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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 IN RE: NATIONAL FOOTBALL
LEAGUE'S "SUNDAY TICKET"
16 ANTITRUST LITIGATION

Case No. 2:15-ml-02668-PSG (SKx)

17 THIS DOCUMENT RELATES TO
18 ALL ACTIONS

**PLAINTIFFS' OPPOSITION TO
NFL DEFENDANTS' MOTION
FOR JUDGMENT AS A MATTER
OF LAW**

19 JUDGE: Hon. Philip S. Gutierrez
20 HEARING DATE: June 25, 2024
COURTROOM:
21 First Street Courthouse
350 West 1st Street
Courtroom 6A
22 Los Angeles, CA 90012

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1 **INTRODUCTION**

2 Defendants’ motion largely repeats arguments that the Court has previously
3 and correctly rejected—as to summary judgment, class certification, and multiple
4 *Daubert* motions. The latest attempt ignores the extensive evidence presented at trial
5 showing that the challenged restraints had anticompetitive effects, that the claimed
6 procompetitive justifications are not tethered to the restraints and can be achieved
7 through less restrictive means, and that the but-for-worlds offered by Plaintiffs’
8 experts provide a reasonable basis for calculating damages for both classes. Given
9 that all reasonable inferences must be drawn in favor of Plaintiffs on a Rule 50 motion
10 and credibility determinations and the weighing of evidence lie with the ultimate
11 factfinder, *see RePET, Inc. v. Zhao*, 2018 WL 6003586, at *1 (C.D. Cal. July 13,
12 2018), the Defendants’ motion must be denied.

13 **ARGUMENT**

14 **I. PLAINTIFFS’ EXPERTS OFFER PLAUSIBLE BUT-FOR WORLDS.**

15 Defendants attempt to impose a legally impermissible burden for the liability
16 and damages caused by their own anticompetitive conduct. “[D]amages resulting
17 from an antitrust injury [are] measured by comparison to a ‘but-for’ world that
18 reflects conditions in the actual world *in all respects* except for the alleged
19 anticompetitive conduct.” Dkt. No. 1325 n. 7 (citing ABA Section of Antitrust Law,
20 *Proving Antitrust Damages: Legal And Economic Issues* 4 n.2 (3d ed. 2017)
21 (emphasis added)). Antitrust plaintiffs need only “show the extent of the damages as
22 a matter of just and reasonable inference, although the result be only approximate.”
23 *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563 (1931);
24 *Tawfilis v. Allergan, Inc.*, 2017 WL 3084275, at *14 (C.D. Cal. June 26, 2017)
25 (“After demonstrating antitrust impact, Plaintiffs may rely on the Supreme Court’s
26 relaxed standard of proof for quantifying antitrust damages.”) (citing *Story*
27 *Parchment Co.*, 282 U.S. at 563). “While a jury may not award damages based on
28 ‘speculation and guesswork,’ the jury ‘may make a just and reasonable estimate of

1 the damage based on relevant data, and render its verdict accordingly,’ including by
2 relying on ‘probable and inferential’ proof.” *Spin Master, Ltd. v. Zobmondo Ent.,*
3 *LLC*, 944 F. Supp. 2d 830, 842 (C.D. Cal. 2012) (quoting *Bigelow v. RKO Radio*
4 *Pictures, Inc.*, 327 U.S. 251, 264 (1946) (cleaned up)).

5 Plaintiffs have done just that, notwithstanding Defendants’ claim that a series
6 of hypotheticals under the heading of “changed incentives” reveals some flaw in the
7 expert analysis. But the law requires Plaintiffs only to compare the world with and
8 without the challenged restraints. This is exactly the analysis performed by Dr. Daniel
9 Rascher, the only sports economist to testify at trial. To calculate the amount of the
10 overcharge for class members, Dr. Rascher estimated what would have happened in
11 the absence of *the challenged conduct*.

12 Dr. Rascher used the model of college football – because it had been subject
13 to similar anticompetitive restraints prior to 1984. Tr. 750: 1-24. Consistent with this
14 Court’s ruling on Motion *in Limine* No. 2, Dkt 1320, Dr. Rascher did not expressly
15 reference *NCAA v. Bd. of Regents of the Univ. of Oklahoma*, 468 U.S. 85 (1984) in
16 his testimony, discussing instead the evolution of college football telecasts after those
17 restraints were lifted. Specifically, prior to the ruling, the NCAA permitted member
18 schools to make agreements to license their telecast rights only to ABC and CBS,
19 limited the total number of games that could be televised and the number of games
20 that any one team could televise. *NCAA*, 468 U.S. at 91-94. The Ninth Circuit
21 likewise recognized the value of *NCAA* in showing the before-and-after effects of
22 eliminating restraints on the licensing of broadcasts. *In re NFL’s Sunday Ticket*
23 *Antitrust Litig.*, 933 F.3d 1136, 1154 (9th Cir. 2019) (“*NFLST*”) (citing *NCAA*, 468
24 U.S. at 114 n.53). This Court recognized the same regarding Dr. Rascher’s use of
25 college football. Dkt. 894 at 13.

26 Consistent with the Ninth Circuit’s guidance, Dr. Rascher testified to the
27 many parallels with the NFL that make college football a useful yardstick. Tr.
28 749:10-25. This is true even though the NCAA is not identically situated to the NFL.

1 The NCAA, for example, does not enjoy an antitrust exemption like the SBA, which
2 would have allowed NFL teams to continue to license their rights to over-the-air
3 games to CBS and Fox. Tr. 885:11-18. These differences do not invalidate the
4 yardstick as the cases cited by the NFL Defendants recognize. In *Tawfilis*, the Court
5 found a yardstick methodology reliable over an objection that the expert failed “to
6 control for any economic factors that might influence the price” in the yardstick
7 market, noting that such arguments “generally go to the weight, rather than the
8 admissibility, of the expert’s testimony” and are “issues [] properly raised on cross-
9 examination.” 2017 WL 3084275, at *6 (C.D. Cal. June 26, 2017). So too here.

10 In the but-for-world, where individual teams had the ability to license their
11 out-of-market games for paid television, those games could have been made available
12 on regular cable or satellite channels—and class members would not have had to pay
13 the subscription fee required for the Sunday Ticket product. Tr. 779:7-23 (“In that
14 process, those games then become available, just like on Saturday, on over-the-air
15 channels and on these -- these basic sports cable channels, and so customers don’t
16 pay anything extra above what they were already paying for their TV package.”).

