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28 **IN THE UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Ninth Inning Inc. dba The Mucky) Case No.
Duck, for itself and for all others)
similarly situated,) **CLASS ACTION**
)

COMPLAINT

1	<i>Plaintiff,</i>)	COMPLAINT FOR DAMAGES AND
2	vs.)	DECLARATORY AND INJUNCTIVE
3	National Football League, Inc.)	RELIEF PURSUANT TO SECTIONS 1
4	345 Park Avenue, 7 th Floor)	AND 2 OF THE SHERMAN ACT
5	New York, NY 10154)	
6	NFL Enterprises LLC)	
7	345 Park Avenue, 7 th Floor)	
8	New York, NY 10154)	
9	DirecTV, LLC)	
10	2230 East Imperial Highway)	
11	El Segundo, California 90245-3504)	
12	and)	
13	DirecTV Holdings LLC)	
14	2230 East Imperial Highway)	
15	El Segundo, California 90245-3504,)	
16	<i>Defendants.</i>)	
17)	

**CLASS ACTION COMPLAINT FOR DAMAGES AND
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, by and through its attorneys, complain and allege as follows:

INTRODUCTION

1. This is a class action brought on behalf of a nationwide Class of bars and restaurants that purchase DirecTV and the NFL SundayTicket—described hereafter as “commercial subscribers”—that challenges an agreement by defendants DirecTV, LLC and DirecTV Holdings LLC (collectively, “DirecTV”) and the National Football

1 League, Inc. and NFL Enterprises LLC (collectively, the “NFL”) to protect and
2 increase the monopoly profits earned by DirecTV and the NFL, on behalf of the 32
3 members of the league, from the live broadcast of Sunday afternoon “out of market”¹
4 NFL games. All allegations herein are based on information and belief except for
5 those relating to Plaintiff and their own actions.
6

7
8 2. Through an exclusive agreement with the NFL, DirecTV is the sole
9 distributor of the live game feeds for these games through DirecTV’s “NFL Sunday
10 Ticket” service. This exclusive deal allows DirecTV to charge supracompetitive prices
11 for NFL Sunday Ticket. As DirecTV says on its own website: “**Only DIRECTV**
12 **brings you every play of every out-of-market game, every Sunday.** Get the action
13 on your TV with NFL SUNDAY TICKET.” (Emphases added).
14

15
16 3. The NFL Sunday Ticket is an out-of-market sports package that carries all
17 NFL games produced by Fox and CBS. Therefore, a viewer can choose to watch any of
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19 _____
20 ¹ Out of market games means NFL games played on Sunday afternoon and not
21 otherwise broadcast on CBS, Fox, or formerly on NBC within the viewer’s television
22 market. The definition also excludes games within the home territory of one of the
23 NFL teams that is not aired on CBS, Fox, or formerly on NBC, due to the team’s
24 failure to sell all of the tickets to the game prior to the blackout deadline for that game.
25 This distinct product, called the NFL Sunday Ticket or Sunday Ticket, has been
26 trademarked by Defendants and is recognized by them as a separate product from NFL
27 games broadcast on Fox, CBS, NBC, ESPN, and NFL Network.
28

1 the out of market Sunday afternoon NFL games, instead of being restricted to the
2 games being telecast by the local Fox Broadcasting or CBS affiliates. Sunday Ticket
3 appeals to bars and restaurants catering to NFL fans with loyalties to teams located
4 throughout the United States. These businesses generate a substantial share of their
5 overall revenue by having the capability to televise multiple professional football
6 games simultaneously in order to attract a diverse range of fans to their establishments
7 on Sunday afternoons during the fall football season. Indeed, DirecTV specifically
8 markets the NFL Sunday Ticket to restaurants and bars, including, for example,
9 advertising such as: “Turn your business into the neighborhood’s go-to spot with the
10 undisputed leader in sports” and “[o]nly DIRECTV has the sports packages you need
11 to attract fans of every stripe with NFL SUNDAY TICKET 2015”

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16 4. DirecTV’s arrangement with the NFL allows the Defendants to restrict the
17 output of, and raise the prices for, the live broadcast of NFL Sunday afternoon out of
18 market games. Every NFL member team owns the initial rights to the broadcast of that
19 team’s games. However, the teams have chosen to collude with each other, and to
20 grant the NFL the exclusive right to market those games outside each team’s home
21 market. But for the NFL teams’ agreement in which DirecTV has joined, teams would
22 compete against each other in the market for NFL football programming, which would
23 likely induce more competitive pricing.
24
25

26 5. DirecTV’s ability to offer Sunday Ticket on an exclusive basis is material
27 to its operations. Indeed, DirecTV’s pending merger with AT&T depends, in
28

1 substantial part, on continued exclusivity of this service. As, DirecTV noted in a filing
2 with the Securities and Exchange Commission on December 3, 2014, “Pursuant to the
3 Merger Agreement, AT&T had the right to terminate the Merger Agreement or not
4 consummate the Merger if we failed to enter into a contract with the NFL providing for
5 exclusive distribution rights for the NFL Sunday Ticket service.” The fact that NFL
6 Sunday Ticket is only available through DirecTV locks commercial subscribers into
7 the DirecTV service throughout the year. Other multi-channel video programming
8 distribution (“MVPD”) competitors, such as Dish Network and Comcast are at a
9 competitive disadvantage, and as a result, DirecTV can extract monopoly rents for its
10 service. *See, e.g.*, Comments of Cox, FCC MB Docket Nos. 12-68, 07-18, 05-192, at 3
11 (June 22, 2012) (“the exclusivity deal causing the most significant market distortion
12 today is DirecTV’s Sunday Ticket package”); Testimony of Roger Noll before the
13 Committee on the Judiciary, United States Senate (Nov. 14, 2006) (“From my
14 perspective, if one adopts the right counterfactual, the right but-for world in the
15 competitive environment, it is obvious that NFL Sunday Ticket is a palliative
16 compared to the output and prices that would exist in a competitive environment.”).

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22 6. As the Court in *Cablevision Sys. Corp. v. FCC*, 649 F.3d 695, 702 (D.C.
23 Cir. 2011) recently noted, for MVPDs, sports programming is “must have and non-
24 replicable.”

25
26 7. In Canada, the NFL Sunday Ticket is distributed on a non-exclusive basis
27 through the following MVPDs: Shaw Cable; Shaw Direct; TELUS; Optik TV; TELUS
28

1 Satellite TV; Bell TV; Access Communications; Cogeco Cable; EastLink Cable;
2 Rogers Cable; Vidéotron; Westman Communications; MTS; and SaskTel.

3
4 8. In the United States, Dish Network, a competing satellite MVPD,
5 concedes that “DirecTV’s flagship exclusive promotion is that they are the only TV
6 provider to offer the NFL Sunday Ticket If you want the NFL Sunday Ticket,
7 then DirecTV wins this battle every time.” However, Dish Network promotes itself as
8 having “more channels with a lower monthly bill” and that “Dish wins versus DirecTV
9 in the price category.” Dish Network and other MVPDs would compete with DirecTV
10 on price and service if they had access to distribution of the Sunday Ticket.
11
12



13 9. A bar or restaurant with a fire code occupancy between 51-100 will pay
14 \$2,314.00 for Sunday Ticket in 2015 (in addition to television package subscription
15 charges, high-definition access fees, and other charges). And the price for Sunday
16 Ticket is higher the larger the establishment’s EVO is. The largest establishments—
17 like Nevada hotels—are charged more than \$120,000 per year for Sunday Ticket.
18
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20 10. The NFL is the most popular professional sports league in the United
21 States. Because DirecTV and the NFL know that Plaintiff and the Class must exhibit
22 these games to effectively run their businesses, DirecTV and the NFL have agreed to
23 set prices for NFL Sunday Ticket that are far higher than a competitive market would
24 allow; it has been estimated that prices are as much as 43% higher because of
25 DirecTV’s exclusive deal with the NFL, yielding excess profits for DirecTV and the
26 NFL in the tens of millions of dollars. But for DirecTV’s agreement to protect the
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1 NFL through its exclusive Sunday Ticket contract, prices for the live broadcast of out
 2 of market Sunday afternoon NFL games would be much lower, as would the cost of
 3 DirecTV programming packages required to be purchased in conjunction with Sunday
 4 Ticket.
 5 Ticket.

