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10 **IN THE UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

13 1465 3RD AVE. REST. CORP. (d/b/a
14 GAEL PUB), for itself and for all
others similarly situated,

15 *Plaintiff,*

16 v.

17 NATIONAL FOOTBALL LEAGUE,
18 INC.; NFL ENTERPRISES LLC;
DIRECTV, LLC; and DIRECTV
19 HOLDINGS LLC,

20 *Defendants.*

Case No. 2:15-cv-6145

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

DEMAND FOR JURY TRIAL

21
22 **CLASS ACTION COMPLAINT FOR DAMAGES AND**
23 **DECLARATORY AND INJUNCTIVE RELIEF**

24 Plaintiff, 1465 3rd Ave. Rest. Corp. (d/b/a Gael Pub), individually and on
25 behalf of all others similarly situated (the “Class” as defined below), upon personal
26 knowledge as to the facts pertaining to itself and upon information and belief as to
27 all other matters, and based on the investigation of counsel, brings this class action
28 for damages, injunctive relief and other relief pursuant to the federal antitrust laws,

1 demands a trial by jury and alleges as follows:

2 **NATURE OF ACTION**

3 1. Plaintiff brings this lawsuit against DirectTV, LLC and DirectTV
4 Holdings LLC (collectively, “DirectTV”) and the National Football League, Inc.
5 and NFL Enterprises LLC (collectively, the “NFL”) (together, “Defendants”) on
6 behalf of itself and a Class consisting of all restaurants and bars (the “Commercial
7 Subscribers”) in the United States who purchased the NFL Sunday Ticket during
8 the Class Period (defined herein).

9 2. The relevant geographic market is the United States and the relevant
10 product market is the market for live broadcasts of Sunday afternoon out-of-market
11 NFL football games (“Out-of-Market Games”).¹

12 3. Through an exclusivity agreement with the NFL, DirecTV is the sole
13 distributor of Out-of-Market Games, which it sells through its “NFL Sunday
14 Ticket” package.² This exclusive arrangement allows DirecTV to charge
15 supracompetitive prices for the NFL Sunday Ticket. According to DirecTV’s own
16 website: “Only DIRECTV brings you every play of every out-of-market game,
17 every Sunday.”

18 4. Every NFL member team owns the initial rights to the broadcast of
19 that team’s games. However, each team has chosen to collude with each other and
20 to grant the NFL the exclusive right to market games outside each team’s home
21 market. DirecTV’s arrangement with the NFL allows the Defendants to restrict the

22 _____
23 ¹ “Out-of-Market Games” excludes live Sunday afternoon NFL football games
24 otherwise broadcast on CBS, Fox, or formerly on NBC within a viewer’s local
25 television market. The definition also excludes games within the home territory of
26 one of the NFL teams that is not aired on CBS, Fox, or formerly on NBC, due to
27 the team’s failure to sell all of the tickets to the game prior to the blackout deadline
28 for that game.

² The NFL Sunday Ticket (also known as the Sunday Ticket) is trademarked by
Defendants and is recognized by them as a separate product from NFL games
broadcast on Fox, CBS, NBC, ESPN, and NFL Network.

1 output of, and raise the prices for, Out-of-Market Games. But for the NFL teams’
2 agreement, in which DirecTV has joined, NFL teams would compete against each
3 other in the market for Out-of-Market Games, which would likely induce more
4 competitive pricing.

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

12 6. As a result of the NFL-DirecTV exclusivity agreement, competition in
13 the market for Out-of-Market Games is eliminated and DirecTV’s MVPD rivals are
14 at a competitive disadvantage. Consequently, DirecTV is able to extract
15 supracompetitive rents for its service compared to prices it charges for sports
16 packages in markets where it faces competition. *See, e.g.*, Comments of Cox, FCC
17 MB Docket Nos. 12-68, 07-18, 05-192, at 3 (June 22, 2012) (“the exclusivity deal
18 causing the most significant market distortion today is DirecTV’s Sunday Ticket
19 package”); Testimony of Roger Noll before the Committee on the Judiciary, United
20 States Senate (Nov. 14, 2006) (“From my perspective, if one adopts the right
21 counterfactual, the right but-for world in the competitive environment, it is obvious
22 that NFL Sunday Ticket is a palliative compared to the output and prices that would
23 exist in a competitive environment.”).

24 7. In the United States, Dish Network, a competing satellite MVPD, has
25 stated that “DirecTV’s flagship exclusive promotion is that they are the only TV
26 provider to offer the NFL Sunday Ticket If you want the NFL Sunday Ticket,
27 then DirecTV wins this battle every time.” However, Dish Network promotes itself
28 as having “more channels with a lower monthly bill” and that “Dish wins versus

1 DirecTV in the price category.” Dish Network and other MVPDs would compete
2 with DirecTV on price and service if they were not unlawfully precluded from
3 access to the distribution of Out-of-Market Games.

