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12
13

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **LOS ANGELES DIVISION**
17

18 EN-TOUCH SYSTEMS, INC.

19 Plaintiff,

20 v.

21 AT&T INC.; AT&T CORP.; AT&T
22 SPORTS NETWORKS, LLC; AT&T
23 SPORTSNET SOUTHWEST, LLC; THE
DIRECTV GROUP, INC.; and DIRECTV,
LLC,

24 Defendants.
25
26
27

CASE NO.

Hon.

**EN-TOUCH SYSTEMS, INC.'S
COMPLAINT FOR:**

- 1. Restraint of Trade: 15 U.S.C. § 1; and
- 2. Monopolization: 15 U.S.C. § 2.

DEMAND FOR TRIAL BY JURY

1 **COMPLAINT**

2 Plaintiff en-Touch Systems, Inc. files this Complaint against Defendants AT&T Inc.;
3 AT&T Corp.; AT&T Sports Networks, LLC; AT&T SportsNet Southwest, LLC; The
4 DirecTV Group, Inc.; and DirecTV, LLC, for violation of Sections 1 and 2 of the Sherman
5 Act, 15 U.S.C. §§ 1 & 2, as authorized by Section 4 of the Clayton Act, 15 U.S.C. § 15, and
6 the California Cartwright Act, Cal. Bus. & Prof. Code § 16720 *et seq.*, as authorized by Cal.
7 Bus. & Prof. Code § 16750, and alleges as follows:

8 **THE PARTIES**

9 1. Plaintiff en-Touch Systems, Inc. (“en-Touch” or “Plaintiff”) is a Delaware
10 corporation with a principal place of business in Houston, Texas, at 11011 Richmond
11 Avenue, Suite 400, Houston, Texas 77042.

12 2. Defendant AT&T Inc. is a Delaware corporation that is headquartered in
13 Dallas, Texas, at 208 South Akard Street, Dallas, Texas 75202, and has a corporate office
14 in Houston at 9051 Park West Drive, Houston, Texas 77063. It may be served through its
15 registered agent, C T Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas
16 75201.

17 3. Defendant AT&T Corp. is a New York corporation that is headquartered in
18 Dallas, Texas, at 208 South Akard Street, Dallas, Texas 75202, and has a corporate office
19 in Houston at 9051 Park West Drive, Houston, Texas 77063. It may be served through its
20 registered agent, C T Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas
21 75201. Defendants AT&T Inc. and AT&T Corp. will be referred to collectively as
22 “AT&T.”

23 4. Defendant AT&T Sports Networks, LLC is a Delaware corporation that is
24 headquartered in Seattle, Washington at 601 Union Street, Suite 3020, Seattle, Washington
25 98101. It may be served through its registered agent, C T Corporation System, at 711
26 Capitol Way South, Suite 204, Olympia, Washington 98501.

27 5. Defendant AT&T SportsNet Southwest, LLC is a Delaware corporation that is
28 headquartered in Houston, Texas at 1201 San Jacinto Street, Suite 200, Houston, Texas

1 77002. It may be served through its registered agent, C T Corporation System, at 1999
2 Bryan Street, Suite 900, Dallas, Texas 75201. AT&T SportsNet Southwest, LLC, was
3 formerly known as Houston Sports Holdings, LLC.

4 6. Defendant The DirecTV Group, Inc. is a Delaware corporation that is
5 headquartered in El Segundo, California, at 2260 East Imperial Highway, El Segundo,
6 California 90245. It may be served through its registered agent, C T Corporation System,
7 at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

8 7. Defendant DirecTV, LLC is a California corporation that is headquartered in
9 El Segundo, California, at 2260 East Imperial Highway, El Segundo, California 90245. It
10 may be served through its registered agent, C T Corporation System, at 1999 Bryan Street,
11 Suite 900, Dallas, Texas 75201.

