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**HERRING NETWORKS, INC.**

13  
14 SUPERIOR COURT OF CALIFORNIA  
15 COUNTY OF SAN DIEGO

16 HERRING NETWORKS, INC., a  
California corporation,

17 Plaintiff,

18 v.

19 AT&T, INC., a Delaware corporation,  
AT&T SERVICES, INC., a Delaware  
20 corporation, DIRECTV, LLC, a  
California limited liability company, and  
21 WILLIAM KENNARD, an individual,

22 Defendants.

Case No. 37-2022-00008623-CU-BC-CTL

**COMPLAINT**

- (1)-(2) **Breach of Contract;**  
(3) **Breach of the Covenant of  
Good Faith and Fair Dealing;**  
(4) **Intentional Interference With  
Business Expectancy; and**  
(5)-(6) **Violation of California's  
Unfair Competition Law**

**Jury Trial Demanded**

23  
24  
25  
26 Herring Networks, Inc., d/b/a One America News Network ("Herring" or  
27 "Plaintiff"), by and through its undersigned attorneys, brings this action against  
28 defendants AT&T, Inc. ("AT&T"), AT&T Services, Inc. ("AT&T Services"),

1 DIRECTV, LLC (“DIRECTV”), and AT&T Board Chairman and Staple Street  
2 Capital, LLC (“Staple Street”) Executive Board Chairman William Kennard  
3 (“Kennard”) (collectively, “Defendants”), alleging counts against some or all of them  
4 for: (1) breach of contract (confidentiality provision); (2) breach of contract (non-  
5 disparagement provision); (3) breach of the covenant of good faith and fair dealing;  
6 (4) intentional interference with business expectancy; (5) violation of California’s  
7 Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.* (“UCL”)  
8 (unlawfulness); and (6) violation of the UCL (unfairness). In support of its  
9 Complaint, Herring states as follows:

10 **NATURE OF THE ACTION**

11 1. This is an action to redress the unchecked influence and power that  
12 Defendants have wielded in an attempt to unlawfully destroy an independent, family-  
13 run business and impede the right of American television viewers to watch the news  
14 media channels and programs of their choice.

15 2. Family-owned and operated Herring manages two television networks:  
16 A Wealth of Entertainment, or “AWE,” and One America News Network, or “OAN.”  
17 For the past several years, Herring, AT&T, AT&T Services, and DIRECTV have  
18 enjoyed a profitable, mutually beneficial business relationship through which AT&T  
19 (through AT&T Services and DIRECTV) carried AWE and OAN and was paid  
20 generous commissions via selling advertising on AWE and OAN. As a result of the  
21 contractual carriage and advertising arrangements, AT&T, AT&T Services, and  
22 DIRECTV have profited financially and Herring has similarly thrived by growing  
23 OAN into one of the most popular cable channels offered on DIRECTV’s platform.

24 3. However, in violation of contracts with and duties to Herring, AT&T,  
25 AT&T Services, and DIRECTV have bowed to political pressure and have put their  
26 unlawful interests and the unlawful personal, political, and financial interests of their  
27 management ahead of contractual and legal obligations. Defendants have  
28 egregiously disparaged Herring, disclosed confidential contractual terms and

1 conditions, and interfered with Herring's reasonable expectancy of a continued  
2 business relationship with DIRECTV. Additionally, their collective conduct  
3 constitutes unlawful and unfair competition in violation of the UCL.

4 4. These wrongdoings are part and parcel of a larger, coordinated,  
5 extremely well-financed political scheme to take down Herring and unlawfully  
6 destroy its ability to operate in the media business.

### 7 **THE PARTIES**

8 5. Herring is a California corporation with its principal place of business  
9 in San Diego, California.

10 6. AT&T is a Delaware corporation with its principal place of business in  
11 Dallas, Texas.

12 7. AT&T Services is a Delaware corporation with its principal place of  
13 business in San Antonio, Texas. Upon information and belief, AT&T Services also  
14 operates out of Dallas, Texas. AT&T is the parent company of AT&T Services.

15 8. DIRECTV is a single-membership-unit California limited liability  
16 company with its principal place of business in El Segundo, California. DIRECTV  
17 has a single member and manager (Michael Hartman at 2250 East Imperial Highway,  
18 12<sup>th</sup> Floor, El Segundo, California). DIRECTV thus shares California citizenship  
19 with Herring. According to his LinkedIn profile, Hartman serves a dual role as Senior  
20 Vice President and Assistant General Counsel of AT&T (a position he has held for  
21 more than seven years) and General Counsel and Chief External Affairs Officer of  
22 DIRECTV, a position he recently took in February 2021. AT&T is the majority  
23 owner of DIRECTV.

24 9. Kennard is a resident of South Carolina and Washington, D.C. Kennard  
25 was born and raised in California, received his bachelor's degree from Stanford  
26 University, and has been licensed to practice law in California. Kennard is the  
27 Chairman of the Board of Directors of AT&T. Kennard also serves on the Executive  
28 Board of Directors of Staple Street. Staple Street is the majority owner of Dominion

1 Voting Systems Corporation, which in turn is the sole owner of Dominion Voting  
2 Systems, Inc. (Dominion Voting Systems Corporation and Dominion Voting  
3 Systems, Inc. are collectively referred to as “Dominion”). Kennard visits California  
4 regularly for business and personal reasons.

### 5 **JURISDICTION AND VENUE**

6 10. Jurisdiction is proper pursuant to Section 410.10 of the California Code  
7 of Civil Procedure because the acts and events giving rise to liability occurred and  
8 continue to occur in California. Specifically, the contracts at issue in this case were  
9 negotiated and executed in California, the actions of (at minimum) Herring and  
10 DIRECTV at issue in this case occurred in California, all efforts to encourage  
11 California-based DIRECTV to cease carriage of California-based Herring were  
12 directed at and/or occurred in California, the unfair and unlawful practices intended  
13 to harm Herring in the marketplace were directed at California, and the harm suffered  
14 by Herring occurred and will continue to occur in California.

15 11. Venue is proper pursuant to Sections 395(a) and 395.5 of the California  
16 Code of Civil Procedure because Herring’s injury occurred and continues to occur in  
17 San Diego County and the subject agreements were to be and have been performed  
18 in San Diego County. Specifically, the contracts at issue in this case were negotiated  
19 and intended to be performed by and for the benefit of Herring in San Diego County,  
20 the efforts to persuade DIRECTV to cease carriage of OAN were intended to harm  
21 Herring (and did harm Herring) in San Diego County, and the unfair and unlawful  
22 practices intended to harm Herring in the marketplace were directed at San Diego  
23 County.

### 24 **FACTUAL BACKGROUND**

#### 25 **A. Herring’s Business**

26 12. Herring is an independent, family-owned media company  
27 headquartered in San Diego, California. CEO Robert Herring Sr. started the  
28 company in 2003 with his sons, Charles Herring (“Charles”) and Robert Herring Jr.

1 (“Bobby”). Charles is the President of Herring, and Bobby is the General Manager.  
2 The Herrings own and operate two television networks that are national cable  
3 channels: AWE and OAN.

4 13. AWE is a lifestyle and entertainment channel, which Herring launched  
5 in 2004. AWE airs a wide range of programming, including travel-related series,  
6 automotive shows, international news, documentaries, and live championship  
7 boxing. AWE has demonstrated excellent performance since its inception. It is  
8 distributed domestically on 150 cable systems; it has received regional Emmy awards  
9 and nominations for its productions; its live championship boxing programming has  
10 received multiple recognitions; and as of Q3 2021, AWE performed in the top 35  
11 percent of the channel lineup according to AT&T’s own data.

