* for a ninth season with
10 the purpose and intent of stealing the show from LMNO.

11 55. On information and belief, Discovery’s new episodes of *The Little Couple*
12 (“the Infringing Season”) include the same or substantially similar elements, format,
13 structure, characters, themes, mood, pace, plot, and settings as LMNO’s Copyrighted
14 Programs. Discovery’s Infringing Season, therefore, is substantially similar to LMNO’s
15 Copyright Programs, and constitutes infringement of LMNO’s rights under copyright
16 law.

17 56. On information and belief, Discovery’s Infringing Season incorporates at
18 least the following elements which are substantially similar to, if not virtually identical
19 to, LMNO’s Copyrighted Programs:

- 20 a. each episode of the Infringing Season features the same characters and
21 actors as LMNO’s Copyrighted Programs;
- 22 b. each episode of the Infringing Season features the same themes, settings,
23 locations, format, and general atmosphere and tone as LMNO’s
24 Copyrighted Programs; and
- 25 c. each episode of the Infringing Season continues the overall plotlines and
26 storylines as LMNO’s Copyrighted Programs, including family vacations,
27 medical issues, job issues and other story and plot elements that were
28 introduced during LMNO’s Copyrighted Programs.

1 57. Discovery's conduct as alleged above, including its production and
2 distribution of the Infringing Episode, the Infringing Special and the Infringing Season,
3 constitutes copyright infringement pursuant to 17 U.S.C. § 501, *et seq.*

4 58. Discovery's infringement was willful, and with knowledge of LMNO's
5 rights in the Copyright Programs.

6 59. LMNO has been damaged by, and Discovery has profited from, such
7 infringement in an amount to be proven at trial.

8
9 **SECOND CLAIM FOR RELIEF**

10 **Unfair Competition**

11 **[Lanham Act § 43(a); 15 U.S.C. § 1125(a)]**

12 60. LMNO repeats and realleges each of the allegations set forth in paragraphs
13 1 through 59, above, as though set forth in full herein.

14 61. LMNO is the creator, producer and source of the long-running series of
15 entertainment content known to the public by the mark "THE LITTLE COUPLE." Through
16 years of association between the mark "THE LITTLE COUPLE" and LMNO's
17 entertainment content, consumers have come to immediately recognize and associate the
18 mark "THE LITTLE COUPLE" with entertainment programming created and produced by
19 LMNO.

20 62. Discovery has historically served only as a distributor of the entertainment
21 content associated with the mark "THE LITTLE COUPLE" – a mere conduit between the
22 actual creator, producer and source, which is LMNO, and the retail delivery of the
23 content through consumer-level cable providers, such as Time Warner Cable. Because
24 trademarks and service marks serve as a source-identifier, the common law trademark
25 rights in "THE LITTLE COUPLE" legally belong to the source of the entertainment
26 content, which is LMNO, the producer of the show.

27 63. As part of its scheme to steal *The Little Couple* show from LMNO, on
28 information and belief, Discovery has decided to use the mark "THE LITTLE COUPLE" in

1 connection with its production, marketing and distribution of the Infringing Special and
2 the Infringing Season.

3 64. Thus, in connection with the sale of goods and services, on information and
4 belief, Discovery has used in commerce and in competition with LMNO the mark “THE
5 LITTLE COUPLE” and substantially similar marks to designate and market the Infringing
6 Special and the Infringing Season, which uses are likely to cause confusion, and/or
7 cause mistake, and/or deceive consumers concerning the affiliation, sponsorship,
8 connection and/or association between LMNO and Discovery, and/or LMNO’s
9 sponsorship, affiliation and/or approval of Discovery’s Infringing Special and Infringing
10 Season. Consumers are likely to believe that Discovery’s Infringing Special and
11 Infringing Season come from the same source, and are affiliated, connected, or
12 associated with LMNO, which was the source of every episode of Seasons 1-8 of *The*
13 *Little Couple*.

14 65. Discovery’s actions have caused, and unless enjoined will continue to
15 cause, substantial and irreparable injury to LMNO for which LMNO has no adequate
16 remedy at law, including but not limited to substantial and irreparable injury to the
17 goodwill and reputation associated with the “THE LITTLE COUPLE” mark.

18 66. Discovery’s actions have been willful, intentional, and malicious, and have
19 been done with knowledge and intent to confuse the public, for the purpose of injuring
20 LMNO and reaping the benefits of LMNO’s goodwill and reputation associated with
21 “THE LITTLE COUPLE” mark.