12 8. Collectively, AT&T Inc.; AT&T Corp.; AT&T Sports Networks, LLC; AT&T
13 SportsNet Southwest, LLC; The DirecTV Group, Inc.; and DirecTV, LLC will be referred
14 to as “Defendants.”

15 **JURISDICTION AND VENUE**

16 9. The Court has subject matter jurisdiction under Section 16 of the Clayton Act,
17 15 U.S.C. § 26, and 28 U.S.C. §§ 1331 and 1337.

18 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and Section 12 of
19 the Clayton Act, 15 U.S.C. § 22, because an existing agreement between Plaintiff en-Touch
20 and Defendant AT&T SportsNet Southwest, LLC (formerly Houston Sports Holdings,
21 LLC) contains a choice of venue provision that specifies this District as the exclusive venue
22 for any action concerning the agreement. Further, the other four Defendants AT&T Inc.;
23 AT&T Sports Networks, LLC; The DirecTV Group, Inc.; DirecTV, LLC possess the
24 capacity to sue and be sued under applicable law in this District, reside, are licensed to do
25 business in, are doing business in, and had agents in, or are found or transact business in
26 this judicial district.

27 11. This Court has personal jurisdiction over Defendants because the agreement
28 referenced in Paragraph 10 submits to the jurisdiction of this Court; each of them transact

1 business throughout the United States, including in this District; each of them directly or
2 indirectly sold or marketed the relevant goods or services, as more specifically set forth
3 below, throughout the United States, including in this District; each of them engaged in acts
4 to attempt to monopolize the relevant market, as more specifically set forth below, that were
5 directed at, and had the direct, substantial, reasonably foreseeable and intended effect of
6 causing injury to the business or property of persons and entities residing in, located in, or
7 doing business throughout the United States, including in this District; each of them
8 engaged in conduct that caused direct, substantial and reasonably foreseeable and intended
9 anticompetitive effects upon interstate commerce. Defendants have substantial contacts
10 within this District and have purposefully availed themselves of the laws of the United
11 States and the State of California.

12 FACTS

13 *A. The Parties*

14 12. Plaintiff en-Touch Systems, Inc. (“Plaintiff” or “en-Touch”) was formed in
15 2006 with the goal of providing bundled services, including security monitoring, Internet
16 access, television, and phone over a robust fiber-optic network. En-Touch currently
17 provides, among other things, Internet access via fiber optic networks and a multichannel
18 video programming service in Houston and surrounding areas in southeast Texas using
19 Internet Protocol (“IP”) video technology. En-Touch is classified as a multichannel video
20 programming distributor (“MVPD”) under the relevant federal laws.

21 13. En-Touch’s competitive entry into the video marketplace in Houston, Texas,
22 expands consumer choice and provides needed competition. As the Federal Communication
23 Commission (“FCC”) has noted, “Congress and the Commission have repeatedly found . . .
24 that entry by . . . other providers of wire-based video service into various segments of the
25 multichannel video marketplace will produce major benefits for consumers. A significant
26 increase in multichannel competition usually results in lower prices, more channels, and a
27 greater diversity of information and entertainment from more sources.”
28

1 14. Defendant AT&T SportsNet Southwest, LLC (“AT&T SportsNet”), formerly
2 Houston Sports Holdings, LLC, is a Regional Sports Network (“RSN”) that provides
3 regional sports programming for Houston Astros and Houston Rockets games, as well as
4 collegiate and other sporting events.

5 15. The DirecTV Group, Inc. and DirecTV, LLC (collectively, “DirecTV”) provide
6 subscription-based television programming to the public through at least two
7 services: DirecTV and DirecTV Now. Defendant AT&T Inc. provides subscription-based
8 television programming to the public through at least two services: U-verse and U-verse
9 Data Free TV.