17 Dr. Rascher testified that this end result – where out-of-market games are
18 available on the cable and satellite television packages that all class members already
19 paid for– could be achieved by several methods. For example, Dr. Rascher and Prof.
20 Elhauge both testified it was likely teams would continue to pool their rights to over-
21 the-air games to CBS and Fox, and that only the rights to license out-of-market games
22 would revert to teams. Tr. 754:4-22 (Rascher); Tr. 2123:22-24 (Elhauge). Individual
23 teams could have reached individual deals for their games or licensed those games
24 as a group (like through a division). Tr. 754:23-755:14. Either scenario would
25 enhance competition, Tr. 753:1-12, and lead to the same outcome of increased
26 availability: “They still lead to the same outcomes. This is -- again, this is the most
27 popular programming on television. . . . They will find their way on to these major
28 networks and these major cable stations.” Tr. 899:1-8. In other words, the licensing

1 of games outside of the monopoly control conferred on the NFL by agreement of the
2 teams would likely have resulted in games making their way to television channels
3 that were widely distributed and not bundled in an exclusive specialized Sunday
4 Ticket package. Tr. 753:13-754: 22 (testifying regarding schedules he prepared for
5 how out-of-market games could be shown on basic cable).

6 Dr. Rascher testified as relevant to his ultimate conclusions:

- 7 • The college football rule change led to 40 games being available on
8 television each Saturday. Tr. 750:6-751:7. With far fewer games played on
9 NFL’s Sunday afternoon, there would be adequate capacity for such games
10 to be available on cable/satellite channels. Tr. 752:20-754:3; 750:6-24;
- 11 • NFL football is highly coveted programming, and there would be no
12 impediment for teams to obtain a deal to show out-of-market games. Tr.
13 772:8-18; 840:9-17, 844:17-845:1, 870:12-14, 881:23-882:6; 899:1-6.
- 14 • Making out-of-market games more available would—as one would
15 expect—increase overall viewership, by as much as 29% for adding a single
16 game. Tr. 776:13-778:6.

17 To corroborate his findings, Dr. Rascher also cited the NFL’s own 2017 “New
18 Frontier” analysis, which also had as its aim “[d]istribut[ing] regular season out-of-
19 market simulcasts on basic cable networks instead of exclusively through DirecTV
20 Sunday Ticket (ST).” TX686 at NFL_0889280. The NFL showed how “average
21 distribution for NFL regular season games has potential to double from -39% to -
22 77% of U.S. TV HHs” through the model proposed by Dr. Rascher. *Id.* at 13. It also
23 confirmed an increase in viewership by making out-of-market games available
24 outside of Sunday Ticket. *Id.* at 48. The NFL’s plan confirmed the feasibility of
25 unbundling the Sunday Ticket and showing those games on cable channels. Tr.
26 758:4-759:14; 760:11-761:17. Unlike the methodology rejected in *In re Bextra &*
27 *Celebrex Marketing Sales Practices and Product Liability Litigation*, Dr. Rascher
28 did not favor certain studies “over the great weight of” contrary evidence. 524 F.

1 Supp. 2d 1166, 1176 (N.D. Cal. 2007). He relied on the *NFL*'s own studies that
2 *confirmed* his findings.

3 The only contrary evidence about the feasibility of his but-for-world was
4 speculation by defense witnesses – reiterated in the NFL's series of hypotheticals in
5 their brief. But those created confusion where there was none: as to revenue sharing,
6 Dr. Rascher and Prof. Elhauge explained only a sliver of revenue would not be
7 subject to 100 percent pooling, leading to plenty of revenue for the teams to meet
8 their operating costs, Tr. 874:6-10 (Rascher), Tr. 2161:15-2162:25 (Elhauge); that
9 broadcasting entities would reach deals as to advertising and transmission of the
10 NFL-owned game feeds much as they do in the real world, including in the current
11 retransmission of feeds from Amazon and ESPN to local television stations, Tr.
12 898:9-14 (Rascher), 2206:23-2207:2 (Elhauge); and the scheduling of games could
13 continue as a non-challenged function of the NFL, Tr. 879:11-18; *see also* Tr. 2169:6-
14 15 (Elhauge). Dr. Rascher's modeling, along with the NFL's own analysis, confirmed
15 that in the but-for-world in which teams or groups of teams did not pool their rights
16 to sell exclusively to one distributor, class members would not have paid for a Sunday
17 Ticket bundled product. Because class members by definition subscribed to DirecTV
18 satellite service, they would have had access to the out-of-market game telecasts
19 without having to buy the additional Sunday Ticket subscription bundle. Tr. 779:7-
20 780:7.

21 In a but-for-world without the challenged restraints, class members would not
22 have needed to buy Sunday Ticket to watch out-of-market games. The total damages
23 was the actual amount of subscriptions paid during the class period. For residential
24 subscribers, there were around 24 million paid subscriptions and 500,000 paid
25 subscriptions for the commercial customers. Tr. 721:11-21; 782:24-783:6. The total
26 damages were \$5.6 billion for the residential subscriptions and \$1.3 billion for the
27 commercial customers totaling \$7 billion. Tr. 780:8-16. These damages omit the cost
28 to class members of paying for an underlying subscription to the DirecTV service

1 costs even though the NFL obtained indirect value of another \$8 billion for that
2 through the rights fees DirecTV paid. Tr. 782:18-783:6, 785:16-786:1.

3 Dr. Rascher also provided an alternative model of damages focusing *solely*
4 what would have happened had there been another competitive offering of a Sunday
5 Ticket bundled package – in other words if DirecTV had faced competition for its
6 subscription bundled Sunday Ticket offering. Tr. 783:7-784:12. Dr. Rascher relied
7 on a model generated by Dr. Douglas Zona for the reduction in price if a second
8 Sunday Ticket distributor were added. Tr. 783:16-23. The model he relied on “uses
9 actual transactions, all the -- millions of transactions data that we got from DirecTV,
10 and then viewership data, [] increments like 6-minute increments of people watching
11 DirecTV programming, sports programming, for instance.” Tr. 783:7-23. As Dr.
12 Rascher explained, Dr. Zona “took that data and, using the transaction data and the
13 viewership data, [] created a model that shows what would happen if instead of
14 Sunday Ticket just being available on DirecTV, it was available in just one other
15 spot, another -- one other competitive situation where you could then purchase
16 DirecTV, and so that competition leads to lower prices, as competition does.” *Id.*

17 Based on billions of DirecTV records, Dr. Rascher relied on Dr. Zona’s
18 finding that with one additional distributor, the price of Sunday Ticket would have
19 dropped 49.7%. Tr. 783:24-784:24. Dr. Rascher then applied that 49.7% reduction
20 factor to class members’ purchases in the case (\$7 billion) to arrive at an alternative
21 damages model of \$3.5 billion. *Id.* Dr. Rascher further opined that the price reduction
22 calculated was similar to the price for Sunday Ticket in Canada (roughly half of the
23 U.S. price), where there are multiple distributors rather than a single exclusive
24 distributor. *Id.* The Canada experience is a natural experiment that provides
25 independent evidence to support the findings from Dr. Zona’s viewership model.

