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21 *Attorneys for DNW Foods Inc. and the Proposed Class*

22 UNITED STATES DISTRICT COURT  
23 CENTRAL DISTRICT OF CALIFORNIA

24 DNW FOODS INC., Individually and  
25 on behalf of all others similarly  
26 situated,

27 Plaintiff,

28 vs.

NATIONAL FOOTBALL LEAGUE,  
INC., NFL ENTERPRISES LLC,  
DIRECTV, LLC, DIRECT TV  
HOLDINGS LLC

Defendants.

CASE NO.:

CLASS ACTION

**CLASS ACTION COMPLAINT  
FOR DAMAGES AND  
DECLARATORY AND  
INJUNCTIVE RELIEF  
PURSUANT TO SECTIONS 1  
AND 2 OF THE SHERMAN ACT**

**Jury Trial Demanded**

CLASS ACTION COMPLAINT

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1 Plaintiff, by and through its attorneys, complains and alleges as follows:

2 **I. NATURE AND SUMMARY OF THE ACTION**

3 1. Plaintiff brings this class action on behalf of itself, and all similarly  
4 situated Class Members (defined herein), who together comprise a nationwide  
5 class of bar and restaurant owners that have purchased DirecTV and the NFL  
6 Sunday Ticket. This action challenges an anticompetitive agreement between  
7 defendants DirecTV, LLC, DirecTV Holdings LLC (collectively, “DirecTV”), the  
8 National Football League, Inc. and NFL Enterprises LLC (collectively, the “NFL”  
9 or "Defendants") whereby the NFL provided DirecTV with the exclusive right to  
10 show the live broadcasts of Sunday afternoon NFL games out of market, thereby  
11 providing DirecTV with a monopoly on the distribution of such games.<sup>1</sup> The  
12 allegations herein are based upon information and belief except as to those  
13 allegations that pertain to the Plaintiff, and its actions, which are made on personal  
14 knowledge.

15 2. DirecTV’s exclusive agreement with the NFL takes the form of the  
16 NFL Sunday Ticket, which DirecTV advertises as providing the “only” access to  
17 “every play of every out of market game, every Sunday.” The NFL Sunday  
18 Ticket is a sports package trademarked by Defendants. This exclusive deal  
19 prevents Plaintiff and other Class Members from purchasing access to out of  
20 market games from a different distributor. It also empowers Defendants to charge  
21 supracompetitive prices for access to out of market games.

22  
23  
24 

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<sup>1</sup> As used herein, “out of market” games mean Sunday afternoon NFL games that  
25 are not broadcast within the viewer’s market and that are not otherwise broadcast  
26 by CBS, Fox or (until recently) NBC. This definition also excludes games that are  
27 not aired due to the team’s failure to sell all ticket before the blackout deadline of  
28 that game.

1           3.     The ability to show out of market games is particularly attractive to  
2 restaurateurs and bar owners, such as Plaintiff and the Class, since it allows them  
3 to attract a larger and more diverse clientele who are interested in watching  
4 multiple games at once and/or in watching games involving every customer's  
5 favorite team. As DirecTV advertises specifically to "restaurants and bars,"  
6 "[o]nly DIRECTV has the sports packages you need to attract fans of every stripe  
7 with NFL SUNDAY TICKET 2015...."

8           4.     The NFL is able to package and exclusively sell the rights to "out of  
9 market" games because all of the thirty-two teams that comprise the NFL have  
10 chosen to collude together, bundle their collective rights, and grant the NFL the  
11 exclusive right to market those games outside each team's home market. Had  
12 these teams not granted the NFL this power, each team would compete against  
13 each other to sell the rights to show their games out of market.

14           5.     DirecTV has paid a very high price for this exclusive content and for  
15 good reason. On October 8, 2014, Forbes announced that DirecTV had agreed to  
16 pay around \$1.5 billion annually for right to distribute out of market games for  
17 another eight years, \$500 million more than its previous agreement. But in return,  
18 DirecTV is able to out-compete other multi-channel video programming  
19 distribution competitors ("MVPDs"), such as Dish Network and Comcast. As a  
20 result, DirecTV can extract supracompetitive prices for its content. Dish Network  
21 competes by offering lower prices. As Dish advertises, "DISH gives you more for  
22 less than DIRECTV. ... With DISH you get more channels for less." Dish and  
23 other MVPDs would compete with DirecTV on price if they had access to out of  
24 market NFL games. Indeed, the FCC has commented on the NFL Sunday Ticket  
25 being a "unique" product that allows DirecTV to charge more than competitors:

26           Corporate annual reports suggest that product differentiation has been,  
27 and remains, a key factor for competing in the market for delivered  
28 video programming. For instance, an MVPD might offer a unique  
video product that a rival MVPD cannot or does not provide.

1 DIRECTV offers the NFL Sunday Ticket where subscribers can  
2 watch every out of market professional football game in HD. In its  
3 advertising, DIRECTV states that, “You won’t find anything like it  
4 with DISH Network or cable ... It’s available only on DIRECTV.”  
5 Some MVPDs highlight better-value or low-price video packages.  
6 DISH Network maintains that it offers better value, and claims that,  
7 “DIRECTV can’t compare with DISH Network’s everyday low price.

8  
9 *In the Matter of Annual Assessment of the Status of Competition in the Market for*  
10 *the Delivery of Video Programming*, FCC MB Docket No. 07-269, at 42 (July 20,  
11 2012).

12 6. Of the four major professional sports in the United States – baseball,  
13 basketball, hockey and American football – only Defendants have an exclusive  
14 out of market broadcasting arrangement. Unsurprisingly, Roger Noll, Professor  
15 *Emeritus* of Economics at Stanford University and a Senior Fellow at the Stanford  
16 Institute for Economics, has determined, after comparing the NFL Sunday Ticket  
17 to the regular season packages of the other three major sports, “[w]hile the price  
18 of NFL Sunday Ticket has increased by 34 percent over [2005-2010], none of the  
19 other packages show price increases in every year, and the price for NBA Center  
20 Court has actually declined slightly.” As a result, DirecTV charges substantially  
21 less for access to the other three sports’ out of market packages, despite these  
22 sports’ providing more games and a longer season.