10 16. En-Touch, DirecTV, U-verse, and other MVPDs maintain agreements with
11 AT&T SportsNet to provide Houston Astros and Houston Rockets games to their
12 customers. Generally, MVPDs pay content providers, including AT&T SportsNet,
13 associated fees as well as a per-subscriber rate to carry that provider’s content. Thus, for
14 each MVPD customer who subscribes to an MVPD cable subscription package that
15 includes a particular channel of programming, the MVPD in turn owes a specific monthly
16 amount for that subscriber to the content provider. The agreement in place between en-
17 Touch and AT&T SportsNet functions in that manner. On information and belief, the
18 agreements between AT&T SportsNet and other MVPDs also function in that manner.

19 ***B. The History of Houston’s Regional Sports Network***

20 17. In 2003, two Houston sports franchises—the National Basketball Association’s
21 Houston Rockets (“Rockets”) and Major League Baseball’s Houston Astros (“Astros”)—
22 agreed to partner to form an RSN and sought to terminate their existing deals with the then-
23 existent primary RSN in Houston, Fox Sports Southwest. Fox Sports Southwest sued the
24 two teams, which led to a renegotiation of their agreements to stay with Fox Sports.
25 Subsequently, Fox Sports created a Houston-specific RSN named Fox Sports Houston,
26 which started carrying the teams’ games in 2009.

27 18. One term in the renegotiated contract between the Rockets and Astros on one
28 side, and Fox Sports on the other, was the ability of the teams to terminate the contract and

1 negotiate with another network. In 2012, the two teams exercised that option and entered
2 into an approximately \$1 billion contract with Comcast Corporation (“Comcast”) (through
3 its subsidiary NBC Sports Group). The three entities formed a new RSN, Comcast
4 SportsNet Houston (“CSN Houston”), in which the Astros owned a 46.384% stake, the
5 Rockets owned a 30.923% stake, and Comcast owned the remaining 22.693% stake. CSN
6 Houston started broadcasting in 2012, and Fox Sports Houston shuttered shortly thereafter.

7 19. Comcast, itself an MVPD offering a cable subscription service named Xfinity,
8 entered into a contract with its subsidiary CSN Houston—now the primary RSN for the
9 Houston market—that contained two provisions relevant to the instant action. First, the
10 contract set the cost for carrying CSN Houston at an unreasonably high per-subscriber rate.
11 Second, the contract granted Comcast, as an MVPD, most favored nation (“MFN”) status,
12 which required Comcast to be charged no more than any other MVPD to carry CSN
13 Houston. *See In re Houston Regional Sports Network, L.P.*, Bankr. No. 13-35998, 2014
14 WL 2159534, at *2 (Bankr. S.D. Tex. May 22, 2014) [hereinafter “*In re Houston Regional*
15 *I*”]; *In re Houston Regional Sports Network, L.P.*, 505 B.R. 468, 470 (Bankr. S.D. Tex.
16 2014) [hereinafter “*In re Houston Regional II*”]. Together, the price term and the MFN
17 clause had the effect of creating an artificially high price for CSN Houston that Comcast, a
18 minority owner (and the only MVPD), could swallow, but that was prohibitive for all other
19 MVPDs. *See In re Houston Regional III*, 547 B.R. at 727-28. For a time, the only major
20 MVPD to carry Rockets and Astros games in the Houston cable market was Comcast,
21 because no other MVPD would carry the exorbitantly expensive CSN Houston.

22 20. The contract structure was also, no doubt, creative—it had the manufactured
23 appearance that the CSN Houston was treating all MVPDs equally by demanding an
24 exorbitant price for its services. In reality, it was a backdoor deal between a parent and a
25 subsidiary to prevent the parent’s MVPD competitors from carrying CSN Houston. With
26 exclusive rights to the Astros and the Rockets, Comcast’s cable service, Xfinity, would be
27 the only cable subscription option for devoted fans of those teams.