26 Dr. Rascher did not rely on any other modeling performed by Dr. Zona,
27 including models in which he looked at adding more than one additional provider of
28 a Sunday Ticket bundled product – which would have further reduced the price. *Id.*

1 Dr. Rascher assumed only a single additional option for buying Sunday Ticket for a
2 consumer. 785:9-11. This reduction factor has no bearing on the primary damages
3 model of \$7 billion, which does not depend on any of Dr. Zona’s work or findings.

4 **II. PLAINTIFFS’ THEORIES OF LIABILITY ARE SUPPORTED BY**
5 **EVIDENCE.**

6 **A. The Teams Are Not a Single Entity Incapable of Concerted Action.**

7 This Court has correctly stated that Defendants’ single-entity argument
8 succeeds only if it is not “*possible* for independent entities—*i.e.*, individual sports
9 teams—to license telecast rights on their own without pooling their rights with a
10 conference or a league.” *In re Nat’l Football League’s Sunday Ticket Antitrust Litig.*,
11 2024 WL 168298, at *16 (C.D. Cal. Jan. 11, 2024) (emphasis added). The single-
12 entity doctrine applies only when otherwise separate entities ““are incapable of
13 conspiring with each other for purposes of § 1 of the Sherman Act.”” *Am. Needle,*
14 *Inc. v. NFL*, 560 U.S. 183, 194 (2010) (quoting *Copperweld Corp. v. Independence*
15 *Tube Corp.*, 467 U.S. 752, 777 (1984)). Here, no reasonable juror could find the teams
16 incapable of concerted action given that it is undisputed that the teams—both
17 historically and presently—sell their telecasts rights individually.¹

18 Defendants’ only response is to continue to conflate the necessity of some
19 cooperation among the teams with the notion that they are incapable of concerted
20 action. That position has been repeatedly rejected in this case and by the Supreme
21 Court. In *NCAA*, the Court recognized that some cooperation was necessary for
22 college football telecasts to exist, but the consequence of that was simply that the rule
23 of reason applied. 468 U.S. at 117. And in *American Needle*, the Court emphasized
24 that “[a]ny joint venture involves multiple sources of economic power cooperating
25 to produce a product. And for many such ventures, the participation of others is

26
27 ¹ Tr. 968:5-12 (Rolapp testimony that teams sell their preseason telecast rights
28 independently); 1638:6-11 (J. Jones testimony that Cowboys license their preseason
telecasts rights “on their own without the NFL”); 1752:17-19 (Yancy testimony that
teams broadcast their own preseason games); 703:10-17; 705:18-706:1 (Rascher
testimony that teams sold rights independently in the 1950s).

1 necessary. But that does not mean that necessity of cooperation transforms concerted
2 action into independent action.” 560 U.S. at 199.

3 “Only the agreements that are the subject of plaintiffs’ antitrust action prevent
4 such independent actions. Thus, we reject the defendants’ argument that *American*
5 *Needle*, 560 U.S. at 190, is inapposite; here, like in *American Needle*, the agreements
6 not to compete concern separately owned intellectual property, and impose an
7 unlawful restraint on independent competition.” *NFLST*, 933 F.3d at 1154; *see also*
8 *NCAA*, 468 U.S. at 99. Because individual NFL teams have in the past broadcast
9 games individually and even today continue to broadcast games individually, as
10 professional teams outside of the NFL do on a routine basis, it is undeniably possible
11 for them to do so. *See* Tr. 2119:4-8 (E. Elhauge) (“It’s also true that in baseball,
12 basketball, and hockey, teams individually sell telecasts...”). Defendants have
13 offered no evidence to suggest otherwise.

14 **B. The Evidence Demonstrates The Challenged Restraints Had**
15 **Anticompetitive Effects.**

16 Under the rule of reason, Plaintiffs may prove anticompetitive harm in any of
17 three ways: by showing a naked restraint on competition; by directly showing the
18 effects on competition; or by indirectly showing the defendants’ power in a defined
19 product market, coupled with evidence of likely harm to competition. Plaintiffs have
20 met their burden under all three frameworks and incorporate by reference the
21 arguments made in their Motion for Judgment as a Matter of Law. *See* Dkt. 1457 at
22 2-8. In addition, the NFL’s argument that no jury could ever find the exclusive
23 arrangement with DirecTV had substantial anticompetitive effects—and Plaintiffs’
24 challenge to the vertical aspect is untenable as a matter of law—is a repackaging of
25 unsuccessful arguments made at summary judgment.² The NFL again attempts to
26 isolate its exclusivity with DirecTV and treat it as a run-of-the-mill exclusive deal.

27 _____
28 ² The NFL even incorporates its summary-judgment briefing here, which lays to rest
any questions whether this is a bona fide Rule 50 issue or merely an effort to preserve
previous arguments.

1 But the jury is required, as was this Court previously, “to take a holistic look at how
2 the interlocking agreements actually impact competition’ and cannot evaluate the
3 NFL’s vertical conduct in isolation.” *In re Nat’l Football League’s Sunday Ticket*
4 *Antitrust Litig.*, 2024 WL 168298, at *19 (C.D. Cal. Jan. 11, 2024) (quoting *NFLST*,
5 933 F.3d at 1152). Professor Elhauge likewise testified about the interaction between
6 the vertical and horizontal aspects here, which enables the NFL to use its market
7 power to raise the licensing fee (whether per-subscriber or otherwise) for downstream
8 distributors. These unique features of the restraint—singular in the world of
9 American professional sports—distinguish exclusivity here from the misleading
10 testimony about the prevalence of exclusivity in other settings. *See also* Tr. 2114:19-
11 2115:3 (Elhauge).

12 Plaintiffs were not required to prove that the effect of the restraint was to
13 “foreclose competition in a substantial share of the line of commerce affected.” *Fed.*
14 *Trade Comm’n v. Qualcomm Inc.*, 969 F.3d 974, 1003 (9th Cir. 2020) (cleaned up).
15 The NFL borrows that requirement from the law of exclusive dealing—confined to
16 “an agreement between a vendor and a buyer that prevents the buyer from purchasing
17 a given good from any other vendor.” *Id.* (cleaned up). At the first step of the rule of
18 reason, Plaintiffs need only prove that the challenged restraint has a substantial
19 anticompetitive effect that harms consumers in a relevant market. *Epic Games, Inc.*
20 *v. Apple, Inc.*, 67 F.4th 946, 983 (9th Cir. 2023). The NFL’s citations actually make
21 Plaintiffs’ point. The limited number of NFL fans who were Sunday Ticket
22 subscribers at a given time is evidence of the *effectiveness* of the restraint, not the
23 absence of anticompetitive consequences. Tr. (Rolapp) 1144:7-1145:5; TX-172 at
24 NFL_0609540. Dr. Rascher testified about his review of numerous other NFL studies
25 and correspondence that point to similar counts, significant unmet demand, and
26 deliberately erected barriers to subscription. Tr. 742:1-746:13.

