UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENARD ROBINSON; BRAYLON EDWARDS; MICHAEL MARTIN; SHAWN CRABLE, Individually and on behalf of themselves and former University of Michigan football players similarly situated,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION aka "NCAA", BIG TEN NETWORK "aka" BTN, and the BIG TEN CONFERENCE, INC.

Defendants.

Case No.: 24-12355
Honorable Terrence G. Berg

_____/

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE OR, IN THE ALTERNATIVE, TO STAY PROCEEDINGS (ECF. NO. 39)

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I. Whether this Honorable Court should deny Defendants' Motion to Transfer Venue because deference is due Plaintiffs' choice of forum, the locus of operative facts and ease of accessing sources of evidence favor Michigan venue, the convenience of the witnesses favors Michigan venue, and the interests of justice weigh heavily in favor of Michigan venue.

Plaintiffs answer "yes."
Defendants answer "no."

II. Whether this Honorable Court should deny Defendants' Motion to Transfer Venue because the first-to-file rule does not mandate transfer to New York.

Plaintiffs answer "yes."
Defendants answer "no."

III. Whether this Honorable Court should deny Defendants' Motion to Stay Proceedings because *Chalmers* does not resolve the claims in this case and Plaintiffs would suffer manifest and severe prejudice if their case is stayed.

Plaintiffs answer "yes."
Defendants answer "no."

PREFACE

This case is currently right where it belongs, in the right court and in the right city. The three primary class representative Plaintiffs all reside in metro Detroit, as do many of the nearly 350 former Michigan players who are now part of this putative class action. All of the former players in this case attended college in the district in which this Federal Court sits. All contracts (as one-sided and unlawful as they might have been) were executed in the very same district in which this Federal Court sits. This was the first football-based Class Action NIL lawsuit in the country and it is unique to any other cases filed anywhere else in this country. Let's be very honest here: Defendant's rationale in hoping for a transfer of venue is they are fearful that if this case ever did go to trial one day, that a jury pulled from this district would see the unlawful nature of what is at issue and compensate the Plaintiffs accordingly. Unfortunately, that is not reason enough to transfer this case, and it must remain here in Detroit, in the USDC-ED before the Honorable Judge Berg.

INTRODUCTION

Defendants National Collegiate Athletic Association (NCAA), Big Ten Conference, and Big Ten Network (BTN) seek to transfer this case to the Southern District of New York (SDNY) or, in the alternative, to stay these proceedings. They argue *Chalmers v. NCAA*, currently pending in the SDNY, precludes this

action under the first-to-file rule and that SDNY is a more appropriate and convenient forum under 28 U.S.C. § 1404(a). Defendants' gloss over the fact that *Chalmers*' proposed class represents only basketball players whereas the instant proposed class only represents University of Michigan football players. Further, Defendant BTN is a party to this case but not *Chalmers*, and this case involves an entirely separate array of antitrust allegations than *Chalmers*.

Plaintiffs filed this action in the Eastern District of Michigan because it is the most appropriate and proper venue for litigating these claims. Specifically, the proposed class representatives are former University of Michigan football players whose names, images, and likenesses (NIL) were and continue to be exploited without compensation by Defendants, particularly BTN, which operates and profits from the commercial use of Michigan athletes' NIL in conjunction with the other Defendants. Michigan is where Plaintiffs enrolled and played college football and where they suffered the injury forming the basis of this lawsuit. The claims at issue involve conduct directly implicating Michigan law, the University of Michigan, and its athletes. The primary commercial activities giving rise to Plaintiffs' claims—the monetization of University of Michigan football players' NIL—occurred in Michigan, making this forum the most appropriate jurisdiction for this litigation.

The Sixth Circuit does not apply the first-to-file rule in a rigid or mechanical manner, but instead considers whether the two cases are nearly identical *and* whether equity justifies the transfer. This case and *Chalmers* are materially different. Unlike *Chalmers*, which was brought by NCAA basketball players, this case is brought by NCAA football players who **specifically** played at the University of Michigan, a school within the Big Ten Conference.

Defendants also fail to meet their burden under 28 U.S.C. § 1404(a), which governs motions to transfer venue. The Sixth Circuit recognizes a Plaintiff's choice of forum is entitled to substantial deference and should not be disturbed unless the balance of factors strongly favors transfer. The party seeking transfer bears the burden of showing how the alternative forum is clearly more convenient for both the parties and witnesses and that the interests of justice favor transfer. Defendants have not satisfied this burden. Many of the key witnesses in this case, such University of Michigan personnel and the Plaintiffs, are in Michigan. The relevant economic harm—the unjust enrichment resulting from BTN's unauthorized use of Michigan athletes' NIL—occurred in Michigan. Because the locus of operative facts is centered in this jurisdiction, transferring the case to SDNY only inconveniences Plaintiffs while providing no benefit to the administration of justice.