28

1 21. Indeed, at least AT&T and DirecTV (themselves MVPDs offering services
2 including AT&T U-verse, AT&T U-verse Data Free TV, DirecTV, and DirecTV Now)
3 believed that the price set by CSN Houston was exorbitant. No Defendant MVPD,
4 including AT&T and DirecTV, carried CSN Houston because its per-subscriber rate was
5 too high. One of the most vocal opponents of the pricing structure was then-DirecTV CEO
6 Mike White. In a 2012 interview with the Houston Chronicle, Mr. White noted that the
7 \$3.40 per-subscriber monthly rate that Comcast (via its subsidiary NBC Sports Group) was
8 requesting for CSN Houston was exorbitant and unfair to other MVPDs in Houston. He
9 specifically noted that, “People take the same content, package it up, bid it up for three
10 times the national average on a per-game basis and then try and stick it back to the other
11 distributors in the geography. And I think that’s very unfortunate. . . . We are taxing most of
12 our customers who wouldn’t be willing to pay for that content.”

13 22. In fact, hardly any MVPDs carried CSN Houston. In addition to DirecTV and
14 AT&T, other MVPDs including Dish Network and Suddenlink did not carry the channel to
15 a broad number of subscribers. As a result, CSN Houston was only available through a
16 small number of MVPDs. Initially valued at over \$700 million, by 2014, CSN Houston had
17 fewer than 700,000 subscribers and \$33 million in annual subscriber fees. Since the initial
18 deal between Comcast, the Astros, and the Rockets had promised approximately \$100
19 million in annual rights fees from Comcast to the teams, the network failed and was forced
20 into bankruptcy in 2013.

21 23. In August 2014, AT&T and DirecTV—at that time completely separate
22 companies who had not yet merged and who were in direct horizontal competition with
23 each other through at least their television subscription services U-verse and DirecTV—
24 agreed to join together for the common purpose of acquiring CSN Houston out of
25 bankruptcy. They jointly proposed a reorganization of the network to the bankruptcy court.
26 Supported by the teams, the bankruptcy court approved the acquisition of CSN Houston by
27 AT&T and DirecTV on October 30, 2014. CSN Houston was acquired by AT&T and
28 DirecTV and rebranded in November 2014 as ROOT Sports Southwest (“ROOT Sports”).

1 ROOT Sports immediately jumped to a carriage of over four million subscribers because
2 MVPDs DirecTV and AT&T carried it both in the Houston metro area and regionally
3 throughout southeast Texas.

4 24. AT&T acquired DirecTV on July 24, 2015, nearly nine months after the
5 companies' decision to jointly acquire ROOT Sports. On July 14, 2017, ROOT Sports was
6 once again rebranded, and is currently called AT&T SportsNet Southwest ("AT&T
7 SportsNet").

8 ***C. en-Touch's Contract To Carry Houston's Regional Sports Network***

9 25. The FCC has consistently recognized that RSN programming is "must-have"
10 programming—that is, programming that consumers demand and without which MVPDs
11 cannot compete effectively. "[N]o amount of investment can duplicate the unique attributes
12 of such programming, and denial of access to such programming can significantly hinder an
13 MVPD from competing in the marketplace." RSN programming "is unique because it is
14 particularly desirable and cannot be duplicated." That is especially so here, where
15 Defendants own the exclusive broadcasting rights for professional sports teams—including
16 the Astros and the Rockets—that are extremely popular in the greater Houston area. There
17 is little doubt that the Astros, having just won their first World Series title, will be in high
18 demand for the 2018 Major League Baseball season in the Houston metro area, and that the
19 same is true for the Houston Rockets, who are consistently near the top of the National
20 Basketball Association's Western Conference standings and are considered one of the best
21 teams in that conference.

22 26. The FCC has found that access to RSN programming is critically important to
23 MVPDs, especially new entrants seeking to compete with entrenched providers: "[A]n
24 MVPD's ability to provide service that is competitive with an incumbent cable operator is
25 significantly harmed if denied access to 'must have' vertically integrated programming for
26 which there are no good substitutes, such as regional . . . sports networks." Similarly, the
27 FCC has found that "an MVPD's ability to provide a service that is competitive with the
28 incumbent cable operator is significantly harmed if the MVPD is denied access to popular,

1 vertically integrated programming for which no good substitute exists . . . including services
2 that are considered ‘must have’ . . . such as regional . . . sports programming.”