1 **C. Plaintiffs Have Identified Less Restrictive Alternatives for Each of**
2 **Defendants’ Claimed Justifications.**

3 Defendants’ argument that no reasonable jury could find less restrictive
4 alternatives to the challenged restraints rests on the mistaken premise that Defendants
5 proved a legally cognizable procompetitive justification for *the challenged restraints*.
6 Mot. at 12. Defendants proved no such thing. As detailed in Plaintiffs’ Motion for
7 Judgment as a Matter of Law, Defendants failed at every turn to consider the
8 combined effects of the interlocking restraints challenged by Plaintiffs. *See* Dkt. No.
9 1457 at 10-11. Moreover, many of the contended procompetitive effects result from
10 unchallenged conduct, such as the revenue sharing of over-the-air telecasts or the
11 teams working together to produce better telecasts. Others are relevant only to one
12 form of conduct alleged to be anticompetitive by the Plaintiffs, without regard to the
13 interlocking nature of all of the restraints at issue. Tr. 2135:10-21 (Elhauge). In any
14 case, Plaintiffs identified less restrictive alternatives to *each* of the purportedly
15 procompetitive rationales that Defendants presented to the jury.

16 As to the protection of over-the-air broadcasts, Professor Elhauge testified that
17 the NFL could continue its commitment to such telecasts in the but-for-world by
18 simply reducing the price that it charges the networks, or by licensing the games to
19 all four, rather than just two, major networks. Tr. 2155:3-24. The NFL could also
20 require that any broadcaster of out-of-market games show that game over-the-air in
21 local markets, as is current practice for the Monday Night Football and Thursday
22 Night Football games that are shown via paid cable and streaming services,
23 respectively. Tr. 2156:2-17. These alternative means of maintaining over-the-air
24 broadcasts are consistent with testimony given by Dr. Rascher about the NFL’s New
25 Frontier Study and the conclusion that household distribution could double if the
26 networks put their out-of-market games on cable channels. Tr. 760:5-761:17.

27 As to competitive balance, Dr. Rascher gave un rebutted testimony that the
28 salary cap and the salary floor are the principal drivers of that balance—not the

1 challenged restraints. Tr. 828:7-14. Those guarantors of competitive balance would
2 continue in a world in which the restraints on Sunday Ticket were removed. Professor
3 Elhauge further testified that “salary caps and salary floors” are less anticompetitive
4 alternatives to the pooling of all telecast rights that Defendants argue promoted
5 competitive balance. Tr. 2163:14-16. The teams could also continue to share
6 revenues sufficient to meet that salary floor—including by sharing the revenues just
7 from the primetime and over-the-air games—without needing to resort to restraining
8 the distribution of out-of-market games. Tr. 2162:21-2163:9 (Elhauge). Both Dr.
9 Rascher and Professor Elhauge made clear that the teams could continue to share
10 telecast revenues from these sources—the bulk of their annual media revenue. Tr.
11 903:6-19 (Rascher); *see also* Tr. 2202:12-16 (Elhauge).

12 As to “innovations and product quality,” numerous fact and expert witnesses
13 testified that competition—not exclusivity—drives innovations. *See* Tr. 1695:23-
14 1696:6 (McManus); Tr. 2166:23-2167:2 (Elhauge) (“the economic literature is pretty
15 clear that, generally, competition leads to more innovation than monopoly”). Dr.
16 Rascher testified that there was no connection between any innovations of NFL
17 broadcasters and charging \$295 for Sunday Ticket, because “those are the sort of
18 innovations that a network would put on because it’s competing with other
19 networks.” Tr. 788:24-789:9. Because those networks are trying to out-compete each
20 other, “they’re going to make those investments sort of regardless of -- of the Sunday
21 Ticket package.” Tr. 789:7-9.

22 For the same reason, the Defendants’ “promotion and price discounts”
23 justification fails. DirecTV’s promotion of a free year of Sunday Ticket for new
24 customers of DirecTV satellite service was a method to entice customers to get
25 locked into a long-term contract.³ Distributors of Sunday Ticket would be
26 incentivized to engage in promotion and price discounts to have customers use their
27

28 ³ *See, e.g.*, Tr. 1301:22-1302:1 (Frantz) (“Well, to be clear, I had to sign a two-year contract.”).

1 platforms absent exclusivity. Any discounts offered by DirecTV would have been a
2 feature of the but-for world and do not diminish the anticompetitive effect of the
3 challenged restraints—the overcharge that class members actually paid.⁴

4 Defendants’ argument that the exclusivity preserved DirecTV’s ability to
5 compete with other MVPDs has nothing to do with any purported procompetitive
6 justification. *See Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488
7 (1977) (“The antitrust laws . . . were enacted for ‘the protection of competition not
8 competitors.’”) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)).
9 As Professor Elhauge clarified, “adopt[ing] restraints that lead to anticompetitive
10 profits” is in contrast to the economic literature which says that competition leads to
11 more innovation. Tr. 2166:15-2167:2. Witnesses testified that, during the class
12 period, several other content distributors were more innovative, demonstrating that
13 the restraints inhibited real competition. Tr. 1554:10-21 (Goodell testifying that
14 Google and Amazon were more innovative than DirecTV).⁵

15 Lastly, Defendants made no attempt to connect DirecTV’s exclusive
16 distribution of Sunday Ticket—a key component of the challenged restraints—to the
17 final procompetitive justification, the efficient matching of games to TV time slots.
18 *See* Tr. 2169:4-5 (Elhauge) (“And there’s no real connection between them.”).
19 Because the SBA antitrust exemption would allow the teams to continue pooling their
20 over-the-air rights in the but-for-world, there is no reason why the NFL teams could
21 not continue “flexing” games and generally matching the most popular games in the
22 most watched timeslots. Tr. (E. Elhauge) 2169:6-15. And the NFL could continue
23
24

25 ⁴ Furthermore, “[t]hose who received the product for free as part of DirecTV’s
26 program to entice new customers, for example, are not included [in the class
27 definition].” Dkt. No. 894 at n. 1.

28 ⁵ Further, conflicting testimony at trial would suggest that the NFL’s proffered
justification is pretextual as DirecTV was “a viable competitor” during the class
period. *See, e.g.*, Tr. 1460:17-1461:6 (Goodell testifying that DirecTV was already
“the largest carrier of sports,” had more reach than cable operators, and was “one of
the leaders into 4K and some of the newer technologies”).

1 this process for out-of-market games as a less restrictive alternative to “collectively
2 licensing and charging a price.” Tr. (E. Elhauge) 2170:13-25.