In the alternative, Defendants ask the court to stay proceedings pending resolution of *Chalmers*. However, staying this case will result in unnecessary and unfair delay for Plaintiffs, while allowing the NCAA and BTN to continue profiting from their unauthorized use of Michigan football players' NIL. The issues in *Chalmers* do not encompass all of the claims in this case, particularly those relating to BTN's direct role in NIL exploitation. The Sixth Circuit disfavors indefinite or speculative stays, particularly where the resolution of the first-filed case will not resolve all relevant claims.

For these reasons, Defendants' motion should be denied. The Eastern District of Michigan is the proper forum for this case because it is the jurisdiction most directly connected to the parties, claims, and factual circumstances at issue. The first-to-file rule does not mandate transfer, as this case and *Chalmers* are legally and factually distinct. Defendants have also failed to meet their burden under 28 U.S.C. § 1404(a), and a stay would unfairly prejudice the Plaintiffs without promoting judicial efficiency.

LEGAL STANDARD FOR TRANSFER UNDER 28 U.S.C. § 1404(A)

Defendants seek to transfer this case to the Southern District of New York (S.D.N.Y.) under 28 U.S.C. § 1404(a), which states, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

However, "[a] transfer at the behest of a defendant is disfavored where it merely shifts the burden of litigating in an inconvenient forum to the plaintiff." *Sacklow v. Saks Inc.*, 377 F. Supp. 3d 870, 879 (M.D. Tenn. 2019).

§ 1404(a) jurisprudence defers to a plaintiff's choice of forum and only disturbs that choice when the defendant meets a heavy burden of showing how a different venue is more convenient for witnesses and parties. *Reese v CNH America, LLC*, 574 F3d 315, 320 (6th Cir. 2009). In deciding whether to transfer a case under § 1404(a), the Court considers the following factors: the location of operative facts/ease of accessing sources of proof; the convenience of witnesses; the convenience of the parties; and the interests of justice. *First Financial Bank v Knapschaefer*, 697 F.Supp.3d 733, 739 (N.D. Ohio 2023).

Each of these factors must be analyzed in the specific context of the case. "[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Reese*, 574 F3d at 320 (quoting *Dowling v. Richardson–Merrell, Inc.*, 727 F.2d 608, 612 (6th Cir.1984). The movant also bears the burden of proving, in light of these factors, "fairness and practicality strongly favor the forum to which transfer is sought." *Thomas v. Home Depot U.S.A., Inc.*, 131 F. Supp. 2d 934, 936 (E.D. Mich. 2001) (quoting *Rowe v. Chrysler Corp.*, 520 F. Supp. 15, 16 (E.D. Mich. 1981)). The movant must make this showing by a preponderance of the evidence. *Id.*

ARGUMENT

I. DEFENDANTS ARE NOT ENTITLED TO TRANSFER UNDER 28 U.S.C. § 1404(A).

A. Deference is Due Plaintiffs' Choice of Forum.

The Court should assign greater weight to the Plaintiffs' choice of forum because all but one of the named Plaintiffs reside in the chosen forum.[1] *First Financial Banks*, 697 F.Supp.3d at 737 (Noting less weight is given when the plaintiff does not reside in the chosen forum, but significant weight is still given even if the plaintiff resides outside the forum). This underscores the fundamental notion that Plaintiffs, as the masters of their claims, are best positioned to determine the most suitable forum for their litigation, particularly when the selected venue has a strong connection to the underlying claims and parties. Unless the balance of convenience strongly favors the defendant, the plaintiff's choice of forum should prevail.

As such, Defendants can overcome Plaintiffs' choice of forum by showing transfer is necessary for the convenience of parties and witnesses and in the interest of justice. *DISC Env't Servs., Inc. v. Usher Oil Co.*, 343 F. Supp. 3d 705, 709 (N.D. Ohio 2018).

[1] The only class representative living outside of Michigan is Shawn Crable, who resides in Canton Ohio. Accordingly, Crable still resides within the 6th Circuit and a mere 3 hour drive to the Eastern District of Michigan.