23 7. Plaintiff seeks to enjoin, on behalf itself and the class, the  
24 unreasonable restraint on trade alleged herein under the federal antitrust laws.  
25 Plaintiff also seeks to recover damages for the Class for the supracompetitive  
26 premiums that Defendants have charged for NFL Sunday Ticket as a result of this  
27 antitrust activity.

## 28 **II. JURISDICTION AND VENUE**

8. Plaintiff brings this action pursuant to Section 16 of the Clayton Act  
(15 U.S.C. § 26), for a violation of Sections 1 and 2 of the Sherman Act, 15

1 U.S.C. §§ 1-2. This Court has subject matter jurisdiction over those claims  
2 pursuant to 28 U.S.C. §§ 1331 and 1337.

3 9. Venue is proper pursuant to 28 U.S.C. § 1391 and 15 U.S.C. § 22.  
4 The Defendants transact business in this District, and are subject to personal  
5 jurisdiction here.

6 10. Class members were injured and DirecTV is headquartered in this  
7 District.

### 8 **III. PARTIES**

9 11. Plaintiff DNW Foods Inc. is a restaurant and bar located in Exton,  
10 Pennsylvania. DNW Foods Inc. purchased the Sunday Ticket from DirecTV  
11 during the Class Period.

12 12. Defendant DirecTV Holdings LLC is a Delaware Limited Liability  
13 Company and has a headquarters at 2230 East Imperial Highway, El Segundo,  
14 California, and has corporate offices in New York, NY. It is the U.S. operating  
15 arm of DirecTV and describes itself as “a leading provider of digital television  
16 entertainment in the United States.” It claims that “[a]s of December 31, 2014,  
17 [it] had approximately 20.4 subscribers.”

18 13. Defendant DirecTV, LLC is a California Limited Liability Company  
19 that has a headquarters at 2230 East Imperial Highway, El Segundo, California.  
20 DirecTV, LLC issues bills to its commercial subscribers.

21 14. Until 2015, the NFL was an unincorporated association of thirty-two  
22 American professional football teams in the United States. Each of the thirty-two  
23 NFL member teams, headquartered in various cities across the country, is  
24 separately owned and operated, acting in its own economic self-interest and  
25 competing in most respect with one another. Those teams are as follows:

26 ///

27 ///

28

	<b><u>NFL Defendant Team Owner</u></b>	<b><u>State of Organization</u></b>	<b><u>Team City and Name</u></b>
1			
2			
3	Arizona Cardinals, Inc.	Arizona	Arizona Cardinals
4	Atlanta Falcons Football Club	Georgia	Atlanta Falcons
5	LLC Buffalo Bills, Inc.	New York	Buffalo Bills
6	Baltimore Ravens Limited	Maryland	Baltimore Ravens
7	Partnership		
8	Panthers Football LLC	North Carolina	Carolina Panthers
9	Chicago Bears Football Club, Inc.	Delaware	Chicago Bears
10	Cincinnati Bengals, Inc.	Ohio	Cincinnati Bengals
11	Cleveland Browns LLC	Delaware	Cleveland Browns
12	Dallas Cowboys Football Club,	Texas	Dallas Cowboys
13	Ltd.		
14	Denver Broncos Football Club	Colorado	Denver Broncos
15	Detroit Lions, Inc.	Michigan	Detroit Lions
16	Green Bay Packers, Inc.	Wisconsin	Green Bay Packers
17	Houston NFL Holdings LP	Delaware	Houston Texans
18	Indianapolis Colts, Inc.	Delaware	Indianapolis Colts
19	Jacksonville Jaguars Ltd.	Florida	Jacksonville Jaguars
20			
21	Kansas City Chiefs Football	Texas	Kansas City Chiefs
22	Club, Inc.		
23	Miami Dolphins, Ltd.	Florida	Miami Dolphins
24	Minnesota Vikings Football Club	Minnesota	Minnesota Vikings
25	LLC		
26	New England Patriots, LP	Delaware	New England Patriots
27	New Orleans Louisiana Saints	Texas	New Orleans Saints
28	LLC		
29	New York Football Giants, Inc.	New York	New York Giants
30			

1	New York Jets Football Club, Inc.	Delaware	New York Jets
2	Oakland Raiders LP	California	Oakland Raiders
3	Philadelphia Eagles Football Club, Inc.	Delaware	Philadelphia Eagles
4	Pittsburgh Steelers Sports, Inc.	Pennsylvania	Pittsburgh Steelers
5			
6	San Diego Chargers Football Co.	California	San Diego Chargers
7	San Francisco Forty Niners Ltd.	California	San Francisco 49ers
8	Football Northwest LLC	Washington	Seattle Seahawks
9	The Rams Football Company LLC	Delaware	St. Louis Rams
10			
11	Buccaneers Limited Partnership	Delaware	Tampa Bay Buccaneers
12	Tennessee Football, Inc.	Delaware	Tennessee Titans
13	Washington Football Inc.	Maryland	Washington Redskins
14			

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

21           16. Each NFL team has a property right in licensing the television  
22 broadcasting rights of its own games. But the teams have agreed to allow the NFL  
23 to negotiate on their behalf television contracts with national broadcasters,  
24 including for the broadcast of each team’s games outside its home territory, and  
25 not to compete with each other over the licensing of those rights. Such national  
26 television contracts include the Sunday Ticket package sold only through  
27 DirecTV.  
28



1           17. Each Defendant acted as the principal of or agent for the other  
2 Defendants with respect to the acts, violations, and common course of conduct  
3 alleged herein.

4           18. Various persons, partnerships, sole proprietors, firms, corporations  
5 and individuals not named as Defendants in this lawsuit, and individuals, the  
6 identities of which are presently unknown, have participated as co-conspirators  
7 with Defendants in the offenses alleged in this Complaint, and have performed  
8 acts and made statements in furtherance of the conspiracy or in furtherance of the  
9 anticompetitive conduct.

10           19. Whenever in this Complaint reference is made to any act, deed or  
11 transaction of any corporation or limited liability entity, the allegation means that  
12 the corporation or limited liability entity engaged in the act, deed or transaction by  
13 or through its officers, directors, agents, employees or representative while they  
14 were actively engaged in the management, direction, control or transaction of the  
15 corporation's or limited liability entity's business or affairs.