6 11. Of the 4 major professional sports in this country—baseball, basketball,
 7 hockey, and football—the only one with an exclusive out of market broadcasting
 8 arrangement is the NFL/DirecTV Sunday Ticket. Major League Baseball (“MLB”),
 9 the National Basketball Association (“NBA”), and the National Hockey League
 10 (“NHL”) all distribute live out of market games through multiple MVPDs, including,
 11 for example, DirecTV, Dish Network, Comcast, Cox Cable and Time Warner.
 12

13 12. As a result, DirecTV does not charge nearly as much for access to MLB
 14 Extra Innings, NBA League Pass, and NHL Center Ice, which provide access to more
 15 games per week over a longer season than the NFL. As the following pricing chart
 16 from DirecTV reflects:
 17
 18

	 NFL Sunday Ticket			 MLB Extra Innings	
EVO	1-PAY	3-PAY	5-PAY	1-PAY	3-PAY
1-50	1,458.00	486.00	291.60	595.00	198.33
51-100	2,314.00	771.33	462.80	805.00	268.33
101-150	4,630.00	1,543.33	926.00	1,120.00	373.33
151-200				1,600.00	533.33
201-350	6,479.00	2,159.67	1,295.80	2,080.00	693.33

351-500	9,258.00	3,086.00	1,851.60	2,400.00	800.00
501-750	10,419.00	3,473.00	2,083.80	2,800.00	933.33
751-1000	13,888.00	4,629.33	2,777.60		
1001-1500	20,832.00	6,944.00	4,166.40	3,600.00	1,200.00
1501-2000	27,774.00	9,258.00	5,554.80		
2001-5000	57,864.00	19,288.00	11,572.80	4,800.00	1,600.00
5001-10000	N/A	34,138.33	20,483.00	6,000.00	2,000.00
10000+	N/A	40,965.00	24,579.00	8,800.00	2,933.33

13. DirecTV and the NFL recently discussed their joint objective of maximizing the supracompetitive prices charged to Plaintiff and similar businesses. The Plaintiff and the Class were targeted because they must purchase Sunday Ticket to attract customers to their bars and restaurants.

14. Plaintiff seeks to enjoin under the federal antitrust laws the ongoing, unreasonable restraint of trade that Defendants have implemented through DirecTV's exclusive deal to broadcast all Sunday afternoon out of market games. They also seek to recover damages for the Class for supracompetitive premiums that DirecTV has charged for NFL Sunday Ticket as a result of this unreasonable restraint of trade.

15. This exclusive agreement eliminates competition by preventing other MVPDs from distributing Sunday afternoon out-of-market NFL games. But for the exclusive agreement between DirecTV and the NFL, additional MVPDs would be willing to compete for consumers of these games—and indeed, three MVPDs, Comcast, Time Warner and Cox, attempted in 2002 to obtain rights to broadcast Sunday Ticket on a non-exclusive basis—which would reduce subscriber costs and

1 enhance competition for viewership—but were told by the NFL that the bid would not
2 be accepted. In addition, but for the horizontal agreement among NFL teams to sell a
3 single package of out-of-market games, those individual NFL teams would compete
4 against each other and drive down the broadcast prices of out-of-market games.
5

6 **JURISDICTION AND VENUE**

7
8 16. Plaintiff brings this action pursuant to Section 16 of the Clayton Act (15
9 U.S.C. § 26), for a violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1-2.
10 This Court has subject matter jurisdiction over those claims pursuant to 28 U.S.C. §§
11 1331 and 1337.
12

13 17. Venue is proper pursuant to 28 U.S.C. § 1391 and 15 U.S.C. § 22. The
14 Defendants transact business in this District, and are subject to personal jurisdiction
15 here.
16

17 18. Class members were injured in this District and DirecTV is headquartered
18 in this District.
19

20 **PARTIES**

21 **Plaintiff**

22 19. Plaintiff Ninth Inning Inc. dba The Mucky Duck is a pub located in San
23 Francisco, California. Plaintiff has purchased the Sunday Ticket from DirecTV in
24 order to attract patrons to its establishment on Sunday afternoons during the NFL's
25 professional football season.
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1 **Defendants**

2 20. Defendant DirecTV Holdings LLC is a Delaware Limited Liability
3
4 Company and has its principal place of business at 2230 East Imperial Highway, El
5 Segundo, California. It the U.S. operating arm of DirecTV, Inc. and describes itself as
6 “a leading provider of digital television entertainment in the United States.” It claims
7 that “[a]s of December 31, 2014, [it] had approximately 20.4 million subscribers.”
8

9 21. DirecTV, LLC is a California Limited Liability Company that has its
10 principal place of business at 2230 East Imperial Highway, El Segundo, California.
11 DirecTV, LLC issues bills to its commercial subscribers.
12

13 22. Until 2015, the NFL was an unincorporated association of 32 American
14 professional football teams in the United States. Each of the 32 NFL member teams,
15 headquartered in various cities across the country, is separately owned and operated,
16 acting in its own economic self-interest and competing in most respects with one
17 another. Those teams are as follows:
18

19

NFL Defendant Team Owner	State of Organization	Team Name (City)
Arizona Cardinals, Inc.	Arizona	Arizona Cardinals
Atlanta Falcons Football Club LLC	Georgia	Atlanta Falcons
Baltimore Ravens Limited Partnership	Maryland	Baltimore Ravens
Buffalo Bills, Inc.	New York	Buffalo Bills
Panthers Football LLC	North Carolina	Carolina Panthers

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1	Chicago Bears Football Club, Inc.	Delaware	Chicago Bears
2	Cincinnati Bengals, Inc.	Ohio	Cincinnati Bengals
3			
4	Cleveland Browns LLC	Delaware	Cleveland Browns
5	Dallas Cowboys Football Club, Ltd.	Texas	Dallas Cowboys
6			
7	Denver Broncos Football Club	Colorado	Denver Broncos
8	Detroit Lions, Inc.	Michigan	Detroit Lions
9			
10	Green Bay Packers, Inc.	Wisconsin	Green Bay Packers
11	Houston NFL Holdings LP	Delaware	Houston Texans
12	Indianapolis Colts, Inc.	Delaware	Indianapolis Colts
13			
14	Jacksonville Jaguars Ltd.	Florida	Jacksonville Jaguars
15			
16	Kansas City Chiefs Football Club, Inc.	Texas	Kansas City Chiefs
17			
18	Miami Dolphins, Ltd.	Florida	Miami Dolphins
19			
20	Minnesota Vikings Football Club LLC	Minnesota	Minnesota Vikings
21			
22	New England Patriots, LP	Delaware	New England Patriots
23			
24	New Orleans Louisiana Saints LLC	Texas	New Orleans Saints
25			
26	New York Football Giants, Inc.	New York	New York Giants
27			
28	New York Jets Football Club, Inc.	Delaware	New York Jets
	Oakland Raiders LP	California	Oakland Raiders
	Philadelphia Eagles Football Club, Inc.	Delaware	Philadelphia Eagles
	Pittsburgh Steelers Sports, Inc.	Pennsylvania	Pittsburgh Steelers

1	San Diego Chargers Football Co.	California	San Diego Chargers
2	San Francisco Forty Niners Ltd.	California	San Francisco 49ers
3			
4	Football Northwest LLC	Washington	Seattle Seahawks
5	The Rams Football Company LLC	Delaware	St. Louis Rams
6			
7	Buccaneers Limited Partnership	Delaware	Tampa Bay
8			Buccaneers
9	Tennessee Football, Inc.	Delaware	Tennessee Titans
10			
11	Washington Football Inc.	Maryland	Washington Redskins

12

13 23. In or about 2015, the NFL incorporated as the National Football League,
14 Inc., and has its headquarters at 345 Park Avenue, 7th Floor, New York, NY 10154. On
15 information and belief, NFL Enterprises LLC was organized to hold the broadcast rights
16 of the 32 NFL teams and license them to MVPDs and other broadcasters, including
17 DirecTV. NFL Enterprises LLC is also located at 345 Park Avenue, 7th Floor, New
18 York, NY 10154

19

20

21 24. Through the NFL, the 32 teams do cooperate in some respects, including
22 by setting game rules and a game schedule, and dividing their member teams into
23 geographic territories and assigning each team a home television territory for
24 broadcasting purposes. The teams have also agreed to allow the NFL to negotiate on
25 their behalf television contracts with national broadcasters, including for the broadcast
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1 of each team's games outside its home territory. These include the Sunday Ticket
2 package sold only through DirecTV.