B. Locus of Operative Facts/Ease of Accessing Sources of Proof Supports a Michigan Venue.

This lawsuit specifically deals with former University of Michigan football players. The key event giving rise to this lawsuit (U of M football players signing away their NIL rights under duress) occurred in Michigan, making it the most appropriate forum. BTN, a named Defendant in this case but not in *Chalmers*, generated substantial revenue from the unauthorized commercialization of Michigan football players' NIL. The NCAA and Big Ten's policies governing NIL rights, including the agreements that student-athletes were required to sign, were enforced at the University of Michigan. The economic harm suffered by the plaintiffs was sustained in Michigan, where they played and where their NIL was misappropriated.

The ease of access to sources of proof, availability of compulsory process for unwilling witnesses, the cost of obtaining attendance of willing witnesses, "and all other practical problems that make trial of a case easy, expeditious and inexpensive" are considered private interest factors. *Hefferan v. Ethicon Endo-Surgery Inc.*, 828 F.3d 488, 498 (6th Cir. 2016) ("[E]xamin[ing] the relative ease of access to sources of proof requires courts to dig into the substance of the dispute to assess the relevant evidence.")

Here, Plaintiffs selected a forum aligning with their financial and logistical capabilities. Defendants have not established how the proposed transfer to the

SDNY would result in a more efficient and cost-effective litigation. And as discussed in greater detail in the every next section, the convenience of the anticipated witnesses will be served through a Michigan venue.

Further, Defendants cannot credibly claim that litigating in Michigan imposes any undue hardship, particularly when they actively market and profit from Michigan-based athletic programs, thereby availing themselves of Michigan law. BTN has no legitimate argument that Michigan is an inconvenient venue where they are headquartered in Chicago and their revenue model is directly tied to Michigan sports.

C. Convenience of Witnesses Strongly Favors Michigan.

In *First Financial Bank, supra,* the court explained the convenience of witnesses is one of the most significant considerations in determining whether to grant a motion to transfer venue, with non-party witnesses' convenience being given even greater weight. See also *B.E. Technology, LLC v. Facebook, Inc.*, 957 F. Supp. 2d 926, 934 (W.D. Tenn. 2013) (while the convenience of party witnesses is important, the convenience of non-party witnesses is given greater weight.)

Defendants argue the SDNY is a more appropriate forum because of the pending *Chalmers* litigation. But the mere existence of *Chalmers* has no bearing on whether the SDNY is the more convenient forum for the parties and witnesses to *this* case. Indeed, Defendants BTN and NCAA are headquartered in Chicago and

Indianapolis, respectively. Ironically, the Eastern District of Michigan is more convenient than the SDNY for these Defendants.

Defendants fail to meet their burden of proving the SDNY is a more convenient venue, particularly given that the majority of individuals with firsthand knowledge of the claims in this case are located in Michigan. Because key non-party witnesses in this case—including university officials—are primarily located in Michigan, transferring the case to SDNY will impose unnecessary burdens on those witnesses and hinder Plaintiffs' ability to present their case. Therefore, the balance of factors strongly weighs against transfer.

The key witnesses in this litigation include:

The Named Plaintiffs – Denard Robinson, Braylon Edwards, and Michael Martin– all former University of Michigan football players whose names, images, and likenesses were commercially exploited without their consent. These individuals live in Michigan and have direct knowledge of the harm they suffered as a result of the NCAA's and BTN's misappropriation of their NIL. Their presence in Michigan strongly supports keeping the case in this forum.

University of Michigan Officials and Athletic Department Personnel – namely, those individuals who were responsible for enforcing NCAA policies related to NIL. These individuals can testify to how the NCAA required student-athletes to sign waivers and how those waivers were applied to Michigan football

players. Their testimony is crucial in establishing the coercive nature of the NCAA's NIL policies and how those policies affected Michigan athletes specifically. The University of Michigan is located in Ann Arbor, Michigan, making it significantly easier for these witnesses to participate in a trial or provide depositions in this jurisdiction.

Big Ten Network Executives and Media Personnel – namely, those who were directly involved in the decision-making processes surrounding the broadcast, licensing, and monetization of Michigan football content. Because BTN is headquartered in Chicago, operates primarily in the Midwest, and profits from the use of Michigan athletes' NIL, its key executives and employees are more easily accessible in Michigan than in SDNY. Requiring these individuals to travel to SDNY would be burdensome and unnecessary, particularly given that BTN is a named defendant in this case but is not a party in *Chalmers*.

Sports Marketing and NIL Valuation Experts – namely, those who will testify to the fair market value of Michigan football players' NIL rights and how they were commercially exploited by defendants. Many of these experts are located in the Midwest, including Michigan-based analysts who specialize in collegiate sports economics. Their assessments will be critical in demonstrating the extent of the unjust enrichment enjoyed by the NCAA, BTN, and the Big Ten.