22 67. As a result of Discovery’s actions, LMNO has been damaged by, *inter alia*,
23 the loss of its ability to sell and market further episodes of the *The Little Couple* under
24 the “THE LITTLE COUPLE” mark and the loss of goodwill and reputation associated with
25 the “THE LITTLE COUPLE” mark.

26 68. LMNO is entitled to injunctive relief, recovery of Defendant’s profits,
27 actual damages, treble profits and damages, costs, and reasonable attorneys’ fees.
28

1 Moreover, this is an exceptional case authorizing attorneys' fees under 15 U.S.C.
2 §1117(a).

3
4 **THIRD CLAIM FOR RELIEF**

5 **Common Law Trademark Infringement**

6 69. LMNO repeats and realleges each of the allegations set forth in paragraphs
7 1 through 68, above, as though set forth in full herein.

8 70. LMNO is the creator, producer and source of the long-running series of
9 entertainment content known to the public by the mark "THE LITTLE COUPLE." Through
10 years of association between the mark "THE LITTLE COUPLE" and LMNO's
11 entertainment content, consumers have come to immediately recognize and associate the
12 mark "THE LITTLE COUPLE" with entertainment programming created and produced by
13 LMNO.

14 71. Discovery has historically served only as a distributor of the entertainment
15 content associated with the mark "THE LITTLE COUPLE" – a mere conduit between the
16 actual creator, producer and source, which is LMNO, and the retail delivery of the
17 content through consumer-level cable providers, such as Time Warner Cable. Because
18 trademarks and service marks serve as a source-identifier, the common law trademark
19 rights in "THE LITTLE COUPLE" legally belong to the source of the entertainment
20 content, which is LMNO, the producer of the show.

21 72. As part of its scheme to steal *The Little Couple* show from LMNO, on
22 information and belief, Discovery has decided to use the mark "THE LITTLE COUPLE" in
23 connection with its production, marketing and distribution of the Infringing Special and
24 the Infringing Season.

25 73. Thus, in connection with the sale of goods and services, on information and
26 belief, Discovery has used in commerce and in competition with LMNO the mark "THE
27 LITTLE COUPLE" and substantially similar marks to designate and market the Infringing
28 Special and the Infringing Season, which uses are likely to cause confusion, and/or

1 cause mistake, and/or deceive consumers concerning the affiliation, sponsorship,
2 connection and/or association between LMNO and Discovery, and/or LMNO's
3 sponsorship, affiliation and/or approval of Discovery's Infringing Special and Infringing
4 Season. Consumers are likely to believe that Discovery's Infringing Special and
5 Infringing Season come from the same source, and are affiliated, connected, or
6 associated with LMNO, which was the source of every episode of Seasons 1-8 of *The*
7 *Little Couple*.

8 74. Discovery's actions have caused, and unless enjoined will continue to
9 cause, substantial and irreparable injury to LMNO for which LMNO has no adequate
10 remedy at law, including but not limited to substantial and irreparable injury to the
11 goodwill and reputation associated with the "THE LITTLE COUPLE" mark.

12 75. Discovery's actions have been willful, intentional, and malicious, and have
13 been done with knowledge and intent to confuse the public, for the purpose of injuring
14 LMNO and reaping the benefits of LMNO's goodwill and reputation associated with
15 "THE LITTLE COUPLE" mark.

16 76. As a result of Discovery's actions, LMNO has been damaged by, *inter alia*,
17 the loss of its ability to sell and market further episodes of the *The Little Couple* under
18 the "THE LITTLE COUPLE" mark and the loss of goodwill and reputation associated with
19 the "THE LITTLE COUPLE" mark.

20
21 **FOURTH CLAIM FOR RELIEF**

22 **Breach of Written Contract**

23 **[October 24, 2014 Formal Assignment Contract]**

24 77. LMNO repeats and realleges each of the allegations set forth in paragraphs
25 1 through 76, above, as though set forth in full herein.

26 78. In 2014, Discovery requested that LMNO allow Discovery to directly
27 employ the actors for *The Little Couple*. LMNO consented to this request, but insisted
28 that the assignment of the actors' agreement include a specific non-circumvention clause

1 that prevents Discovery from trying to create a related show or derivative work without
2 using LMNO as the producer.

3 79. In October 2014, LMNO and Defendant entered into a “Formal
4 Assignment” pursuant to which LMNO assigned most of its rights and obligations in the
5 agreement with the actors who appear in *The Little Couple*. Pursuant to the Formal
6 Assignment, LMNO expressly maintained all ownership rights in *The Little Couple*
7 pursuant to the contracts between LMNO and Discovery, including LMNO’s copyrights
8 in the show, and further obtained an agreement by Discovery that it would not attempt to
9 use its direct relationship with the actors to produce programs without LMNO.