12 14. OAN, launched on July 4, 2013, is a news channel that delivers timely  
13 national and international news 24 hours a day throughout the United States. It  
14 features political analysis programming, political talk shows, and special  
15 documentary-style reports. OAN provides more live news than any other network.  
16 As of the third quarter of 2021, AT&T’s own data showed that OAN was a top  
17 performing network, ranked 24th (excluding broadcast networks) out of over 300  
18 channels, putting OAN in the top 10 percent of channels offered via DIRECTV.  
19 OAN outperformed CNBC, Fox Business, CNN Headline News, Newsmax, and  
20 popular entertainment channels such as Paramount Network, Comedy Central, and  
21 Animal Planet. Additionally, OAN’s extensive live programming lineup, which  
22 preserves the linear experience for viewers, is an ideal genre moving forward to  
23 compete with streaming services that don’t offer live programming experiences.

24 **B. AT&T Helped Launch OAN.**

25 15. AT&T is the largest combined telecommunications and entertainment  
26 company in the world. It provides mobile telecommunications, broadband, and  
27 Internet subscription services throughout the United States and Latin America.  
28 Through its WarnerMedia subsidiary, AT&T manages one of the world’s largest TV

1 and film studios and delivers streaming services through its recently launched HBO  
2 Max platform. WarnerMedia also offers a significant portfolio of advertising  
3 solutions through Basic Networks, which sells advertising on WarnerMedia's  
4 networks and digital properties and through another wholly owned AT&T subsidiary  
5 called Xandr, Inc. ("Xandr") (which provides marketers with advanced advertising  
6 solutions). As of the close of 2021, AT&T reported \$153 billion in aggregate revenue  
7 across its three operating segments.

8 16. Through its WarnerMedia division, AT&T owns Cable News Network  
9 ("CNN") and Home Box Office ("HBO"). Indeed, AT&T's Web site prominently  
10 features CNN and one of its news personalities on its investor profile landing page,  
11 and AT&T similarly highlights HBO and the HBO Max streaming platform as one  
12 of AT&T's crown jewels.

13 17. DIRECTV is the country's largest paid satellite TV provider. AT&T  
14 acquired DIRECTV in 2015. With a 70 percent ownership interest in DIRECTV,  
15 AT&T remains the majority owner of DIRECTV.

16 18. AT&T Services is another wholly owned subsidiary of AT&T.

17 19. Herring and AT&T have been in business together since June 2006,  
18 when AT&T began distributing AWE (formerly known as WealthTV) on its  
19 "U-Verse" network. In 2013, at the urging of AT&T, which wanted to compete with  
20 Fox News Network with an alternative conservative-leaning network, Herring  
21 launched OAN. AT&T Services and OAN entered into a Network Affiliation  
22 Agreement on April 10, 2014. AT&T was planning to take an equity stake in Herring  
23 to ensure that OAN gained carriage on DIRECTV (pursuant to a put-right agreement  
24 between AT&T and DIRECTV). The plan was terminated as AT&T began targeting  
25 DIRECTV for a possible acquisition.

26 20. AT&T announced its plan to acquire DIRECTV shortly thereafter and  
27 enlisted Herring's help to ensure that the Federal Communications Commission  
28 ("FCC") approved the acquisition. Herring obliged by, among other things, hiring

1 lobbyists, meeting with FCC officials, and signing filings in support of the  
2 acquisition that were ghostwritten by AT&T. In exchange, AT&T promised to air  
3 OAN and AWE on U-Verse and DIRECTV.

4 21. But when the FCC approved AT&T's acquisition of DIRECTV and the  
5 acquisition completed in July of 2015, AT&T and DIRECTV did not hold up their  
6 end of the bargain, forcing Herring to file suit. AT&T Services, DIRECTV, and  
7 Herring subsequently entered into an Affiliation Agreement on March 9, 2017  
8 ("Affiliation Agreement"). Upon information and belief, AT&T Services later fully  
9 assigned the Affiliation Agreement to DIRECTV. AT&T Services, a/k/a Xandr, and  
10 Herring later entered into an Advertising Agreement on April 15, 2019 ("Advertising  
11 Agreement").

12 **C. The Affiliation Agreement and the Advertising Agreement**

13 22. The Affiliation Agreement expanded the business relationship between  
14 AT&T and Herring and further extended the business relationship between  
15 DIRECTV and Herring. The Affiliation Agreement demonstrates AT&T's desire for  
16 OAN to compete with Fox News Network, providing that OAN's programming was  
17 "designed to have broad appeal with special interest to viewers interested in  
18 independent and conservative political thought." (Affiliation Agreement, Ex. A.)

19 23. The term of the Affiliation Agreement is five years and is set to expire  
20 on April 7, 2022. (Affiliation Agreement § 1.1.1.) The Affiliation Agreement is  
21 governed by California law. (*Id.* § 13.)

22 24. Since execution of the Affiliation Agreement, OAN has grown  
23 substantially, benefiting AT&T, AT&T Services, and DIRECTV. As of 2021, a  
24 substantial amount of OAN's revenue came from the Affiliation Agreement.  
25 Because of OAN's success with DIRECTV, Herring reasonably expected that the  
26 Affiliation Agreement would be renewed and took steps in furtherance of that  
27 expectation.

1           25. For example, in April 2019, Herring expanded its relationship with and  
2 reliance on the continuing carriage of OAN through AT&T, AT&T Services, and  
3 DIRECTV by entering into the Advertising Agreement with AT&T Services, d/b/a  
4 Xandr, on April 15, 2019. The Advertising Agreement expires in mid-2024.

5           26. Before April 2019, Herring worked with a different media vendor that  
6 had a non-exclusive right to sell direct response advertising broadcast commercial  
7 time on behalf of Herring.

8           27. The agreement with the media vendor provided only for the sale of  
9 “traditional advertising.”

10          28. Traditional advertising is seen by all viewers who watch a program. In  
11 contrast, “programmatic targeted advertising” or “dynamic ad insertion” tailors the  
12 advertisement to the individual viewer based on data known about the viewer.  
13 Programmatic targeted advertising requires express approval by the multichannel  
14 video programming distributor or “MVPD” before it can be used. It is generally  
15 more expensive than traditional advertising in terms of commissions paid by the  
16 programmer to the sales representative, but has the potential to generate greater  
17 revenue.

18          29. Herring and AT&T saw an opportunity to expand their relationship to  
19 include other services in addition to carriage under the Affiliation Agreement. By  
20 entering into the Advertising Agreement, AT&T Services would provide both  
21 traditional advertising and programmatic targeted advertising for Herring’s  
22 programs. But the Advertising Agreement gave AT&T Services the exclusive right  
23 to sell ad space and required that Herring terminate its existing media vendor. Seeing  
24 an opportunity to solidify and expand its business relationship with AT&T, Herring  
25 agreed.

26          30. Herring showed loyalty to AT&T through termination of its existing  
27 media vendor and also agreed to give AT&T Services more favorable terms. For  
28 example, the Advertising Agreement gave AT&T Services a commission rate for



1 direct response advertising that was 10 percent higher than Herring's prior deal. For  
2 programmatic targeted advertising, AT&T Services received a commission rate that  
3 was 15 percent higher than the market rate for commissions for programmatic  
4 targeted advertising.

5 31. The Advertising Agreement covers all current and future MVPDs that  
6 carry Herring's programs and provides very limited circumstances in which the  
7 parties can terminate the agreement before its expiration.

8 32. Additionally, there was a slight overlap in April 2019 when both AT&T  
9 Services and the prior vendor believed that they were providing advertising sales on  
10 behalf of Herring. Rather than dispute the charges by either company, Herring agreed  
11 to make a double payment to satisfy both parties.

12 33. Herring reasonably believed that the Advertising Agreement was proof  
13 of a commitment to a long-term carriage relationship by AT&T, AT&T Services, and  
14 DIRECTV. This belief was solidified by the fact that the Advertising Agreement  
15 was set to expire more than two years after the Affiliation Agreement was set to  
16 expire. Herring did not take issue with the term of the Advertising Agreement  
17 because Herring had a reasonable belief that the Affiliation Agreement would be  
18 renewed. Considering the high commission rates, the double payment, the  
19 termination of a prior vendor agreement, and the right of exclusivity in the new  
20 Advertising Agreement, Herring reasonably believed that AT&T Services and  
21 DIRECTV were valuable partners that intended to continue to facilitate carriage of  
22 Herring's programs at least through the initial term of the Advertising Agreement.

