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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

Brandy A. Allen, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

v.

VERIZON COMMUNICATIONS, INC.,  
CELLCO PARTNERSHIP d/b/a/ VERIZON  
WIRELESS,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Brandy A. Allen, individually and on behalf of all others similarly situated, brings this class action for injunctive relief and damages against Defendants Verizon Communications, Inc., and Cellco Partnership d/b/a Verizon Wireless (together “Verizon” or “Defendants”). Plaintiff alleges, based upon information and belief<sup>1</sup> except as to the allegations pertaining specifically to Plaintiff that are based on personal knowledge, as follows:

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<sup>1</sup> Plaintiff’s information and belief are based on an investigation (by and through counsel) which included, among other things, a review and analysis of publicly available information, press releases, news articles, and additional analysis. Plaintiff believes that substantial additional

### NATURE OF THE ACTION

1. This antitrust class action arises from a conspiracy among Verizon and AT&T, Inc., and AT&T Mobility LLC (together, “AT&T”) to stifle competition in the wireless communication services market in the United States—in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1—by limiting the use of embedded-SIM (“eSIM”) technology in order to stifle consumers’ ability to switch between wireless carriers.

2. Specifically, Verizon and AT&T colluded to limit the ability of their respective customers to switch wireless service providers and to set industry standards that would allow wireless carriers to lock devices to a certain network, further limiting the ability of consumers to switch wireless service providers and hindering consumer choice among carriers based on price.

3. Verizon is the largest wireless communications provider in the United States, providing wireless communication services to over 150 million consumers across the country. Together, Verizon and AT&T control 70 percent of the United States’ wireless market. As described herein, Defendants conspired with AT&T to maintain this market share by locking phones in order to stifle price competition among wireless carriers.

4. Defendants effectuated their scheme by colluding to thwart eSIM technology, which replaces the traditional SIM card in a consumer’s phone with an embedded chip that can be reconfigured without the need to physically remove it from the device.<sup>2</sup> Essentially, through

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evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

<sup>2</sup> See Sam Rutherford, *Verizon and AT&T Reportedly Under DOJ Investigation for Potential Collusion*, GIZMODO (Apr. 20, 2018, 6:31 PM), <https://gizmodo.com/verizon-and-at-t-reportedly-under-doj-investigation-for-1825431101>.

the use of eSIM technology, users can remotely switch wireless communication providers without having to insert a new SIM card into a device and without visiting a physical store.<sup>3</sup>

5. The majority of mobile phones use subscriber identity modules, or SIM cards, which contain unique identifying information about a user that identifies it to a specific mobile network. SIM cards are a tiny piece of plastic that users slide into a tray on their mobile device that contain a unique reference number for a user's account so that a mobile service provider knows whom to charge and how much access to grant to a particular user's device. Essentially, the SIM card enables the mobile network to know that a certain phone belongs to a particular user. For example, if a user has an iPhone on Verizon's network, the phone needs a SIM card so that Verizon knows that the phone belongs to that individual who is paying Verizon for the subscription. Typically, users will need to purchase a new SIM card when they change wireless carriers. Unlike traditional SIM cards, eSIM technology allows users to switch wireless service providers remotely, without the need to switch out physical SIM cards.

6. Although eSIM was introduced in 2013, industry specifications have limited its use by consumers.<sup>4</sup> It was not until early 2016 that Groupe Speciale Mobile Association ("GSMA")—a mobile industry standards group—released updated guidelines to support the use of eSIM.

7. Since the updated guidelines were released, however, Defendants and AT&T colluded to (i) lock customer eSIMS to their respective networks; and (ii) to have GSMA set new standards allowing for the same. Locking eSIMS to a single carrier disables one of the most

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<sup>3</sup> See Cecilia Kang, *U.S. Investigating AT&T and Verizon Over Wireless Collusion Claim*, N.Y. TIMES (Apr. 20, 2018), <https://www.nytimes.com/2018/04/20/technology/att-verizon-investigate-esim.html> ("N.Y. Times Report").

<sup>4</sup> See Cherlynn Low, *It's time to embrace the eSIM*, ENGADGET (June 19, 2017), <https://www.engadget.com/2017/06/19/its-esim-time/> ("Engadget Article").

important functions of eSIM technology—the ability to simply switch between carriers through a mobile device, without visiting a physical store and changing a physical SIM card, which can be difficult for consumers to do on their own.

8. GSMA is an industry organization which “represents the interests of mobile operators worldwide, uniting nearly 800 operators with more than 300 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organizations in adjacent industry sectors.” GSMA also produces industry events “such as Mobile World Congress, Mobile World Congress Shanghai, Mobile World Congress Americas and the Mobile 360 Series of conferences.” GSMA provided Verizon and AT&T with the opportunity to conspire to manipulate the wireless communications services market, through industry events and board meetings attended by senior executives of Verizon and AT&T.

9. Through their collusive scheme to secretly hinder the utility of eSIM technology, Verizon and AT&T sought to manipulate the market for wireless communication services by excluding, restraining and suppressing competition. As a result, Plaintiff and Class members were injured by artificially limited choices in the market for wireless communications services and artificially inflated prices. Verizon’s scheme caused a lack of competition in the market, which deprived consumers of free and open competition and consumer choice, and reduced price competition, which resulted in Plaintiff and Class members paying higher prices for wireless communication services than would have been charged in a competitive market.

10. In February 2018, the Antitrust Division of the United States Department of Justice (the “DOJ”) issued demands to AT&T, Verizon, and GSMA for information on their potential collusion regarding eSIM technology, following formal complaints filed by Apple and

an un-named wireless carrier regarding the conduct. The DOJ is investigating whether Verizon and AT&T worked together to establish GSMA standards that would allow them to lock a device to their networks even if it had eSIM technology.<sup>5</sup>

11. Until the publication of reports regarding the DOJ investigation on April 20, 2018, Verizon effectively concealed its unlawful conduct from Plaintiff and Class members. In response to the investigation, GSMA confirmed that it had developed an eSIM standard that would allow a carrier to lock a device to its network, but stated that it had put the standard on hold pending the DOJ's findings.<sup>6</sup>

12. Plaintiff is a wireless communications subscriber who directly contracted with AT&T for wireless communications services. Defendants' conduct proximately and foreseeably caused Plaintiff and Class members to suffer injuries by limiting consumer choice and inflating, fixing or maintaining prices for wireless communications services, which were higher than prices that would have been established in a competitive market.

13. The impact of Verizon's unlawful and anticompetitive conduct is ongoing and continues to this day, and requires injunctive relief to prevent future harm to Plaintiff and Class members.