10 80. Specifically, the Formal Assignment provides, in relevant part:

11 “[Discovery] agrees that [LMNO] shall be locked on a pay or play basis to:

12 (i) new programs that are derivative works of the Program; (ii) talk shows
13 featuring Jen, Bill or their kids; (iii) children’s shows featuring Jen, Bill, or
14 their kids; and (iv) any other reality specials or programs related to or similar
15 to the Program.”

16 81. The Formal Assignment is a valid, binding, and enforceable written
17 contract between LMNO and Discovery. The “lock” clause of the Formal Assignment,
18 quoted above, requires Discovery to engage LMNO as the Producer on any television
19 program that is a derivative work of the Copyrighted Programs, or is otherwise related
20 to or similar to the Copyrighted Programs.

21 82. LMNO has performed all its obligations under the Formal Assignment.

22 83. As part of its scheme to steal *The Little Couple* show, Discovery has
23 breached the “lock” provision of the Formal Assignment contract by:

- 24 a. Producing the Infringing Special, which is a derivative work of the
25 Copyrighted Programs, and a show that is related to and similar to the
26 Copyrighted Programs, without engaging LMNO as the producer as it was
27 required to do under the “lock” provision; and
28

1 b. Producing the Infringing Season, which is a derivative work of the
2 Copyrighted Programs, and a series of shows that are related to and similar
3 to the Copyrighted Programs, without engaging LMNO as the producer as
4 it was required to do under the “lock” provision.

5 84. As a result of Discovery’s breach, LMNO has been damaged in that it has
6 been deprived of the value it would have received as the producer of the shows,
7 including its profits relating to such shows, its profits from further renewals and
8 continuations of such shows, and the revenues and other value attributable to ownership
9 of the episodes, in an amount to be proven at trial but presently believed to be in excess
10 of \$5,000,000.

11
12 **FIFTH CLAIM FOR RELIEF**

13 **Breach of Contract**

14 **[Production & Distribution Agreement for *The Little Couple*]**

15 85. LMNO repeats and realleges each of the allegations set forth in paragraphs
16 1 through 84, above, as though set forth in full herein.

17 86. LMNO and Discovery are parties to a valid, binding, and enforceable
18 contract that governs LMNO’s license of certain distribution rights to Discovery with
19 respect to *The Little Couple*. The production and distribution contract includes multiple
20 documents, and includes a November 5, 2008 agreement that pertains to LMNO’s grant
21 of a license to Discovery with respect to the first season of *The Little Couple*. The
22 November 5, 2008 agreement is supplemented by a series of amendments, which pertain
23 to the production and distribution of subsequent seasons of *The Little Couple* through
24 the end of Season 8.

25 87. The November 5, 2008 agreement contains a series of provisions that give
26 Discovery an option and a right of first negotiation to order additional seasons of *The*
27 *Little Couple* from LMNO after Season 1. In the event that Discovery does not
28 exercise its option, and the initial negotiations do not materialize into an agreement

1 between the parties for additional episodes, then the November 5, 2008 agreement
2 explicitly provides that LMNO shall be free to enter into negotiations with third parties
3 with respect to the production and distribution of additional episodes of *The Little*
4 *Couple*.

5 88. Discovery did not exercise its option to order additional seasons of *The*
6 *Little Couple* from LMNO after Season 8. On June 17, 2016, Discovery terminated the
7 November 5, 2008 agreement with LMNO with respect to *The Little Couple*, and has
8 instead gone forward with its scheme to steal *The Little Couple* by producing additional
9 episodes without LMNO's participation, authorization or consent.

10 89. Discovery's course of conduct, including its production of the Infringing
11 Season, is a breach of the production and distribution agreement embodied in the
12 November 5, 2008 contract, including the covenant of good faith and fair dealing that is
13 implied in that contract. In particular, Discovery's course of conduct, including its
14 production of the Infringing Season, has destroyed LMNO's ability to obtain the benefit
15 of its underlying rights in the show, including its right under Section 7.G of the
16 November 5, 2008 contract to negotiate with other parties for the production and
17 distribution of additional episodes of *The Little Couple*, because no other potential
18 distributor of *The Little Couple* will engage in such negotiations with LMNO while
19 Discovery is unlawfully producing the Infringing Season.

20 90. As a result of Discovery's breach, LMNO has been damaged in that it has
21 been deprived of the value it would have received as the producer of future episodes of
22 *The Little Couple*, including its profits relating to such shows, its profits from further
23 renewals and continuations of such shows, and the revenues and other value attributable
24 to ownership of the episodes, in an amount to be proven at trial but presently believed to
25 be in excess of \$5,000,000.