3 27. Accordingly, en-Touch carries Houston’s RSN to stay competitive in the
4 Houston MVPD cable market. Unfortunately, it has (literally) paid a price for doing so.
5 After Defendants AT&T and DirecTV acquired and rebranded CSN Houston to ROOT
6 Sports, they kept in place the very pricing structure that led to CSN Houston’s demise.
7 Instead of normalizing the per-subscriber rates for ROOT Sports, AT&T and DirecTV
8 maintained the artificially high per-subscriber rates that Comcast first instituted and that
9 AT&T and DirecTV had previously denounced. For example, the recently expired contract
10 between en-Touch and AT&T SportsNet’s predecessor-in-interest for the right to
11 rebroadcast ROOT Sports had an arbitrarily high per-subscriber price for ROOT Sports.

12 28. The expiration of that contract presented a Hobson’s choice for Plaintiff:
13 negotiate with AT&T SportsNet to continue to carry AT&T SportsNet (née ROOT Sports)
14 at an exorbitantly high price, or lose its subscribers who understandably desire their cable
15 package to have this “must-see” programming. That newly negotiated contract pushes the
16 prices even higher, continuing to maintain an exorbitantly high per-subscriber price.

17 29. On information and belief, other MVPDs in the Houston market, including
18 DirecTV and U-verse, have agreements with AT&T SportsNet Southwest, LLC, to pay
19 similarly high per-subscriber rates to carry AT&T SportsNet.

20 30. The continuation by Defendants of the artificially high pricing structure allows
21 Defendants to plead innocence when accused of anti-competitive pricing, proclaiming that
22 AT&T SportsNet is expensive for all MVPDs, including Defendant MVPDs. This
23 backdoor deal between Defendant MVPDs and AT&T SportsNet harms competition
24 because competitor MVPDs like Plaintiff do not reap the benefit of paying their own
25 subsidiary an exorbitantly high price that will come out in the wash. Thus, the arrangement
26 is a win-win for AT&T because it receives a revenue boost from its subsidiary, AT&T
27 SportsNet, while both harming small MVPDs and keeping an entrance barrier for other
28 MVPDs trying to enter the market.

1 ***D. Defendants’ Efforts to Restrain Trade and Attempt Monopolization of the Houston***
2 ***Cable Television Subscription Market***

3 31. For the purposes of this complaint, the “Houston cable television subscription
4 market” is the cable subscription market in the following counties in the state of Texas:
5 Brazoria, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. These counties
6 cover the southeast corner of Texas with the Houston metropolitan region in Harris County
7 as the focal point. Major Texas cities included within the Houston cable subscription
8 market include Houston, Cypress, Galveston, Pasadena, and Sugar Land.

9 32. For the purposes of this complaint, the “Houston cable television subscription
10 market” includes at least the following products through which consumers may subscribe to
11 cable television programming: cable television, fiber-optic television, Internet Protocol
12 television (“IPTV”), and satellite television. The Houston cable television subscription
13 market contains approximately 2,450,800 subscribers.

14 33. Several Defendants own and operate several customer-facing cable television
15 subscription services in the Houston cable television subscription market, including AT&T
16 U-verse, U-verse Data Free TV, DirecTV, and DirecTV Now. Through at least these
17 services, AT&T and DirecTV hold the broadest market share of any cable provider in
18 Houston, controlling approximately 26% of the Houston cable television subscription
19 market, with 637,208 subscribers.