14. Plaintiff and Class members seek damages for their injury caused by Verizon's collusive, manipulative, and anticompetitive restraint of competition in the wireless communication services market. Specifically, Plaintiff seeks injunctive relief, treble damages, costs of suit, and reasonable attorneys' fees on behalf of herself and the class of direct purchasers, as defined herein, pursuant to Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

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<sup>5</sup> See N.Y. Times Report.

<sup>6</sup> See *id.*

## **JURISDICTION AND VENUE**

15. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337(a), and Section 16 of the Clayton Act, 15 U.S.C. § 26, to award equitable and injunctive relief for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337(a) to award damages for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

16. Venue is proper in this District pursuant to Sections 4(a) and 12 of the Clayton Act, 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. § 1391(b), (c), and (d) because Defendants are believed to have resided, transacted business, were found, or had agents in the District, a substantial part of the events giving rise to the claims occurred within this District, and a substantial portion of the affected interstate trade and commerce discussed herein has been carried out in this District. Additionally, Defendant Verizon Wireless is headquartered in this District, in Basking Ridge, New Jersey.

17. This Court has personal jurisdiction over each Defendant because each Defendant is believed to have transacted business throughout the United States, including in this District; had substantial contacts with the United States, including in this District, and/or committed overt acts in furtherance of their illegal scheme and conspiracy in the United States, including in this District. In addition, Defendants' conspiracy was directed at, and had the intended effect of, causing injury to persons residing in, located in, or doing business in the United States, including in this District, and Plaintiff's claims arise out of Defendants' conduct.

18. Defendants' activities were within the flow of, were intended to, and did have a substantial effect on the interstate commerce of the United States.

## **THE PARTIES**

### **Plaintiff**

19. Plaintiff Brandy A. Allen is a resident of Philadelphia, Pennsylvania. Ms. Allen has been a subscriber to AT&T wireless communications services for approximately ten years. As a result of Verizon's collusive and anticompetitive conduct, Ms. Allen has been injured in her business or property.

### **Defendants**

20. Defendant Verizon Communications Inc., a Delaware corporation headquartered in New York, New York, is an American multinational telecommunications conglomerate and the largest provider of mobile telephone services in the United States. Verizon Communications Inc. describes itself as, *inter alia*, "a global communications & technology leader known for its 4g & 5g wireless networks[.]"

21. Defendant Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") (together with Verizon Communications Inc., "Verizon"), is a wholly owned subsidiary of Verizon, which is headquartered in Basking Ridge, New Jersey. Verizon Wireless is the largest wireless telecommunications provider in the United States with over 150 million subscribers.

### **Co-Conspirators and Agents**

22. Various persons and/or firms not named as defendants herein have participated as co-conspirators in the violations alleged herein and have performed acts and made statements in furtherance thereof. Defendants are jointly and severally liable for the acts of their co-conspirators whether named or not named as defendants in this Complaint.

23. Each Defendant and their respective subsidiaries acted as the principal of or agent for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein.

## FACTUAL ALLEGATIONS

### I. Verizon and AT&T Dominate the Wireless Communications Services Market

24. Verizon and its co-conspirators, AT&T, largely control the U.S. market for wireless communications services, which was worth an estimated \$256 billion as of 2016.<sup>7</sup>

25. As of the second quarter of 2014, Verizon and AT&T were joint leaders in the wireless carrier market, both holding a share of approximately 30 percent or more of wireless subscriptions in the United States.<sup>8</sup> Their market dominance has grown each year since, with Verizon and AT&T together currently controlling roughly 70 percent of all wireless subscriptions in the United States. Verizon and AT&T top the 2017 Forbes Global 2000 list of the world's largest telecom companies.<sup>9</sup>

26. As reflected in the graph below, as of the fourth quarter of 2017, Verizon held a 35.46 percent share of the wireless communications services in the United States, while AT&T held a 33.37 percent market share.<sup>10</sup>

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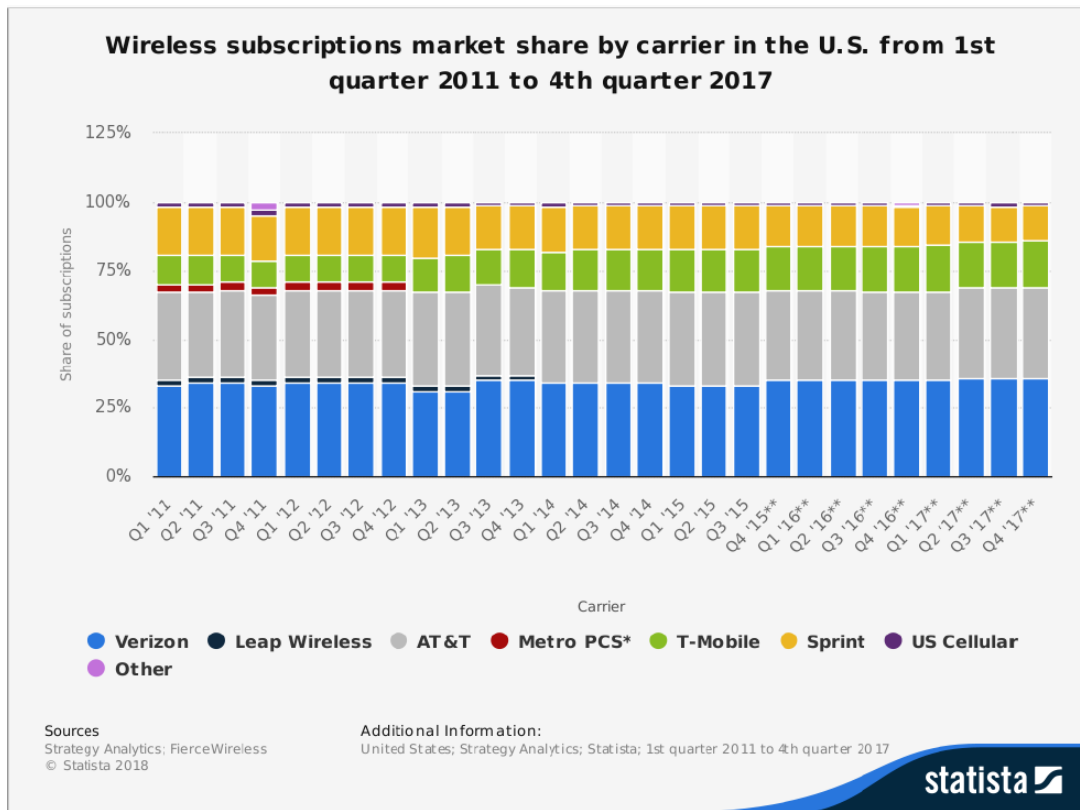
<sup>7</sup> *Wireless subscriptions market share by carrier in the U.S. from 1<sup>st</sup> quarter 2011 to 4<sup>th</sup> quarter 2017*, STATISTA, <https://www.statista.com/statistics/199359/market-share-of-wireless-carriers-in-the-us-by-subscriptions/> (last visited Apr. 23, 2018).