4 8. The exclusivity agreement between the NFL and DirecTV is lucrative.
5 In October of 2014, various media outlets reported that DirecTV and the NFL
6 entered into a new telecasting deal reportedly worth \$1.5 billion annually for the
7 next eight years, a deal that will bring \$8 billion more to the NFL (over four
8 additional years) than its last deal with DirecTV.

9 9. Indeed, DirecTV’s ability to offer the NFL Sunday Ticket on an
10 exclusive basis is material to its operations. As detailed herein, DirecTV’s recent
11 merger with AT&T depended upon, in substantial part, the continued exclusivity of
12 this service.

13 10. Defendants’ exclusive agreement eliminates competition by preventing
14 other MVPDs from distributing Out-of-Market Games. But for the exclusive
15 agreement between DirecTV and the NFL, additional MVPDs would be willing and
16 able to compete for consumers of these broadcasts. Additionally, faced with
17 competition, prices for these broadcasts would be much lower, as would the cost of
18 DirecTV programming packages required to be purchased in conjunction with the
19 NFL Sunday Ticket. In addition, but for the horizontal agreement among NFL
20 teams to sell a single package of Out-of-Market Games, those individual NFL
21 teams would compete against each other and drive down the broadcast prices of
22 Out-of-Market Games.

23 11. The NFL is the most popular professional sports league in the United
24 States and Commercial Subscribers generate a substantial share of their overall
25 revenue by having the capability to televise multiple professional football games
26 simultaneously. The NFL Sunday Ticket particularly appeals to Commercial
27 Subscribers that cater to NFL fans with loyalties to teams located throughout the
28 United States. Indeed, DirecTV specifically markets the NFL Sunday Ticket to

1 Commercial Subscribers, including, for example, advertising such as: “Turn your
2 business into the neighborhood’s go-to spot with the undisputed leader in sports”
3 and “[o]nly DIRECTV has the sports packages you need to attract fans of every
4 stripe with NFL SUNDAY TICKET 2015”

5 12. Through this lawsuit, Plaintiff and the Class seek to enjoin under the
6 federal antitrust laws the ongoing, unreasonable restraint of trade that Defendants
7 have implemented through DirecTV’s exclusive arrangement to broadcast all Out-
8 of-Market Games. Plaintiff also seeks to recover damages on behalf of itself and
9 the Class for the supracompetitive premiums charged by DirecTV for Out-of-
10 Market Games as a result of this unreasonable restraint of trade.

11 **JURISDICTION AND VENUE**

12 13. Plaintiff brings this action pursuant to Section 16 of the Clayton Act
13 (15 U.S.C. § 26) to secure monetary, equitable and injunctive relief against
14 Defendants for violating Section 1 of the Sherman Act (15 U.S.C. § 1).

15 14. This Court has subject matter jurisdiction over this action pursuant to
16 Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15
17 U.S.C. § 1), and 28 U.S.C. §§ 1331 and 1337.

18 15. Venue is proper pursuant to Section 12 of the Clayton Act (15 U.S.C.
19 § 22) and 28 U.S.C. § 1391 because Defendants transact business in this District,
20 and are subject to personal jurisdiction in this District, because DirecTV is
21 headquartered in this District, and Class members were injured in this District.

22 16. The activities of the Defendants and their co-conspirators as alleged
23 herein were within the flow of, were intended to, and did have, a substantial effect
24 on interstate commerce of the United States.

25 17. Defendants’ conspiracy and unlawful conduct described herein
26 adversely affected the business and property of Commercial Subscribers in the
27 United States that purchased the NFL Sunday Ticket, including Plaintiff and
28 members of the Class.

1 **PARTIES**

2 **Plaintiff**

3 18. Plaintiff 1465 3rd Ave. Rest. Corp. (d/b/a Gael Pub) is a bar and
4 restaurant located in New York, New York. During the Class Period, Plaintiff
5 purchased the NFL Sunday Ticket from DirecTV to attract patrons to its
6 establishment during the NFL's professional football season.

7 **Defendants**

8 19. Defendant DirecTV Holdings LLC is a Delaware limited liability
9 company and has its principal place of business at 2230 East Imperial Highway, El
10 Segundo, California. It is the U.S. operating arm of DirecTV, Inc. and describes
11 itself as "a leading provider of digital television entertainment in the United States."
12 It claims that "[a]s of December 31, 2014, [it] had approximately 20.4 million
13 subscribers."

14 20. DirecTV, LLC is a California limited liability company that has its
15 principal place of business at 2230 East Imperial Highway, El Segundo, California.
16 DirecTV, LLC issues bills to its Commercial Subscribers.

17 21. Until 2015, the NFL was an unincorporated association of 32
18 American professional football teams in the United States, each of which was
19 separately owned and operated, acted in its own economic self-interest and
20 competed in most respects with the other NFL Teams. The NFL teams are
21 headquartered in various cities across the United States and are organized under the
22 laws of various states.