3
4 25. In *American Needle, Inc. v. National Football League*, 560 U.S. 183
5 (2010), the United States Supreme Court unanimously rejected the NFL's claim that an
6 agreement regarding the joint marketing of club-owned intellectual property was the
7 decision of a "single entity" – the league – not subject to section 1 of the Sherman Act
8 (15 U.S.C. §1). The Court reaffirmed lower court decisions that sports leagues are
9 subject to the antitrust laws and that league owners must refrain from agreements that
10 unreasonably restrain trade. The Court also reaffirmed its own decision in *National*
11 *Collegiate Athletic Ass'n v. Board of Regents*, 468 U.S. 85 (1984), which held that the
12 hallmark of an unreasonable restraint is one that raises price, lowers output, or renders
13 output unresponsive to consumer preference.
14
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17 **TRADE AND COMMERCE**

18 26. The NFL is by far the most significant provider of professional football in
19 the United States. This year's Super Bowl was the most-watched program ever, with
20 114.4 million viewers.
21

22 27. By one estimate, the NFL brings in about \$6 billion annually in total
23 television revenue from all sources. In 2011, the NFL negotiated nine-year extensions
24 of its existing broadcast deals with Fox Broadcasting, CBS and NBC that will run
25 through the 2022 season; According to an August 27, 2014 Bloomberg report, ESPN,
26 Fox Broadcasting, CBS and NBC pay a respectively \$1.9 billion, \$1.1 billion, \$1
27
28

1 billion and \$950 million per year for the right to broadcast NFL games. The *Wall*
2 *Street Journal* reported in September of 2014 that CBS paid \$300 million for the right
3 to telecast NFL “Thursday Night Football” for one year.
4

5 28. The commerce between the NFL and DirecTV is equally imposing. In
6 October of 2014, it was announced that DirecTV and the NFL entered into a new
7 telecasting deal reportedly worth \$1.5 billion annually for the next eight years, a deal
8 that will bring \$8 billion more to the NFL (over four additional years) than its last deal
9 with DirecTV. Through these and other contractual deals, the NFL, its member teams
10 and DirecTV engage in interstate commerce and in activities substantially affecting
11 interstate commerce, and the conduct alleged herein substantially affects interstate
12 commerce.
13
14

15
16 **CLASS ACTION ALLEGATIONS**

17 29. Plaintiff brings this action on behalf of itself and as a class action under
18 Fed. R. Civ. P. 23 on behalf of all persons (excluding Defendants; their present and
19 former parents, subsidiaries, affiliates, and co-conspirators; and government entities)
20 who fall within the following Class (the “Class”):
21

22 All DirecTV commercial subscribers that purchased the NFL Sunday
23 Ticket from DirecTV, or its subsidiaries, at any time beginning four years
24 prior to the filing of this complaint and until the effects of the
25 anticompetitive conduct described herein end.

26 30. DirecTV has sold its Sunday Ticket service to Class members across the
27 nation during the relevant period. Defendants have charged supracompetitive prices for
28

1 that service.

2 31. Due to the nature of the trade and commerce involved, the Class consists
3 of many thousands of members. The exact number and their identities are known to
4 DirecTV.
5

6 32. The Class is so numerous that joinder of all members is impracticable.
7

8 33. There are questions of law and fact common to the Class, including:

9 a. Whether Defendants have engaged in and are continuing to engage
10 in a contract, combination, or conspiracy among themselves to fix, raise,
11 maintain or stabilize prices of video presentations of live Sunday NFL games by
12 eliminating competition among presenters of out-of-market NFL games;
13

14 b. Whether Defendants have engaged in and are continuing to engage
15 in a contract, combination, or conspiracy among themselves to fix, raise,
16 maintain or stabilize prices of the Sunday Ticket by preventing any competitor
17 from offering competing products;
18

19 c. The identities of the participants in the conspiracy;
20

21 d. The duration of the conspiracy and the acts performed by
22 Defendants in furtherance of it;
23

24 e. Whether the alleged conspiracy violated Section 1 of the Sherman
25 Act, 15 U.S.C. § 1;
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1 f. Whether the alleged conspiracy violated Section 2 of the Sherman
2 Act, 15 U.S.C. § 2;

3 g. Whether the conduct of Defendants caused injury to the Plaintiff
4 and the other members of the Class; and

5 h. The appropriate Class-wide measure of damages.

6 34. Plaintiff and the Class were, during the Class period, commercial
7 subscribers to DirecTV who also purchased the Sunday Ticket package. Their claims
8 are typical of the claims of the Class, and the named Plaintiff will fairly and adequately
9 protect the interests of that Class.
10

11 35. Plaintiff is represented by counsel who are competent and experienced in
12 the prosecution of antitrust and class action litigation.
13

14 36. Given the high cost of establishing that Defendants' agreements violated
15 the antitrust laws (including, but not limited to, substantial expert witness costs and
16 attorneys' fees), a class action is the only economically feasible means for any Plaintiff
17 to enforce their statutory rights.
18

19 37. The prosecution of separate actions by individual members of the Class
20 would also create a risk of inconsistent or varying adjudications, establishing
21 incompatible standards of conduct for Defendants.
22

23 38. The questions of law and fact common to the members of the Class
24 predominate over any questions affecting only individual members, including legal and
25 factual issues relating to liability and damages.
26

1 teams' home territories.

2 41. DirecTV distinguishes between residential and commercial subscribers. A
3 portion of its website is labeled "DirecTV For Business" and a further separate and
4 distinct tab for restaurants and bars is located on DirecTV's website, and thus it treats
5 these commercial subscribers as a distinct market.
6

7 42. Although there is undoubtedly some substitution that might occur between
8 in-market broadcasts (broadcasts of games that include the local NFL team) and out-
9 of-market broadcasts, the availability of the in-market games does not compete away a
10 monopolist's ability to raise the price of out-of-market games above competitive
11 levels. This is particularly true in the case of commercial subscribers, where Plaintiff
12 and the Class need to attract customers with loyalty to a diverse range of NFL teams.
13

14 43. New entries that would dilute the market power over NFL video
15 broadcasts created by the collusive agreements at issue here are extremely unlikely.
16

17 44. New entries would require the creation of a new professional league
18 playing American football. Such an undertaking would be enormously expensive,
19 and—based on history—very unlikely to succeed. Even if a new entrant did appear,
20 and even if it were sufficiently successful to sustain itself, it is unlikely that the
21 resulting video product would compete sufficiently with the NFL's broadcasts to
22 dissipate the NFL's monopoly power.
23

24 45. In the 95 years since the NFL's formation in 1920, there have only been a
25 few noteworthy attempts at entry into the market for American football games. Three
26

1 times, once each in the decades of the 1920s, 1930s, and 1940s, an entity calling itself
2 the American Football League (AFL) was formed, briefly operated and then failed. In
3 1960 another entry attempt, also under the name AFL, operated independently for nine
4 years before merging with the NFL in 1970.
5

6 46. The United States Football League (“USFL”) was founded in 1982 and
7 was disbanded in 1986. It sued the NFL for monopolization and won a jury verdict.
8 *USFL v. NFL*, 842 F.2d 1335 (2d Cir. 1988). There have also been failed attempts to
9 start and sustain a women’s football league and various minor leagues or talent
10 development leagues. The closest thing to a successful entry is the Arena Football
11 League, which plays a substantially different type of football—indoor football. The
12 Arena Football League (“AFL”) began play in 1987 and continued through the 2008
13 season. The league was reorganized in 2010 and continues today. However, the games
14 of the AFL are played in spring and summer to avoid competition with NFL football
15 broadcasts. In addition, AFL produces an altogether different sport that does not
16 compete substantially with the NFL for broadcast audience.
17

18 47. NFL teams are well established and popular, with 32 regionally diverse
19 teams in or near almost every major population center in the United States. There are
20 NFL teams within 18 of the 25 most populous metropolitan areas, dramatically limiting
21 the locations and audiences available to new teams or leagues. During the NFL’s long
22 history not one of the few sporadic attempted entries has been successful at competing
23 for NFL football broadcast audiences. It is virtually impossible that a new league will
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1 form to compete away the NFL's monopoly power.

2 48. That monopoly power will only be tempered if the underlying collusive
3 agreement that created the monopoly power is broken up through antitrust authority, or
4 if the exclusive deal that propagates that monopoly power is replaced by non-exclusive
5 licenses.
6

7
8 49. The value of the monopoly power that DirecTV exercises as a result of its
9 exclusive deal with the NFL is once again illustrated by the recent acquisition offer for
10 DirecTV from AT&T. As *Forbes* noted in an October 1, 2014 article:

11
12 DirecTV has renewed its agreement with the National Football League for
13 another 8 years. However, this time around, the price is increased by 50%
14 to around \$1.5 billion a year. This is very expensive and far more than \$1
15 billion that CBS, NBC and Fox pay for their respective NFL coverage.
16 The satellite company offers to its subscribers the popular *NFL Sunday*
17 *Ticket*, a sports package that broadcasts NFL regular season games that
18 are not available on local affiliates. Aided by the NFL, DirecTV has
19 managed to attract customers even at times when other pay-TV operators
20 were losing subscribers. The extended deal with the NFL will aid to the
21 overall subscriber growth for the company. Moreover, the agreement was
22 of key importance for DirecTV, as its proposed merger with AT&T to
23 some extent was dependent on this deal.