23 34. However, AT&T, AT&T Services, and Kennard, faced with increasing  
24 political pressure, interfered with Herring's prospective business expectancy with  
25 DIRECTV. And in doing so, AT&T, AT&T Services and DIRECTV breached the  
26 Affiliation Agreement with Herring.

1 **D. Dominion Sued Herring for Defamation, Seeking Over \$1.6 Billion in**  
2 **Damages in an Attempt to Destroy Herring and Silence OAN.**

3 35. Dominion, which Staple Street acquired in 2018, has provided and  
4 continues to provide electronic voting systems for elections held in several states in  
5 the country, including for the 2020 presidential election. Long before the 2020 U.S.  
6 presidential election, voting machines and software created by Dominion were under  
7 intense public scrutiny for their lack of security and reliability. For example, in 2017,  
8 Georgia voters filed a lawsuit related to the security of Dominion voting machines,  
9 and in October 2020, the federal judge in that case credited testimony from an “array  
10 of experts and subject matter specialists [that] provided a huge volume of significant  
11 evidence regarding the security risks and deficits in the [Dominion] systems,” finding  
12 that those risks were neither “hypothetical nor remote.”<sup>1</sup>

13 36. Similarly, in January 2020, the state of Texas refused to certify  
14 Dominion voting systems, questioning whether they were “safe from fraudulent or  
15 unauthorized manipulation.”

16 37. In the weeks leading up to and after the November 2020 presidential  
17 election, President Trump began announcing his belief that the results of the  
18 November 2020 presidential election were not accurate, in part because of alleged  
19 flaws in Dominion’s voting system technology. Across the country, dozens of  
20 lawsuits were filed on behalf of President Trump’s campaign challenging the results  
21 of the election.

22 38. Like most national media outlets, OAN provided extensive coverage of  
23 the 2020 presidential election, Dominion’s role in the election, and the President’s  
24 pronouncements about alleged election irregularities, all of which were matters of  
25 great public concern.

26 39. However, as part of a public relations strategy to burnish Dominion’s  
27 public image, in early 2021, Dominion began unleashing a torrent of defamation

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<sup>1</sup> *Curling v. Raffensperger*, 493 F. Supp. 3d 1264, 1278, 1341 (N.D. Ga. 2020).

1 lawsuits against multiple Trump campaign surrogates and media outlets including  
2 Fox News Network, Newsmax, Rudy Giuliani, Sidney Powell, Patrick Byrne, and  
3 Michael Lindell.

4 40. Later that year, on August 10, 2021, Dominion filed suit against  
5 Herring, Robert Herring, Charles Herring, and two OAN reporters in the U.S. District  
6 Court for the District of Columbia in a case styled *U.S. Dominion, Inc. et al. v.*  
7 *Herring Networks, Inc. et al.*, Case No. 1:21-cv-02130. Dominion alleges that  
8 Herring and the other defendants defamed Dominion in connection with OAN’s  
9 coverage of the 2020 presidential election and seeks at least **\$1.6 billion** in damages  
10 against Herring.

11 41. In public interviews, Dominion CEO John Poulos has made clear that it  
12 is “[o]ne hundred percent correct” that Dominion will not accept a settlement in its  
13 defamation litigation and that it intends to take all of its cases to trial.<sup>2</sup>

14 42. AT&T Board Chairman Kennard also serves as a member of the  
15 Executive Board of Directors of Staple Street, which is the majority owner of  
16 Dominion. Kennard’s role with Staple Street creates a conflict of interest for him in  
17 anything having to do with Herring because Dominion, owned largely by Staple  
18 Street, currently is suing Herring for \$1.6 billion. Herring is confident that discovery  
19 will further demonstrate that Kennard was directly involved in DIRECTV’s decision  
20 to non-renew OAN and that Kennard has a personal, political, and financial interest  
21 in destruction of OAN that is inconsistent with his fiduciary obligations to AT&T  
22 shareholders.

23 43. Kennard was appointed as Chairman of AT&T’s Board on November  
24 6, 2020 — three days after the 2020 U.S. presidential election. Around this same  
25 time, Staple Street’s Web site underwent a full transformation, and all information  
26

27 \_\_\_\_\_  
28 <sup>2</sup> <https://www.npr.org/2021/01/12/955938741/dominion-voting-systems-sues-ex-trump-lawyer-over-false-claims> (last visited March 5, 2022).

1 about Staple Street’s investment in Dominion and Kennard’s role as a member of  
2 Staple Street’s Executive Board of Directors vanished.

3 44. In addition to being Chairman of the Board of AT&T, Kennard also sits  
4 on AT&T’s Public Policy and Corporate Reputation Committee, which has “the  
5 authority to review AT&T’s management of its brands to ensure that the value and  
6 reputation of the Company’s brand names is maintained and enhanced.”

7 45. Kennard, who is a registered Democrat, has deep ties to the Democratic  
8 Party, having been appointed in 1997 as Chairman of the FCC by President Bill  
9 Clinton and in 2009 as the U.S. Ambassador to the European Union by President  
10 Barack Obama.

11 46. When Staple Street acquired Dominion in 2018, it announced that “[w]e  
12 are excited to partner with [Dominion CEO John Poulos] and the Dominion Voting  
13 team as they embark on their next phase of growth. . . .” Like any private equity  
14 company, Staple Street’s goal in acquiring Dominion as a portfolio company was  
15 presumably to make Dominion as profitable as possible so Staple Street could in turn  
16 sell Dominion for a profit.

17 47. On October 8, 2020, Staple Street’s Form D Notice of Exempt Offering  
18 of Securities filed with the Securities and Exchange Commission disclosed that  
19 Staple Street had raised \$400 million from unknown investors in an unusual “one and  
20 done” deal. This additional capital raise suggests that Staple Street continues to  
21 invest in Dominion’s success.

22 48. As an Executive Board member of Dominion’s majority owner, Staple  
23 Street, Kennard is invested in helping to make Dominion succeed and become as  
24 profitable as possible. This includes ensuring Dominion defeats its opponents such  
25 as Herring in Dominion’s defamation litigation. And one way to hasten Herring’s  
26 defeat is by cutting off Herring’s ability to earn revenue to help fund its defense.

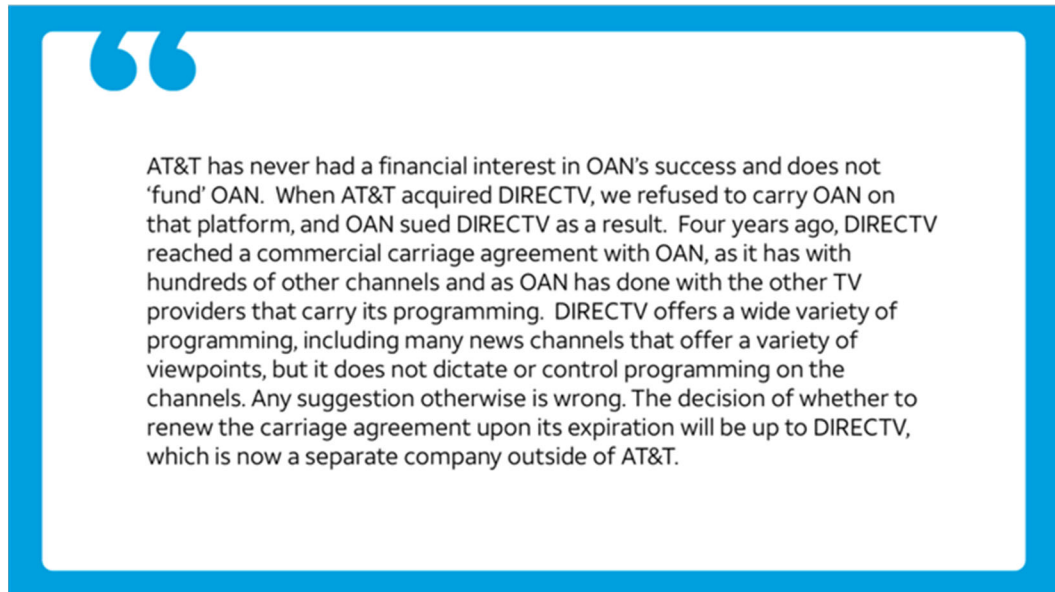
27 49. Kennard’s role as Chairman of AT&T’s Board gives Kennard  
28 significant influence over AT&T and its subsidiaries. Given AT&T’s sole ownership

1 of AT&T Services and AT&T’s majority ownership in DIRECTV, it is obvious that  
2 AT&T — through Kennard — induced DIRECTV to discontinue its relationship with  
3 Herring without legally adequate justification.