16 **IV. TRADE AND COMMERCE**

17           20. The NFL is by far the most significant provider of professional  
18 football in the United States. According to a Harris Poll, the NFL has been ranked  
19 the most popular American sport for thirty consecutive years. According to The  
20 Nielsen Company, the 2014 regular season reached 202.3 million unique viewers,  
21 representing 80% of all television homes and 68% of potential viewers in the  
22 United States. NFL games accounted for every one of the top twenty, and forty-  
23 five of the top fifty, most-watched TV shows among all programming in the fall  
24 of 2014, and for the third consecutive year, an NFL game was the week's most-  
25 watched TV show in all seventeen weeks of the 2014 season.

26           21. According to news reports, last year the NFL had an annual revenue  
27 of \$7.2 billion. In 2011, the NFL signed nine-year extensions of its existing  
28

1 broadcast deals with Fox Broadcasting, CBS, and NBC that will run through the  
2 2022 season. According to news articles, ESPN, Fox Broadcasting, CBS, and  
3 NBC pay \$1.9 billion, \$1.1 billion, \$1 billion, and \$950 million respectively per  
4 year for the right to broadcast NFL games. In January 2015, CBS paid \$300  
5 million for the right to telecast NFL “Thursday Night Football” for the upcoming  
6 year.

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

## 14 **V. FACTUAL ALLEGATIONS**

### 15 **A. Relevant Market and Barriers to Entry**

16 23. The relevant geographic market is the United States. The relevant  
17 product market is live broadcasts of NFL Sunday afternoon out of market games.  
18 Broadcasts of other sports or other content do not compete with broadcasts of  
19 NFL games. In addition, NFL games broadcast locally on CBS and Fox  
20 Broadcasting on Sunday afternoons are not interchangeable with the multi-game  
21 offering provided by Sunday Ticket specifically because the local games  
22 broadcast by CBS and Fox are different from the multi-game offering provided by  
23 NFL Sunday Ticket. NFL Sunday Ticket caters to fans that are not located within  
24 the geographical confines of their favorite teams’ home territories or have a  
25 broader interest in watching football games other than those broadcast in their  
26 local area.

1           24. Although there is some substitution that occurs between in-market  
2 broadcasts (broadcasts of games that include the local NFL team) and out of  
3 market broadcasts, the availability of the in-market games does not compete away  
4 a monopolist's ability to raise the price of out of market games above competitive  
5 levels.

6           25. New entries that would dilute the market power over NFL video  
7 broadcasts created by the collusive agreements at issue here are extremely  
8 unlikely.

9           26. New entries would require the creation of a new professional league  
10 playing American football. Such an undertaking would be incredibly expensive,  
11 and –based on the history of the sport –very unlikely to succeed. Even if a new  
12 entrant did appear, and even if it were sufficiently successful to sustain itself, it is  
13 unlikely that the resulting video product would compete sufficiently with the  
14 NFL's broadcasts to dissipate the NFL's monopoly power.

15           27. In the ninety-five years since the NFL's formation on August 20,  
16 1920, there have only been a few noteworthy attempts at entry into the market for  
17 American football games. Four times, an entity calling itself the American  
18 Football League ("AFL"), attempted to compete with the NFL. In 1926, AFL I  
19 lasted only one season before shuttering. In 1936-37, AFL II lasted two seasons,  
20 but soon closed due to lack of attendance. AFL III, which began operations in  
21 1940, closed with the bombing of Pearl Harbor on December 7, 1941. The final  
22 iteration, AFL IV operated independently for nine years (1960-69) before merging  
23 with the NFL in 1970.

24           28. The United States Football League ("USFL") was founded in 1982  
25 and was disbanded in 1986. It sued the NFL for monopolization and won a jury  
26 verdict in *U.S. Football League v. Nat'l Football League*, 842 F.2d 1335 (2d. Cir.  
27 1988). There have also been failed attempts to start and sustain a women's  
28

1 football league and various minor leagues or talent development leagues. The  
2 closest thing to a successful entry is the Arena Football League, which plays a  
3 substantially different type of American football, playing in a walled-off arena  
4 with a much shorter field and with fewer players per side. The Arena Football  
5 League (“AFL”) began in 1987 and continued until the 2008 season. The league  
6 was reorganized in 2010 and continues today. To avoid competition with NFL  
7 games, AFL games are played in spring and summer.

8 29. NFL teams are well established and popular, with thirty-two  
9 regionally diverse teams in or near almost every major population center in the  
10 United States. There are NFL teams within eighteen of the twenty-five most  
11 populous metropolitan areas, dramatically limiting the locations and audiences  
12 available to new teams or leagues. During the NFL’s long history not one of the  
13 few attempts at entry into this market has been successful at competing for NFL  
14 football broadcast audiences. It is virtually impossible for a new league to  
15 compete away the NFL’s monopoly.

16 30. As a result of DirecTV’s exclusive deal with the NFL, it has acquired  
17 part of this enormously valuable monopoly. The value of this is demonstrated by  
18 the recent acquisition of DirecTV by AT&T. As Forbes noted in an October 8,  
19 2014 article:

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

1  
2 31. Indeed, AT&T's \$48.5 billion offer to purchase DirecTV, which  
3 concluded on July 24, 2015, contains a clause allowing AT&T to cancel the deal if  
4 DirecTV loses its exclusive, collusive contract for Sunday Ticket. That clause  
5 provides,

6 The parties also have agreed that in the event that DIRECTV's  
7 agreement for the 'NFL Sunday Ticket' service is not renewed  
8 substantially on the terms discussed between the parties, the Company  
9 may elect not to consummate the Merger, but the Company will not  
10 have a damages claim arising out of such failure so long as DIRECTV  
11 used its reasonable best efforts to obtain such renewal.