23 22. In or about 2015, the NFL incorporated as the Defendant National
24 Football League, Inc., has its headquarters at 345 Park Avenue, 7th Floor, New
25 York, NY 10154.

26 23. Defendant NFL Enterprises LLC, a Delaware limited liability
27 company, upon information and belief, was organized to hold the broadcast rights
28 of the 32 NFL teams and license them to MVPDs and other broadcasters, including

1 DirecTV. NFL Enterprises LLC is also located at 345 Park Avenue, 7th Floor,
2 New York, NY 10154.

3 **AGENTS AND CO-CONSPIRATORS**

4 24. Each Defendant acted as the principal of or agent for the other
5 Defendants with respect to the acts, violations, and common course of conduct
6 alleged herein.

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

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

19 **FACTUAL ALLEGATIONS**

20 **A. The NFL's Broadcasting Agreements**

21 27. Each of the NFL's 32 member teams gave the league authority to
22 negotiate television deals on its behalf in exchange for an equal share of the
23 resulting revenues. With this authority, the NFL entered into broadcast agreements
24 with ESPN, Fox Broadcasting, CBS and NBC. NBC has the right to nationally
25 broadcast prime-time Sunday night games (NBC Sunday Night Football). ESPN
26 has the right to nationally broadcast prime-time Monday night games (Monday
27 Night Football). In addition, the NFL Network—a cable and satellite network
28 owned by the NFL— nationally broadcasts approximately eight regular season

1 games, in partnership with CBS. These games are usually broadcast during prime-
2 time on Thursday nights.

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

14 29. As a result of this arrangement, during most weeks of the season, only
15 three of the Sunday afternoon games are broadcast by CBS or Fox, and the specific
16 games available to any given viewer depend on whether the viewer is located
17 within a team’s home territory and whether that team is playing on Sunday
18 afternoon.

19 **B. DirecTV’s NFL Sunday Ticket**

20 30. Generally, viewers can only watch NFL games that are broadcast
21 nationally or within their local television market. All other games are considered
22 Out-of-Market Games, which can only be viewed by purchasing a special package.

23 31. DirecTV began to offer the NFL Sunday Ticket beginning in 1994
24 pursuant to an exclusive agreement with the NFL. Today, through this exclusivity
25 agreement, DirecTV takes the live game telecast feeds produced by CBS and Fox
26 and redistributes them without alteration to the NFL Sunday Ticket subscribers
27 through DirecTV channels. By purchasing the NFL Sunday Ticket, a viewer is able
28 to watch any of the Out-of-Market Games.

1 32. As a result of Defendants’ collusive and anticompetitive exclusivity
2 agreement, Out-of-Market Games can only be purchased through DirecTV. This
3 arrangement eliminates competition in the market for the distribution of Out-of-
4 Market Games and requires anyone wishing to view these games to subscribe to
5 DirecTV and purchase the NFL Sunday Ticket at the supracompetitive price
6 dictated by DirecTV.

7 33. DirecTV’s exclusive arrangement with the NFL results in Commercial
8 Subscribers, including Plaintiff and members of the Class, paying a higher price for
9 the NFL Sunday Ticket (and other access charges) than they otherwise would pay if
10 the agreement was negotiated competitively.

11 34. For example, when the NFL’s first contract with DirecTV for the NFL
12 Sunday Ticket expired in 2002, several cable companies (acting as a consortium)
13 offered the NFL \$400 million to \$500 million annually for the nonexclusive rights
14 to carry Out-of-Market Games. The NFL rejected the bid and alternatively chose to
15 renew with DirecTV. As a result, DirecTV was given the exclusive rights to carry
16 Out-of-Market Games for about \$400 million per year.

17 35. In October of 2014, DirecTV renewed its exclusive agreement with the
18 NFL on terms even more lucrative for the NFL and its member teams. On
19 information and belief, the renewal requires DirecTV to pay the NFL an average of
20 \$1.5 billion per year for eight years in return for the exclusive right to broadcast
21 Out-of-Market Games through the NFL Sunday Ticket.

22 **C. Commercial Subscriptions to the NFL Sunday Ticket**

23 36. DirecTV offers Commercial Subscribers “amazing exclusive sports
24 content like NFL SUNDAY TICKET.” Having access to the NFL Sunday Ticket is
25 valuable to these establishments. The National Restaurant Association reports that
26 NFL fans often stay at establishments four hours longer than other patrons and
27 order three or more drinks. Given how valuable Out-of-Market Games are to
28 Commercial Subscribers, and the fact that these games are not interchangeable with

1 telecasts of local NFL games, the subscribers are willing to pay a substantial
2 amount for the NFL Sunday Ticket to offer their patrons the opportunity to view
3 multiple Out-of-Market Games. Additionally, during the Class Period, the fact that
4 the NFL Sunday Ticket is only available through DirecTV locked Commercial
5 Subscribers into the DirecTV service throughout the year.³

6 37. Defendants have taken advantage of this by charging Commercial
7 Subscribers supracompetitive prices for the NFL Sunday Ticket. Although
8 residential DirecTV subscribers pay a fixed charge for DirecTV service and the
9 NFL Sunday Ticket, DirecTV charges Commercial Subscribers fees based on the
10 maximum occupancy permitted by the local fire code. The least expensive package
11 is \$1,458 per season, and the most expensive runs in excess of \$120,000.