4 **E. Liberal Organizations Pressured AT&T to “Drop” OAN.**

5 50. AT&T’s political goals became clearer in the fall of 2021. On October  
6 6, 2021, Reuters published an article titled “How AT&T helped build far-right One  
7 America News.”

8 51. In response to that article, AT&T released the following statement,  
9 providing confidential information on how the Affiliation Agreement came to be (and  
10 implying that AT&T carried OAN only because OAN forced AT&T’s hand by suing  
11 AT&T in 2016):

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22 52. AT&T’s release of confidential information about the discussions  
23 leading to the Affiliation Agreement and its terms violates the Affiliation  
24 Agreement’s non-disclosure provision, as discussed further below.

25 53. Immediately upon release of the Reuters article, liberal and other  
26 organizations began publicly criticizing AT&T and DIRECTV for their relationship  
27 with OAN.  
28

1           54. On October 6, 2021, NAACP President Derrick Johnson issued a public  
2 statement condemning AT&T for supporting OAN. In that statement, the NAACP  
3 accused AT&T for causing “irreparable damage to our democracy,” stating that it  
4 was “sickened by these revelations.”<sup>3</sup> The NAACP’s statement was picked up and  
5 published throughout the media.<sup>4</sup>

6           55. Media Matters of America (“Media Matters”), a politically left-wing  
7 organization founded by a prominent political operative within the Democratic Party,  
8 began a public Twitter campaign criticizing OAN and AT&T. On October 6, 2021,  
9 Media Matters President Angelo Carusone tweeted, “I want to just put a few things  
10 out there about OANN and ATT/DirectTV . . . on how absurd and odious this deal is.  
11 ATT has been paying OANN. . . . The amount of revenue they give OANN every  
12 month is massive. But it’s worse than that.”<sup>5</sup> Carusone went on to take AT&T to  
13 task for “propping up” OAN.

14           56. Media Matters then published articles critical of AT&T’s relationship  
15 with OAN. One such article published October 8, 2021, titled “Fact-checking  
16 AT&T’s defense of single-handedly funding OAN,” criticized AT&T, stating  
17 “AT&T is having a bad day after the first part of a bombshell Reuters exposé  
18 uncovered the company’s extensive involvement in helping to create and fund the  
19 far-right conspiracy theory outlet One America News Network.”

20           57. On October 7, 2021, Ultraviolet, a women’s advocacy group, joined the  
21 fray, calling on AT&T CEO John Stankey to either resign or immediately sever ties  
22 with OAN and fire Ed Gillespie, the former Chairman of the Republican National  
23 Committee who had joined AT&T as its senior vice president of external and

24 <sup>3</sup> [https://naacp.org/articles/naacp-president-and-ceo-derrick-johnson-released-following-](https://naacp.org/articles/naacp-president-and-ceo-derrick-johnson-released-following-statement-following-revelation)  
25 [statement-following-revelation](https://naacp.org/articles/naacp-president-and-ceo-derrick-johnson-released-following-statement-following-revelation) (last visited March 5, 2022).

26 <sup>4</sup> [https://www.msn.com/en-us/news/politics/naacp-president-blasts-at-t-after-report-linking-](https://www.msn.com/en-us/news/politics/naacp-president-blasts-at-t-after-report-linking-company-to-one-america-news/ar-AAPd2WE?li=BB141NW3)  
27 [company-to-one-america-news/ar-AAPd2WE?li=BB141NW3](https://www.msn.com/en-us/news/politics/naacp-president-blasts-at-t-after-report-linking-company-to-one-america-news/ar-AAPd2WE?li=BB141NW3) (last visited March 5, 2022).

28 <sup>5</sup> <https://twitter.com/GoAngelo/status/1445858337673781249>, *available at*  
<https://tinyurl.com/MMtweet5> (last visited March 5, 2022).

1 legislative affairs.<sup>6</sup> Ultraviolet also criticized AT&T for donating to Texas  
2 Republican lawmakers who facilitated the passage of recent legislation relating to  
3 abortions.

4 58. AT&T, under mounting pressure, agreed to meet with the NAACP  
5 shortly thereafter. On October 20, 2021, the NAACP issued a press release stating  
6 that NAACP President Derrick Johnson would be meeting with AT&T leadership the  
7 next day, on October 21, in Washington, D.C.<sup>7</sup> The release further stated, “The  
8 meeting will focus on the need for AT&T to drop OAN immediately.” The meetings  
9 indeed included Mr. Gillespie and others in AT&T’s leadership. During those  
10 meetings, the NAACP demanded that AT&T de-platform OAN from DIRECTV and  
11 AT&T U-Verse, which are both products directly owned by DIRECTV, not AT&T.  
12 In other words, while AT&T publicly claimed on the one hand that it was not  
13 affiliated with DIRECTV and did not participate in programming decisions made by  
14 DIRECTV, AT&T took meetings with organizations such as the NAACP suggesting  
15 that AT&T in fact had the authority and ability to influence DIRECTV’s  
16 programming decisions.

17 59. On October 26, 2021, environmental organization Greenpeace  
18 published yet another article titled “How AT&T Funds Right Wing Extremism and  
19 Six More Scary Things You Need to Know About the Company.”<sup>8</sup> The article led  
20 with criticism of AT&T’s support for OAN.

21 60. On October 29, 2021, Media Matters published another article titled  
22 “AT&T is funding OAN’s incendiary misogyny and virulent anti-abortion tirades.”  
23 The article attempted to make the case that OAN’s viability depends on AT&T’s

24 <sup>6</sup> <https://www.commondreams.org/newswire/2021/10/07/ultraviolet-says-att-ceo-john-stankey-should-end-companys-relationship-radical> (last visited March 5, 2022).

26 <sup>7</sup> See <https://thehill.com/homenews/media/577669-naacp-att-to-meet-to-discuss-oann> (last visited  
27 March 5, 2022).

28 <sup>8</sup> <https://www.greenpeace.org/usa/how-att-funds-right-wing-extremism-and-six-more-scary-things-you-need-to-know-about-the-company/> (last visited March 5, 2022).

1 support, stating, “Though AT&T continues to support OAN financially despite its  
2 hateful rhetoric, the multinational corporation quickly tried to spin its support for  
3 OAN with half-truths and misdirection, which Media Matters debunked.”

4 61. On November 8, 2021, 16 liberal organizations (including Media  
5 Matters) sent a joint letter to the CEOs of AT&T and DIRECTV, stating:

6 **We call on DIRECTV to stop carrying OANN.**

7 **AT&T, you hold a 70 percent equity stake in DIRECTV and**  
8 **appoint half of DIRECTV’s board. Your equity interest brings with**  
9 **it tremendous influence. We call on you to do the right thing and**  
10 **demand that DIRECTV take all available means to end its**  
11 **relationship with OANN, so that its customers are no longer forced**  
12 **to subsidize hate and disinformation.<sup>9</sup>**

13 62. On October 21, 2021 a representative of AT&T called OAN President  
14 Charles Herring on behalf of AT&T CEO John Stankey and told Herring to “stand  
15 down” from speaking out and defending OAN from the recent attacks by Media  
16 Matters and others, assuring Herring that AT&T would take the lead in defending  
17 against the attacks. In reliance on that statement, neither Herring nor OAN took any  
18 public positions to defend themselves against the attacks on their reporting, their  
19 business, and their reputations.