24 50. Indeed, AT&T's \$48.5 billion offer to purchase DirecTV contains a clause
25 allowing AT&T to cancel the deal if DirecTV loses its exclusive, collusive contract for
26 Sunday Ticket. That clause provides: "[t]he parties also have agreed that in the event
27 that DirecTV's agreement for the 'NFL Sunday Ticket' service is not renewed
28 substantially on the terms discussed between the parties, the Company [AT&T] may
elect not to consummate the Merger."

1 **B. The NFL and the Broadcast Rights Agreements**

2 51. As noted above, the NFL’s 32 member teams have given the league
3 authority to negotiate pooled rights television deals on their behalf, in exchange for an
4 equal share of the resulting revenues. The broadcast agreements with ESPN, Fox
5 Broadcasting, CBS and NBC were the result. NBC has the right to nationally broadcast
6 prime-time Sunday night games (NBC Sunday Night Football). ESPN has the right to
7 nationally broadcast prime-time Monday night games (Monday Night Football). In
8 addition, the NFL Network—a cable and satellite network owned by the NFL—
9 nationally broadcasts approximately eight regular season games, in partnership with
10 CBS. (These games are usually broadcast during prime-time on Thursday nights.)

11 52. Pursuant to their respective agreements with the NFL, CBS and Fox
12 Broadcasting, these entities televise between ten and fifteen weekly Sunday afternoon
13 games, which commence at either 1 p.m. or 4 p.m. Eastern time. For the first sixteen
14 weeks of the 17-week NFL season, on an alternating basis, one network is designated
15 to broadcast “doubleheader” games in both time slots and the other is designated to air
16 a single game in one of the slots. Both networks are permitted to show doubleheaders
17 the last week of the season. Subject to certain restrictions for games that do not sell
18 out, CBS’s or Fox’s local affiliate (as the case may be) generally must broadcast any
19 Sunday afternoon game being played by a team whose territory falls within the local
20 affiliate’s coverage area (*i.e.*, an “in market game”).

21 53. As a result of this arrangement, during most weeks of the season, only
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1 three of the Sunday afternoon games are broadcast by CBS or Fox, and the specific
2 games available to any given viewer depend on whether the viewer is located within a
3 team's home territory and whether that team is playing on Sunday afternoon.
4

5 **C. DirecTV and NFL Sunday Ticket**

6 54. Beginning in 1994, pursuant to an exclusive agreement with the NFL,
7 DirecTV began to offer its subscribers access to the Sunday afternoon games that are
8 not otherwise available in their market via national broadcasts. These subscribers could
9 purchase NFL Sunday Ticket, a premium subscription-based package that provides
10 access to all Sunday afternoon games broadcast on Fox and CBS, or their predecessors.
11
12

13 55. Through its exclusive agreement with the NFL, DirecTV today takes the
14 live game telecast feeds produced by CBS and Fox and redistributes them without
15 alteration to NFL Sunday Ticket subscribers via DirecTV channels. NFL Sunday
16 Ticket subscribers can thus access all Fox or CBS games, except for the "in market"
17 games broadcast by the local Fox or CBS affiliate, which are available on the Fox or
18 CBS DirecTV channel.
19
20

21 56. Defendants have colluded to sell the out-of-market NFL Sunday afternoon
22 games *only* through DirecTV. Such an arrangement eliminates competition in the
23 distribution of out-of-market Sunday afternoon games and requires anyone wishing to
24 view these games to subscribe to DirecTV and purchase NFL Sunday Ticket at the
25 supracompetitive price dictated by DirecTV.
26
27

28 57. DirecTV's exclusive arrangement with the NFL results in NFL Sunday

1 Ticket subscribers, including the commercial subscriber Plaintiff, paying a higher price
2 for NFL Sunday Ticket (and other access charges) than they otherwise would pay if the
3 agreements were negotiated competitively.
4

5 58. For example, in 2002, when the NFL's first contract with DirecTV for
6 NFL Sunday Ticket expired, several cable companies acting as a consortium offered
7 \$400 million to \$500 million annually for the nonexclusive rights to carry Sunday
8 Ticket. The NFL rejected their bid and instead chose to renew with DirecTV, giving it
9 a five-year exclusive rights deal to Sunday Ticket for about \$400 million per year.
10

11 59. As noted above, in October of 2014, DirecTV renewed its exclusive
12 agreement with the NFL. On information and belief, the renewal requires DirecTV to
13 pay the NFL an average of \$1,500,000,000 (\$1.5 billion) per year for eight years in
14 return for the exclusive right to rebroadcast NFL Sunday afternoon games on
15 Defendants' NFL Sunday Ticket service.
16
17

18 **D. Commercial Subscriptions to NFL Sunday Ticket**

19 60. DirecTV offers restaurants and bars "amazing exclusive sports content
20 like NFL SUNDAY TICKET."
21

22 61. The National Restaurant Association reports that NFL fans stay longer,
23 often 4 hours, and order 3 or more drinks.
24

25 62. Although residential DirecTV subscribers pay a fixed charge for DirecTV
26 service and NFL Sunday Ticket, DirecTV charges commercial subscribers fees based
27 on the maximum occupancy permitted by the local fire code.
28

1 63. In recent years, the price DirecTV charges to commercial subscribers,
2 such as Plaintiff, for Sunday Ticket has increased substantially.

3
4 64. DirecTV charges thousands of dollars to bars and restaurants each season
5 for the Sunday Ticket package. Its fees are based on fire code occupancy — not on
6 actual viewership — so bar and restaurant owners are paying for seats that often go
7 unfilled on a Sunday afternoon.

8
9 65. The least expensive package is \$1,458 per season, and the most expensive
10 runs in excess of \$120,000. The least expensive Sunday Ticket package price
11 increased roughly 11.5% this year and prices have increased substantially during the
12 Class period.

13
14 66. The agreement between the NFL and DirecTV granting DirecTV the
15 exclusive right to distribute the Sunday afternoon out-of-market games is not necessary
16 to ensure telecast of such NFL football games. In fact, CBS and Fox are contractually
17 obligated to produce these games and provide over-the-air broadcast of them in local
18 and/or regional markets.

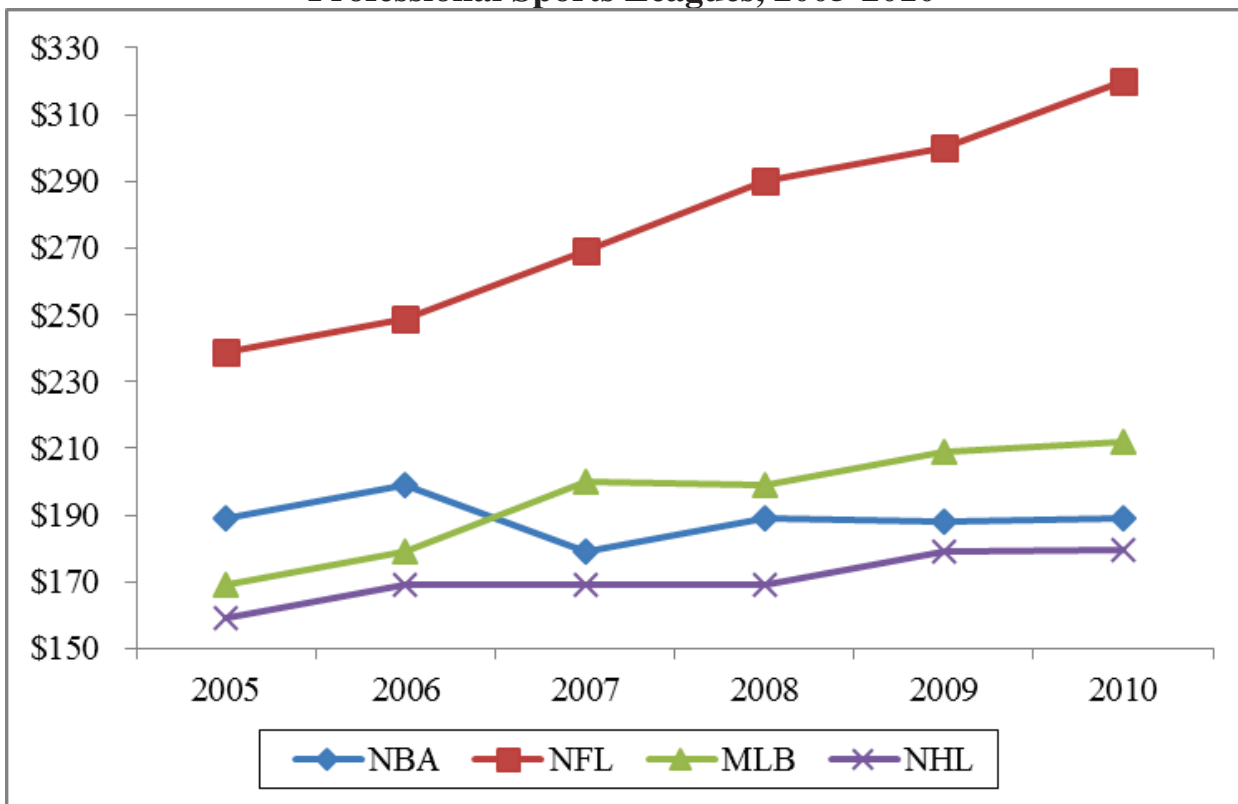
19
20
21 67. As recently as 2014, representatives of DirecTV and the NFL met in
22 person and discussed the fact that commercial users like Plaintiff should be targeted for
23 double-digit price increases because Plaintiff and the Class would have little choice but
24 to pay higher prices due to their need to attract customers.
25
26
27
28