Economic Damages Experts – namely, those who will assess the financial impact of the NCAA and BTN's NIL policies on Michigan football players. These experts will review the revenue BTN generated from broadcasting Michigan football games and licensing content featuring Michigan athletes. The majority of this financial data is tied to Michigan-based broadcasts, ticket sales, and merchandising agreements, making Michigan the logical venue for this analysis.

Notably, Defendants fail to identify a single key witness who would be significantly burdened by litigating this case in Michigan instead of New York. The NCAA, BTN, and the Big Ten Conference are all large, sophisticated organizations who regularly litigate in multiple jurisdictions, including Michigan. Their legal teams can and have appeared in Michigan without hardship. Conversely, forcing the individual Plaintiffs and university-based witnesses to travel to the SDNY will impose a significant burden.

On a separate note, modern technology has eliminated many of the justifications for venue transfer based on witness convenience. Courts now routinely permit remote depositions and electronic submission of evidence, making it unnecessary to relocate an entire case simply for the benefit of a few corporate witnesses, or their lawyers, who may find it more convenient to litigate in their hometown. Defendants have not demonstrated how requiring them to litigate in

Michigan would create an undue hardship, nor have they identified a single key witness for whom Michigan would be an unreasonable forum.

D. Interests of Justice Weigh Heavily in Favor of Michigan.

This factor asks whether transferring a case will serve the broader interests of fairness, judicial efficiency, and public policy. Defendants bear the burden of demonstrating how transfer will better serve the administration of justice, but they fail to do so here. Instead, the relevant factors overwhelmingly favor keeping this case in Michigan, where the key legal and factual issues are most directly connected, where the Plaintiffs suffered harm, and where the local interest in resolving this matter is most compelling. Michigan has a significant interest in protecting its former student-athletes from economic exploitation and ensuring that corporations profiting from Michigan-based athletic programs are held accountable in a Michigan court. The named plaintiffs in this case are former University of Michigan football players who played their collegiate careers in this state. Their names, images, and likenesses were misappropriated in Michigan, and Defendants derived revenue from that unauthorized use within Michigan's borders. This implicates Michigan's common law regarding unjust enrichment and Michigan statutory law protecting NIL rights. See *IFL Grp. Inc. v. World Wide Flight Serv., Inc.*, 306 F. Supp. 2d 709, 712 (E.D. Mich. 2004) (Motion to transfer venue denied even where incident occurred in Washington but plaintiffs resided in Michigan.)

Defendants' argument regarding judicial economy is wholly without merit. For example, Defendants complete ignore the fact that BTN is not a party to *Chalmers*. Defendant BTN operates within the Midwest, including Michigan, and its profits are tied to the commercialization of Michigan football content. The NCAA and Big Ten's licensing agreements with broadcasters and advertisers have disproportionately benefited from Michigan football players' NIL, making Michigan the natural venue for this case. The misappropriation of Michigan football players' NIL directly affects the University of Michigan and the state's athletic and economic landscape.

Defendants have not presented any compelling evidence that Michigan is an inappropriate forum or that SDNY is a significantly more convenient forum for the parties or witnesses. Instead, Defendants cast their lot on perceived judicial economy concerns and the specter of inconsistent rulings to argue this case should be transferred to the SDNY, where Defendants will of course move to consolidate this case with *Chalmers*. In doing so, Defendants gloss over how Defendant BTN is not a party to *Chalmers*. The instant Plaintiffs allege a vertical antitrust conspiracy between Defendants NCAA and BTN. How is there a risk of inconsistent rulings between this case and *Chalmers* when a major vertical antitrust allegation exists in one case but not the other?

E. Preventing Forum Shopping and Ensuring Fair Access to Justice.

Courts disfavor transferring cases when doing so would reward forum shopping by the defendant. Here, the NCAA and BTN's preference for the (SDNY) appears to be a strategic attempt to consolidate NIL litigation in a forum they believe to be more favorable to them or at least a venue their lawyers appear in more often. However, venue should not be dictated by a defendant's strategic preferences but rather by a careful analysis of where the case is most appropriately litigated. Transferring this case to SDNY would impose unnecessary burdens on Plaintiffs, who would be forced to litigate in a jurisdiction with no meaningful connection to them. The rule governing transfer of venue is not intended to provide a mechanism for forum shopping by defendants; rather, it requires that a transfer satisfy the convenience of both parties. See *B.E. Technology, LLC*, 957 F. Supp. 2d at 930 ("Merely shifting the inconvenience from one party to another does not meet Defendant's burden.") The Supreme Court has reinforced this principle in *Atlantic Marine Construction Co., Inc. v. U.S. District Court for the Western District of Texas*, 571 U.S. 49, 65 (2013), clarifying that § 1404(a) should not create or multiply opportunities for forum shopping and should not be used to change the applicable law to a party's advantage.