20 34. AT&T Chairman and CEO Randall Stephenson has been vocal in his
21 proclamation that AT&T is aggressively pursuing even more of that market, especially
22 through the company’s “zero-rated services” like U-verse Data Free TV and DirecTV Now.
23 In this instance, “zero-rated services” are those that a telecommunications data provider like
24 AT&T does not count against an individual subscriber’s data plan. In other words, AT&T
25 allows individual subscribers using its cellular network to stream video via services like U-
26 verse Data Free TV and DirecTV Now on the U-verse or DirecTV app without counting
27 against that individual’s data plan.
28

1 35. By contrast, en-Touch possesses only a 0.31% market share, with
2 approximately 7,700 subscribers.

3 36. Defendant's actions have harmed competition by erecting a barrier to entry for
4 small MVPDs and intentionally harming competitor MVPDs, especially those small
5 MVPDs like en-Touch. The artificially high price Defendants demand for AT&T
6 SportsNet makes it incredibly difficult for en-Touch and other MVPDs to compete in the
7 Houston cable subscription market. The cost of carrying AT&T SportsNet Southwest is
8 extremely disproportional with other channels and is a significant burden on the overall cost
9 of en-Touch's subscription packages that feature the channel. For example, AT&T
10 SportsNet Southwest is only 1 of 120 channels and is not in the top 75 channels that
11 subscribers watch on an annualized basis.

12 37. In addition, the Houston cable television subscription market has suffered an
13 anti-trust injury because it is less competitive due to Defendants' actions. As one example,
14 in the 77433 zip code, en-Touch's cheapest cable package that carries AT&T SportsNet
15 Southwest, titled "Enhanced Package," is \$68.95 per month for a subscription. By contrast,
16 in that same zip code, DirecTV's "Choice" Package, which is the cheapest tier that carries
17 AT&T SportsNet Southwest, is \$60.00 per month for a subscription. Part of that cost
18 differential is due to en-Touch's necessity to pass the cost of AT&T SportsNet Southwest
19 along to its subscribers.

20 **CAUSES OF ACTION**

21 **COUNT ONE: RESTRAINT OF TRADE**

22 **(15 U.S.C. § 1; Cal. Bus. & Prof. Code § 16720 et seq.)**

23 38. Plaintiff hereby incorporates paragraphs 1 through 37.

24 39. Defendants have contracts, conspired, and/or colluded to unreasonably restrain
25 trade in violation of Section 1 of the Sherman Act and the Cartwright Act, Cal. Bus. & Prof.
26 Code § 16720 et seq.

27 40. Defendants have made the decision to maintain the artificially high per-
28 subscriber rate for AT&T SportsNet, which unreasonably restrains trade. Even a cursory

1 look at that decision from an MVPD's perspective demonstrates the anti-competitive nature
2 of the action. DirecTV is the single largest subscription cable provider in Houston and thus
3 has substantial bargaining power to negotiate low per-subscriber rates for channels it
4 chooses to carry in its cable subscription packages (it, no doubt, also benefits from national
5 bargaining power for non-regional networks given its national market share). DirecTV's
6 choice to pay an exorbitantly high price to carry AT&T SportsNet is thus against its own
7 economic self-interest, and without a parent company directing it to do so, it would make
8 the choice to walk away unless the price was fair. That is not speculation: DirecTV's
9 choice not to carry CSN Houston due to Comcast's exorbitant rates, and then-CEO Michael
10 White's public statements explaining that position, reflect exactly how an MVPD market
11 leader acts out of its own competitive self-interest when a content provider charges a per-
12 subscriber rate that is too high. And though it does not have a similar market share, these
13 same reasons reflect why it is not in U-Verse's self-interest to pay an exorbitant rate for
14 AT&T SportsNet.