1 68. Sunday Ticket prices for the largest members of the Class have also
2 increased substantially since 2011. For example, prices for certain large commercial
3 subscribers increased in the following amounts:
4

5 2010	\$41,895
6 2011	\$43,990
7 2012	\$43,990
8 2013	\$61,680
9 2014	\$86,446

10 69. Professor Roger Noll charted the price increase for the NFL Sunday
11 Ticket for residential consumers relative to price changes in the out-of-market
12 broadcast packages offered by MLB, the NBA, and NHL. While residential customers
13 pay a fee for the Sunday Ticket service that is lower than commercial subscribers pay,
14 the chart is nonetheless illustrative of the pricing differential that exists between
15 Sunday Ticket (which is distributed exclusively through DirecTV) and Extra Innings,
16 League Pass, and Center Ice, which are distributed through competing MVPDs.
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Pricing for Regular Season Out-of-Market Television Bundle for Major Professional Sports Leagues, 2005-2010



Source: DTV-SP0046512.

E. DirecTV’s Wide-Ranging Role in the NFL’s Scheme

70. DirecTV has done the league important and valuable favors to maintain the NFL’s horizontal agreement, and DirecTV’s exclusivity. As the 2011 NFL season approached, with the NFL’s labor deal with the players’ union expiring and a possible lockout looming, DirecTV agreed to pay the NFL \$1 billion *even if no games were played* that season. No other outlet made such an offer; CBS, ESPN, Fox Broadcasting, and NBC would have paid nothing if no games were played. DirecTV’s promise ensured that owners and league executives would make \$1 billion even if the entire season were cancelled.

1 71. As NFL Commissioner Roger Goodell said in announcing the deal, “[w]e
2 are pleased to continue our partnership with DirecTV....DirecTV and Sunday Ticket
3 have served our fans well for 20 years and continue to complement our broadcast
4 television packages.” DirecTV Chairman, President and CEO Mike White stated that
5 “[t]his new agreement is a testament to the terrific long-term relationship we have with
6 the NFL....NFL Sunday Ticket has always been the centerpiece of DirecTV’s sports
7 leadership and we’re please to continue our relationship with the NFL and be a part of
8 the league’s future growth and success.”

9 72. As noted above, DirecTV recently agreed to sell itself to AT&T in a
10 nearly \$50 billion transaction that has attracted federal antitrust scrutiny. As a
11 condition of the deal, AT&T insisted that DirecTV renew its exclusive deal with the
12 NFL, which DirecTV did in October 2014. If the AT&T-DirecTV deal closes, AT&T
13 will acquire something that CBS, Comcast, ESPN, Fox, NBC, and Verizon do not
14 have—the sole means to distribute out of market Sunday afternoon NFL games.

15 **F. Exclusivity Is Not Warranted**

16 73. The exclusive deal between DirecTV and the NFL for the broadcast rights
17 of NFL Sunday Ticket is necessary to preserve the exercise of market power created by
18 the teams’ anticompetitive agreement to monopolize the sales of broadcast rights.
19 Without the exclusive deal, some of the monopoly power created by the collusion
20 among NFL teams would be dissipated by price competition between DirecTV and one
21 or more distributors of broadcasts to customers.

1 74. There is no evidence to show that agreement was created to assure a
2 quality broadcast of the games offered on Sunday Ticket or to allow the NFL sufficient
3 oversight of games offered on Sunday Ticket or any other reasonable objective.
4 Instead, it seems as if the agreement was created to artificially raise the price of
5 Sunday Ticket.
6

7 75. Indeed, the exclusive content enjoyed by DirecTV is rare. Rob Stecklow,
8 general manager of sports products and marketing for DirecTV, admitted as much:
9 “[i]n this time and era where there’s less and less content that’s exclusive, the NFL still
10 reigns as some of the best content out there.” The only way Plaintiff and other Class
11 members can view Sunday afternoon out-of-market NFL football games is by
12 purchasing NFL Sunday Ticket from DirecTV.
13

14 76. A case study involving Major League Baseball’s (“MLB”) negotiation
15 with DirecTV for an exclusive contract to carry baseball’s Extra Innings package from
16 2007 to 2013 can be used to estimate the price premium that DirecTV pays for NFL
17 Sunday Ticket exclusivity, over the price of the right to carry Sunday Ticket that would
18 prevail under non-exclusive terms. Under the proposed exclusive baseball contract,
19 DirecTV agreed to pay MLB \$700 million over seven years (2007–13) for exclusive
20 rights to carry the Extra Innings package. At that time, a provider called InDemand
21 had made a \$70 million per year (\$490 million over seven years) bid for non-exclusive
22 rights to carry Extra Innings, but this offer was declined by MLB. While MLB and
23 DirecTV were finalizing their exclusive contract, public outcry and Congressional
24

1 pressure forced cancellation of the deal before the season began. With the prospect of
2 exclusivity eliminated, Extra Innings was carried by both DirecTV and InDemand,
3 thereby offering greater consumer choice in broadcasting than would have been
4 possible under an exclusive contract. In the MLB case study, DirecTV's \$700 million
5 offer can be interpreted as the price of an exclusive Extra Innings contract, and
6 InDemand's \$490 million as the price of Extra Innings under a non-exclusive contract.
7
8 Therefore, the estimated overcharge arising from an exclusive contract with DirecTV
9 rather than the non-exclusive, multi-carrier contract proposed by InDemand is 43%.
10

11
12 77. Subscribers to DirecTV have been concerned about the market leverage it
13 has been able to obtain as a result of its deal with the NFL for Sunday Ticket. The
14 following interchange between a subscriber and business columnist Steven Pearlstein
15 was reported in a *Washington Post* article:
16

17 What do you make of the current exclusivity arrangement the NFL has
18 with DirecTV to broadcast games? I find that DirecTV will not sell its
19 'Sunday Ticket' package unless one also purchases a base programming
20 package. I don't feel receiving NFL games on cable is a God-given right,
21 but do feel the NFL is employing monopolistic practices by not opening
22 up the Sunday Ticket to other cable/satellite carriers. When might that
23 arrangement end? Thanks.

24 **Steven Pearlstein:** Right now they are using DirecTV as the instrument
25 for extending their football monopoly to the distribution of games on
26 video. They have made it clear, however, that they want to own the
27 distribution channel themselves and now share their monopoly profits
28 with DirecTV. That is their ultimate game plan, which by the way won't
include a free, over-the-air broadcast of local team games on local
television, unless they are forced to do so.

1 78. Another columnist made a similar point in a May 2014 article on the
2 website of the *Atlantic Monthly*:

3
4 AT&T's bid to acquire DirecTV includes acquisition of the Sunday Ticket
5 exclusive. The *Los Angeles Times* reports that snapping up Sunday Ticket
6 is a key goal of AT&T's. Professional football is among the most valuable
7 brands on the entertainment landscape. What communications corporation
8 wouldn't want a monopoly over a major NFL product?

9
10 But the Sunday Ticket cartel arrangement assures that only a small share
11 of the American population can enjoy viewer choice on Sunday
12 afternoons. The same voters who are taxed to subsidize the NFL, to the
13 tune around \$1 billion annually, are denied a choice about what games to
14 watch.

15
16 Adding insult to injury, anyone in Canada and Mexico can sign up for
17 NFL Sunday Ticket, without cable-carrier restrictions. In those nations,
18 telecommunication law forbids sole-carrier contracts. Inside the United
19 States, the NFL's antitrust waiver allows it to screw consumers with
20 impunity. And screwing consumers with impunity is a prerogative AT&T
21 wants too!