3 **D. Plaintiffs’ Section Two Claim Should Go to the Jury**

4 “To prove their § 2 conspiracy claim, Plaintiffs must also prove, in addition to
5 establishing the agreement, ‘an overt act in furtherance of the conspiracy’ and ‘the
6 specific intent to monopolize.’” *In re NFLST Antitrust Litig.*, 2024 WL 168298, at
7 *8 (Jan. 11, 2024) (quoting *Paladin Assocs., Inc. v Mont. Power Co.*, 328 F.3d 1145,
8 1158 (9th Cir. 2003)). Here, the jury may consider the evidence that the Teams-NFL,
9 NFL-Networks, and NFL-DTV Agreements “were designed to maintain market
10 power, which establishes the defendants’ specific intent.” *See NFLST*, 933 F.3d at
11 1159. Specifically, Plaintiffs have provided more than sufficient evidence for the jury
12 to find that the agreements among the NFL, the member clubs, DirecTV, and the
13 networks were designed to maintain market power by reducing output, creating
14 artificial scarcity, and raising prices.

15 Defendants claim Plaintiffs cannot prevail on their Section 2 claim if their
16 Section 1 claim fails. This is wrong as a matter of law because the claims are distinct.
17 The elements of a Section 2 conspiracy to monopolize claim vary from the elements
18 of a Section 1 claim. For example, a showing of market power is not required for
19 Plaintiffs’ Section 2 claim. *See Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*, 627
20 F.2d 919, 926 (9th Cir. 1980) (“[N]o particular level of market power or ‘dangerous
21 probability of success’ has to be alleged or proved in a conspiracy [to monopolize]
22 claim where the specific intent to monopolize is otherwise apparent from the
23 character of the actions taken.”).

24 **III. PLAINTIFFS HAVE PROVEN CLASSWIDE INJURY AND**
25 **DAMAGES.**

26 There is ample record evidence that Plaintiffs have proven causation and
27 classwide injury and damages. There is no dispute that every class member had only
28 one option to watch out-of-market games—purchasing Sunday Ticket from DirecTV.

1 Class members were required to install a dish and purchase DirecTV’s satellite
2 service as a prerequisite to purchasing Sunday Ticket. *See* Tr. 196:2-12, 266:11-
3 267:6. And the evidence is clear that the NFL required DirecTV to charge a
4 “premium” price for Sunday Ticket. TX-045 at -469 (premium subscription
5 requirement in DTV-NFL contract); Tr. 277:4-25, 280:4-8, 290:16-17, Tr. 293:17-
6 18 (testimony of Steve Bornstein that premium subscription meant premium price).
7 All class members paid that “premium” price. The specific facts supporting Article
8 III standing are “supported adequately by the evidence adduced at trial.” *TransUnion*
9 *LLC v. Ramirez*, 594 U.S. 413, 431 (2021).

10 Further, it is the jury’s duty to evaluate the reliability of Plaintiffs’ experts’
11 methodologies pertaining to injury and damages. Because the precise economics of
12 a world absent the alleged anticompetitive conduct cannot be known with certainty,
13 courts only require antitrust plaintiffs to put forth reasonable estimates of antitrust
14 damages. *See Story Parchment*, 282 U.S. at 562. Plaintiffs have met that burden.
15 Though the NFL Defendants quibble with Plaintiffs’ experts’ methodologies, it is the
16 jury’s duty to evaluate the reliability of the but-for world Plaintiffs’ experts have
17 presented, as evident by the case the NFL Defendants rely on. *See Kurtz v. Costco*
18 *Wholesale Corp.*, 818 F. App’x 57, 62 (2d Cir. 2020) (“Defendants’ central
19 contention is that Weir’s analysis either does not or cannot establish a price premium
20 because of issues such as an incomplete dataset, flawed parameters of the regression,
21 or business considerations not captured by the model. *A factfinder may ultimately*
22 *agree*. But *if* that is the case, then the class claims will fail as a unit.”) (emphasis
23 added).

24 Dr. Zona’s modeling of a world in which Sunday Ticket was distributed on a
25 non-exclusive basis (like every other sport), supports a verdict in plaintiffs’ favor.
26 Dr. Zona’s econometric modeling—described in nearly three hours of testimony—
27 uses as an input DirecTV’s extensive transactional data, spanning billions of data
28 points. Tr. (Zona) 1174:3-1176:2; Tr. (Yurukoglu) 1411:6-7. Specifically, Dr. Zona

1 used “nested logit models” using the “Berkson-Theil method,” which has more than
2 a 50-year history in applied economics. Tr. (Zona) 1177:2-1178:2. That modeling
3 showed a reduction factor (*i.e.*, a discount) of 49.7% had there been even a single
4 distributor-competitor in addition to DirecTV during the class period. Tr. (Zona)
5 1173:7-10. And fundamentally, Dr. Zona’s modeling quantifies the application of a
6 fundamental economic principle *on which there is consensus*: class members “would
7 have paid less if there had been more competition.” Tr. (Zona) 1172:14-15; Tr.
8 (Yurukoglu) 1409:22-24 (“But you agree that competition leads to lower prices? A.
9 Again, generally, yes.”).

10 To assure himself of the reliability of his modeling, Dr. Zona examined the
11 statistical fit in his computing and as it relates to particular variables. Tr. 1179:9-15.
12 Dr. Zona also tested the “internal validity” of his modeling by applying it to actual
13 prices in the real world and observed “estimates of what the demand would be that
14 are within less than 1 percent of the actual numbers” (*i.e.*, more than 99% accurate).
15 Tr.1179:16-25.

16 Dr. Zona’s models *do not* predict higher prices in the but-for world, as the NFL
17 suggests. It was only when Dr. Yurukoglu applied his own set of assumptions to Dr.
18 Zona’s modeling that any of these supposed issues arose. Tr. (Yurukoglu) 1418:25-
19 1419:3 (“Now, that 148.86 that you have here is a number that you generated after
20 making changes to Dr. Zona’s model; right? A. At a high level, yes.”). Chief among
21 Dr. Yurukoglu’s assumptions is that the NFL would have used a per-subscriber fee
22 structure when licensing to multiple distributors. But Dr. Yurukoglu acknowledged
23 in his testimony “that in real life the NFL licensed Sunday Ticket and other telecasts
24 on a nonexclusive basis using a flat fee,” and that the NFL licensed Thursday Night
25 Football to both Amazon and FOX on a nonexclusive basis using a flat fee. Tr.
26 1436:7-20. A second undisputed example is the 2002 DirecTV-NFL contract for
27 Sunday Ticket, which featured a flat fee for each of the five years (2003-2007) but
28 was explicitly non-exclusive for the final two years (2006-2007). TX-390 at

1 NFL_0000418 (“Scope of contractual exclusivity on out-of-market games . . . 2006
2 and 2007 NFL seasons – vs. [other] satellite platforms only . . .”).⁶

3 Against this backdrop, a reasonable jury could well conclude that the NFL
4 would have continued to use a flat-fee structure when licensing to multiple
5 distributors.⁷ Plainly, the NFL “believed” that its real-life strategy of a flat fee with
6 multiple distributors before and during the class period “would maximize its profits.”
7 *Murphy Tugboat Co. v. Crowley*, 658 F.2d 1256, 1262 (9th Cir. 1981).⁸ But even a
8 per-subscriber fee in the but-for-world would not be saddled with Defendants’ other
9 anticompetitive conduct, including its created monopoly and collusive behavior with
10 competitors. Tr. 2232:7-16 – 2233:1 (Elhauge).