20 63. As a result, OAN reasonably believed that AT&T would continue its  
21 relationship with OAN at least through the term of the Advertising Agreement.  
22 Indeed, as recently as December 2021, DIRECTV implemented dynamic ad insertion  
23 on AWE, which generates higher revenue than traditional advertising and therefore  
24 benefits both Herring and AT&T Services. The December 2021 deployment of  
25 dynamic ad insertion solidified Herring’s belief that its relationship with AT&T  
26 Services and DIRECTV was on solid ground.

27 \_\_\_\_\_  
28 <sup>9</sup> November 8, 2021 letter to AT&T and DIRECTV at 1, *available at*  
<https://tinyurl.com/oannletter> (last visited March 5, 2022) (emphasis in original).



1           **F. Defendants Caved and Publicly Announced that DIRECTV Would**  
2           **“Drop” OAN and AWE.**

3           64. On Friday, January 14, 2022, OAN President Charles Herring spoke  
4 with DIRECTV Senior Vice President of Content Rob Thun (“Thun”). Throughout  
5 much of Herring’s relationship with AT&T, Thun has been Herring’s primary contact  
6 with AT&T and DIRECTV. During that call, Thun informed Charles that DIRECTV  
7 decided not to renew the Agreement. Thun informed Charles that the decision was  
8 made at the board level and was “political,” implying that outside forces, such as  
9 AT&T and/or Kennard (given his role with Dominion’s owner, Staple Street), had  
10 influenced the decision. Indeed, Charles later learned that AT&T’s CEO, John  
11 Stankey, knew at least two days before that OAN would not be renewed. The news  
12 stunned Charles, Robert and Bobby.

13           65. That same day, Bloomberg News released an article titled “DirecTV to  
14 Drop One America News in Blow to Conservative Channel.”<sup>10</sup> DIRECTV provided  
15 confidential information regarding the parties’ discussions on the non-renewal of the  
16 Affiliation Agreement to Bloomberg News, writing via email that it had “informed  
17 Herring Networks that, following a routine internal review, we do not plan to enter  
18 into a new contract when our current agreement expires.” Multiple news outlets such  
19 as *The Wall Street Journal*, *The New York Times* and *The Washington Post* picked  
20 up the article, and DIRECTV has since provided similar statements to other media  
21 outlets.

22           66. Since the news media reported that DIRECTV intended to drop OAN,  
23 Herring has been flooded with emails and other communications from viewers who  
24 have expressed their dismay that they will no longer be able to watch OAN through  
25 DIRECTV. Consequently, as a direct result of Defendants’ wrongful actions, the  
26 public will be deprived of its ability to watch the national news source of its choice.

27 \_\_\_\_\_  
28 <sup>10</sup> See <https://www.bloomberg.com/news/articles/2022-01-14/directv-to-drop-one-america-news-in-blow-to-conservative-channel> (last visited March 5, 2022).

1           67. Also after DIRECTV’s public announcement, OAN representatives  
2 have been told by a major MVPD that it will take “wait and see” approach to adding  
3 OAN. The pre-announcement by DIRECTV to not renew OAN — more than 75  
4 days in advance — is atypical in the industry. There is no question that AT&T’s and  
5 DIRECTV’s strategy was intended to harm OAN. By making the gratuitous  
6 announcement that breached the Affiliation Agreement, AT&T and DIRECTV  
7 signaled to the public that something was wrong, hurting OAN’s business and  
8 standing in the news media business. And as demonstrated above, concerns about  
9 OAN’s viability directly sparked by DIRECTV’s aggressive, well-in-advance  
10 notification approach, have significantly harmed OAN.

11           68. The January 14, 2022 Bloomberg News article reported that a “person  
12 familiar with the matter” told Bloomberg that the Affiliation Agreement expires in  
13 April. *Supra* note 10. The only reasonable conclusion is that this information came  
14 from someone at DIRECTV or AT&T because the termination date of the Affiliation  
15 Agreement was confidential and thus unknown to non-parties.

16           69. The Affiliation Agreement contains a confidentiality provision that  
17 provides in relevant part:

18           **The Parties agree that all terms and provisions of this Agreement**  
19 (as well as all data, summaries, reports or information of all kinds,  
20 whether oral or written, acquired or devised or developed in any manner  
21 from the other Party (and/or the Programmer Related parties or the  
22 AT&T Related Parties, as applicable, and/or their respective  
23 Representatives), or any proprietary or subscriber information, provided  
24 by one Party (and/or the Programmer Related parties or the AT&T  
25 Related Parties, as applicable, and/or their respective Representatives)  
26 and to the other Party), **its negotiation, and any discussions, or**  
27 **agreements related thereto, as well as information, testimony,**  
28 **documents or other data related to or concerning the Litigation,** or  
provided and/or obtained in discovery in the Litigation (together, the  
“Confidential Information”) **shall be held strictly confidential by the**  
**Parties,** the Programmer Related Parties, the AT&T Related Parties,  
and their respective Representatives.

Affiliation Agreement § 16.2 (emphasis added.)

1           70. In addition to AT&T’s October 2021 public statement disclosing the  
2 discussions leading to the Agreement, DIRECTV’s disclosure of its intent not to  
3 renew the Affiliation Agreement and the expiration date of the Affiliation Agreement  
4 breached the confidentiality provision in that agreement. But Defendants’ breaches  
5 of the Affiliation Agreement did not stop there.

6           71. The Affiliation Agreement also contains a non-disparagement provision  
7 that AT&T, AT&T Services, and DIRECTV also have breached.

8           72. The non-disparagement provision provides, in relevant part:  
9 [T]he Parties, the AT&T Related Parties, the Programmer Related  
10 parties, and their respective Representatives during the Term of this  
11 Agreement and for two (2) years thereafter, shall not directly or  
12 indirectly (or encourage, suggest or organize any other individual, entity  
13 or third party or their Representatives to) (1) disparage (including,  
14 without limitation, via the Services, blogging, social media, press  
interviews and/or any public statement) the other Party, the Programmer  
Related Parties, the AT&T Related parties, and/or their respective  
Representatives . . . .

15 Affiliation Agreement § 16.3.

16           73. “AT&T Related Parties” is defined broadly to include AT&T and  
17 DIRECTV “and all of their current, then-current and former members of the Board  
18 of Directors, officers, representatives, agents, employees, attorneys, parent  
19 companies, subsidiaries, insurers, partners, predecessors, contractors, successors and  
20 assigns including, but not limited to, AT&T Inc., DIRECTV, LLC, AT&T Services,  
21 Inc. and AT&T Mobility LLC.” *Id.* §§ 16.1.1, 16.1.3.