15 41. The only viable explanation for DirecTV's change of heart regarding the high
16 per-subscriber rate is an intent among at least AT&T and DirecTV to unreasonably restrain
17 competition by forcing competitor MVPDs (*i.e.*, MVPDs other than U-Verse and DirecTV)
18 to pay an exorbitant rate for AT&T SportsNet. That rate forces those competitors into three
19 choices: (1) do not carry AT&T SportsNet and lose subscribers, (2) carry AT&T SportsNet
20 and swallow the cost, making the business less viable and incurring economic harm to its
21 bottom line, or (3) carry AT&T SportsNet and pass the cost on to subscribers, forcing its
22 package rates to go up and leading to an attrition of subscribers to cheaper services like
23 DirecTV. Those scenarios together unreasonably restrain trade because they ultimately
24 reduce consumer choice and an open market because they leave competitor MVPDs
25 weakened or unable to compete altogether. Thus, these actions have caused an antitrust
26 injury in the Houston cable television subscription market.

27 42. The purpose and effect of AT&T and DirecTV's decision to acquire CSN
28 Houston out of bankruptcy was to restrain competition. By failing to "normalize" the

1 per-subscriber rate to carry the channel—the very same rate then-DirecTV CEO Mike
2 White complained of as being too high—AT&T and DirecTV harm competition by keeping
3 the subscriber rate artificially high to act as an entry bar,, or a competitive tool to weaken
4 MVPD competitors. By virtue of AT&T’s possession of both U-verse *and* AT&T
5 SportsNet, and DirecTV’s pending acquisition by AT&T, Defendants had knowledge that
6 they would be able to weather the short-term economic harm imposed by maintaining the
7 high per-subscriber rate to carry AT&T SportsNet while their competitor MVPDs,
8 including en-Touch, would not. These anticompetitive actions outweighed any beneficial
9 effect that the acquisition had on competition: the companies could have acquired the sports
10 channel and returned the rates to normal. They did not do so despite their knowledge that
11 the high rates were harming their own bottom line as well as other MVPDs.

12 43. Defendants colluded and conspired to restrain trade. First, at the time of the
13 acquisition of CSN Houston out of bankruptcy, AT&T and DirecTV had not yet merged,
14 and were disparate companies with separate CEOs, management, boards, etc. Their
15 decision to continue the high pricing regime first instituted by Comcast occurred prior to
16 when the acquisition of DirecTV by AT&T became official in July 2015. Second, for the
17 purposes of this claim, Defendants should not be treated as a single entity. As explained
18 above, DirecTV and U-verse are direct horizontal competitors offering competing television
19 subscription packages. Further, DirecTV and U-verse have diametric economic goals to
20 AT&T SportsNet. As cable providers, their goal is to achieve as low a per-subscriber rate
21 as possible from each content provider so that they can suppress the total cost of each cable
22 package that they offer to the public. As a content provider, AT&T SportsNet’s goal is to
23 acquire as high a per-subscriber rate as possible. Accordingly, Defendants are not a single
24 entity who share the same economic goals or the same decision makers.

25 44. These actions involve interstate commerce because they involve the purchase,
26 sale, and exchange of money and goods across state lines.

1 **COUNT TWO: MONOPOLIZATION**

2 **(15 U.S.C. § 2)**

3 45. Plaintiff hereby incorporates paragraphs 1 through 44.

4 46. Defendants have engaged in activity that has injured Plaintiff and that has
5 violated Section 2 of the Sherman Act. Defendants have combined or conspired with each
6 other, and possibly other unnamed actors, to monopolize the Houston cable television
7 subscription market. Defendants have also attempted to monopolize the Houston cable
8 television subscription market.

9 47. Defendants acted in a combination or conspiracy to monopolize the Houston
10 cable television subscription market. While they were still independent, horizontal
11 competitors, AT&T and DirecTV partnered to acquire CSN Houston out of bankruptcy.
12 After they acquired CSN Houston, Defendants committed several overt acts in furtherance
13 of that conspiracy, including maintaining the artificially high price of carrying the channel
14 and entering into new contracts with competitor MVPDs at that artificially high price.