<sup>8</sup> *See id.*

<sup>9</sup> *See* Antoine Gara, *The World's Largest Telecom Companies: AT&T And Verizon Top China Mobile*, FORBES (May 24, 2017, 7:00 AM), <https://www.forbes.com/sites/antoinegara/2017/05/24/the-worlds-largest-telecom-companies-att-and-verizon-top-china-mobile/#34c23fb4a452> ("Forbes Article").

<sup>10</sup> *Wireless subscriptions market share by carrier in the U.S. from 1<sup>st</sup> quarter 2011 to 4<sup>th</sup> quarter 2017*, STATISTA, <https://www.statista.com/statistics/199359/market-share-of-wireless-carriers-in-the-us-by-subscriptions/> (last visited Apr. 23, 2018).





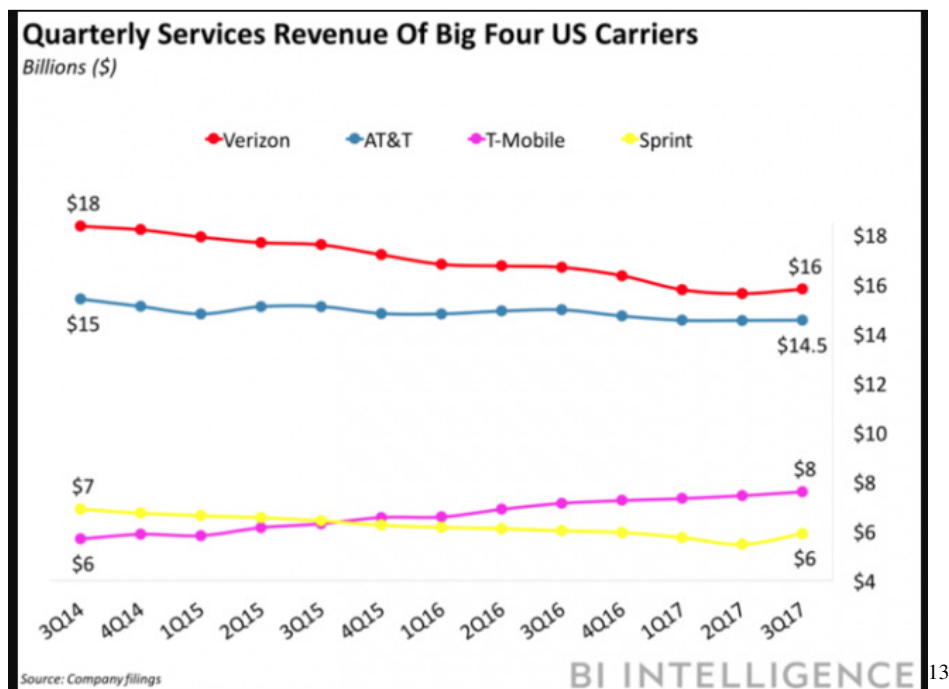
27. The companies' annual service revenue reflects this market dominance. In 2017, for example, Verizon announced revenues of \$126.0 billion, with \$87.5 billion of that revenue coming from wireless communication services.<sup>11</sup> Verizon boasts the most wireless subscribers in the United States, with over 150 million subscribers as of the fourth quarter of 2017.

28. With \$160.5 billion in annual sales, AT&T is currently the world's largest telecom company, having recently acquired satellite television provider DirecTV and several smaller wireless outfits.<sup>12</sup> AT&T has approximately 142 million subscribers to its wireless service in the United States.

<sup>11</sup> Verizon Commc'ns, Inc., Annual Report (Form 10-K) (Feb. 23, 2018).

<sup>12</sup> See Forbes Article.

29. As a result of Verizon and AT&T's collusion, the two wireless carriers continue to dominate the market, far surpassing other wireless carriers in terms of service revenue as of the third quarter of 2017:



30. However, over the last few years smaller carriers, such as T-Mobile, have been cutting prices and aggressively marketing their services, which threatens Verizon and AT&T's market share.<sup>14</sup> Carriers are in a constant consolidated push to grow and retain their subscriber base through improved service and features. *Forbes* describes the market as a “zero-sum game, with power concentrating to the industry’s top players.”<sup>15</sup>

<sup>13</sup> See Rayna Hollander, *Here’s how the four major telecom companies stacked up last quarter*, BUSINESS INSIDER (Oct. 26, 2017, 9:25 AM), <http://www.businessinsider.com/verizon-att-tmobile-sprint-q3-results-2017-10>.

<sup>14</sup> See Marguerite Reardon, *DOJ investigates AT&T and Verizon for collusion over SIM cards*, CNET (Apr. 20, 2018, 4:18 PM), <https://www.cnet.com/news/doj-investigating-at-t-and-verizon-for-collusion/>.

<sup>15</sup> See *Forbes* Article.

31. Controlling over 70 percent of the market sets AT&T and Verizon apart as “standards-setting bodies,” which, according to John Bergmayer, senior counsel at Public Knowledge, an advocacy group focused on copyright, telecom and the internet, can be “both extremely valuable, and create an opportunity for collusion.”<sup>16</sup> Mr. Bergmayer stresses that standards-setting bodies are ripe for abuse: “[i]ncumbent firms have shown themselves willing to use every tool at their disposal to block competition. The DOJ must investigate this alleged collusion swiftly to protect the rights of American consumers.”<sup>17</sup>

## II. Verizon Colluded to Restrict the Use of eSIM Technology

32. Most mobile phones use subscriber identity modules, or SIM cards, which contain unique identifying information about a user that identifies it to a specific mobile network.<sup>18</sup> SIM cards are generally a tiny piece of plastic that users slide into a tray on their mobile device or smartwatch, and contains a unique reference number for a user’s account so that a mobile service provider knows whom to charge and how much access to grant to a particular user’s device.<sup>19</sup> The SIM card also contains some onboard memory to store a small number of contacts or SMS messages.<sup>20</sup> The SIM cards more or less allow the wireless device to function properly. Essentially, the SIM card enables the mobile network to know that a certain phone belongs to a particular user who is paying for a subscription to use its services. For example, if a user has an

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<sup>16</sup> See David McLaughlin, Mark Gurman, and Scott Moritz, *AT&T, Verizon Face U.S. Probe Over Mobile Technology*, BLOOMBERG (Apr. 20, 2018, 7:14 PM), <https://www.bloomberg.com/news/articles/2018-04-20/at-t-verizon-said-to-face-u-s-probe-over-mobile-technology> (“Bloomberg Article”).