22 **G. AT&T and AT&T Services Disparaged OAN in Violation of the**  
23 **Affiliation Agreement.**

24           74. While DIRECTV was still 100 percent owned by AT&T, AT&T and  
25 AT&T Services began breaching the non-disparagement provisions in the Affiliation  
26 Agreement through CNN, which competes with OAN. On January 10, 2021, during  
27 CNN’s *Reliable Sources* program, CNN chief media correspondent Brian Stelter  
28 interviewed CNN media reporter Oliver Darcy, who stated, “You have corporations

1 and people that are profiting off of lies and conspiracy theories, whether that is big  
2 tech, whether that's Fox News, whether that's **TV providers that beam OAN** and  
3 Newsmax into homes.” (Emphasis added.) Stelter responded, “Right. This is a  
4 poisoned informational well. That is the big story here.”<sup>11</sup>

5 75. On January 17, 2021, CNN's Stelter continued promoting  
6 disparagement of OAN by inviting former Facebook Chief Security Officer Alex  
7 Stamos on his *Reliable Sources* program.<sup>12</sup> During the program, Stamos advocated  
8 eliminating the capability of conservative programs such as OAN from reaching large  
9 audiences. Stamos stated, “And then we're going to have to figure out the OANN  
10 and Newsmax problem, that these companies have freedom of speech, but I'm not  
11 sure we need Verizon, AT&T, Comcast, and such to be bringing them into tens of  
12 millions of homes. . . . Allowing people to seek out information if they really want  
13 to, but not pushing it into their faces, I think, is where we're going to have to do here.”  
14 CNN's Stelter thanked Stamos for his comments.

15 76. On January 22, 2021, Bloomberg News Canada published an article  
16 quoting CNN's Darcy and CNN analyst Max Boot.<sup>13</sup> In the article, Darcy implied  
17 that conservative channels contributed to the unfortunate events of January 6, 2021  
18 at the U.S. Capitol. In that same article, Boot wrote that “cable providers should  
19 ‘step in and kick Fox News off.’ If Newsmax and rival One America News Network  
20 ‘continue to incite viewers, they, too, should be booted off,’ [CNN analyst Boot]  
21 added.”

22  
23  
24  
25 <sup>11</sup> See <https://t.co/ljEEQvKiKI>. (last visited March 5, 2022).

26 <sup>12</sup> See <https://www.cnn.com/videos/business/2021/01/17/how-to-cover-the-information-crisis--and-curb-it.cnn>. (last visited March 5, 2022).

27  
28 <sup>13</sup> See <https://www.bnnbloomberg.ca/fox-news-foes-face-uphill-fight-in-getting-cable-network-dropped-1.1552416> (last visited March 5, 2022).

1           77. Throughout 2021, CNN steadily released a drumbeat of similar reports  
2 and commentary that falsely accused OAN of contributing to the events of January  
3 6, 2021 and engaging in “disinformation” campaigns.

4           78. AT&T and AT&T Services also breached the non-disparagement  
5 provisions in the Affiliation Agreement on April 5, 2020, when HBO’s *Last Week*  
6 *Tonight with John Oliver* dedicated an entire segment to OAN. Host John Oliver  
7 made the following comments about OAN during the segment:

- 8           • “The whole selling point for OAN is that they are Fox News with even  
9 less shame and even fewer scruples.”
- 10           • “And I know that it is easy to dismiss OAN as just a stupid, little  
11 watched, borderline self-parody. The problem is if we’re learning one thing  
12 right now it’s that toxic things that start small can get big fast and it’s  
13 dangerous to ignore them.”
- 14           • “OAN’s weird combination of far right-wing talking points and dirt  
15 stupid reporting is incredibly dangerous at a time like this.”
- 16           • “It is more important than ever to be on the lookout for OAN’s bullshit  
17 and to make sure no one that *you* know is falling for it either.”

18           79. Oliver doubled down in his October 10, 2021 episode, referring to OAN  
19 as a “ragtag band of fascists” and stating that “with [AT&T’s] help, OAN has grown  
20 into the toxic network that is today — one that’s happy to give a platform to batshit  
21 election fraud theories from America’s most out-of-breath pillow fetishist.”

22           80. Around that same time, CNN also doubled down on its disparagement  
23 attack on OAN. For example, on October 6, 2021, CNN anchor Don Lemon stated  
24 that OAN is “corrosive to our democracy” and CNN media reporter Oliver Darcy  
25 referred to OAN as a “far right-wing conspiracy channel” that “promotes all sorts of  
26 nonsense.” The next day when appearing on CNN’s *New Day*, CNN chief media  
27 correspondent Brian Stelter called OAN “conspiracy laden” and accused OAN of  
28 putting “some of the worst of the worst content out there.” He went even further to

1 state that “there’s a difference between real news and conspiracy crap. . . . [OAN]  
2 goes on the air and lies to people who for some reason want the lies.”

3 81. Additionally, when speaking with Oliver Darcy and Reuters reporter  
4 John Shiffman on an October 7, 2021 episode of *The Lead with Jake Tapper*, Tapper  
5 referred to OAN as “the ultra-far-right cable network that’s a major source of lies  
6 masquerading as facts.”

7 82. These are mere examples of the ways in which AT&T and AT&T  
8 Services have breached the non-disparagement provision in the Affiliation  
9 Agreement.

10 **H. AT&T Accused Herring of Defamation, Then Backed Down.**

11 83. After DIRECTV announced it would not renew the Affiliation  
12 Agreement, OAN anchor Dan Ball reported on January 17, 2022, that Kennard  
13 pressured DIRECTV to drop OAN and not renew the Affiliation Agreement. Robert  
14 Herring also gave a statement on January 20, 2022, in which he concluded that  
15 Kennard and the AT&T Board directed DIRECTV to remove OAN from  
16 DIRECTV’s channel lineup. On January 21, 2022, AT&T’s counsel sent a letter to  
17 Robert Herring and Mr. Ball accusing them of defaming AT&T and Kennard by  
18 suggesting that AT&T and Kennard pressured DIRECTV to drop OAN from its  
19 channel lineup. In that letter, AT&T’s counsel demanded that OAN issue a  
20 retraction.

21 84. That demand for retraction invoked the Texas Defamation Mitigation  
22 Act (“DMA”), Tex. Civ. Prac. & Rem. Code §§ 73.051-73.062. The DMA states, in  
23 relevant part:

24 A person who has been requested to make a correction, clarification, or  
25 retraction may ask the person making the request to provide reasonably  
26 available information regarding the falsity of the allegedly defamatory  
27 statement not later than the 30th day after the date the person receives  
28 the request. Any information requested under this section must be  
provided by the person seeking the correction, clarification, or

1 retraction not later than the 30th day after the date the person receives  
2 the request.

3 DMA § 73.056(a).

4 85. The DMA further states, in relevant part:

5 If a correction, clarification, or retraction is not made, a person who,  
6 without good cause, fails to disclose the information requested under  
7 Subsection (a) may not recover exemplary damages, unless the  
publication was made with actual malice.

8 DMA § 73.056(b).

9 86. On February 2, 2022, Herring sent AT&T a letter responding to AT&T's  
10 accusations, noting that OAN's assertions that AT&T and Kennard were involved in  
11 DIRECTV's decision were not defamatory.

12 87. Among other reasons, Herring's letter stated that the statements were  
13 true or substantially true because AT&T owns 70 percent of DIRECTV and it is likely  
14 irrefutable that Kennard, Chairman of the Board and a member of AT&T's Public  
15 Policy and Reputation Committee, provided input on how to respond to the demands  
16 to drop OAN.

17 88. Herring's letter also argued that AT&T (as DIRECTV's majority  
18 owner) and Kennard (as AT&T Board Chairman) tortiously interfered with the  
19 Affiliation Agreement (and, by extension, OAN's ongoing relationship with  
20 DIRECTV) by inducing DIRECTV to make the decision not to renew the Affiliation  
21 Agreement.

22 89. Herring's letter also asserted that AT&T and DIRECTV breached the  
23 Affiliation Agreement by disclosing confidential terms in the Affiliation Agreement  
24 and by disparaging OAN through the statements made by CNN reporters and HBO's  
25 John Oliver.

26 90. Herring offered to discuss a potential resolution to the claims raised in  
27 the January 21 and February 2 letters but received no response as of filing this  
28 Complaint.