15 48. Defendants have engaged in predatory and anticompetitive conduct by
16 charging MVPDs like en-Touch an artificially high price for AT&T SportsNet. Defendant
17 MVPDs like U-verse and DirecTV are able to swallow the artificially high price because
18 those costs will eventually be offset on AT&T's balance sheet based on the equal income to
19 AT&T SportsNet Southwest. On the other hand, that artificially high per-subscriber rate
20 creates one of two scenarios for competitor or rival MVPDs: (a) a competitor MVPD like
21 Plaintiff must pay that artificially high per-subscriber rate and swallow the cost or pass the
22 cost on to consumers, making it less competitive in the marketplace, or (b) a competitor
23 MVPD like Plaintiff may choose not to carry the RSN, making it less competitive in the
24 marketplace because Defendant MVPDs carry an essential live-television service that
25 competitor MVPDS like en-Touch do not provide. Both scenarios impair the opportunities
26 of en-Touch and other MVPD rivals of Defendants, and hinder competition in an
27 unnecessarily restrictive way. This harms the marketplace and the ability of consumers to
28

1 have real choice in the Houston cable television subscription market and constitutes an anti-
2 trust injury.

3 49. Defendants' conduct demonstrates an intent to monopolize the Houston cable
4 television subscription market. As AT&T Chairman and CEO Randall Stephenson has
5 stated, the company is making a push to increase its market share in the IPTV cable market,
6 where en-Touch and U-verse operate. By engaging in the predatory and exclusive pricing
7 structure described above, AT&T makes it difficult for its MVPD competitors to compete
8 against it in the marketplace. Given that Defendants know the rates are high, complained
9 about their exorbitant nature when Comcast was pushing such rates during the CSN
10 Houston era, and have declared an intent to dominate the IPTV cable market, it is clear that
11 Defendants have intent to economically punish or altogether exclude small competitors like
12 en-Touch from the Houston cable television subscription market.

13 50. AT&T has a substantial amount of market power in the Houston cable
14 television subscription market. It controls 100% of the Rockets and Astros broadcasting
15 rights, and may elect to include or exclude non-Defendant MVPDs from the ability to
16 broadcast Rockets and Astros games. Combined with its place as the top provider of cable
17 television subscription services in Houston and a market share of nearly 30% in that market,
18 AT&T's market power in relation to Houston's RSN and competitor MVPDs is substantial.

19 51. AT&T has a dangerous chance of success in pushing small competitors out of
20 the market. Because of the cost of AT&T SportsNet, en-Touch and other competitor
21 MVPDs struggle to compete in the Houston cable television subscription market.

22 **DAMAGES**

23 52. As a result of Defendants' intentional actions, Plaintiff has suffered economic
24 and actual damages, including future revenue. Defendants' actions also threaten significant,
25 irreparable future economic and reputational damage to Plaintiff. For these reasons,
26 Plaintiff brings suit for compensatory damages based on its current and future pecuniary
27 and nonpecuniary loss. Pursuant to controlling law, plaintiff also seeks treble damages. 15
28 U.S.C. § 15(a); Cal. Bus. & Prof. Code § 16750.

ATTORNEY’S FEES & COSTS

53. Plaintiff seeks all reasonable and necessary attorney’s fees and costs in this case. 15 U.S.C. § 15(a); Cal. Bus. & Prof. Code § 16750.

DEMAND FOR JURY TRIAL

54. Plaintiff respectfully demands a trial by jury of any and all issues triable of right before a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of judgment against Defendants as follows:

- A. The Court assume jurisdiction of this cause.
- B. The Court award Plaintiff damages as specified above.
- C. The Court award Plaintiff’s reasonable attorney’s fees.
- D. The Court award Plaintiff pre- and post-judgment interest at the highest rates allowed.

Plaintiff further prays for any other relief as the Court may find proper, whether at law or in equity.

Dated: December 5, 2017

Respectfully Submitted,

By: /s/ David J. Miclean
 MICLEAN GLEASON LLP
 David J. Miclean
 Attorneys for Plaintiff
 en-Touch Systems, Inc.