<sup>17</sup> See *id.*

<sup>18</sup> See Russell Ware, *A Look at What a SIM Card Is*, LIFEWIRE (Apr. 19, 2018), <https://www.lifewire.com/what-are-sim-cards-577532>.

<sup>19</sup> See Engadget Article.

<sup>20</sup> See *id.*

iPhone on Verizon's network, the phone needs a SIM card so that Verizon knows that the phone belongs to that individual who is paying Verizon for the subscription. Typically, users will need to purchase a new SIM card when they change wireless carriers.

33. eSIM technology, however, prevents a user from having to change a physical SIM card, which makes it easier to compare wireless networks and easily select a new service provider when desired. GSMA describes eSIM as "a global specification by the GSMA which enables remote SIM provisioning of any mobile device" and "allows consumers to store multiple operator profiles on a device simultaneously, and switch between them remotely . . . ." <sup>21</sup>

34. Developed in 2013 and introduced in the market in early 2016, eSIM technology is embedded into mobile phones and other devices, so that users no longer need to use a physical SIM card in their wireless device.<sup>22</sup> As described in Engadget, "fiddling with a tiny physical card is archaic and frustrating (who wants to carry around a SIM ejector?), and eSIMs can alleviate that pain" because "[e]mbedded SIMs integrate the identification technology of the plastic card into the device's processor or modem itself."<sup>23</sup> The information on an eSIM will be compliant or rewritable by all operators, such that a user can decide to change a wireless service provider with a simple phone call.<sup>24</sup> Thus, users need not acquire a new SIM card when switching between carriers which allows users to transfer wireless plans when they are traveling or buy a specific amount of data without having to visit a carrier's physical store.

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<sup>21</sup> *The SIM for the next Generation of Connected Consumer Devices*, GSMA, <https://www.gsma.com/esim/> (last visited Apr. 23, 2018).

<sup>22</sup> See N.Y. Times Report.

<sup>23</sup> See *id.*

<sup>24</sup> See Rick Henderson, *What is an eSIM and how will it change your future devices for the better?*, POCKET-LINT (Mar. 1, 2018), <https://www.pocket-lint.com/phones/news/134640-what-is-an-esim-and-how-will-it-change-connected-devices-for-the-better>.

35. According to John Bergmayer of Public Knowledge, “[n]ew technologies can increase customer choice. eSIMs could make it easier for customers to use their phones, tablets, smartwatches, and other connected devices with multiple carriers, enabling consumers to pick whichever carrier has the best service or lowest price.”<sup>25</sup>

36. The eSIM technology is supported by wireless carriers across the country and around the world, as well as several gadget makers, including Apple, Google and Microsoft.<sup>26</sup> For example, the Apple Watch 3, Google Pixel 2 smartphone and Microsoft Surface all have eSIM abilities. For companies such as Apple, eSIM technology helps free up physical space in devices to use for other technologies, such as bigger processors or batteries, and could also make it easier for users while traveling for business.<sup>27</sup> Telecom companies T-Mobile and Sprint allow iPad users to switch between carriers via a menu on the iPad.<sup>28</sup> AT&T users can use eSIM technology, but are unable to switch to another carrier, while Verizon does not support eSIM technology at all.<sup>29</sup>

37. Absent Defendants’ collusion, consumers would not have to “worry about being locked to one carrier.”<sup>30</sup> Rather, “[t]hanks to ‘remote SIM provisioning (RSP)’ eSIMs can store and adopt different profiles (or accounts) so [consumers] can simply switch carriers without having to get a new card.”<sup>31</sup>

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<sup>25</sup> See Shiva Stella, *Public Knowledge Responds to Report of Possible AT&T-Verizon Collusion*, PUBLIC KNOWLEDGE (Apr. 20, 2018), <https://www.publicknowledge.org/press-release/public-knowledge-responds-to-report-of-possible-att-verizon-collusion>.

<sup>26</sup> See N.Y. Times Report.

<sup>27</sup> See *id.*

<sup>28</sup> See Bloomberg Article.

<sup>29</sup> See *id.*

<sup>30</sup> See Engadget Article.

<sup>31</sup> See *id.*

38. However, Verizon colluded with AT&T to stifle this flexibility and restrict the ability of consumers to move easily from one wireless carrier to another. Indeed, Verizon is using eSIM to take away consumer freedoms. As stated by Mr. Bergmayer of Public Knowledge: “[t]hat is why it has been disturbing to learn that major carriers may be colluding behind closed doors to make eSIMs benefit themselves, instead of consumers. The two major wireless carriers—AT&T and Verizon—stand to benefit if device portability becomes more difficult. No one else does.”<sup>32</sup>

39. The push by Defendants to limit the utility of eSIM technology runs counter to a movement in which consumers were able to move from carrier to carrier with ease.<sup>33</sup> This hindrance comes as a blow to consumers, who had been making considerable strides in gaining more flexibility with moving between carriers since 2013 when, under pressure by the Federal Communications Commission (“FCC”), the wireless industry agreed to let consumers take devices off any particular network without penalty once the devices were fully paid for.<sup>34</sup>

40. There can be no doubt that locking down phones by restricting eSIM capabilities is a consumer-unfriendly policy, despite the fact that Verizon and AT&T have tried to justify the practice as a way to cut down on theft and fraud.<sup>35</sup>

41. A policy expert at the Center for Democracy and Technology, Ferras Vinh, laments that Defendants’ “actions [around eSIM] would limit choice for consumers and harm

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<sup>32</sup> See Shiva Stella, *Public Knowledge Responds to Report of Possible AT&T-Verizon Collusion*, PUBLIC KNOWLEDGE (Apr. 20, 2018), <https://www.publicknowledge.org/press-release/public-knowledge-responds-to-report-of-possible-att-verizon-collusion>.

<sup>33</sup> See N.Y. Times Report.