1           91. In the February 2 letter, Herring also demanded, pursuant to the DMA,  
2 that AT&T produce information relating to AT&T’s retraction demand, including  
3 but not limited to (i) communications relating to demands or complaints to AT&T  
4 about OAN, including requests that AT&T and/or DIRECTV drop OAN from  
5 carriage via DIRECTV; (ii) internal and external communications by Kennard about  
6 OAN; (iii) information and communications relating to Kennard’s relationship with  
7 Staple Street; (iv) internal and external communications about reporting by OAN  
8 regarding DIRECTV’s non-renewal, AT&T’s ownership interest in or control of  
9 DIRECTV, Kennard’s role in non-renewal of OAN, and the AT&T Board of  
10 Directors’ role in the non-renewal of OAN; and (v) Kennard’s human resources file.  
11 Under the DMA, AT&T was required to provide this information to Herring no later  
12 than March 2, 2022.

13           92. Despite the statutory deadline of March 2, 2022, under the DMA — a  
14 statute first invoked by AT&T in its letter — AT&T has neither responded to  
15 Herring’s letter nor produced any of the information requested as of filing this  
16 Complaint. Given AT&T’s obvious familiarity with the DMA and the implications  
17 of failing to respond by the deadline, AT&T’s lack of response shows that AT&T  
18 actually has no evidence of falsity as to Dan Ball’s and Robert Herring’s statements.

19           93. Thus, Ball and Herring were right that AT&T and Kennard, at  
20 minimum, were involved in the decision not to renew the Affiliation Agreement.

21           94. Kennard is motivated to use his role and position of influence at AT&T  
22 to induce DIRECTV not to continue its carriage of OAN, to the benefit of Kennard,  
23 Staple Street, and Dominion and to the detriment of OAN.

#### **FIRST CAUSE OF ACTION**

#### **(Breach of Contract v. AT&T, AT&T Services, and DIRECTV)**

24  
25           95. Herring incorporates Paragraphs 1 through 70 by reference as if fully set  
26 forth herein.  
27  
28







1 advertising revenue and other fees collected from Herring relating to carriage of OAN  
2 and AWE.

3 108. Herring has fulfilled all of its obligations under the Affiliation  
4 Agreement.

5 109. AT&T and AT&T Services have breached the Affiliation Agreement by  
6 disparaging OAN as described above.

7 110. The foregoing breaches and continuing breaches have directly and  
8 proximately caused and will continue to cause Herring damages including, but not  
9 limited to, lost revenue associated with a decrease in viewership, lost advertising  
10 revenue, and other potential lost business opportunities.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, plaintiff Herring Networks, Inc. respectfully requests that the  
13 Court enter judgment in Plaintiff's favor on Count II and award Plaintiff the  
14 following relief:

- 15 A. Compensatory and other damages, in an amount to be determined at  
16 trial;
- 17 B. Pre-judgment and post-judgment interest;
- 18 C. Costs of suit, including reasonable attorneys' fees and expenses  
19 pursuant to California Code of Civil Procedure Section 1021.5; and
- 20 D. Such other and further relief as the Court deems just and proper.

21 **THIRD CAUSE OF ACTION**

22 **(Breach of Covenant of Good Faith and Fair Dealing v. AT&T Services and  
23 DIRECTV)**

24 111. Herring incorporates Paragraphs 1 through 49 and 64 through 73 by  
25 reference as if fully set forth herein.

26 112. AT&T Services and DIRECTV entered into a valid and legally  
27 enforceable Affiliation Agreement with Herring.

1           113. In connection with the Affiliation Agreement, Herring entered into the  
2 exclusive Advertising Agreement with AT&T Services a/k/a Xandr that does not  
3 terminate until July 1, 2024.

4           114. The Advertising Agreement is less favorable for Herring than Herring's  
5 prior vendor because AT&T Services' commission rates were higher than Herring's  
6 prior deal, but Herring entered into the Advertising Agreement nonetheless because  
7 Herring reasonably believed that it would also get the additional benefit of extended  
8 carriage under the Affiliation Agreement.

9           115. Herring's belief was reasonable because the Advertising Agreement  
10 extended two years beyond the Affiliation Agreement and neither AT&T Services  
11 nor DIRECTV gave any indication before January 14, 2022 that the Affiliation  
12 Agreement would not be renewed. In fact, as recently as December 2021, DIRECTV  
13 implemented dynamic ad insertion on AWE, which generates higher revenue than  
14 traditional advertising and therefore benefits both Herring and AT&T Services. The  
15 December 2021 deployment of dynamic ad insertion bolstered Herring's reasonable  
16 belief that DIRECTV intended to renew the Affiliation Agreement beyond its  
17 expiration.

18           116. Herring has fulfilled its obligations under the Affiliation Agreement and  
19 the Advertising Agreement, including by terminating its prior media vendor, entering  
20 into the exclusive relationship with AT&T Services through the Advertising  
21 Agreement, and paying higher commissions to AT&T Services under the Advertising  
22 Agreement than amounts Herring paid under its prior deal. Herring continues to  
23 fulfill all of its obligations under the Affiliation Agreement and all conditions  
24 precedent to AT&T Services' and DIRECTV's performance under the Affiliation  
25 Agreement have occurred.

26           117. But despite Herring's performance, AT&T Services and DIRECTV  
27 have unfairly interfered with Herring's rights to receive the benefits of the  
28

1 Advertising Agreement by inducing DIRECTV to terminate and by terminating  
2 carriage of Herring's television networks, OAN and AWE.

3 118. As a result, Herring is locked into an Advertising Agreement requiring  
4 AT&T Services to be the exclusive advertiser for OAN and AWE, but will be unable  
5 to broadcast OAN and AWE via DIRECTV if DIRECTV fails to renew the  
6 Affiliation Agreement.

7 119. The damage caused by DIRECTV's non-renewal, if not addressed and  
8 reversed in the near future, will result in damage to Herring *exceeding \$1 billion*.

9 120. The conduct of AT&T Services and DIRECTV violates their duties of  
10 good faith and fair dealing inherent in the Affiliation Agreement.

11 121. The foregoing breaches and continuing breaches have directly and  
12 proximately caused and will continue to cause Herring damages including, but not  
13 limited to, lost revenue associated with a decrease in viewership, lost advertising  
14 revenue, and other potential lost business opportunities.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, plaintiff Herring Networks, Inc. respectfully requests that the  
17 Court enter judgment in Plaintiff's favor on Count III and award Plaintiff the  
18 following relief:

- 19 A. Compensatory and other damages, in an amount to be determined at  
20 trial;
- 21 B. Exemplary damages pursuant to Section 3294(a) of the California Civil  
22 Code;
- 23 C. Costs of suit, including reasonable attorneys' fees and expenses  
24 pursuant to California Code of Civil Procedure Section 1021.5;
- 25 D. Pre-judgment and post-judgment interest; and
- 26 E. Such other and further relief as the Court deems just and proper.
- 27
- 28

**FOURTH CAUSE OF ACTION**  
**(Intentional Interference With Business Expectancy v.  
AT&T, AT&T Services, and Kennard)**

122. Herring incorporates Paragraphs 1 through 94 by reference as if fully set forth herein.

123. Herring has an economic relationship with DIRECTV through the Affiliation Agreement and has a reasonable expectation that that relationship will continue beyond April 2022 to Herring's benefit. Herring's expectation that its economic relationship with DIRECTV will continue is based on the fact that Herring entered into the exclusive Advertising Agreement with AT&T Services a/k/a Xandr, which does not terminate until July 1, 2024.

124. The Advertising Agreement is less favorable for Herring than Herring's prior deal because AT&T Services' commission rates were higher than the rates Herring paid to its prior vendor, but Herring entered into the Advertising Agreement nonetheless because Herring reasonably believed that it would also get the additional benefit of extended carriage under the Affiliation Agreement.

125. Herring's belief was reasonable because the Advertising Agreement extended two years beyond the Affiliation Agreement and neither AT&T Services nor DIRECTV gave any indication before January 14, 2022 that the Affiliation Agreement would not be renewed. In fact, as recently as December 2021, DIRECTV implemented dynamic ad insertion on AWE, which generates higher revenue than traditional advertising and therefore benefits both Herring and AT&T Services. The December 2021 deployment of dynamic ad insertion bolstered Herring's reasonable belief that DIRECTV intended to continue its economic relationship beyond the expiration of the Affiliation Agreement.