22
23 When the NFL made its first deal with DirecTV, satellite-relayed signals
24 were exotic and broadband cable did not exist: Initially, Sunday Ticket
25 was seen as a niche product for technophiles. A ratings calculation was at
26 work as well. Sunday Ticket is an annualized pay-per-view, and pay-
27 channel viewership does not count in Nielsen ratings. If large numbers of
28 viewers switched from NFL games aired on local affiliates to football
shown on Sunday Ticket, the NFL's Nielsen numbers would decline, even
if actual viewership was rising.

But as football has surged in popularity in the last two decades and
broadband has become available to nearly all the country, observers have
repeatedly expected that Sunday Ticket would become available to
everyone. After all, no one now could think the NFL is losing popularity,
while Nielsen's scoring of new-viewership habits such as next-day DVR
of drama and comedy shows is taken into account in their advertising
rates. Today the NBA and MLB both market their extra-price watch-any-
game services via cable.

1 But DirecTV has repeatedly offered the NFL a king's ransom to renew its
2 monopoly. For the 2014 season, DirecTV will pay the league \$1 billion
3 for about two million Sunday Ticket subscribers: more than to be paid by
4 NBC, whose NFL games average 10 times as many viewers. DirecTV
5 offers the king's ransom because Sunday Ticket is the loss leader that put
6 the company on the map. And the NFL loves a customer that pays too
7 much!

8 DirecTV has done the league important favors to sustain its sweetheart
9 relationship. As the 2011 season approached, with the NFL's labor deal
10 expiring and a lockout possible, DirecTV agreed to pay \$1 billion even if
11 no games were played that season. CBS, ESPN, Fox, and NBC would
12 have owed nothing for no games. The \$1 billion promise from DirecTV
13 afforded the NFL a plush strike fund, ensuring owners and league
14 executives could live in luxury that year even if the season were
15 cancelled.

16 AT&T badly wants the same sweetheart relationship with the NFL, and
17 has insisted DirecTV renew its monopoly deal before the takeover closes.
18 If so AT&T will acquire something CBS, Comcast, ESPN, Fox, NBC, and
19 Verizon don't have—the sole means to watch the NFL game of your
20 choice.

21 The Justice Department should insist, as part of any approval it may offer
22 for the AT&T merger bid, that DirecTV divest itself of the Sunday Ticket
23 exclusive. Such a requirement may cause AT&T to back out of the deal,
24 or demand that DirecTV accept a lower price: but that's why there is
25 antitrust law, to provide a cross-check against behavior that harms
26 consumers. The NFL's viewer-choice service should be offered by all
27 cable carriers, as nearly all other entertainment products are available
28 across the cable universe.

Not only is it absurd that Americans subsidize a sports league so Canadian
and Mexican viewers can have more choice than Americans do. If Sunday
Ticket were available on all cable carriers, more buyers would allow for a
lower price, as happened with cell phones. Rather than a tiny number who
have good luck with geography paying \$200 a year to pick their own NFL
game, many millions could pay, say, \$50 a year for the same freedom.

Allowing AT&T to acquire DirecTV's Sunday Ticket monopoly would be
strongly anti-consumer. Using this moment to divest the monopoly and

1 bring Sunday Ticket to all telecommunications platforms would be
2 strongly pro-consumer. Please don't tell us the Justice Department and the
3 White House will mess this opportunity up.

4 79. For years DirecTV has hypocritically fought with its cable industry
5 competitors to ensure that vital access to sports programming on so-called
6 "regional sports networks" or "RSNs" is available to it on a non-exclusive basis.
7 For example, on August 31, 2012, DirecTV wrote to the Federal
8 Communications Commission in support of a proposed rule extending a ban on
9 vertically integrated cable companies from withholding access to RSNs from
10 other MVPDs, including DirecTV:

11 Six years ago, the Commission used a regression analysis to evaluate and
12 quantify the potential harm to competition that results when a cable-
13 affiliated programmer withholds content from rival MVPDs. Among other
14 things, the Commission found that, as a result of the decision by the Cox-
15 affiliated regional sports network ("RSN") in San Diego to deny its
16 programming (including games of the San Diego Padres) to MVPD rivals,
17 DBS penetration in the San Diego market was 40.5% lower than it would
18 have been if that programming had not been withheld. The attached
19 economic analysis of San Diego subscribership is qualitatively consistent
20 with the Commission's finding about the damage done when cable-affiliated
21 programmers withhold content from competitors.

22 This updated analysis takes advantage of the fact that the Cox RSN recently
23 lost the rights to telecast Padres games. This season, those games are
24 available to all MVPDs through Fox Sports San Diego ("FSSD").
25 DIRECTV carries FSSD, as does Cox. These recent developments in San
26 Diego offer a natural experiment through which to evaluate the effects of
27 gaining access to valuable content. Accordingly, DIRECTV asked
28 Professor Kevin Murphy to augment his prior economic analysis in this
proceeding with an analysis of subscribership in San Diego in light of this
new RSN arrangement.

As more fully detailed in Professor Murphy's attached report, the data from
2012 are consistent with the Commission's finding in 2006. In order to
evaluate the effect on DIRECTV's subscribership from gaining access to

1 Padres games, Professor Murphy first calculated the difference in the
2 growth rate in the number of DIRECTV subscribers in San Diego before
3 and after these RSN changes. He then calculated this difference for a set of
4 control markets, and compared the before-and-after difference in
5 DIRECTV's growth rates in San Diego to the before-and-after difference in
6 DIRECTV's growth rates in the control markets. The results of this analysis
7 indicate that DIRECTV has gained substantially more subscribers in San
8 Diego since it gained access to Padres games through FSSD than would
9 have been expected based on its subscribership trends in comparable
10 markets. These gains were achieved in only the first five months of
11 DIRECTV's FSSD carriage; the long run effects likely will be larger, as
12 additional San Diego households revisit their MVPD choice. These
13 conclusions are further supported by customer surveys, which evidence an
14 increase in the number of new subscribers citing "access to sports channels"
15 as the reason for subscribing to DIRECTV since it began carriage of FSSD.
16 80. Thus, as DirecTV's own data demonstrates, consumers benefit from

17 the non-exclusive distribution of live sports content by way of enhanced
18 competition amongst MVPDs.

19 **G. DirecTV's Most Recent Agreement with NFL for the 2014 Regular Season**

20 81. Prior to October of 2014, representatives of DirecTV were making public
21 statements that it would only pay so much for that exclusivity.

22 82. DirecTV CFO Pat Doyle ("Doyle") said at a 2013 investors conference
23 that, if the price goes up too high when the current NFL Sunday Ticket deal expires
24 after the 2014 season, DirecTV would consider "striking a non-exclusive deal with the
25 NFL or possibly even dropping the popular package," according to the *Hollywood*
26 *Reporter*.

27 83. In 2014, Doyle reiterated that he would rather share Sunday Ticket with
28 cable or even drop it all together to prevent paying double the asking price.

1 84. These statements were efforts at misdirection. As noted above, in October
2 of 2014, DirecTV renewed the deal on terms even more lucrative for the NFL and its
3 member teams.
4

5 85. The out-of-market Sunday afternoon NFL games constitute a distinct
6 product market and are not interchangeable with the over-the-air telecasts of local NFL
7 games. This is particularly true for commercial subscribers. As a result, commercial
8 subscribers to Sunday Ticket are willing to pay a substantial amount to offer their
9 customers the opportunity to view multiple NFL out-of-market games.
10

11 86. In contrast to the NFL's exclusive deal with DirecTV, the NBA, the NHL,
12 and MLB offer their live out-of-market game packages through both DirecTV *and*
13 cable sports networks, including, for example, various sports networks owned by
14 Comcast. In the "but for" world, these other providers would compete for viewers of
15 Sunday afternoon out-of-market NFL football games, which would result in lower
16 prices, as teams and providers competed for viewership.
17

18 87. Defendants could achieve any legitimate, pro-competitive goals without
19 an exclusive arrangement. As noted in the *Atlantic Monthly* article cited above,
20 Sunday Ticket is offered in Canada on a non-exclusive basis through more than a
21 dozen satellite and cable providers. And in the United States, other pro football
22 products such as the NFL's "Red Zone" package (which offers views of selected in-
23 game highlights) are offered on a non-exclusive basis as well.
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1 88. Defendants and their co-conspirators' exclusive agreement has a clear
2 negative impact on competition, and serves no pro-competitive purpose. There is no
3 evidence that this agreement was created to assure the quality of Sunday Ticket or to
4 allow the NFL sufficient oversight, or any other permissible objective. Instead,
5 DirecTV and the NFL entered into the agreement with the intent of maintaining a
6 monopoly price for Sunday Ticket. And, because all the NFL teams have colluded to
7 offer the package, they have also prevented individual competition by teams selling
8 their own games to broadcasters.
9