11 Dr. Zona’s modeling is also reliable under Federal Rule of Evidence 702
12 notwithstanding the NFL’s accusations of “undisputed, outlandish predictions.”
13 Competitors charge different prices all the time; that is the essence of price
14 competition. Tr. (Zona) 1172:14-15 (competition causes prices to fall); Tr.
15 (Yurukoglu) 1409:22-24 (same). That is particularly so here, where the price
16 assumed to be charged by the other competitor was *without* the need for a satellite
17 dish and a \$1100 plus subscription just to get on the DirecTV service. Tr. 1226:4-9.

18 Even the NFL Defendants’ preferred authority emphasizes as much:
19 “[R]ational economic behavior in the hypothetical free market . . . includes a rational
20

21 ⁶ And, as another example, Dr. Yurukoglu affirmed that at one time Major League
22 Baseball made use of flat fees but was unaware of the details. Tr. (Yurukoglu)
1434:23-1435:10.

23 ⁷ In its order denying the NFL Defendants’ Motions *in Limine* 5 and 6, ECF No.
24 1334, this Court noted its “satisf[action] with Dr. Zona’s reasons to maintain the
25 fixed-fee structure in his models: Each of the NFL’s current broadcast agreements is
26 for a fixed fee, and thus keeping this structure could contribute to the model’s
comparability.” *Id.* at 5. For all the reasons outlined here and at trial, Dr. Zona’s
“fixed-fee structure could very well be a rational economic choice, [and] its inclusion
in Dr. Zona’s models does not make the models unreliable.” *Id.*

27 ⁸ Elsewhere, the NFL Defendants accuse Plaintiffs of “hid[ing]” Dr. Zona’s survey
28 model, which is inaccurate. Dr. Zona’s survey model is simply not the basis for any
damages estimate in the case. *See, e.g.*, Tr. (Yurukoglu) 1412:21-25 (“And, again,
you agree with the statement that you made nearly a year ago in your report that Dr.
Rascher does not rely on other reduction factors estimated by Dr. Zona [outside of
Model 1] to calculate damages; right? A. Yes.”).

1 price differential between [competitor] prices based on all competitors['] attempts to
2 maximize their own profits . . . and the potential entry of other competitors into the
3 market.” *Dolphin Tours, Inc. v. Pacifico Creative Serv., Inc.*, 773 F.2d 1506, 1511
4 (9th Cir. 1985). Dr. Yurukoglu’s critique here is fundamentally that he has not seen
5 similar price dispersion with respect to other sports leagues’ packages. But, as with
6 past *Daubert* attempts against Dr. Zona rejected by this Court, “Defendants do not
7 explain why the structures of the out-of-market packages of the MLB, NHL, and
8 NBA are good comparators with respect to ‘practices’ or ‘incentives.’” Dkt. No. 1334
9 at 5.

10 The NFL is also mistaken that there could not have been a second provider of
11 Sunday Ticket from 2011 to 2023, particularly when every other sports-league out-
12 of-market package had multiple distributors during the same period. Tr. (Yurukoglu)
13 1434:5-8 (“And during the class period, NFL Sunday Ticket was the only U.S.
14 professional sports league that licensed its out-of-market package to a single
15 distributor? A. Of those four [NBA, MLB, NHL, NFL], yes.”). For his modeling
16 purposes, Dr. Zona did not “have any particular supplier in mind” with the entry of a
17 “direct to consumer” competitor. Tr. 1222:20-1224:6, 1228:1-4 (“My model doesn’t
18 rely on anything specific. It’s just an additional competitor.”); 1225:23-1226:5;
19 1233:1-3 (“you don’t have to pay the underlying subscription service like cable or
20 satellite” because “[y]ou may already have it”). This “direct-to-consumer” alternative
21 could be a cable offering for those who already have cable service; a DISH network
22 offering for those who already have satellite service, or a “Netflix-like” service for
23 those who already have internet service. Tr. 1223:12-17, 1225:23-1226:5, 1227:13-
24 25, 1233:1-3, 1277:14-19. Dr. Yurukoglu understood Dr. Zona’s “direct-to-
25 consumer” scenario to “encompass[] many possibilities, including MVPDs
26 [multichannel video programming distributors],” which Dr. Yurukoglu defined as “a
27 cable, satellite, or telco company from whom you buy television service.” Tr.
28

1 1364:11-24. Dr. Yurukoglu specifically acknowledged DISH Network among these
2 possibilities. Tr. 1367:3-15.

3 In other words, Dr. Zona never limited his but-for world to streaming
4 competitors alone. In any event, streaming options for live sports—and even Sunday
5 Ticket—were prevalent during the entire class period, as numerous witnesses and
6 trial exhibits confirmed. Dr. Yurukoglu verified that live-sports streaming existed
7 before and during the class period. Tr. 1313:20-1314:13, 1368:15-21, 1369:9-11.
8 Cathy Yancy testified that she was personally involved in discussions with DirecTV
9 about their marketing of a streaming Sunday Ticket product as early as 2012. Tr.
10 1781:9-12. Indeed, DirecTV’s “NFL Sunday Ticket 2012 Marketing Plan,” which
11 was shared with the NFL, details the ability to “[g]et every NFL Sunday Ticket game
12 on any device. Watch every NFL Sunday Ticket game live, anywhere, on your laptop,
13 phone, or tablet. You’ll never miss a game, even when you’re nowhere near a TV.”
14 TX470 at NFL_0868426; Tr. (Yancy) 1782:6-1784:8. And Ms. Yancy agreed—“that
15 sounds about right”—that the first Super Bowl to be livestreamed was in 2012. Tr.
16 (Yancy) 1798:12-18.⁹

17 Nor is there anything new or undisclosed about Dr. Zona’s discovery of an
18 “NFL Tax” through his modeling, which is the difference between DirecTV’s profit-
19 maximizing list price for Sunday Ticket of \$222 and its actual list price of \$295 (a
20 24.6% variation) and which he interprets as consistent with Plaintiffs’ allegations of
21 the NFL’s control over price. Those figures appear in Dr. Zona’s reports, even
22 expressly as a “price reduction factor.” Dr. Yurukoglu’s say-so at trial, meanwhile,
23 that the profit-maximizing list price must be the actual list price (and any other result
24 reflects “deficiencies,” Tr. 1345:25-1346:3) is no reason to deny the jury
25 consideration of both experts’ opinions, particularly when Dr. Yurukoglu did not
26

27 ⁹ The earliest evidence of live-streaming possibilities in the trial record is the NFL’s
28 2009 Sunday Ticket contract with DirecTV. That contract, dated more than two years
before the start of the class period, details at length DirecTV’s rights to distribute
Sunday Ticket over broadband and mobile and the joint development of those
offerings. TX44, at NFL 0000440-43.