12 38. The prices DirecTV charges to Commercial Subscribers for the NFL
13 Sunday Ticket have increased substantially throughout the Class Period. Prices for
14 the NFL Sunday Ticket increased by more than 7% this year alone.

15 39. In contrast to the NFL's exclusive deal with DirecTV, the NBA, the
16 NHL, and MLB offer their live out-of-market game packages through both
17 DirecTV *and* cable sports networks, including, for example, various sports
18 networks owned by Comcast. In these markets, DirecTV does not charge nearly as
19 much for access to MLB Extra Innings, NBA League Pass, and NHL Center Ice,
20 which provide access to more games per week over a longer season than the NFL.
21 For example, as the chart below demonstrates, a Commercial Subscriber with a
22 capacity of 51-100 people will be charged \$2,314 for the NFL Sunday Ticket,
23

24 ³ It was announced on August 10, 2015 that DirecTV would begin offering the NFL
25 Sunday Package through an online streaming service for the 2015 NFL football
26 season. This service will not require subscribers to also purchase a separate
27 DirecTV subscription. See John Breech, CBS Sports, *NFL Sunday Ticket available*
28 *to more viewers without DirecTV subscription*, Aug. 10, 2015,
[http://www.cbssports.com/nfl/eye-on-football/25265705/sunday-ticket-now-
available-to-almost-anyone-without-directv-subscription](http://www.cbssports.com/nfl/eye-on-football/25265705/sunday-ticket-now-available-to-almost-anyone-without-directv-subscription).

1 compared to only \$805 for the MLB Extra Innings package.

	 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	\$ 4,630.00	\$ 1,543.33	\$ 926.00	\$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	\$2,800.00	\$ 933.33
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	\$3,600.00	\$ 1,200.00
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

15 40. In the “but for” world without the unreasonable restraint imposed by
 16 the exclusivity agreement, both teams and providers would compete for viewership
 17 for Out-of-Market Games, which would result in increased options and lower
 18 prices.

19 41. Indeed, Professor Roger Noll testified at a hearing on “Competition In
 20 Sports Programming And Distribution: Are Consumers Winning?” that:

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

1 **D. The Structure of the Market for the NFL Sunday Ticket**

2 42. The relevant geographic market is the United States. The relevant
3 product market is the market for Out-of-Market Games. As alleged herein, the
4 national broadcast rights to select packages of games are negotiated by the NFL
5 with networks CBS, NBC, ESPN and Fox Broadcasting. This market includes both
6 live broadcasts and the broadcast rights for Out-of-Market Games, such as those
7 carried in the NFL Sunday Ticket package. Live broadcasts of other sports or other
8 content do not compete with live broadcasts of NFL games. Moreover, NFL games
9 broadcast locally on CBS and Fox Broadcasting on Sunday afternoons are not
10 interchangeable with the multi-game offering provided by the NFL Sunday Ticket,
11 specifically because the local games are different from the multi-game offering
12 provided by the NFL Sunday Ticket, which caters to fans that are not located within
13 the geographical confines of their favorite teams' home territories.

14 43. DirecTV treats residential and Commercial Subscribers as distinct
15 markets. DirecTV labels a portion of its website "DirecTV For Business," which
16 has a distinct tab for restaurants and bars.

17 44. Although there is undoubtedly some substitution that might occur
18 between broadcasts of in-market games and Out-of-Market Games, the availability
19 of the in-market games does not erode the Defendants' ability to raise the price of
20 Out-of-Market Games above competitive levels. This is particularly true in the case
21 of Commercial Subscribers, where Plaintiff and the Class need to attract customers
22 with loyalty to a diverse range of NFL teams.

23 45. New entrants that would dilute the Defendants' market power
24 established by the collusive agreements alleged herein are extremely unlikely.

25 46. Entry into the market would require the creation of a new professional
26 American football league. Such an undertaking would be enormously expensive
27 and, based on history, very unlikely to succeed.

28 47. In the 95 years since the NFL's formation in 1920, there have only

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

6 48. 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
9 to 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 began play in 1987 and continued through the 2008 season.
13 The league was reorganized in 2010 and continues today. However, the games of
14 the Arena Football League are played in spring and summer to avoid competition
15 with NFL football broadcasts. In addition, the Arena Football League produces an
16 altogether different sport that does not compete substantially with the NFL for
17 broadcast audience.