10
11
12 89. There are several less restrictive alternatives which would achieve any
13 legitimate, procompetitive goals. Those include letting teams contract individually with
14 DirecTV and allowing other distributors to purchase and exhibit the Sunday Ticket
15 package.
16

17 90. Plaintiff seek to restore competition by ending the collusive agreement by
18 Defendants that eliminate competition in the distribution of the live out-of-market NFL
19 games over television, while monopolizing or attempting to monopolize the broadcast
20 market for out of market Sunday afternoon NFL games.
21

22 **H. Plaintiff And The Class Have Suffered Antitrust Injury**

23 91. Plaintiff and the Class were, and continue to be, harmed by Defendants'
24 anti-competitive agreement with NFL. Plaintiff and the Class are direct purchasers of
25 NFL Sunday Ticket and the territorial restrictions enforced by the exclusive
26 arrangement between DirecTV and the NFL causes Plaintiff and the Class to pay a
27
28

1 higher, supracompetitive price for the package of out-of-market NFL games than they
2 otherwise would have paid if the agreement were negotiated competitively.

3
4 92. The agreements described above have restrained horizontal competition
5 between and among the distributors of NFL games, including competition in the
6 commercial exploitation of televised presentations of live games. In particular, without
7 the exclusive licenses and other competitive restraints, DirecTV, the television
8 networks, and other MVPDs would compete with each other in the distribution of NFL
9 games to a much greater extent than the limited opportunities now available.
10

11
12 93. The agreements described above have adversely affected and substantially
13 lessened competition in the relevant markets. As a result, prices are higher than they
14 would be in the absence of the agreements to restrict competition.
15

16 94. The agreements described above do not concern matters of NFL structure
17 and do not concern any unique characteristic or need of football exhibitions. These
18 anticompetitive restraints are not necessary to the exhibition of football and are not
19 integral to the sport itself.
20

21 95. There are no legitimate, pro-competitive justifications for these exclusive
22 license agreements and other competitive restraints, which would justify the anti-
23 competitive harms they create.
24

25 96. A similar issue was dealt with in the case of *Laumann v. National Hockey*
26 *League*, Nos. 12-cv-1817 (SAS), 12-cv-3704 (SAS), 2014 WL 3900566 (S.D.N.Y.
27 Aug. 8, 2014). There Judge Shira Schiendlin was dealing with agreements by MLB
28

1 and the NHL with DirecTV that involved the telecasting of games outside of a member
2 team's home territory. Judge Schiendlin denied summary judgment, finding triable
3 issues as to antitrust injury:
4

5 Plaintiff have carried their initial burden of showing an actual impact on
6 competition. The clubs in each League have entered an express agreement
7 to limit competition between the clubs—and their broadcaster affiliates—
8 based on geographic territories. There is also evidence of a negative
9 impact on the output, price, and perhaps even quality of sports
10 programming. Plaintiff expert, Dr. Roger G. Noll ["Noll"], attests that
11 consumers pay higher prices for live game telecasts, and have less choice
12 among the telecasts available to them, than they would in the absence of
13 the territorial restrictions. Similarly, Dr. Noll estimates that the price of
14 OOM [out-of-market] packages would decrease by about fifty percent in a
15 world without the restrictions.

16 *Id.* at *8. She went on to rule that there were jury issues as to whether telecasters like
17 DirecTV were participants in the conspiracy between MLB, the NHL and their
18 member clubs. *Id.* at *12-13.

19 97. The expert evidence by Noll provided in that case and cited by Judge
20 Schiendlin was as follows:

21 The ability to extract more revenues from an exclusive contract arises
22 because out-of market telecasts are a subscription driver for MVPDs
23 [multichannel video programming distributors like DirecTV]. The benefits
24 of exclusivity to the licensee then can be captured by MLB through higher
25 rights fees by auctioning the exclusive rights to the highest bidder. If live
26 telecasts of other sports, or other types of programming, were close
27 competitive substitutes for MLB Extra Innings, DirecTV would not be
28 able to obtain greater revenue from subscribers by obtaining exclusive
rights, and so MLB would not be able to extract additional revenue by
selling Extra Innings on an exclusive basis.

1 “Declaration of Roger G. Noll,” p. 89 (Feb. 14, 2014), filed in *Laumann v. National*
2 *Hockey League*, Nos. 12–cv–1817 (SAS), 12–cv–3704 (SAS) (S.D.N.Y.). During the
3 course of this analysis, Noll presented a chart showing the drastic price increases in
4 NFL Sunday Ticket regular season packages, which climbed by 34% from 2005 to
5 2010. *Id.*, Exh. 4.
6

7
8 98. Noll made a similar point in testimony before the United States Senate
9 Judiciary Committee at a November 14, 2006 hearing on “Competition In Sports
10 Programming And Distribution: Are Consumers Winning?”:
11

12 The relevant benchmark for whether an action is pro- or anti-competitive
13 is the circumstance that would prevail in a competitive world. The
14 argument that NFL Sunday Ticket increased output is correct, but it
15 increased output in a monopolized market. The issue is what is the
16 alternative in the absence of monopolization, and in the absence of
17 monopolization, the market for televised NFL games would be like other
18 pro sports were or like college sports are today. For example, if all
19 broadcasting of college football games were put together into a single
20 package priced at \$150 a month and shown exclusively through DirecTV,
21 the effort would be a profit-enhancing reduction in output. From my
22 perspective, if one adopts the right counterfactual, the right but-for world
23 in the competitive environment, it is obvious that NFL Sunday Ticket is a
24 palliative compared to the output and prices that would exist in a
25 competitive environment.”

26 **I. The Sports Broadcasting Act Does Not Shield Defendants’ Anticompetitive**
27 **Acts**

28 99. Congress enacted the Sports Broadcasting Act of 1961 (“SBA”) to
facilitate the sale of packaged broadcast rights for pro sports leagues. It states:

The antitrust laws, as defined in section I of the Act of October 15, 1914
[Section One of the Sherman Act] ... shall not apply to any joint
agreement by or among persons engaging in or conducting the organized
professional team sports of football, baseball, basketball, or hockey, by

1 which any league of clubs participating in professional football, baseball,
2 basketball, or hockey contests sells or otherwise transfers all or any part of
3 the rights of such league's member clubs in the sponsored telecasting of
4 the games of football, baseball, basketball, or hockey, as the case may be,
engaged in or conducted by such clubs.

5 15 U.S.C. §1291.

6 100. In essence, the SBA granted all the major sports leagues an exemption
7 from antitrust liability when entering into pooled-rights contracts.
8

9 101. The SBA is expressly limited to “sponsored telecasting,” which courts
10 have construed to mean that the SBA only applies to broadcast television and not to
11 cable or satellite. In fact, when the SBA was being passed through Congress, former
12 NFL Commissioner Pete Rozelle (“Rozelle”) was asked by the House of
13 Representatives, “[y]ou understand . . . that this Bill covers only the free telecasting of
14 professional sports contests, and does not cover pay T.V.?” to which Rozelle
15 responded under oath, “[a]bsolutely.” Another former NFL commissioner, Paul
16 Tagliabue, has conceded before a Senate Committee that the term “sponsored
17 telecasts” does not include “pay and cable This is clear from the legislative history
18 and from the committee reports.”
19
20
21

22 102. Thus, the SBA offers Defendants and their co-conspirators no protection
23 for their anti-competitive acts.
24

25 103. In *Shaw v. Dallas Cowboys Football Club, Ltd.*, No. Civ. A. 97-5184,
26 1998 WL 419765 (E.D. Pa. June 23, 1998), *aff'd*, 172 F.3d 299 (3d Cir. 1999), plaintiff
27 Charles Shaw brought a consumer Class action suit against several NFL teams and the
28

1 NFL itself, alleging that the NFL’s agreement for Sunday Ticket with DirecTV
2 violated the Sherman Act.

3
4 104. The NFL argued, in moving to dismiss, that Sunday Ticket was exempt
5 from antitrust scrutiny under the SBA because Sunday Ticket “is simply a sale of the
6 [teams’] residual rights in the games which were broadcast on ‘sponsored telecasts,’
7 and, so, the package is a sale of ‘part of the rights’ to the ‘sponsored telecasts.’” 1998
8 WL 419765, at *2.