1 calculate a profit-maximizing list price or perform any modeling whatsoever. Tr.
2 1405:25-1406:3.

3 **IV. PLAINTIFFS HAVE PROVIDED SUFFICIENT EVIDENCE**
4 **REGARDING THE COMMERCIAL CLASS.**

5 Defendants' arguments regarding the commercial class ignore the many
6 commonalities between the residential and commercial classes; both "uniformly
7 purchased NFL Sunday Ticket packages at supracompetitive prices because of
8 Defendants' restrictions on telecasts" and "share a common interest." Dkt. No. 894
9 at 23-24. For starters, the Defendants ignore the fact that the anticompetitive conduct
10 challenged by Plaintiffs was the same between the two classes: the pooling agreement
11 among the NFL's teams applied equally to commercial subscribers; the restraints
12 imposed by the networks such as charging a "premium" price applied equally to
13 commercial subscribers; and DirecTV was the exclusive provider of Sunday Ticket
14 for commercial subscribers. The limitations on Sunday Ticket in the NFL-DirecTV
15 agreements and NFL-Network agreements applied equally to residential and
16 commercial subscribers.

17 The same is true for injury and damages. Both Dr. Rascher and Dr. Zona
18 calculate damages for commercial subscribers separate and apart from residential
19 subscribers as noted above. Under Dr. Rascher's College Football but-for world, the
20 result is the same between residential and commercial subscribers. All games would
21 be available on free over-the-air or basic cable channels, eliminating the need to
22 purchase any add-on Sunday Ticket package.

23 As for Dr. Zona's analysis in a world without DirecTV's exclusivity, he
24 separately calculated the total amount of business from commercial Sunday Ticket
25 subscribers. Tr. (Zona) 1189:16-1190:2; Tr. (Yurukoglu) 1398:2-5. Dr. Zona went
26 on to assess whether the same reduction factor he applied to the residential class could
27 also apply to the commercial class. Tr. (Zona) 1189:3-12; 1219:9-15; 1220:21-
28 1221:1. In particular, Dr. Zona testified that demand in commercial settings is driven

1 by “the underlying demand from the viewers [patrons] at the establishment that has
2 the service,” *i.e.*, individuals who are also potentially viewing games at home. Tr.
3 (Zona) 1277:3-9. Even Dr. Yurukoglu—who did not conduct his own empirical
4 analysis or modeling of the impact on commercial class members—conceded that
5 commercial subscribers purchased the same Sunday Ticket product, from the same
6 exclusive distributor (DirecTV), for the same reason: to access out-of-market games.
7 Tr. (Yurukoglu) 1415:3-20.

8 Antitrust courts routinely approve of the use of overcharge percentages that
9 straddle discrete but similarly affected populations *See, e.g., Olean Wholesale*
10 *Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 661, 684–85 (9th Cir.
11 2022) (en banc) (affirming certification of a class “[i]n a complex market such as the
12 one at issue here, where different purchasers with different bargaining power
13 purchased a range of products at different prices from different suppliers”); *In re*
14 *TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 603 (N.D. Cal. Mar. 28,
15 2010) (“Numerous courts have held that variations in products and complexities in a
16 distribution chain do not preclude an estimation of whether an overcharge impacted
17 end purchasers.”); *cf. Prime Media Group, LLC v. Acer America Corporation*, 2015
18 WL 452192, at *4 (N.D. Cal. Jan 22, 2015) (denying motion to exclude expert
19 testimony) (“Extrapolating results from a sample to a population is a routine
20 statistical technique and indeed is often necessary in the face of an incomplete or
21 intractably large data set.”).

22 Defendants make an irrelevant argument based on the fact that the two
23 residential class representatives may go to bars to watch football games, and that
24 going to these establishments “would eliminate the need for many consumers to go
25 to a bar to watch the game.” *See* Mot. at 22. The issue is whether class members were
26 overcharged for Sunday Ticket, not whether they also watched games at a bar or
27 restaurant.

1 **V. PLAINTIFFS ARE DIRECT PURCHASERS OF THE CONSPIRACY.**

2 The Ninth Circuit clearly held that *Illinois Brick* is inapplicable in this case.
3 *NFLST*, 933 F.3d at 1158. Moreover, in denying the Defendants’ motion for
4 summary judgment, the Court rejected the Defendants’ argument that Plaintiffs were
5 indirect purchasers with no standing to sue because there was sufficient evidence to
6 raise a material question of fact regarding whether the interlocking web of
7 agreements alleged by Plaintiffs resulted “in DirecTV’s monopoly of out-of-market
8 telecasts and to show DirecTV’s conscious commitment to the alleged conspiracy.”
9 Dkt. No. 1155 at 8.

10 Evidence at trial confirms each of the agreements this Court referenced. First,
11 several witnesses conceded that the teams have pooled their independent telecast
12 rights in the league.¹⁰ Second, the NFL-Network contracts provide that no more than
13 two telecasts can be broadcast at the same time in a given market¹¹ and impose
14 limitations on the league’s “resale” of those telecasts out of market, including by
15 requiring that those telecasts be sold on a subscription basis. Moreover, the NFL and
16 the Networks had a common understanding that Sunday Ticket would be sold at a
17 premium price, thereby limiting distribution.¹²

18 Third, the NFL-DirecTV agreements demonstrate that DirecTV agreed to, and
19 benefited from, those agreements. Those agreements protected DirecTV by providing
20 exclusivity, specifying a minimum number of games that must be regionalized
21 (leaving DirecTV as the sole provider of those games to out-of-market viewers),
22 reducing the number of games that could be telecast by CBS and FOX, and providing

23
24 ¹⁰ See Tr. (Rolapp) 969:7-9 (“[T]he clubs pool all of their rights at the league level
25 and it’s the league’s responsibility to then license those rights.”); Tr. (Rolapp) 968:5-
26 12 (teams sell preseason rights independently); Tr. (J. Jones) 1638:6-8 (same); Tr.
27 (Yancy) 1751:17-19 (same); Tr. (Rascher) 703:10-17; 705:18-706:1 (teams
28 historically sold telecasts independently).

¹¹ See, e.g., TX-145 at NFL_0419945; TX-188 at NFL_0862671-72.