126. Indeed, it would not make sense for AT&T Services to be the exclusive advertiser for OAN and AWE if DIRECTV did not also carry OAN and AWE.

127. AT&T, AT&T Services and Kennard were aware of Herring's economic relationship with DIRECTV and AT&T and AT&T Services took meetings with

1 leaders of liberal organizations such as the NAACP, who publicly urged AT&T to  
2 force DIRECTV to discontinue broadcasting OAN. There is no reason why AT&T  
3 and AT&T Services would agree to meet with the leaders of the NAACP if AT&T  
4 and AT&T Services had no ability to influence decision-making at DIRECTV.  
5 Indeed, AT&T is DIRECTV's majority owner.

6 128. Moreover, AT&T *instructed* Herring to “stand down” from defending  
7 itself and OAN from attacks from these organizations and assured Herring that  
8 AT&T would “take the lead” in the defense. Herring reasonably believed that AT&T  
9 would also exercise its influence to ensure ongoing carriage on DIRECTV. Instead,  
10 AT&T did the opposite — it took advantage of Herring and interfered with Herring's  
11 relationship with DIRECTV, punishing Herring for AT&T's own actions. And  
12 AT&T's ploy worked because AT&T enriched itself by enhancing its standing with  
13 prominent organizations such as the NAACP and burnishing its public image, all at  
14 the expense of Herring.

15 129. For his part, Kennard is motivated to disrupt OAN's business  
16 relationship with DIRECTV because the economic consequences of losing carriage  
17 with DIRECTV could be devastating to OAN. This change in circumstances to OAN  
18 would enrich Staple Street's portfolio company, Dominion, which is seeking  
19 \$1.6 billion in damages from OAN.

20 130. When DIRECTV's Rob Thun informed Herring of the decision not to  
21 renew the Affiliation Agreement, Thun added that the decision was “political” and  
22 was made at the board level, implying that AT&T leadership such as Kennard  
23 influenced the nonrenewal decision.

24 131. Indeed, AT&T executives knew days before January 14, 2022 that  
25 Herring's Affiliation Agreement would not be renewed, a clear indication of direct  
26 communications and influence by AT&T and DIRECTV regarding the decision not  
27 to renew the Affiliation Agreement.

28





1 **FIFTH CAUSE OF ACTION**  
2 **(Violation of Unlawfulness Prong of**  
3 **California UCL v. AT&T, AT&T Services, DIRECTV, and Kennard)**

4 136. Herring incorporates Paragraphs 1 through 94 by reference as if fully set  
5 forth herein.

6 137. As described above, AT&T, AT&T Services, and DIRECTV have  
7 breached the Affiliation Agreement, AT&T Services and DIRECTV have breached  
8 the covenant of good faith and fair dealing with respect to the Affiliation Agreement,  
9 and AT&T, AT&T Services, and Kennard have tortiously interfered with Herring's  
10 reasonable expectancy of a continued business relationship with DIRECTV.

11 138. These improper business practices of AT&T, AT&T Services,  
12 DIRECTV, and Kennard are unlawful and therefore constitute unfair competition in  
13 violation of Cal. Bus. & Prof. Code §17200.

14 139. As a result of the unlawful conduct of AT&T, AT&T Services,  
15 DIRECTV, and Kennard, Herring paid increased commissions for advertising, and  
16 Herring has been and will be significantly injured in the form of lost market share,  
17 among other things, as a result of the non-renewal decision if not reversed.

18 140. Herring is entitled to injunctive relief and restitution including, but not  
19 limited to, the difference between the higher commissions Herring was forced to pay  
20 AT&T Services under the Advertising Agreement and market rate commissions.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, plaintiff Herring Networks, Inc. respectfully requests that the  
23 Court enter judgment in Plaintiff's favor on Count V and award Plaintiff the  
24 following relief:

- 25 A. Injunctive relief;
- 26 B. Restitution;
- 27 C. Costs of suit incurred herein, including reasonable attorneys' fees and  
28 expenses pursuant to California Code of Civil Procedure Section  
1021.5; and

1 D. Such other and further relief as the Court deems just and proper.

2 **SIXTH CAUSE OF ACTION**

3 **(Violation of Unfairness Prong of California UCL v. AT&T, AT&T Services,**  
4 **DIRECTV, and Kennard)**

5 141. Herring incorporates Paragraphs 1 through 94 by reference as if fully set  
6 forth herein.

7 142. Viewers of OAN, including citizens of California, have a personal  
8 interest in being given a choice to watch diverse news programming that offers a  
9 wide range of views and opinions, including those offered by OAN.

10 143. AT&T, which owns WarnerMedia, ultimately operates several channels  
11 such as CNN and HBO, which compete with OAN.

12 144. As described above, AT&T, AT&T Services, and DIRECTV have  
13 breached the Affiliation Agreement, AT&T Services and DIRECTV have breached  
14 the covenant of good faith and fair dealing with respect to the Affiliation Agreement,  
15 and AT&T, AT&T Services, and Kennard have tortiously interfered with Herring's  
16 reasonable expectancy of a continued business relationship with DIRECTV.

17 145. Additionally, the actions by AT&T, AT&T Services, DIRECTV, and  
18 Kennard harmed consumers and shareholders of AT&T because Defendants have  
19 allowed their personal, political, and financial interests to undermine what is best for  
20 viewers of OAN and AWE and shareholders of AT&T.

21 146. As a result of the conduct of AT&T, AT&T Services, DIRECTV, and  
22 Kennard, OAN and AWE might be forced off the air because Herring will no longer  
23 be able to broadcast OAN and AWE via DIRECTV and Herring presently has limited  
24 alternative carriage options.

25 147. AT&T, AT&T Services, DIRECTV, and Kennard's conduct is unfair  
26 and limits competition and viewers' choices.

27 148. As a result of the unfair conduct of AT&T, AT&T Services, DIRECTV,  
28 and Kennard, Herring paid increased commissions for advertising, and Herring has

1 been and will be significantly injured in the form of lost market share, among other  
2 things, as a result of the non-renewal decision.

3 149. Herring is entitled to injunctive relief and restitution, including, but not  
4 limited to, the difference between the higher commissions Herring paid AT&T  
5 Services under the Advertising Agreement and market rate commissions.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, plaintiff Herring Networks, Inc. respectfully requests that the  
8 Court enter judgment in Plaintiff's favor on Count VI and award Plaintiff the  
9 following relief:

- 10 A. Injunctive relief;  
11 B. Restitution;  
12 C. Costs of suit incurred herein, including reasonable attorneys' fees and  
13 expenses pursuant to California Code of Civil Procedure Section  
14 1021.5; and  
15 D. Such other and further relief as the Court deems just and proper.

16 **PRAYER FOR RELIEF**

17 **(All Claims)**

18 WHEREFORE, plaintiff Herring Networks, Inc. respectfully requests that the  
19 Court enter judgment in Plaintiff's favor on all Causes of Action and award Plaintiff  
20 the following relief:

- 21 A. Injunctive relief;  
22 B. Compensatory damages, in an amount to be determined at trial and in  
23 an amount sufficient to have a deterrent effect on Defendants;  
24 C. Restitution;  
25 D. Exemplary damages pursuant to Section 3294(a) of the California Civil  
26 Code;  
27 E. Pre-judgment and post-judgment interest;  
28 F. Costs of suit incurred herein, including reasonable attorneys' fees and

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expenses pursuant to California Code of Civil Procedure Section 1021.5; and

G. Such other and further relief as the Court deems just and proper.  
Plaintiff Herring Networks, Inc. hereby demands a trial by jury.

Dated: March 7, 2022

HERRING NETWORKS, INC.

By: /s/ Eric R. McDonough  
ERIC R. MCDONOUGH

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