12  
13 **B. The NFL and Broadcast Rights Agreements**

14 32. The NFL's thirty-two member teams have pooled their television  
15 rights and given the league authority to negotiate pooled rights television deals on  
16 their behalf. Rather than competing over their shares of the total revenue from  
17 NFL broadcasting rights, the NFL teams have agreed to exchange an equal share  
18 of the resulting revenues. Currently, the league has the following deals: CBS and  
19 Fox Broadcasting have the right to broadcast Sunday afternoon games subject to  
20 the league's restrictions on out of market games, and each have the exclusive  
21 rights to one of three Thanksgiving games; NBC has the exclusive right to  
22 nationally broadcast prime-time Sunday night games (NBC Sunday Night  
23 Football), the exclusive right to the first Thursday Night Football games, and the  
24 exclusive right to one of the three Thanksgiving games; ESPN has the exclusive  
25 right to nationally broadcast prime-time Monday night games (Monday Night  
26 Football); the NFL Network – a cable and satellite network owned by the NFL –  
27 nationally broadcasts all fourteen Thursday regular season games, in partnership  
28 with CBS who broadcasts only eight of these Thursday games; and as stated  
above, DirecTV Sunday Ticket has the exclusive right to distribute out of market  
games.

1           33. Pursuant to their respective agreements with the NFL, CBS and Fox  
2 Broadcasting, these entities televise between eleven and sixteen weekly Sunday  
3 afternoon games, which commence at either 1 p.m. or 4:25 p.m. Eastern time. For  
4 the first sixteen weeks of the seventeen week NFL season, on an alternating basis,  
5 one network is designated to broadcast “doubleheader” games in both time slots  
6 and the other is designated to air a single game in one of the slots. Both networks  
7 are permitted to show doubleheaders the last week of the season. Subject to  
8 certain restrictions for games that do not sell out, CBS’s or Fox’s local affiliate (as  
9 the case may be) generally must broadcast any Sunday afternoon game being  
10 played by a team whose territory falls within the local affiliate’s coverage area  
11 (*i.e.*, an “in market game”).

12           34. As a result of this arrangement, during most weeks of the season only  
13 three of the eleven to sixteen Sunday afternoon games are broadcast by CBS or  
14 Fox in any particular geographic broadcast area, and the specific games available  
15 to any given viewer through CBS and Fox depend on where that viewer is located.

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

17           35. The NFL Sunday Ticket is an out of market package that carries all  
18 games produced by the networks that broadcast the Sunday afternoon games  
19 (currently Fox and CBS). A purchaser of Sunday Ticket can choose to watch any  
20 of the out of market Sunday afternoon NFL games, instead of being restricted to  
21 the games being telecast by the local Fox Broadcasting or CBS affiliates. Sunday  
22 Ticket appeals to NFL fans with loyalties to out of market teams, to fans of the  
23 game more generally and to the bar and restaurants catering to them. These  
24 businesses generate a substantial share of their overall revenue by having the  
25 capability to televise multiple professional football games simultaneously in order  
26 to attract a diverse range of fans to their establishments on Sunday afternoons  
27 during the fall football season.

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

7           37. Through its exclusive agreement with the NFL, DirecTV today takes  
8 the live game telecast feeds produced by CBS and Fox and redistributes them  
9 without alteration to NFL Sunday Ticket subscribers via DirecTV channels. NFL  
10 Sunday Ticket subscribers can thus access all Fox or CBS games, except for the  
11 “in market” games broadcast by the local Fox or CBS affiliate, which are  
12 available on the Fox or CBS DirecTV channel.

13           38. Defendants have colluded to sell the out of market NFL Sunday  
14 afternoon games *only* through DirecTV. Such an arrangement eliminates  
15 competition in the distribution of out of market Sunday afternoon games and  
16 requires anyone wishing to view these games to subscribe to DirecTV and  
17 purchase NFL Sunday Ticket at the supracompetitive price dictated by DirecTV.

18           39. DirecTV’s exclusive arrangement with the NFL results in NFL  
19 Sunday Ticket subscribers, including the commercial subscriber Plaintiff, paying a  
20 higher price for NFL Sunday Ticket (and other access charges) than they  
21 otherwise would pay if the agreements were negotiated competitively.

22           40. For example, in 2002 when the NFL’s first contract with DirecTV for  
23 NFL Sunday Ticket expired, several cable companies acting as a consortium  
24 offered \$400 million to \$500 million annually for the nonexclusive rights to carry  
25 Sunday Ticket. The NFL rejected their bid and instead chose to renew with  
26 DirecTV, giving it a five-year exclusive rights deal to Sunday Ticket for about  
27 \$400 million per year.

1           41. As noted above, in October of 2014, DirecTV renewed its exclusive  
2 agreement with the NFL. On information and belief, the renewal requires  
3 DirecTV to pay the NFL an average of \$1.5 billion per year for eight years in  
4 return for the exclusive right to rebroadcast NFL Sunday afternoon games on  
5 Defendants' NFL Sunday Ticket service.

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

7           42. DirecTV advertises to restaurants and bars as having “amazing  
8 exclusive sports content like NFL SUNDAY TICKET....” DirecTV’s advertising  
9 goes on to claims that

10           NFL Sunday Ticket is a proven money maker for bars & restaurants  
11 nationwide with an average of a 74% increase in foot traffic on  
12 Sundays! What would an increase in sales that size mean to your  
13 bottom line? The National Restaurant Association tells us that NFL  
14 fans stay longer, often 4 hours, and order 3 or more drinks. How much  
15 more money will you make by featuring every NFL game every  
16 Sunday?

17           43. Although residential DirecTV subscribers pay a fixed charge for  
18 DirecTV service and NFL Sunday Ticket, DirecTV charges commercial  
19 subscribers fees based on the maximum occupancy permitted by the local fire  
20 code – so bar and restaurant owners are paying for seats that often go unfilled on a  
21 Sunday afternoon.

22           44. The least expensive package is \$1,458 per season, and the most  
23 expensive runs in excess of \$120,000. The least expensive Sunday Ticket package  
24 price increased roughly 11.5% this year and prices have increased substantially  
25 during the Class period.

26           45. In recent years, the price DirecTV charges to commercial subscribers  
27 such as Plaintiff for Sunday Ticket has increased substantially. Sunday Ticket  
28 prices for the largest members of the Class have also increased substantially since



1 2011. For example, prices for certain large commercial subscribers increased in  
2 the following amounts:

3	2010:	\$41,895
4	2011:	\$43,990
5	2012:	\$43,990
6	2013:	\$61,680

7 46. These price increases are especially dramatic when compared to  
8 similar sports packages. Professor Noll, after comparing the NFL Sunday Ticket  
9 to the regular season packages of MLB Extra Innings, NBA Center Court, and  
10 NHL Center Ice from 2005 through 2010 found that “[w]hile the price of NFL  
11 Sunday Ticket has increased by 34 percent over this period, none of the other  
12 packages show price increases in every year, and the price for NBA Center Court  
13 has actually declined slightly.”