¹² Tr. 538:8-13 (Larry Jones: “A: FOX just wanted to make sure, as I said, [Sunday
Ticket] was a complementary package of a premium product sold behind a pay wall.
Q: Right. Because the pricier it is, the fewer subscribers it will have; true, sir? A:
Yes.”); Tr. 1677:6-19 (Sean McManus: CBS and NFL agreed to a premium price for
Sunday Ticket which limits distribution of Sunday Ticket); TX-750.

1 that no more than two over-the-air broadcasts can be shown in any location at one
2 time.¹³ Additional evidence offered at trial further shows that DirecTV overcharged
3 subscribers to Sunday Ticket, as intended by the conspiracy.¹⁴

4 DirecTV also contractually agreed—consistent with the agreements between
5 the NFL and the networks—to sell Sunday Ticket at high “premium” prices.¹⁵
6 Despite the contractual provisions that purportedly gave DirecTV discretion over
7 pricing, the evidence demonstrates that DirecTV and the NFL reached agreements
8 that a premium price should be charged to class members.¹⁶ The Defendants’ motion
9 does not address any of this evidence. These documents contradict the Defendants’
10 self-serving testimony regarding the NFL’s role in Sunday Ticket pricing (or
11 supposed lack thereof). Moreover, the documentary evidence of the NFL’s influence
12 over pricing extends beyond the additional exhibits admitted under Rule 806.¹⁷ *See,*
13 *e.g.*, TX-267 (DirecTV internal document stating that pricing and packaging is
14 “Subject to NFL approval”); TX-269 (DirecTV internal email that the “two entities
15 required to lower the price” of Sunday Ticket were the NFL and DirecTV’s finance
16 department).

17
18
19 ¹³ *See, e.g.*, TX-045 at NFL 000468 and NFL 000481.

20 ¹⁴ Tr. (Bornstein) 206:16-19; 207:20-209:10; 355:13-19; 364:3-8; 366:2-14; Tr.
(Rolapp) 971:2-16; 974:7-20; Hawkins Video (Dkt. No.) 108:10-15; White Video
(Dkt. No.) 193:12-18; TX-271; TX-481.

21 ¹⁵ TX-044 at -440 (stating that “in all cases NFL Sunday Ticket shall be marketed
22 and offered in a manner consistent with its status as a high quality, premium
23 subscription sports offering”); TX-045 at -469 (same).

24 ¹⁶ *See, e.g.* TX-806 (showing AT&T “ask” for a “4%/5% increases” to “Satellite
25 Pricing” and NFL Response of “Okay”); TX-808 (marketing spreadsheet maintained
26 outlining NFL’s response to DTV’s submission of “recommended pricing for 2016”);
27 TX-804 (NFL marketing spreadsheet stating that “NFL reviewing” and later
28 “confirm[ing]” satellite pricing for 2018 season”).

¹⁷ The plain text of Rule 806 establishes that the documents used to attack the
deponents’ credibility was admitted into evidence. *See* Fed. R. Evid. 806 (“The court
may *admit evidence* of the declarant’s inconsistent statement or conduct, regardless
of when it occurred or whether the declarant had an opportunity to explain or deny
it.” (emphasis added)). Each of these documents is also admissible for substantive
purposes, and is not hearsay. The documents produced by the NFL are party-
opponent statements under Fed. R. Evid 801(d)(2)(D) while those produced by
DirecTV are statements of a co-conspirator in furtherance of the conspiracy under
Fed. R. Evid 801(d)(2)(E), or business records under Rule 803(6).

1 Given this evidence, a “reasonable trier of fact could find that these
2 interlocking provisions show DirecTV was aware and participating in the overall
3 scheme to limit output of paid telecasts. Moreover, the various agreements are all
4 designed to protect their piece of the conspiracy from intrusion from the other
5 pieces.” Dkt. No. 1155 at 11. This evidence includes the evidence supporting
6 Plaintiffs’ claims, which, contrary to Defendants’ argument, are hardly new.¹⁸
7 Finally, based on the teams’ agreement to limit the output of their own telecasts,
8 Plaintiffs would have antitrust standing in any event.

9 **VI. DEFENDANTS’ CONDUCT IS NOT PROTECTED BY THE SPORTS**
10 **BROADCASTING ACT (“SBA”).**

11 The Defendants’ reliance on the SBA has been rejected numerous times in this
12 litigation. In denying Defendants’ motion for summary judgment, the Court
13 explicitly held that “[t]he SBA does not exempt the NFL-Network Agreements from
14 antitrust scrutiny.” Dkt. No. 1155 at 14. “Defendants’ position seeks to expand the
15 SBA’s exemption to antitrust laws outside of the conduct permitted by the SBA. For
16 even though Defendants state that they ‘are not seeking to extend the protections of
17 the SBA to a license for “paid telecasting,”’ . . . Defendants’ position taken to its
18 logical conclusion would allow the NFL to do just that.” *Id.* at 17.

19 Defendants claim that Plaintiffs are seeking to impose liability based on their
20 contracts with CBS and FOX, which – Defendants insist – cannot be questioned given
21 the SBA’s protections. But, as this Court has already held, the SBA does not
22 immunize contracts or agreements. *Id.* at 18. All it does is protect at most the NFL
23 teams’ collective sale of telecast rights to free, over-the-air television networks.
24 *NFLST*, 933 F.3d at 1147. The teams may not turn that limited protection into
25 unlimited protection by claiming that the SBA protects any provision in any contract
26 that concerns over the air telecasting. “If the Court were to agree with Defendants’
27

28 ¹⁸ See Dkt. No. 441 at ¶¶ 46, 126, 146; Dkt. No. 630 at 14-15; Dkt. No. 913-1 at 18;
Dkt. No. 964 at 7; Dkt. No. 964-1 at No. 245; Dkt. No. 1265-1; Dkt. No. 1155 at 2.

1 logic and not allow Plaintiffs’ challenges to proceed, the NFL could circumvent the
2 statutory confines, nullify the statutory scheme, simply by including provisions in the
3 NFL-Network Agreements that restrict paid telecasts.” *Id.* at 18 (quotation marks
4 omitted). “Indeed, the Court ‘would allow the exception to swallow the rule: a
5 sponsored telecast to a limited geographic area would secure an antitrust law
6 exemption for nationwide sales.’” *Id.* (quoting *Shaw v. Dallas Cowboys Football*
7 *Club, Ltd.*, 172 F.3d 299, 302 (3d Cir. 1999)).

8 In sum, Plaintiffs are *not* challenging Defendants’ pooling of rights for over
9 the air distribution. Rather, Plaintiffs challenge provisions that place restrictions on
10 telecasts for *paid* distribution, conduct that falls outside the SBA’s narrow confines.
11 *Id.* (“The SBA cannot be read to immunize contracts that restrict competition for paid
12 telecasts.”).

13 CONCLUSION

14 For the foregoing reasons, Plaintiffs respectfully submit that the Court should
15 deny the NFL Defendants’ Motion for Judgment as a Matter of Law.

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Respectfully submitted,

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