9
10 105. The court in *Shaw* rejected the NFL’s argument, finding that the NFL’s
11 sale of Sunday Ticket fell outside the SBA’s protections, and holding instead that
12 “sponsored telecasts” refers only to the “more traditional corporate-sponsored
13 commercial context, rather than the pre-paid, commercial-free package context.” *Id.* at
14 *3.
15

16
17 106. Likewise, in *Laumann v. NHL*, 907 F.Supp.2d 465 (S.D.N. Y. 2012),
18 Judge Scheindlin also held that the term “[s]ponsored telecasting’ under the SBA
19 pertains only to network broadcast television and does not apply to non-exempt
20 channels of distribution such as cable television, pay-per-view, and satellite television
21 networks.’ ” *Id.* at 489 n. 141 (quoting *Kingray v. NBA, Inc.*, 188 F.Supp.2d 1177,
22 1183 (S.D. Cal. 2002)).
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CLAIMS FOR RELIEF

COUNT ONE

Violation of Section 1 of the Sherman Act

(Per Se Violation)

107. Beginning at a time presently unknown to Plaintiff, and continuing through the present, the exact dates being unknown to Plaintiff, Defendants, including the 32 teams that comprise the NFL, entered into a continuing agreement, combination or conspiracy in restraint of trade with the purpose, intent, and effect of restraining horizontal competition in the live game distribution market with the purpose, intent, and effect of restraining trade and commerce in the distribution of live NFL games, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

108. This contract, combination or conspiracy has resulted in an agreement understanding, or concerted action between and among the Defendants that the Sunday Ticket will exclusively be provided by DirecTV. The agreement forbids any other MVPD from offering the same product.

109. The contract, combination or conspiracy alleged above has substantial horizontal elements, including agreements between the 32 NFL teams, to limit competition between and among the member teams, who would otherwise be competitors in the live game distribution market, such that application of the per se rule is justified under the facts and circumstances set forth herein.

110. This contract, combination, or conspiracy has also restrained competition between and among the DirecTV and potential competitors in violation of Section 1 of

1 the Sherman Act. It has led to anticompetitive effects, including increased prices and
2 reduced output, and otherwise caused injury to consumers and competition in those
3 relevant markets and elsewhere.
4

5 111. The Defendants' contract, combination, agreement, understanding or
6 concerted action occurred in or affected interstate commerce. The Defendants'
7 unlawful conduct was through mutual understandings, combinations or agreements by,
8 between and among Defendants.
9

10 112. Defendants' anticompetitive conduct has directly and proximately caused
11 antitrust injury, in the form of higher prices and reduced choice, as set forth
12 above. Plaintiff and other commercial subscribers will continue to suffer antitrust
13 injury and other damage unless Defendants are enjoined from continuing to engage in
14 the foregoing violations of law.
15
16

17 **COUNT TWO**

18 **Violation of Section 1 of the Sherman Act**

19 **(Rule of Reason)**

20 113. Plaintiff, on behalf of itself and the Class, incorporate and re-allege the
21 preceding paragraphs of the complaint.
22

23 114. Beginning at a time presently unknown to Plaintiff, and continuing
24 through the present, the exact dates being unknown to Plaintiff, Defendants entered
25 into a continuing agreement, combination or conspiracy in restraint of trade with the
26 purpose, intent, and effect of restraining horizontal competition in the live game
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1 distribution market with the purpose, intent, and effect of restraining trade and
2 commerce in the distribution and broadcasting of live NFL games, in violation of
3 Section 1 of the Sherman Act (15 U.S.C. § 1).
4

5 115. This contract, combination or conspiracy has resulted in an agreement
6 understanding, or concerted action between and among the Defendants that the Sunday
7 Ticket will exclusively be provided by DirecTV. The agreement forbids any other
8 competitor from offering the same product.
9

10 116. This contract, combination, or conspiracy has also restrained competition
11 between and among the DirecTV and potential competitors in violation of Section 1 of
12 the Sherman Act. It has led to anticompetitive effects in the relevant markets, as
13 alleged herein, and caused injury to consumers and competition in those relevant
14 markets and elsewhere.
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16

17 117. The relevant geographic market is the United States. The relevant product
18 market is the market for live distribution of NFL games through the Sunday Ticket
19 service to commercial subscribers. The Defendants explicitly recognize this product
20 market and have, in fact, trademarked the Sunday Ticket name. The Defendants direct
21 advertising and marketing dollars towards this market and to commercial subscribers,
22 specifically.
23
24

25 118. The NFL, and its 32 teams, have monopoly power with respect to the
26 creation, licensing, and distribution of NFL games. DirecTV has market power in the
27 MVPD market, generally, and specifically in the market for commercial
28

1 subscribers. DirecTV's exclusive arrangement with the NFL for the distribution of
2 Sunday Ticket enhances DirecTV's market power in the MVPD market, generally, and
3 provides it with a monopoly in the market for the live distribution of NFL games
4 through the Sunday Ticket service.
5

6 119. The Defendants' contract, combination, agreement, understanding or
7 concerted action occurred in or affected interstate commerce. The Defendants'
8 unlawful conduct was through mutual understandings, combinations or agreements by,
9 between and among Defendants.
10

11 120. Defendants' anticompetitive conduct has directly and proximately caused
12 antitrust injury, in the form of higher prices and reduced output, as set forth
13 above. Plaintiff and other commercial subscribers will continue to suffer antitrust
14 injury and other damage unless Defendants are enjoined from continuing to engage in
15 the foregoing violations of law.
16
17

18 **COUNT THREE**

19 **VIOLATION OF SECTION 2 OF THE SHERMAN ACT**

20 121. Plaintiff, on behalf of itself and the Class, incorporate and re-allege the
21 preceding paragraphs of the complaint.
22

23 122. Defendants, by the above-mentioned conduct, possess monopoly power
24 over the creation, licensing, and distribution of live NFL football broadcasts and have
25 used that power for the purposes of unreasonably excluding and/or limiting
26 competition, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2), by limiting
27
28

1 the distribution of the Sunday Ticket service to only one MVPD, DirecTV. These
2 activities have gone beyond those which could be considered as “legitimate business
3 activities,” and are an abuse of Defendants’ market position.
4

5 123. The relevant geographic market is the United States. The relevant product
6 market is the market for live distribution of NFL games through the Sunday Ticket
7 service to commercial subscribers. The Defendants explicitly recognize this product
8 market and have, in fact, trademarked the Sunday Ticket name. The Defendants direct
9 advertising and marketing dollars towards this market and to commercial subscribers,
10 specifically.
11

12
13 124. Through the anti-competitive conduct described herein, DirecTV has
14 willfully acquired and maintained monopoly power, and unless restrained by the Court,
15 will continue to willfully maintain, that monopoly power in the relevant market by
16 anti-competitive and unreasonably exclusionary conduct. The NFL, by and on behalf
17 of its 32 member teams, have acted with an intent to allow DirecTV to illegally acquire
18 and maintain that monopoly power in the relevant product market, and Defendants’
19 illegal conduct has enabled DirecTV to do so, in violation of Section 2 of the Sherman
20 Act.
21
22

23
24 125. Defendants’ anticompetitive conduct has directly and proximately caused
25 antitrust injury, as set forth above. Plaintiff and other commercial subscribers will
26 continue to suffer antitrust injury and other damage unless Defendants and their co-
27 conspirators are enjoined from continuing to engage in the foregoing violations of law.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray as follows:

1. That the Court determines that this action may be maintained as a Class action under Fed. R. Civ. P. 23, and that Plaintiff be named representatives of the Class.

2. That the contract, combination or conspiracy, and the acts done in furtherance thereof by Defendants and their co-conspirators as alleged in this complaint, be adjudged to have been a violation of Section 1 of the Sherman Act.

3. That Defendants and their co-conspirators' actions to illegally acquire and maintain monopoly power in the relevant product market, be adjudged to have been in violation of Section 2 of the Sherman Act.

4. That judgment be entered for Plaintiff and members of the Class against Defendants for three times the amount of damages sustained by Plaintiff and the members of the Class as allowed by law, together with the costs of this action, including reasonable attorneys' fees, pursuant to Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26).

5. That Plaintiff and the Class be awarded pre-judgment and post-judgment interest at the highest legal rate from and after the date of service of this Complaint to the extent provided by law;

6. That Defendants and their co-conspirators be enjoined from further violations of the antitrust laws; and,

1 7. That Plaintiff and members of the Class have such other, further or
2 different relief, as the case may require and the Court may deem just and proper under
3 the circumstances.
4

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff requests a jury trial on all matters so triable.

7
8 Dated: July 13, 2015

Respectfully submitted,

HAUSFELD LLP

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