<sup>34</sup> See *id.*

<sup>35</sup> See Sam Rutherford, *Verizon and AT&T Reportedly Under DOJ Investigation for Potential Collusion*, GIZMODO (Apr. 20, 2018, 6:31 PM), <https://gizmodo.com/verizon-and-at-t-reportedly-under-doj-investigation-for-1825431101>.

competition.”<sup>36</sup> Further, according to Harold Feld, a senior vice president of Public Knowledge, in a private meeting of a task force called GSMA North America this year, AT&T and Verizon pushed for the ability to bypass the very purpose of the eSIM technology, advocating for the capability to lock phones to their networks.<sup>37</sup> Verizon purportedly argued that it needed to be able to lock down phones for the purposes of preventing theft and fraud.<sup>38</sup>

42. Mr. Feld noted the issues inherent in Verizon’s collusive behavior: “[t]here is a constant problem with industry standards-setting organizations that on the one hand allow the industry to come together for the purpose of efficiency but can be very anticompetitive and operate in secrecy.”<sup>39</sup> Mr. Feld also commended the DOJ for its investigation, stating that he is “very happy that the DOJ is taking its job as a cop on the beat very seriously.”<sup>40</sup>

### **III. The Wireless Communications Services Market Was Ripe for Collusion**

43. The market for wireless communication services was particularly susceptible to collusion during the Class Period because: (1) there are a limited number of wireless service providers; (2) the barriers to entry are extremely high; (3) the products are homogenous; (4) Verizon and its co-conspirators have a common motive to conspire—a desire to limit eSIM technology allowing consumers to easily switch wireless carriers; and (5) Verizon had ample opportunities to conspire with AT&T through the industry standard setting organization, GSMA.

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<sup>36</sup> See N.Y. Times Report.

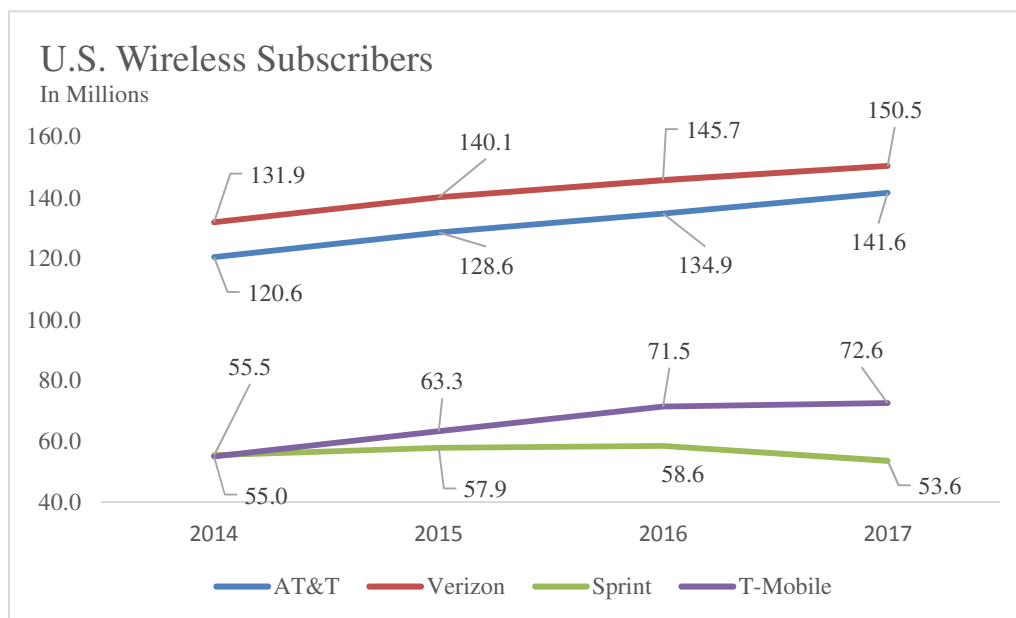
<sup>37</sup> See *id.*

<sup>38</sup> See Richard Lawler, *NYT: AT&T, Verizon and GSMA are being investigated over eSIM*, ENGADGET (Apr. 20, 2018), <https://www.engadget.com/2018/04/20/nyt-doj-esim-att-verizon/>.

<sup>39</sup> See N.Y. Times Report.

<sup>40</sup> See David Shepardson, *U.S. said to investigate AT&T, Verizon over wireless collusion claim: source*, REUTERS (Apr. 20, 2018, 4:12 PM), <https://www.reuters.com/article/us-doj-at-t/u-s-said-to-investigate-att-verizon-over-wireless-collusion-claim-source-idUSKBN1HR2Z8> (“Reuters Article”).

44. As shown below, the market for wireless communications services in the United States is highly concentrated, with four major players dominating the market—Verizon, AT&T, T-Mobile and Sprint.



Source: <https://www.fiercewireless.com>

45. Verizon colluded with AT&T to (i) maintain their respective market shares and maintain inflated prices by hindering the ability of consumers to switch between wireless carriers and (ii) codify this arrangement through GSMA standards that would allow phones to be locked to a carrier. Verizon engaged in the anticompetitive conduct described herein in order to maintain supracompetitive prices and to ensure that revenue is not diverted to other providers of wireless communications services.

46. In a conspiracy that increases the price for consumers, market forces would typically attract new entrants seeking to exploit the pricing gap created by that conspiracy's supra-competitive pricing. But when there are high barriers to entry for an industry, new wireless



providers outside the conspiracy are less likely to enter the market. Barriers to entry are a key component to facilitating the formation and continuation of a conspiracy.

47. In the wireless communications services industry, there are high barriers to entry due to high capital costs and a high degree of technical sophistication and relative scarcity of people with experience in those areas.

48. It is well established as a matter of economics that agreements to suppress or limit technology can be used to avoid price competition. Here, Verizon colluded with AT&T to hinder the utility of eSIM technology with the goal of raising, fixing, maintaining or stabilizing prices in the market for wireless communication services by reducing competition.

49. Had Verizon and AT&T faced competition from one another in terms of innovation and technological advances associated with the use of eSIM technology, those who did not innovate would have experienced downward pressure on the price of their wireless services, while those who did would experience lower profit margins as a result of the ability of consumers to switch among carriers based on price.

50. Industry organizations including GSMA, *inter alia*, offered ample opportunities for Verizon to conspire with AT&T. For example, Rima Qureshi, Executive Vice President and Chief Strategy Officer for Verizon currently serves as a member of the GSMA board, along with Bill Hague, Executive Vice President Global Connection Management for AT&T. The GSMA holds board meetings, attended by its board members such as Qureshi and Hague, three times per year. GSMA also hosts industry conferences attended by senior executives of Verizon and AT&T, such as the Mobile World Congress Americas 2017, held in September 2017 in San Francisco, California and the 2018 Mobile World Congress, held in February 2018 in Barcelona, Spain. Verizon and AT&T were both exhibitors at each of those events.