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

25 50. Even if a new entrant did appear, and even if it were sufficiently
26 successful to sustain itself, it is unlikely that the resulting live telecasts of that new
27 product would compete sufficiently with the NFL’s broadcasts to dissipate the
28 NFL’s market power.

1 51. The Defendants' market power will only be reduced if the underlying
2 collusive agreement that establishes their power is invalidated by antitrust
3 authorities, or if the exclusivity agreement that supports that market power is
4 replaced by non-exclusive licenses.

5 52. The value of the market power that DirecTV exercises as a result of its
6 exclusivity agreement with the NFL is once again illustrated by the recent
7 acquisition offer for DirecTV from AT&T. As *Forbes* noted in an October 8, 2014
8 article:

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

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

28 **E. DirecTV's Involvement in the NFL's Scheme**

54. DirecTV has enabled the NFL teams to maintain their horizontal
agreement while at the same time preserving DirecTV's exclusivity. For example,
as the 2011 NFL season approached, the NFL's labor deal with the players' union
was expiring and a possible lockout was 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

1 games were played. DirecTV's promise ensured that owners and league executives
2 would make \$1 billion even if the entire season were cancelled.

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

11 **F. There are No Pro-Competitive Justifications for the NFL-DirecTV**
12 **Exclusivity Agreement**

13 56. The exclusivity agreement between DirecTV and the NFL for the
14 broadcast rights of the NFL Sunday Ticket is necessary only to preserve the
15 exercise of power in the market for Out-of-Market Games created by the NFL
16 teams' anticompetitive agreement. Without the exclusive deal, the market power
17 created by the collusion among NFL teams would be dissipated by price
18 competition between DirecTV and one or more distributors of broadcasts to
19 customers.

20 57. There are no procompetitive justifications for the exclusivity
21 agreement. There is no evidence to show that the agreement was created to assure a
22 quality broadcast of the games offered on the NFL Sunday Ticket, to allow the NFL
23 sufficient oversight of games offered, or any other ostensibly reasonable objective.
24 Nor is the exclusivity agreement between the NFL and DirecTV necessary to
25 ensure the telecast of Out-of-Market Games. In fact, CBS and Fox are
26 contractually obligated to produce these games and provide over-the-air broadcast
27 of them in local and/or regional markets. Instead, the agreement was created for the
28 sole purpose of artificially inflating the price of Out-of-Market Games.

1 58. Indeed, the exclusive content enjoyed by DirecTV is rare. Rob
2 Stecklow, general manager of sports products and marketing for DirecTV, admitted
3 as much: “[i]n this time and era where there’s less and less content that’s exclusive,
4 the NFL still reigns as some of the best content out there.” The only way Plaintiff
5 and other Class members can view Out-of-Market Games is by purchasing the NFL
6 Sunday Ticket from DirecTV.

7 59. Subscribers have expressed concern about the market leverage
8 DirecTV has been able to obtain as a result of its deal with the NFL for Sunday
9 Ticket. The following exchange between a subscriber and business columnist
10 Steven Pearlstein was reported in a *Washington Post* article:

11 What do you make of the current exclusivity arrangement the NFL has
12 with DirecTV to broadcast games? I find that DirecTV will not sell its
13 ‘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 monopoly
22 profits with DirecTV. That is their ultimate game plan, which by the
23 way won’t include a free, over-the-air broadcast of local team games
24 on local television, unless they are forced to do so.

25 60. For years DirecTV has hypocritically fought with its cable industry
26 competitors to ensure that vital access to sports programming on so-called “regional
27 sports networks” (“RSNs”) is available to it on a non-exclusive basis. For example,
28 on August 31, 2012, DirecTV wrote to the Federal Communications Commission
29 (“FCC”) in support of a proposed rule extending a ban on vertically integrated cable
30 companies from withholding access to RSNs from other MVPDs, including
31 DirecTV. In that letter, DirecTV specifically acknowledged the FCC’s findings
32 that “potential harm to competition [] results when a cable-affiliated programmer
33 withholds content from rival MVPDs.” DirecTV further explained the findings by
34 an economist it retained, stating that, once DirecTV and other competitors acquired

1 the rights to broadcast San Diego Padres baseball games, DirecTV “gained
2 substantially more subscribers in San Diego . . . than would have been expected
3 based on its subscribership trends in comparable markets.” DirecTV also
4 recognized that the “recent developments in San Diego offer a natural experiment
5 through which to evaluate the effects of gaining access to valuable content.”

6 61. As DirecTV’s own data demonstrates, consumers benefit from the
7 non-exclusive distribution of live sports content through, among other things,
8 increased options when competition is enhanced among MVPDs.

9 62. Defendants could achieve any legitimate, pro-competitive goals
10 without their exclusive arrangement. For example, the NFL Sunday Ticket is
11 offered in Canada on a non-exclusive basis through more than a dozen satellite and
12 cable providers. And in the United States, other professional football products such
13 as the NFL’s “Red Zone” package (which offers views of selected in-game
14 highlights) are offered on a non-exclusive basis as well.