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

19 **E. DirecTV’s Role in the NFL’s Scheme**

20 48. According to an article by columnist Gregg Easterbrook in *The*  
21 *Atlantic* dated May 21, 2014,

22 DirecTV has done the league important favors to sustain its  
23 sweetheart relationship. As the 2011 season approached, with the  
24 NFL’s labor deal expiring and a lockout possible, DirecTV agreed to  
25 pay \$1 billion even if no games were played that season. CBS, ESPN,  
26 Fox, and NBC would have owed nothing for no games. The \$1 billion  
27 promise from DirecTV afforded the NFL a plush strike fund, ensuring  
28 owners and league executives could live in luxury that year even if the  
season were cancelled.

1           49. In 2014, when NFL Commissioner Roger Goodell announced that  
2 DirecTV had agreed to continue renew its exclusive deal, he said, “We are pleased  
3 to continue our partnership with DirecTV.” He added, “DirecTV and Sunday  
4 Ticket have served our fans well for 20 years and continue to complement our  
5 broadcast television packages.” DirecTV Chairman, President and CEO Mike  
6 White stated that “[t]his new agreement is a testament to the terrific long-term  
7 relationship we have with the NFL....NFL Sunday Ticket has always been the  
8 centerpiece of DirecTV’s sports leadership and we’re please to continue our  
9 relationship with the NFL and be a part of the league’s future growth and  
10 success.”

11           50. As noted above, DirecTV recently agreed to sell itself to AT&T in a  
12 nearly \$50 billion transaction that has attracted federal antitrust scrutiny, a  
13 transaction which nonetheless was finalized on July 24, 2015. As a condition of  
14 the deal, AT&T insisted that DirecTV renew its exclusive deal with the NFL,  
15 which DirecTV did in October 2014. As a result, AT&T has acquired something  
16 that CBS, Comcast, ESPN, Fox, NBC, and Verizon do not have—the sole means  
17 to distribute out of market Sunday afternoon NFL games.

18           **F. Exclusivity Is Not Warranted**

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

26           52. There is no evidence to show that agreement was created to assure a  
27 quality broadcast of the games offered on Sunday Ticket or to allow the NFL  
28

1 sufficient oversight of games offered on Sunday Ticket or any other reasonable  
2 objective. Instead, it appears the agreement was created to artificially raise the  
3 price of Sunday Ticket.

4 53. Indeed, the exclusive content enjoyed by DirecTV is rare. In a 2014  
5 interview with the Michael Sanserino of Pittsburgh Post-Gazette, Rob Stecklow,  
6 general manager of sports products and marketing for DirecTV, admitted as much,  
7 “In this time and era where there’s less and less content that’s exclusive, the NFL  
8 still reigns as some of the best content out there.” *Bars pay an arm, a leg and a*  
9 *beer for NFL content*, Pittsburgh Post-Gazette (Oct. 19, 2014). In the same  
10 article, a local bar owner is quoted as saying, “Sunday Ticket’s the greatest....  
11 You have no Ticket, you have no business. And that’s the truth.” Indeed, the  
12 only way Plaintiff and other Class Members can provide Sunday afternoon out of  
13 market NFL football games for their customers is by purchasing NFL Sunday  
14 Ticket from DirecTV.

15 54. The premium that DirecTV pays for this exclusive access can be  
16 estimated by looking at a similar situation where DirecTV negotiated for  
17 exclusive MLB content. In 2007, DirecTV asked MLB for an exclusive contract  
18 to carry baseball’s Extra Innings package from 2007 to 2013. Under the proposed  
19 exclusive baseball contract, DirecTV agreed to pay MLB \$700 million over seven  
20 years (2007–13) for exclusive rights to carry the Extra Innings package. At that  
21 time, a provider called InDemand had made a \$70 million per year (\$490 million  
22 over seven years) bid for non-exclusive rights to carry Extra Innings, but this offer  
23 was declined by MLB. While MLB and DirecTV were finalizing their exclusive  
24 contract, public outcry and Congressional pressure forced cancellation of the deal  
25 before the season began. With the prospect of exclusivity eliminated, Extra  
26 Innings was carried by both DirecTV and InDemand, thereby offering greater  
27 consumer choice in broadcasting than would have been possible under an  
28

1 exclusive contract. In the MLB case study, DirecTV's \$700 million offer can be  
2 interpreted as the price of an exclusive Extra Innings contract, and InDemand's  
3 \$490 million as the price of Extra Innings under a non-exclusive contract.  
4 Therefore, the estimated overcharge arising from an exclusive contract with  
5 DirecTV rather than the non-exclusive, multi-carrier contract proposed by  
6 InDemand is 43%.

7 55. Subscribers to DirecTV have been concerned about the market  
8 leverage it has been able to obtain as a result of its deal with the NFL for Sunday  
9 Ticket. The following interchange between a subscriber and business columnist  
10 Steven Pearlstein was reported in an October 29, 2009 *Washington Post* article:

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

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

25 56. Columnist Gregg Easterbrook made a similar point in his May 21,  
26 2014 article on the website of the *Atlantic Monthly*:

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

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

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

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

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

28 But DirecTV has repeatedly offered the NFL a king's ransom to  
renew its monopoly. For the 2014 season, DirecTV will pay the  
league \$1 billion for about two million Sunday Ticket subscribers:  
more than to be paid by NBC, whose NFL games average 10 times as  
many viewers. DirecTV offers the king's ransom because Sunday  
Ticket is the loss leader that put the company on the map. And the  
NFL loves a customer that pays too much! DirecTV has done the  
league important favors to sustain its sweetheart relationship. As the  
2011 season approached, with the NFL's labor deal expiring and a  
lockout possible, DirecTV agreed to pay \$1 billion even if no games  
were played that season. CBS, ESPN, Fox, and NBC would have

1 owed nothing for no games. The \$1 billion promise from DirecTV  
2 afforded the NFL a plush strike fund, ensuring owners and league  
3 executives could live in luxury that year even if the season were  
cancelled.