#### IV. The DOJ Launches a Probe into Verizon's Collusion in the Wireless Market

51. In February 2018, the Antitrust Division of the United States DOJ launched an investigation into Verizon's anticompetitive conspiracy with AT&T to limit the use of eSIM technology, following formal complaints filed against AT&T and Verizon by Apple, Inc. and other equipment makers.<sup>41</sup>

52. According to a source familiar with the DOJ investigation, other wireless operators may have also potentially received inquiries from the DOJ.<sup>42</sup> Ethan Glass, a former trial attorney with the DOJ, says that it is not unusual for the DOJ to send CIDs, the equivalent of a subpoena, to all major players in the industry, because the agency wants evidence from companies that allegedly participate in any conspiracy, as well as those players outside of it.<sup>43</sup>

53. This is not the first time regulators have put pressure on phone companies to make it easier for consumers to switch carriers. In 2013, the four largest service providers, including Verizon, agreed to permit consumers to use smartphones on other networks after their contracts expired.<sup>44</sup> The next year, President Barack Obama signed legislation giving consumers the freedom to switch between wireless carriers without having to purchase a new device.<sup>45</sup>

54. That law, dubbed the "Unlocking Consumer Choice and Wireless Competition Act" (S. 517) was aimed to help promote consumer choice in the wireless market, since it allows

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<sup>41</sup> See Reuters Article.

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See Bloomberg Article.

<sup>45</sup> See *id.*

consumers to take their cell phones to other carriers.<sup>46</sup> The purpose of the bill was “to promote consumer choice and wireless competition by permitting consumers to unlock mobile wireless devices” and was seen as “just a small step in the right direction of a much bigger issue” of “digital locks” which “harm[ ] consumer choice, encourage[ ] anti-competitive behavior, and stifle[ ] innovation . . . .”<sup>47</sup> FCC Chairman, Tom Wheeler, called the law “a positive development that addresses the issues that triggered unlocking concerns in the first place. When the wireless industry worked with the FCC on a voluntary agreement to unlock devices when consumers’ contracts have been fulfilled, they took an important step forward. The president’s signature today makes greater consumer choice the law of the land.”<sup>48</sup>

55. Verizon’s recent attempts to further limit consumers’ freedoms to change carriers by locking eSIM technology is a huge step backwards in consumer protection advancements.

56. Defendants confirmed receipt of the DOJ demands, but deny any wrongdoing. A spokesman for Verizon confirmed that the carrier had been working with the DOJ for several months on the probe because of “a difference of opinion with a couple of phone equipment manufacturers regarding the development of eSIM standards,” but brushed the inquiry off as “much ado about nothing.”<sup>49</sup> GSMA issued a statement that it was “cooperating fully with the Department of Justice in this matter,” and further confirmed that it had developed an eSIM

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<sup>46</sup> See Marguerite Reardon, *President signs cell phone unlocking bill into law*, CNET (Aug. 1, 2014, 2:42 PM), <https://www.cnet.com/news/president-signs-cell-phone-unlocking-bill-into-law/>.

<sup>47</sup> See H.R. Rep. No. 113-356, at 1, 15 (2014).

<sup>48</sup> See *id.*

<sup>49</sup> See N.Y. Times Report.

standard that would allow a carrier to lock a device to its network.<sup>50</sup> GSMA put the standard on hold pending the DOJ's investigation.<sup>51</sup>

57. The current DOJ investigation highlights the DOJ antitrust chief, Makan Delrahim's, recent crackdown on the opaque world of intellectual property standards. Mr. Delrahim has commented that the DOJ will scrutinize potential coordination in standards-setting organizations that can hurt competition, such as the conduct complained of herein.<sup>52</sup> At a conference last month in Washington, D.C., Mr. Delrahim said in a speech that "[i]n the context of antitrust and [intellectual property], we will be inclined to investigate and enforce when we see evidence of collusive conduct undertaken for the purpose of fixing prices, or excluding particular competitors or products."<sup>53</sup> He also warned about the potential for "cartel-like behavior" by competitors who have gotten together with standards-setting organizations, such as AT&T and Verizon.<sup>54</sup>

### **THE RELEVANT MARKET**

58. Plaintiff disclaims the need to plead a relevant market for her antitrust claims. The restraint of trade and anticompetitive conduct alleged herein directly inflated or maintained prices, restricted supply, and restrained competition and consumer choice in the market for wireless communication services in the United States and otherwise constitutes a *per se* violation of the Sherman Act, 15 U.S.C. § 1.

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<sup>50</sup> *See id.*

<sup>51</sup> *See id.*

<sup>52</sup> *See id.*

<sup>53</sup> *See id.*

<sup>54</sup> *See id.*

59. In the alternative, Defendants' collusion with AT&T is an unreasonable restraint of trade, which resulted in substantial anticompetitive effects in the market for wireless communication services in the United States in violation of the Sherman Act under a "quick look" or "rule of reason" mode of analysis.

60. The relevant product and geographic market for purposes of this complaint is the market for the sale of wireless communication services in the United States.

### **ANTITRUST INJURY**

61. Plaintiff and Class members are direct purchasers of wireless communication services from AT&T.

62. Verizon and its co-conspirator, AT&T, are horizontal competitors in the market for wireless communication services in the United States. Verizon and AT&T participated as co-conspirators and performed acts in furtherance of the conspiracy alleged herein.

63. Defendants intended to restrain trade and actually restrained trade in violation of Section 1 of the Sherman Act by engaging in artificial manipulation of the market for wireless communication services, and their conduct injured competition and Plaintiff and Class members. Defendants shared a conscious commitment to the common scheme designed to achieve the unlawful objective of limiting consumer choice in the market for wireless communication services and inflating, fixing, stabilizing or maintaining prices by limiting consumers' ability to choose between wireless service providers based on price.

64. By refusing to compete with AT&T, including by limiting the pace and extent of innovation related to eSIM technology, Verizon, *inter alia*, eliminated consumer surplus (i.e., the value of innovation that is not captured by a manufacturer's price increases) and artificially inflated, stabilized, fixed or maintained prices for wireless communications services, thereby increasing Verizon's profit margins relative to the but for world in which Verizon either

competed with AT&T on innovation and experienced decreased profit margins based on the implementation of eSIM technology, which led to price competition, or, alternatively, experienced downward pressure on the price of its wireless services based on its failure to innovate in a competitive market.

65. As alleged herein, Defendants' and their co-conspirators' collusion had the following effects on the wireless communication services market and proximately caused injury to Plaintiff and the Class in the following ways, *inter alia*:

- a. Defendants' unlawful anticompetitive conduct has restrained price competition in the market for wireless communication services in the United States;
- b. Prices for wireless communication services provided by Defendants to purchasers in the United States—including Plaintiff and members of the Class—have been fixed, maintained, stabilized and/or artificially inflated to non-competitive levels;
- c. The supply of wireless communication services provided to purchasers in the United States has been artificially restrained; and
- d. Purchasers of wireless communication services in the United States—including Plaintiff and members of the Class—have been deprived of the benefit of free and open competition on the basis of price in the market for wireless communication services.