15 63. Defendants and their co-conspirators’ exclusive agreement has a clear
16 negative impact on competition for Out-of-Market Games, and serves no pro-
17 competitive purpose. There is no evidence that this agreement was created to
18 assure the quality of the NFL Sunday Ticket or to allow the NFL sufficient
19 oversight, or any other ostensibly permissible objective. Instead, DirecTV and the
20 NFL entered into the agreement with the intent of maintaining supracompetitive
21 prices for the NFL Sunday Ticket. And, because all the NFL teams have colluded
22 to offer the package, they have also prevented individual competition by teams
23 selling their own games to broadcasters.

24 64. There are several less restrictive alternatives which would achieve any
25 legitimate, procompetitive goals. Those include permitting teams to contract
26 individually with DirecTV and allowing other distributors to purchase and exhibit
27 the NFL Sunday Ticket package.

28 65. Plaintiff seeks to restore competition by ending the collusive

1 agreement by Defendants that eliminates competition in the distribution of Out-of-
2 Market Games.

3 **PLAINTIFF AND THE CLASS SUFFERED ANTITRUST INJURY**

4 66. Plaintiff and the Class were, and continue to be, harmed by
5 Defendants' anti-competitive agreement. Plaintiff and the Class are direct
6 purchasers of the NFL Sunday Ticket. The unlawful restraint created by the
7 exclusive arrangement between DirecTV and the NFL causes Plaintiff and the Class
8 to pay a higher, supracompetitive price for Out-of-Market Games than they
9 otherwise would have paid if the agreement were negotiated competitively.

10 67. The agreements described herein have restrained horizontal
11 competition between and among the distributors of Out-of-Market Games. In
12 particular, without the exclusive licenses and other competitive restraints, DirecTV,
13 the television networks, and other MVPDs would compete with each other in the
14 distribution of Out-of-Market Games to a much greater extent than the limited
15 opportunities now available.

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

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

23 **CLASS ACTION ALLEGATIONS**

24 70. Plaintiff brings this action on behalf of itself and as a class action
25 under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on
26 behalf of the members of the following class (the "Class"):

27 All DirecTV Commercial Subscribers that purchased the
28 NFL Sunday Ticket from DirecTV, or any current or
former subsidiary or affiliate thereof, at any time

1 beginning June 17, 2011 and until the effects of
2 Defendants' anticompetitive conduct described herein
cease.

3 Excluded from the Class are Defendants, their present and
4 former parent companies, subsidiaries and affiliates, any
5 co-conspirators, federal governmental entities and
instrumentalities of the federal government, states and
their subdivisions, and agencies and instrumentalities.

6 71. DirecTV has sold the NFL Sunday Ticket to Class members across the
7 nation during the Class Period. Defendants have charged, and continue to charge,
8 supracompetitive prices for that service.

9 72. While Plaintiff does not know the exact number of Class members,
10 due to the nature of the trade and commerce involved, Plaintiff believes there are (at
11 least) thousands of Class members. The exact number of Class members and their
12 identities are known to DirecTV.

13 73. The Class is so numerous that joinder of all members is impracticable.

14 74. Common questions of law and fact exist as to all members of the
15 Class. This is particularly true given the nature of Defendants' conspiracy, which
16 was generally applicable to all members of the Class, thereby making appropriate
17 relief with respect to the Class as a whole. Such questions of law and fact common
18 to the Class include, but are not limited to:

19 a. Whether Defendants and their co-conspirators engaged in and
20 are continuing to engage in a contract, combination, or conspiracy among
21 themselves to fix, raise, maintain or stabilize the prices for the NFL Sunday
22 Ticket by eliminating competition in the relevant market for Out-of-Market
23 Games in the United States;

24 b. Whether Defendants have engaged in and are continuing to
25 engage in a contract, combination, or conspiracy among themselves to fix,
26 raise, maintain or stabilize prices of the NFL Sunday Ticket by preventing
27 any competitor from offering competing products;

28 c. Whether the alleged unlawful agreement in restraint of trade

1 violated Section 1 of the Sherman Act, 15 U.S.C. § 1;

2 d. Whether the conduct of Defendants and their co-conspirators
3 caused injury to the business or property of Plaintiff and the members of the
4 Class;

5 e. The effect of the alleged unlawful agreement in restraint of trade
6 on the prices for the NFL Sunday Ticket packages sold during the Class
7 Period;

8 f. The appropriate injunctive and related equitable relief for the
9 Class; and

10 g. The appropriate Class-wide measure of damages.

11 75. Plaintiff's claims are typical of the claims of the members of the Class,
12 and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff
13 and all members of the Class are similarly affected by Defendants' wrongful
14 conduct in that they are Commercial Subscribers of DirecTV and paid artificially
15 inflated prices for the NFL Sunday Ticket.