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

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

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

20 Allowing AT&T to acquire DirecTV's Sunday Ticket monopoly  
21 would be strongly anti-consumer. Using this moment to divest the  
22 monopoly and bring Sunday Ticket to all telecommunications  
23 platforms would be strongly pro-consumer. Please don't tell us the  
Justice Department and the White House will mess this opportunity  
up.

24 57. For years DirecTV has hypocritically fought with its cable industry  
25 competitors to ensure that vital access to sports programming on so-called  
26 "regional sports networks" ("RSNs") is available to it on a non-exclusive basis.  
27 For example, on August 31, 2012, DirecTV wrote to the FCC in support of a  
28

1 proposed rule extending a ban on vertically integrated cable companies from  
2 withholding access to RSNs from other MVPDs, including DirecTV:

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

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

24 As more fully detailed in Professor Murphy’s attached report, the data  
25 from 2012 are consistent with the Commission’s finding in 2006. In  
26 order to evaluate the effect on DIRECTV’s subscribership from  
27 gaining access to Padres games, Professor Murphy first calculated the  
28 difference in the growth rate in the number of DIRECTV subscribers  
in San Diego before and after these RSN changes. He then calculated  
this difference for a set of control markets, and compared the before-  
and-after difference in DIRECTV’s growth rates in San Diego to the  
before-and-after difference in DIRECTV’s growth rates in the control  
markets. The results of this analysis indicate that DIRECTV has  
gained substantially more subscribers in San Diego since it gained  
access to Padres games through FSSD than would have been expected  
based on its subscribership trends in comparable markets. These  
gains were achieved in only the first five months of DIRECTV’s  
FSSD carriage; the long run effects likely will be larger, as additional

1 San Diego households revisit their MVPD choice. These conclusions  
2 are further supported by customer surveys, which evidence an  
3 increase in the number of new subscribers citing “access to sports  
4 channels” as the reason for subscribing to DIRECTV since it began  
5 carriage of FSSD.

6 58. Thus, as DirecTV’s own data demonstrates, consumers benefit from  
7 the non-exclusive distribution of live sports content by way of enhanced  
8 competition amongst MVPDs.

9 **G. Plaintiff And The Class Have Suffered Antitrust Injury**

10 59. Plaintiff and the Class were, and continue to be, harmed by  
11 Defendants’ anti-competitive agreement with NFL. Plaintiff and the Class are  
12 direct purchasers of NFL Sunday Ticket and the territorial restrictions enforced by  
13 the exclusive arrangement between DirecTV and the NFL causes Plaintiff and the  
14 Class to pay a higher, supracompetitive price for the package of out of market  
15 NFL games than they otherwise would have paid if the agreement were negotiated  
16 competitively.

17 60. The agreements described above have restrained horizontal  
18 competition between and among the distributors of NFL games, including  
19 competition in the commercial exploitation of televised presentations of live  
20 games. In particular, without the exclusive licenses and other competitive  
21 restraints, DirecTV, the television networks, and other MVPDs would compete  
22 with each other in the distribution of NFL games to a much greater extent than the  
23 limited opportunities now available.

24 61. The agreements described above have adversely affected and  
25 substantially lessened competition in the relevant markets. As a result, prices are  
26 higher than they would be in the absence of the agreements to restrict competition.

27 62. The agreements described above do not concern matters of NFL  
28 structure and do not concern any unique characteristic or need of football



1 exhibitions. These anticompetitive restraints are not necessary to the exhibition of  
2 football and are not integral to the sport itself.

3 63. There are no legitimate, pro-competitive justifications for these  
4 exclusive license agreements and other competitive restraints, which would justify  
5 the anticompetitive harms they create.

6 64. In *Laumann v. National Hockey League*, 56 F. Supp. 3d 280  
7 (S.D.N.Y. 2014), Judge Shira Schiendlin recently adjudicated similar issues  
8 involving agreements by MLB and the NHL with DirecTV that involved the  
9 telecasting of games outside of a member team's home territory. Judge  
10 Schiendlin denied summary judgment, finding triable issues as to antitrust injury:

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

19 *Id.* at 297-98. She went on to rule that there were jury issues as to whether  
20 telecasters like DirecTV were participants in the conspiracy between MLB, the  
21 NHL and their member clubs. *Id.* at 302-304.

22 65. The expert evidence by Dr. Noll provided in that case and cited by  
23 Judge Schiendlin was as follows:

24 The ability to extract more revenues from an exclusive contract arises  
25 because out-of market telecasts are a subscription driver for MVPDs.  
26 The benefits of exclusivity to the licensee then can be captured by  
27 MLB through higher rights fees by auctioning the exclusive rights to  
28 the highest bidder. If live telecasts of other sports, or other types of  
programming, were close competitive substitutes for MLB Extra  
Innings, DirecTV would not be able to obtain greater revenue from

1 subscribers by obtaining exclusive rights, and so MLB would not be  
2 able to extract additional revenue by selling Extra Innings on an  
3 exclusive basis.

4 66. Dr. Noll made a similar point in testimony before the United States  
5 Senate Judiciary Committee at a November 14, 2006 hearing on “Competition in  
6 Sports Programming and Distribution: Are Consumers Winning?”:

7 The relevant benchmark for whether an action is pro- or anti-  
8 competitive is the circumstance that would prevail in a competitive  
9 world. *The argument that NFL Sunday Ticket increased output is*  
10 *correct, but it increased output in a monopolized market.* The issue  
11 is what is the alternative in the absence of monopolization, and *in the*  
12 *absence of monopolization, the market for televised NFL games*  
13 *would be like other pro sports were or like college sports are today.*  
14 For example, if all broadcasting of college football games were put  
15 together into a single package priced at \$150 a month and shown  
16 exclusively through DirecTV, the effort would be a profit-enhancing  
17 reduction in output.