66. Absent Defendants' collusion, those purchasing wireless communication services would have transacted at competitive prices and reaped the benefits of competition.

67. As a direct, intended, foreseeable, and proximate result of Defendants' unlawful conspiracy and acts in furtherance of their conspiracy, Plaintiff and Class members have been injured in their business and property, in violation of the federal antitrust laws.

68. The injury to Plaintiff and Class members is the type the antitrust laws were designed to prevent and directly flows from Defendants' unlawful anticompetitive conduct.

69. There is no legitimate business justification for, or procompetitive benefits of, Verizon's unreasonable restraint of trade.

70. Verizon is jointly and severally liable for the acts of its co-conspirators.

#### **EFFECT ON INTERSTATE COMMERCE**

71. Billions of dollars of transactions in wireless communication services are entered into each year in interstate commerce in the United States.

72. Defendants' manipulation of the market for wireless communication services had a direct, substantial, and foreseeable impact on interstate commerce in the United States.

73. Defendants intentionally targeted their unlawful conduct to affect commerce, including interstate commerce within the United States, by combining, conspiring, and/or agreeing with AT&T to limit the ability of consumers to switch between wireless service providers.

74. Defendants' unlawful conduct has a direct and adverse impact on competition in the United States. Absent Defendant's combination, conspiracy, and/or agreement to manipulate the market for wireless communication services, the pricing and supply of wireless communication services would be determined by a competitive, efficient market.

#### **FRAUDULENT CONCEALMENT AND TOLLING OF THE STATUTE OF LIMITATIONS**

75. Any applicable statute of limitations has been tolled by Defendants' knowing and active concealment of their collusion to limit the use of eSIM technology in order to stifle competition in the wireless communication services market in the United States. Through no fault or lack of diligence, Plaintiff and Class members were deceived regarding Defendants'

collusion to stifle competition in the wireless communication services market and could not reasonably discover the collusion.

76. As alleged herein, Defendants' collusion to limit the use of eSIM technology in order to stifle competition in the wireless communication services market was material to Plaintiff and Class members at all relevant times. Within the time period of any applicable statute of limitations, Plaintiff and Class members could not have discovered through the exercise of reasonable diligence that Defendants were colluding to limit the use of eSIM technology in order to stifle competition in the wireless communication services market, which Defendants fraudulently concealed.

77. Plaintiff and Class members did not discover and did not know of any facts that would have caused a reasonable person to suspect that Defendants were colluding to limit the use of eSIM technology in order to stifle competition in the wireless communication services market.

78. Defendants knowingly, actively, and affirmatively concealed the facts alleged herein, including their collusion with AT&T to limit the use of eSIM technology in order to stifle competition in the wireless communication services market. Plaintiff and Class members reasonably relied on Defendants' knowing, active, and affirmative concealment.

79. For these reasons, all applicable statutes of limitations have been tolled based on the discovery rule and Defendants' fraudulent concealment and Defendants are estopped from relying on any statutes of limitations in defense of this action.

### **CLASS ALLEGATIONS**

80. Plaintiff brings this proposed action pursuant to Federal Rules of Civil Procedure ("Rules") 23(a) and 23(b)(2), and/or (b)(3) on behalf of herself and as a class action, seeking equitable relief and damages on behalf of the following nationwide class of similarly situated subscribers, defined as follows:



All persons, corporations and other legal entities that are or were subscribers to wireless communication services provided by Verizon from 2016 forward (the “Class”).

81. The action also asserts claims on behalf of the following Sub-Class seeking injunctive relief on behalf of similarly situated subscribers, defined as follows:

All persons, corporations and other legal entities that are current subscribers to wireless communication services provided by Verizon (the “Sub-Class”).

82. Excluded from the Class and Sub-Class are Defendants and their parents, subsidiaries, and corporate affiliates, officers, directors, employees, assigns, successors, and co-conspirators, the court, court staff, Defendants’ counsel, and all respective immediate family members of the excluded entities described above. Plaintiff reserves the right to revise the definition of the Class and Sub-Class based upon subsequently discovered information and reserves the right to add additional Sub-Classes where appropriate.

83. The Class is so numerous that individual joinder of all potential members is impracticable. Plaintiff believes that there are at least thousands of proposed members of the Class throughout the United States.

84. Common questions of law and fact exist as to all members of the Class and predominate over any issues solely affecting individual members of the Class. The common and predominating questions of law and fact include, but are not limited to:

- a. Whether Defendants unreasonably restrained trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
- b. Whether Defendants’ conduct is a *per se* violation of Section 1 of the Sherman Act;

- c. Whether Verizon engaged in a combination, conspiracy, and/or agreement to limit the use of eSIM technology in order to stifle competition in the market for wireless communication services in the United States;
- d. Whether Verizon engaged in a combination, conspiracy, and/or agreement to raise, fix, maintain, and/or stabilize prices in the market for wireless communication services in the United States;
- e. The identity of the participants in the conspiracy;
- f. The duration of the conspiracy;
- g. The nature and character of the acts performed by Defendants in furtherance of the conspiracy;
- h. Whether the conduct of the Defendants, as alleged herein, caused injury to the business or property of Plaintiff and Class members;
- i. Whether the conduct of the Defendants, as alleged herein, reduced price competition in the market for wireless communication services in the United States and caused wireless communication services to be sold at artificially inflated prices;
- j. Whether Plaintiff and other members of the Sub-Class are entitled to injunctive relief and, if so, the nature and extent of such relief;
- k. Whether equitable relief should be awarded; and
- l. Whether actual damages, costs, disgorgement and/or treble damages should be awarded.

85. Plaintiff's claims are typical of the claims of other members of the Class and Sub-Class because Plaintiff and all class members share the same injury. As alleged herein, Plaintiff

and members of the Class and Sub-Class sustained damages arising out of the same illegal actions and conduct by Defendants.

86. Plaintiff is willing and prepared to serve the Class and Sub-Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly and adequately protect the interests of the Class and Sub-Class and has no interests adverse to or in conflict with the interests of the other members of the Class and Sub-Class.

87. Plaintiff's interests are co-extensive with and are not antagonistic to those of absent Class or Sub-Class members. Plaintiff will undertake to represent and protect the interests of absent Class and Sub-Class members and will vigorously prosecute this action.