16 76. Plaintiff's claims arise out of the same common course of conduct
17 giving rise to the claims of the other members of the Class. Plaintiff's interests are
18 coincident with, and not antagonistic to, those of the other members of the Class.
19 Plaintiff is represented by counsel who are competent and experienced in the
20 prosecution of antitrust and class action litigation.

21 77. The questions of law and fact common to the members of the Class
22 predominate over any questions affecting only individual members, including legal
23 and factual issues relating to liability and damages.

24 78. Class action treatment is a superior method for the fair and efficient
25 adjudication of the controversy, in that, among other things, such treatment will
26 permit a large number of similarly situated persons to prosecute their common
27 claims in a single forum simultaneously, efficiently and without the unnecessary
28 duplication of evidence, effort and expense that numerous individual actions would

1 engender. The benefits of proceeding through the class mechanism, including
2 providing injured persons or entities with a method for obtaining redress for claims
3 that it might not be practicable to pursue individually, substantially outweigh any
4 difficulties that may arise in management of this class action.

5 79. The prosecution of separate actions by individual members of the
6 Class would also create a risk of inconsistent or varying adjudications, establishing
7 incompatible standards of conduct for Defendants.

8 **CLAIMS FOR RELIEF**

9 **COUNT ONE**

10 **Violation of Section 1 of the Sherman Act (*Per Se*)**

11 80. Plaintiff repeats the allegations set forth above as if fully set forth
12 herein.

13 81. Beginning at a time presently unknown to Plaintiff, and continuing
14 through the present, the exact dates being unknown to Plaintiff, Defendants,
15 including the 32 teams that comprise the NFL, and unnamed co-conspirators,
16 entered into a continuing contract, combination or conspiracy in unreasonable
17 restraint of trade with the purpose, intent, and effect of restraining competition in
18 the market for Out-of-Market Games, in violation of Section 1 of the Sherman Act
19 (15 U.S.C. § 1).

20 82. Defendants' contract, combination or conspiracy has resulted in an
21 agreement understanding, or concerted action between and among Defendants that
22 the NFL Sunday Ticket will be provided by DirecTV exclusively. The agreement
23 forbids any other competing MVPD from offering the same product.

24 83. The contract, combination or conspiracy alleged herein has substantial
25 horizontal elements, including agreements between the 32 NFL teams, to limit
26 competition between and among the member teams, who would otherwise be
27 competitors for Out-of-Market Games.

28 84. Defendants' contract, combination or conspiracy has also

1 unreasonably restrained or eliminated competition between and among DirecTV
2 and its potential competitors in violation of Section 1 of the Sherman Act.

3 85. Defendants' contract, combination or conspiracy has created
4 anticompetitive effects, including increased prices and reduced output, and
5 otherwise caused injury to consumers and competition in the relevant market and
6 elsewhere.

7 86. The acts done by each of the Defendants as part of, and in furtherance
8 of, their contract, combination, or conspiracy were authorized, ordered, or done by
9 their officers, agents, employees, or representatives while actively engaged in the
10 management of Defendants' affairs.

11 87. In formulating and carrying out the alleged contract, combination or
12 conspiracy, Defendants and their co-conspirators did the things that they combined
13 and conspired to do, including but not limited to the acts, practices and course of
14 conduct set forth herein.

15 88. Defendants' unlawful agreement in restraint of trade had the following
16 effects, among others:

17 a. Price competition in the market for Out-of-Market Games has
18 been restrained, suppressed and/or eliminated in the United States;

19 b. Prices for the NFL Sunday Ticket have been fixed, raised,
20 maintained, and stabilized at artificially high, non-competitive levels
21 throughout the United States; and

22 c. Plaintiff and members of the Class that purchased the NFL
23 Sunday Ticket have been deprived of the benefits of free and open
24 competition.

25 89. The Defendants' contract, combination or conspiracy occurred in or
26 affected interstate commerce in the United States.

27 90. The alleged contract, combination or conspiracy is a *per se* violation of
28 the federal antitrust laws.

1 91. Defendants' anticompetitive conduct has directly and proximately
2 caused antitrust injury, in the form of inflated, supracompetitive prices for the NFL
3 Sunday Ticket and reduced choice. Plaintiff and other similarly situated Class
4 members have been injured and will continue to be injured in their business and
5 property by paying more for the NFL Sunday Ticket than they would have paid and
6 will pay in the absence of the conspiracy.

7 92. Plaintiff and members of the Class are entitled to an injunction against
8 Defendants to prevent and restrain the violations alleged herein.

9 **COUNT TWO**

10 **Violation of Section 1 of the Sherman Act (Rule of Reason)**

11 93. Plaintiff repeats the allegations set forth above as if fully set forth
12 herein.