#### 18 **H. The Sports Broadcasting Act Does Not Shield Defendants’** 19 **Anticompetitive Acts**

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

22 The antitrust laws, as defined in section I of the Act of October 15,  
23 1914 [Section One of the Sherman Act] ... shall not apply to any joint  
24 agreement by or among persons engaging in or conducting the  
25 organized professional team sports of football, baseball, basketball, or  
26 hockey, by which any league of clubs participating in professional  
27 football, baseball, basketball, or hockey contests sells or otherwise  
28 transfers all or any part of the rights of such league’s member clubs in  
the sponsored telecasting of the games of football, baseball,  
basketball, or hockey, as the case may be, engaged in or conducted by  
such clubs.

15 U.S.C. §1291. In essence, the SBA granted all the major sports leagues an  
exemption from antitrust liability when entering into pooled-rights contracts.

1           68. The SBA is expressly limited to “sponsored telecasting,” which  
2 courts have construed to mean that the SBA only applies to broadcast television  
3 and not to cable or satellite. In fact, when the SBA was being passed through  
4 Congress, former NFL Commissioner Pete Rozelle (“Rozelle”) was asked by the  
5 House of Representatives, “You understand . . . that this Bill covers only the free  
6 telecasting of professional sports contests, and does not cover pay T.V.?” to which  
7 Rozelle responded under oath, “Absolutely.” Another former NFL commissioner,  
8 Paul Tagliabue, has conceded before a Senate Committee that the term “sponsored  
9 telecasts” does not include “pay and cable . . . . This is clear from the legislative  
10 history and from the committee reports.” Thus, the SBA offers Defendants and  
11 their co-conspirators no protection for their anti-competitive acts.

12           69. In *Shaw v. Dallas Cowboys Football Club, Ltd.*, No. Civ. A. 97-  
13 5184, 1998 U.S. Dist. LEXIS 9896 (E.D. Pa. June 23, 1998), *aff’d*, 172 F.3d 299  
14 (3d Cir. 1999), plaintiff Charles Shaw brought a consumer Class action suit  
15 against several NFL teams and the NFL itself, alleging that the NFL’s agreement  
16 for Sunday Ticket with DirecTV violated the Sherman Act.

17           70. The NFL argued, in moving to dismiss, that Sunday Ticket was  
18 exempt from antitrust scrutiny under the SBA because Sunday Ticket “is simply a  
19 sale of the [teams’] residual rights in the games which were broadcast on  
20 ‘sponsored telecasts,’ and, so, the package is a sale of ‘part of the rights’ to the  
21 ‘sponsored telecasts.’”

22           71. The court in *Shaw* rejected the NFL’s argument, finding that the  
23 NFL’s sale of Sunday Ticket fell outside the SBA’s protections, and holding  
24 instead that “sponsored telecasts” refers only to the “more traditional corporate-  
25 sponsored commercial context, rather than the pre-paid, commercial-free package  
26 context.” *Id.* at \*3.

1           72. Likewise, in an earlier ruling in *Laumann v. National Hockey*  
2 *League*, Judge Scheindlin also held that the term “[s]ponsored telecasting’ under  
3 the SBA pertains only to network broadcast television and does not apply to non-  
4 exempt channels of distribution such as cable television, pay-per-view, and  
5 satellite television networks.” 907 F. Supp. 2d 465, 489 n. 141 (S.D.N.Y. 2012)  
6 (quoting *Kingray v. NBA, Inc.*, 188 F. Supp. 2d 1177, 1183 (S.D. Cal. 2002)).

7 **VI. CLASS ACTION ALLEGATIONS**

8           73. Plaintiff brings this action individually and as a class action, pursuant  
9 to Fed. R. Civ. P. 23, on behalf of the following class (the “Class”):

10           All DirecTV Commercial Subscribers that purchased the NFL Sunday  
11 Ticket from DirecTV, or any current or former subsidiary or affiliate  
12 thereof, at any time beginning June 17, 2011 and until the effects of  
13 the anticompetitive conduct described herein end (the “Class Period”).

14           Excluded from the Class are Defendants, their present and former  
15 parents, subsidiaries, affiliates, and co-conspirators; and government  
16 entities.

17           74. DirecTV has sold the NFL Sunday Ticket to Class members across  
18 the nation during the Class Period. Defendants have charged, and continue to  
19 charge, supracompetitive prices for this service.

20           75. This action is properly maintainable as a class action.

21           76. Due to the nature of the trade and commerce involved, the Class  
22 consists of many thousands of members. The exact number and identities of the  
23 Class members are known to DirecTV.

24           77. The Class is so numerous that joinder of all members is  
25 impracticable.

26           78. There are questions of law and fact which are common to the Class  
27 including, *inter alia*, the following:  
28

- 1 (a) whether the Defendants have engaged in and are continuing to  
2 engage in a contract, combination, or conspiracy among themselves  
3 to fix, raise, maintain or stabilize prices of NFL Sunday Ticket;
- 4 (b) whether Defendants have engaged in and are continuing to engage in  
5 a contract, combination, or conspiracy among themselves to fix,  
6 raise, maintain or stabilize prices of video presentations of live  
7 Sunday NFL games by eliminating competition among presenters of  
8 out of market games;
- 9 (c) the identities of the participants in the conspiracy;
- 10 (d) the duration of the conspiracy and the acts performed by the  
11 Defendants in furtherance of it
- 12 (e) whether the alleged conspiracy violated Section 1 of the Sherman  
13 Act, 15 U.S.C. § 1;
- 14 (f) whether the alleged conspiracy violated Section 2 of the Sherman  
15 Act, 15 U.S.C. § 2.
- 16 (g) whether the conduct of Defendants caused injury to Plaintiff and the  
17 other members of the Class; and
- 18 (h) the measure of damages appropriate to redress the injuries to Plaintiff  
19 and the other members of the Class.

20 79. Plaintiff's claims are typical of the claims of the members of the  
21 Class, and Plaintiff will fairly and adequately protect the interest of the Class.  
22 Plaintiff and all members of the Class are similarly affected by Defendants'  
23 wrongful conduct in that they are commercial subscribers of DirecTV and paid  
24 artificially inflated prices for the NFL Sunday Ticket. Plaintiff and the Class  
25 were, during the Class period, commercial subscribers to DirecTV who also  
26 purchased the Sunday Ticket package. Their claims are typical of the claims of the  
27  
28

1 Class, and the named Plaintiff will fairly and adequately protect the interests of  
2 that Class.

3 80. Plaintiff is represented by attorneys who are competent and  
4 experienced in the prosecution of antitrust and class action litigation.