1 **SIXTH CLAIM FOR RELIEF**

2 **Breach of Implied Contract**

3 **[Production & Distribution of the Scotland/UK Special]**

4 91. LMNO repeats and realleges each of the allegations set forth in paragraphs
5 1 through 90, above, as though set forth in full herein.

6 92. After the conclusion of Season 8 of *The Little Couple*, LMNO proposed to
7 Discovery that LMNO would shoot a special episode that centered on a family vacation
8 trip to Scotland and England. LMNO prepared a story outline and treatment for the
9 proposed special, and pitched the idea to Discovery in early 2016. Because LMNO
10 owned all of the underlying rights in *The Little Couple*, and because LMNO was the
11 originator, author and creator of the story outline and treatment, LMNO and Discovery
12 understood that Discovery could not and would not utilize the idea of the Scotland and
13 England special episode without LMNO's consent, and without compensating LMNO.

14 93. Discovery initially responded with enthusiasm to the proposal, and
15 approved LMNO's production of the special. However, on information and belief, after
16 communicating with the Criminal Extortionist and concocting its scheme to steal the
17 show from LMNO, Discovery cancelled its order for the special, and informed LMNO
18 that it would not move forward with the show.

19 94. However, without informing LMNO, and without LMNO's consent or
20 authorization, Discovery secretly went ahead and filmed the Infringing Special, which is
21 substantially based on the proposal made by LMNO, and previously approved by
22 Discovery.

23 95. The circumstances and actions of LMNO and Discovery with respect to
24 LMNO's proposal for the Scotland and England special gave rise to an implied-in-fact
25 contract within the meaning of *Desny v. Wilder*, 46 Cal.2d 715 (1956), and Discovery
26 breached that contract by using LMNO's proposal and creating the Infringing Special
27 without compensating LMNO.
28

1 96. As a result of Discovery’s breach of the implied-in-fact contract, LMNO
2 has been damaged in that it has been deprived of the value it would have received as the
3 producer of the Scotland and England special, including its profits relating to such show,
4 and the revenues and other value attributable to ownership of the special, in an amount
5 to be proven at trial, but in no event less than \$250,000.

6
7 **SEVENTH CLAIM FOR RELIEF**

8 **For California Unfair Competition**

9 **[Cal. Bus. & Prof. Code § 17200]**

10 97. LMNO repeats and realleges each of the allegations set forth in paragraphs
11 1 through 96, above, as though set forth in full herein.

12 98. Discovery has engaged in fraudulent and unfair business practices through
13 the use of reproductions, counterfeits, copies, and/or colorable imitations of “THE
14 LITTLE COUPLE” related marks, infringement of LMNO’s copyrighted works, and public
15 representations implying its right to produce and exhibit future episodes of *The Little*
16 *Couple*, which are likely to cause, and have caused, consumer confusion regarding
17 Discovery’s association with LMNO and the source of future *The Little Couple*
18 programs now in production.

19 99. Discovery has engaged in illegal business practices through its violations of
20 the Copyright Act and the Lanham Act.

21 100. Discovery’s unfair and unlawful business practices described above have
22 caused, and unless enjoined will continue to cause, substantial and irreparable injury to
23 LMNO for which LMNO has no adequate remedy at law, including but not limited to
24 substantial and irreparable injury to the goodwill and reputation associated with “THE
25 LITTLE COUPLE” mark. LMNO has further suffered a loss of money and property as a
26 result of Discovery’s unfair competition, including from lost sales, diversion of revenue,
27 loss of goodwill, and diminution of value of “THE LITTLE COUPLE” mark.

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1 101. LMNO is entitled to injunctive relief against Discovery, along with
2 restitution of monies belonging to LMNO that were wrongfully diverted or otherwise
3 obtained by Discovery.

4
5 **EIGHTH CLAIM FOR RELIEF**

6 **Breach of Contract**

7 **[Production and Distribution Agreement for *7 Little Johnstons*]**

8 102. LMNO repeats and realleges each of the allegations set forth in paragraphs
9 1 through 101, above, as though set forth in full herein.

10 103. Discovery and LMNO negotiated the terms of a contractual agreement,
11 pursuant to which LMNO would produce a second season of *7 Little Johnstons*,
12 comprised of eight episodes. In consideration for LMNO's production and grant of
13 distribution rights for these eight episodes, Discovery agreed that it would pay LMNO a
14 flat fee of \$2,640,000.