13 94. Beginning at a time presently unknown to Plaintiff, and continuing
14 through the present, the exact dates being unknown to Plaintiff, Defendants and
15 unnamed co-conspirators, entered into a continuing contract, combination or
16 conspiracy in unreasonable restraint of trade with the purpose, intent, and effect of
17 restraining competition in the market for Out-of-Market Games, in violation of
18 Section 1 of the Sherman Act (15 U.S.C. § 1).

19 95. Defendants' contract, combination or conspiracy has resulted in an
20 agreement understanding, or concerted action between and among Defendants that
21 the NFL Sunday Ticket will be provided by DirecTV exclusively. The agreement
22 forbids any other competing MVPD from offering the same product. Thus,
23 Defendants' contract, combination or conspiracy has unreasonably restrained or
24 eliminated competition between and among DirecTV and its potential competitors
25 in violation of Section 1 of the Sherman Act.

26 96. The relevant geographic market is the United States. The relevant
27 product market is the market for Out-of-Market Games. The Defendants explicitly
28 recognize this product market. The Defendants direct advertising and marketing

1 dollars towards this market and to Commercial Subscribers specifically.

2 97. Defendants' contract, combination or conspiracy has created
3 anticompetitive effects, including increased prices and reduced output, and
4 otherwise caused injury to consumers and competition in the relevant market and
5 elsewhere.

6 98. The acts done by each of the Defendants as part of, and in furtherance
7 of, their contract, combination, or conspiracy were authorized, ordered, or done by
8 their officers, agents, employees, or representatives while actively engaged in the
9 management of Defendants' affairs.

10 99. In formulating and carrying out the alleged contract, combination or
11 conspiracy, Defendants and their co-conspirators did the things that they combined
12 and conspired to do, including but not limited to the acts, practices and course of
13 conduct set forth herein.

14 100. Defendants' conspiracy had the following effects, among others:

15 a. Price competition in the market for Out-of-Market Games has
16 been restrained, suppressed and/or eliminated in the United States;

17 b. Prices for the NFL Sunday Ticket have been fixed, raised,
18 maintained, and stabilized at artificially high, non-competitive levels
19 throughout the United States; and

20 c. Plaintiff and members of the Class that purchased the NFL
21 Sunday Ticket have been deprived of the benefits of free and open
22 competition.

23 101. The Defendants' contract, combination or conspiracy occurred in or
24 affected interstate commerce in the United States.

25 102. Defendants' anticompetitive conduct has directly and proximately
26 caused antitrust injury, in the form of inflated, supracompetitive prices for the NFL
27 Sunday Ticket and reduced choice. Plaintiff and other similarly situated Class
28 members have been injured and will continue to be injured in their business and

1 property by paying more for the NFL Sunday Ticket than they would have paid and
2 will pay in the absence of the conspiracy.

3 103. There are no pro-competitive justifications for Defendants' exclusivity
4 agreement.

5 104. Plaintiff and members of the Class are entitled to an injunction against
6 Defendants to prevent and restrain the violations alleged herein.

7 WHEREFORE, Plaintiff demands judgment that:

8 1. That the Court determines that this action may be maintained as a
9 Class action under Rule 23 of the Federal Rules of Civil Procedure, and that
10 Plaintiff be named as representative of the Class;

11 2. That the contract, combination or conspiracy, and the acts done in
12 furtherance thereof by Defendants and their co-conspirators as alleged herein, be
13 adjudged and decreed an unreasonable restraint of trade or commerce in violation
14 of Section 1 of the Sherman Act;

15 3. That Plaintiff and members of the Class recover damages, to the
16 maximum extent allowed under the law, and that a joint and several judgment be
17 entered in favor of Plaintiff and members of the Class against Defendants for three
18 times the amount of damages sustained by Plaintiff and members of the Class as
19 allowed by law, together with the costs of this action, including reasonable
20 attorneys' fees, pursuant to Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15
21 and 26);

22 4. That Plaintiff and members of the Class be awarded pre- and post-
23 judgment interest as provided by law, and that such interest be awarded at the
24 highest legal rate from and after the date of service of this Complaint;

25 5. That Defendants and their co-conspirators, affiliates, successors,
26 transferees, assignees and other officers, directors, partners, agents and employees
27 thereof, and all other persons acting or claiming to act on their behalf or in concert
28 with them, be permanently enjoined from further violations of the antitrust laws,

1 including being restrained from and in any manner continuing, maintaining or
2 renewing the conduct, contract, conspiracy, or combination alleged herein, or from
3 entering into any other contract, conspiracy, or combination having a similar
4 purpose or effect, and from adopting or following any practice, plan, program, or
5 device having a similar purpose or effect; and,

6 6. That Plaintiff and members of the Class have such other and further
7 relief as the case may require and the Court may deem just and proper under the
8 circumstances.

9 **DEMAND FOR JURY TRIAL**

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

11 Respectfully submitted,

12
13 DATED: August 13, 2015

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14
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