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

9 82. The prosecution of separate actions by individual members of the  
10 Class would also create a risk of inconsistent or varying adjudications,  
11 establishing incompatible standards of conduct for Defendants.

12 83. The questions of law and fact common to the members of the Class  
13 predominate over any questions affecting only individual members, including  
14 legal and factual issues relating to liability and damages.

15 84. A class action is superior to other available methods for the fair and  
16 efficient adjudication of this controversy because, among other things, joinder of  
17 all members of the Class is impracticable. The Class is readily ascertainable and  
18 is one for which records exist. Prosecution as a class action will eliminate the  
19 possibility of repetitious litigation. Treatment as a class action will permit a large  
20 number of similarly situated persons to adjudicate their common claims in a single  
21 forum simultaneously, efficiently, and without the duplication of effort and  
22 expense that numerous individual actions would engender. Furthermore, because  
23 the damages suffered by individual Class members may be relatively small, the  
24 expense and burden of individual litigation make it impossible for members of the  
25 Class to individually redress the wrongs done to them. There will be no difficulty  
26 in the management of this action as a class action.

1 **VII. CLAIMS FOR RELIEF**

2 **COUNT I**

3 **For Violations of Section 1 of the Sherman Act**

4 **(Per Se Violation)**

5 85. Plaintiff, on behalf of itself and the Class, repeats and realleges each  
6 and every allegation set forth above as if fully set forth herein.

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

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

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

25 89. This contract, combination, or conspiracy has also restrained  
26 competition between and among the DirecTV and potential competitors in  
27 violation of Section 1 of the Sherman Act. It has led to anticompetitive effects,  
28

1 including increased prices and reduced output, and otherwise caused injury to  
2 consumers and competition in those relevant markets and elsewhere.

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

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

## 12 **COUNT II**

### 13 **For Violations of Section 1 the Sherman Act**

#### 14 **(Rule of Reason)**

15 92. Plaintiff, on behalf of itself and the Class, repeats and realleges each  
16 of the allegations set forth above as if fully set forth herein.

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

24 94. This contract, combination or conspiracy has resulted in an  
25 agreement understanding, or concerted action between and among the Defendants  
26 that the Sunday Ticket will exclusively be provided by DirecTV. The agreement  
27 forbids any other competitor from offering the same product.  
28



1           95. This contract, combination, or conspiracy has also restrained  
2 competition between and among the DirecTV and potential competitors in  
3 violation of Section 1 of the Sherman Act. It has led to anticompetitive effects in  
4 the relevant markets, as alleged herein, and caused injury to consumers and  
5 competition in those relevant markets and elsewhere.

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

12           97. The NFL and its thirty-two teams have monopoly power with respect  
13 to the creation, licensing, and distribution of NFL games. DirecTV has market  
14 power in the MVPD market, generally, and specifically in the market for  
15 commercial subscribers. DirecTV's exclusive arrangement with the NFL for the  
16 distribution of Sunday Ticket enhances DirecTV's market power in the MVPD  
17 market, generally, and provides it with a monopoly in the market for the live  
18 distribution of NFL games through the Sunday Ticket service.

19           98. The Defendants' contract, combination, agreement, understanding or  
20 concerted action occurred in or affected interstate commerce. The Defendants'  
21 unlawful conduct was through mutual understandings, combinations or  
22 agreements by, between, and among Defendants.

23           99. Defendants' anticompetitive conduct has directly and proximately  
24 caused antitrust injury, in the form of higher prices and reduced output, as set  
25 forth above. Plaintiff and other commercial subscribers will continue to suffer  
26 antitrust injury and other damage unless Defendants are enjoined from continuing  
27 to engage in the foregoing violations of law.

1 **COUNT III**

2 **For Violations of Section 2 of the Sherman Act**

3 100. Plaintiff, on behalf of itself and the Class, incorporate and re-allege  
4 the preceding paragraphs of the complaint.

5 101. Defendants, by the above-mentioned conduct, possess monopoly  
6 power over the creation, licensing, and distribution of live NFL football  
7 broadcasts and have used that power for the purposes of unreasonably excluding  
8 and/or limiting competition, in violation of Section 2 of the Sherman Act (15  
9 U.S.C. § 2), by limiting the distribution of the Sunday Ticket service to only one  
10 MVPD, DirecTV. These activities have gone beyond those which could be  
11 considered as “legitimate business activities,” and are an abuse of Defendants’  
12 market position.

13 102. The relevant geographic market is the United States. The relevant  
14 product market is the market for live distribution of NFL games through the  
15 Sunday Ticket service to commercial subscribers. The Defendants explicitly  
16 recognize this product market and have, in fact, trademarked the Sunday Ticket  
17 name. The Defendants direct advertising and marketing dollars towards this  
18 market and to commercial subscribers, specifically.

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

1           104. Defendants’ anticompetitive conduct has directly and proximately  
2 caused antitrust injury, as set forth above. Plaintiff and other commercial  
3 subscribers will continue to suffer antitrust injury and other damage unless  
4 Defendants and their coconspirators are enjoined from continuing to engage in the  
5 foregoing violations of law.

6 **VIII. PRAYER FOR RELIEF**

7           WHEREFORE, Plaintiff, on behalf itself and the Class, respectfully prays  
8 for judgment as follows:

9           A.     Determining that this action is a proper class action maintained under  
10 Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, certifying Plaintiff  
11 as class representative;

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

15           C.     That Defendants and their co-conspirators’ actions to illegally acquire  
16 and maintain monopoly power in the relevant product market, be adjudged to have  
17 been in violation of Section 2 of the Sherman Act;

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

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

26           F.     That Defendants and their co-conspirators be enjoined from further  
27 violations of the antitrust laws; and  
28

1 G. Granting such other and further relief as the Court deems just and  
2 proper.

3 **IX. DEMAND FOR JURY TRIAL**

4 Plaintiff demands a trial by jury of all issues so triable.

5  
6 DATED: September 9, 2015

Respectfully submitted,

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