15 104. In reliance on this agreement, LMNO began filming for these episodes, and
16 has performed all of its obligations under the parties' agreement, except to the extent
17 excused by Discovery's breach.

18 105. Based on the agreements and representations of the parties, and the parties'
19 subsequent actions, including LMNO's substantial performance and Discovery's part
20 performance, and LMNO's substantial reliance, there exists a valid, binding, and
21 enforceable contract between LMNO and Discovery with respect to the production of
22 these episodes of *7 Little Johnstons*, pursuant to which Discovery is obligated to pay
23 LMNO the agreed flat fee sum of \$2,640,000.

24 106. Despite LMNO's reliance and substantial performance, Discovery has
25 repudiated its agreement and obligations, refused to pay LMNO the sums that are due,
26 and recently purported to terminate its agreement with LMNO with respect to *7 Little*
27 *Johnstons*. To date, Discovery has paid only \$2,007,952.90 of its promised \$2,640,000
28

1 fee, while much of the cost of the production has already been paid by LMNO in
2 reliance the parties' agreement.

3 107. Discovery has failed to perform its obligations and promises, and has
4 materially breached the parties' agreement, by failing to make its promised payments,
5 and by repudiating the parties' agreement.

6 108. As a result of Discovery's breach, Discovery has been unjustly enriched
7 and LMNO has been damaged in an amount of at least \$632,000.

8
9 **NINTH CLAIM FOR RELIEF**

10 **Breach of Written Contract**

11 **[Production and Distribution Agreement for *Killer Confessions*]**

12 109. LMNO repeats and realleges each of the allegations set forth in paragraphs
13 1 through 108, above, as though set forth in full herein.

14 110. LMNO and Discovery entered into a production and distribution contract
15 dated August 20, 2014, and a further agreement dated December 8, 2015, pursuant to
16 which LMNO agreed to produce additional episodes of *Killer Confessions*, and
17 Discovery agreed to pay LMNO for distribution rights in such episodes.

18 111. The contractual agreements between LMNO and Discovery with respect to
19 the production and distribution of the second season of *Killer Confessions* are valid,
20 binding, and enforceable written contracts between LMNO and Discovery.

21 112. LMNO has performed all of its obligations under contracts relating to
22 Season 2 of *Killer Confessions*, except those that have been excused by Discovery's
23 breach.

24 113. Discovery has breached the contractual agreement for the production and
25 distribution of Season 2 of *Killer Confessions* by repudiating and terminating the
26 agreement, and thus refusing to pay LMNO the contractual price for the production of
27 and distribution of the episodes. To date, at least \$1,200,000 remains due and owing
28 from Discovery to LMNO under with respect to *Killer Confessions*.

1 114. As a result of Discovery's breach, LMNO has been damaged in an amount
2 to be proven at trial, but in no event less than \$1,200,000.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff LMNO Cable Group, Inc. demands judgment against
6 Defendant Discovery Communications, LLC as follows:

7 A. That Defendant and its agents, servants, employees, representatives,
8 successors, and assigns, and all persons or entities in active concert or participation with
9 Defendants, be enjoined from:

10 (1) copying, distributing or publishing copies of, or derivative works based on,
11 the Copyright Programs, or otherwise directly or indirectly infringing or contributing to
12 the infringement of the Copyright Programs;

13 (2) further use of the mark "THE LITTLE COUPLE," or any reproductions,
14 counterfeits, copies, and/or colorable imitations of "THE LITTLE COUPLE";

15 (3) otherwise unfairly competing with LMNO in any manner; and

16 (4) effecting assignments or transfers, forming new entities or associations or
17 utilizing any other device for the purpose of circumventing or otherwise avoiding the
18 prohibitions set forth in subparagraphs (1) – (4) herein.

19 B. That LMNO be awarded damages for Defendant's copyright infringement
20 and unfair competition as set forth herein, including actual damages, statutory damages,
21 and Defendant's profits derived from its unlawful infringement, together with
22 prejudgment and post-judgment interest.

23 C. That Defendant account for, disgorge and pay over to LMNO all profits
24 realized by Defendant by reason of Defendant's unlawful acts herein alleged and that
25 such award be increased as provided by law.

26 D. For compensatory and consequential damages according to proof on its
27 breach of contract claims in an amount to be proven at trial, but presently believed to be
28 not less than \$7,000,000.

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E. For costs and attorneys fees pursuant to applicable law.

F. For such other and further relief as the Court deems proper, just and equitable.

Dated: June 22, 2016

BARNES & THORNBURG LLP

By _____ /s/ Stephen R. Mick
Stephen R. Mick
Attorneys for Plaintiff
LMNO CABLE GROUP, INC.