88. Plaintiff has engaged the services of the undersigned counsel. Counsel is experienced in complex litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise represent, Plaintiff and absent Class and Sub-Class members.

89. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this litigation that would preclude its maintenance as a class action.

90. Class action status is warranted under Rule 23(b)(3) because questions of law or fact common to Class and Sub-Class members predominate over any questions affecting only individual Class and Sub-Class members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

91. The Sub-Class may also be certified under Rule 23(b)(2) because Defendants have acted on grounds generally applicable to the Sub-Class, thereby making it appropriate to award final injunctive relief or corresponding declaratory relief with respect to the Sub-Class.

92. The interest of Class and Sub-Class members in individually controlling the prosecution of separate actions is theoretical and not practical. The Class and Sub-Class have a high degree of similarity and are cohesive, and Plaintiff anticipates no difficulty in the management of this matter as a class action.

**COUNT I**  
**VIOLATIONS OF SECTION 1 OF**  
**THE SHERMAN ANTITRUST ACT, 15 U.S.C. § 1**

(on behalf of the Class)

93. Plaintiff incorporates by reference and re-alleges each preceding paragraph as though fully set forth herein.

94. As alleged herein, Defendants combined, conspired, and agreed to limit the use of eSIM technology to stifle competition in the market for wireless communication services in the United States. This combination, conspiracy, and/or agreement unreasonably restrained trade in violation of the federal antitrust laws.

95. Specifically, the anticompetitive combination, conspiracy, and/or agreement alleged herein is a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (“Section 1”). Alternatively, the anticompetitive combination, conspiracy, and/or agreement alleged herein resulted in substantial anticompetitive effects in the market for wireless communication services in the United States in violation of Section 1.

96. Defendants intended to restrain trade and actually restrained trade in violation of Section 1. Defendants shared a conscious commitment to the common scheme designed to achieve the unlawful objective of limiting the use of eSIM technology in order to stifle competition in the market for wireless communication services in the United States.

97. The anticompetitive combination, conspiracy, and/or agreement alleged herein unreasonably restrained trade, and there is no legitimate business justification for, or

procompetitive benefits of, Defendants' unreasonable restraint of trade. Any alleged procompetitive benefit or business justification is pretextual and/or could have been achieved through less restrictive means.

98. The anticompetitive combination, conspiracy, and/or agreement alleged herein occurred within the flow of and substantially affected interstate commerce.

99. As a direct and proximate result of Defendants' anticompetitive scheme and concrete acts in furtherance of that scheme, Plaintiff and members of the Class have been injured in their business and property by reason of Defendants' violation of Section 1, within the meaning of Section 4 of the Clayton Act, 15 U.S.C. § 15.

100. Plaintiff's and the Class members' injuries are of the type the antitrust laws were designed to prevent and are a direct result of Defendants' unlawful anticompetitive conduct.

101. Pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, Plaintiff and the Class are entitled to treble damages, costs, and attorneys' fees for the violations of the Sherman Act alleged herein.

**COUNT II**  
**INJUNCTIVE RELIEF FOR VIOLATIONS OF SECTION 1 OF**  
**THE SHERMAN ANTITRUST ACT, 15 U.S.C. § 1**

(on behalf of the Sub-Class)

102. Plaintiff incorporates by reference and re-alleges each preceding paragraph as though fully set forth herein.

103. Plaintiff asserts this count on behalf of herself and the members of the nationwide Sub-Class.

104. As alleged herein, Defendants combined, conspired, and agreed to limit the use of eSIM technology to stifle competition in the market for wireless communication services in the

United States. This combination, conspiracy, and/or agreement unreasonably restrained trade in violation of the federal antitrust laws.

105. Specifically, the anticompetitive combination, conspiracy, and/or agreement alleged herein is a *per se* violation of Section 1. Alternatively, the anticompetitive combination, conspiracy, and/or agreement alleged herein resulted in substantial anticompetitive effects in the market for wireless communication services in the United States in violation of Section 1.

106. Defendants intended to restrain trade and actually restrained trade in violation of Section 1. Defendants shared a conscious commitment to the common scheme designed to achieve the unlawful objective of limiting the use of eSIM technology in order to stifle competition in the market for wireless communication services in the United States.

107. The anticompetitive combination, conspiracy, and/or agreement alleged herein unreasonably restrained trade, and there is no legitimate business justification for, or procompetitive benefits of, Defendants' unreasonable restraint of trade. Any alleged procompetitive benefit or business justification is pretextual and/or could have been achieved through less restrictive means.

108. The anticompetitive combination, conspiracy, and/or agreement alleged herein occurred within the flow of and substantially affected interstate commerce.

109. As a direct and proximate result of Defendants' anticompetitive scheme and concrete acts in furtherance of that scheme, Plaintiff and members of the Sub-Class have been injured and will continue to be injured in their business and property by reason of Defendants' violation of Section 1, and are entitled to injunctive relief, costs, and attorneys' fees pursuant to the Clayton Act, 15 U.S.C. § 26.

110. Unless enjoined, Defendants' anticompetitive combination, conspiracy, and/or agreement will continue.

111. Plaintiff's and the Sub-Class members' injuries are of the type the antitrust laws were designed to prevent and are a direct result of Defendants' unlawful anticompetitive conduct.

112. Plaintiff and members of the Sub-Class seek an injunction against Defendants, preventing and restraining the Sherman Act violations alleged herein, costs, and attorneys' fees. *See* 15 U.S.C. § 26.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests that this Court enter judgment against Verizon and in favor of Plaintiff and the Class, and award the following relief:

- a. certify this lawsuit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiff as the representative of the Class and Plaintiff's counsel as counsel for the Class;
- b. declare Defendants' conduct alleged herein violates Section 1 of the Sherman Antitrust Act;
- c. permanently enjoin and restrain Defendants, their affiliates, successors, transferees, assignees and other officers, directors, agents and employees thereof, and all other persons acting or claiming to act on their behalf, from in any manner continuing, maintaining or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

- d. find Defendants jointly and severally liable for the acts of their co-conspirators and for the damages incurred by Plaintiff and the Class;
- e. award actual damages, costs, disgorgement, and/or treble damages under applicable law;
- f. award Plaintiff and members of the Class damages against Defendants for their violations of federal antitrust laws, in an amount to be trebled under Section 4 of the Clayton Antitrust Act, 15 U.S.C. § 15 (a);
- g. require Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- h. award Plaintiff costs of suit, including reasonable attorneys' fees and expenses, including expert fees, as provided by law; and
- i. direct any such further relief that the Court may deem just and proper.

#### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: May 7, 2018

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