Again, Plaintiff's choice of forum is generally entitled to "substantial consideration" in balancing the 1404(a) factors. Here, forcing Plaintiffs to litigate

in the SDNY will impose significant financial and logistical burdens, while Defendants—large organizations with nationwide business operations—would face no comparable hardship litigating in Michigan.

In sum, the interests of justice strongly favor keeping this case in Michigan. The named plaintiffs, key witnesses, and central events giving rise to the claims are all closely tied to this jurisdiction. Michigan has a substantial local interest in regulating NIL commercialization that affects its institutions and student-athletes. Keeping the case in Michigan will promote judicial efficiency by allowing Plaintiffs to fully litigate their claims against all Defendants, including BTN, in a single proceeding. Because Defendants have failed to demonstrate how a transfer would serve the interests of justice, their motion should be denied.

II. THE FIRST-TO-FILE RULE DOES NOT MANDATE TRANSFER.

The first-to-file rule is a prudential doctrine and "[d]istrict courts have the discretion to dispense with the first-to-file rule where equity so demands." *Zide Sport Shop of Ohio, Inc. v. Ed Tobergte Assocs., Inc.*, 16 F. App'x 433, 437 (6th Cir. 2001); *Baatz v. Columbia Gas Transmission, LLC*, 814 F.3d 785, 789 (6th Cir. 2016). "[C]ourts generally evaluate three factors: (1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake." *Baatz*, 814 F.3d at 789.

Although *Chalmers* was filed first, Defendants cannot establish the second and third factors of the first-to-file rule because there is a fundamental dissimilarity between the parties, issues, and claims. The first to file rule applies only "when actions involving nearly identical parties and issues." *Zide*, 16 F. App'x at 437. "Generally, where a suit has been properly filed in one court, the filing of ***an identical suit*** in a second court does not deprive the first court of jurisdiction." *In re Burley*, 738 F.2d 981, 988 (9th Cir. 1984) (emphasis added).

This case and *Chalmers* do not involve the same parties, claims, or legal issues. *Chalmers* was brought by "members of the 1997, 2008, 2011 and 2014 NCAA Championship Men's ***Basketball teams***…" (Chalmers Class Action Complaint ¶ 5, Case No. 24-cv-05008, ECF No. 1, Page ID 4) (emphasis added). In contrast, this case is brought on behalf of former University of Michigan ***football*** players. Unlike *Chalmers*, where BTN is not a defendant, this case focuses heavily on the exploitation of their NIL by Defendant BTN. This distinction is critical because BTN plays a central role in the commercialization of Michigan football players' NIL, and Plaintiffs' claims against BTN will not be adjudicated in *Chalmers*. This case presents a vertical antitrust conspiracy not at all present in *Chalmers*. Therefore, this case involves not only substantially different parties, but also a separate array of antitrust issues that are not at issue in *Chalmers*.

However, the analysis does not end there. Courts "must also evaluate whether there are any equitable concerns that weigh against applying" the first to file rule. *Baatz,* 814 F.3d 785, 792. "Courts have repeatedly warned that the first-to-file rule 'is not a mandate directing wooden application of the rule without regard to extraordinary circumstances, inequitable conduct, bad faith, or forum shopping.'" *Baatz*, 814 F.3d at 792 (6th Cir. 2016) (quoting from *E.E.O.C. v. Univ. of Pennsylvania*, 850 F.2d 969, 972 (3d Cir. 1988), aff'd, 493 U.S. 182, 110 S. Ct. 577, 107 L. Ed. 2d 571 (1990)). *Zide,* 16 F. App'x at 437 (The Sixth Circuit "has never adhered to a rigid 'first to file' rule."); *Pacesetter Sys., Inc. v. Medtronic, Inc*., 678 F.2d 93, 95 (9th Cir. 1982) ("[T]he 'first to file' rule is not a rigid or inflexible rule to be mechanically applied, but rather is to be applied with a view to the dictates of sound judicial administration."); *Zide*, 16 F. App'x at 437 ("Factors that weigh against enforcement of the first-to-file rule include extraordinary circumstances, inequitable conduct, bad faith, anticipatory suits, and forum shopping."); and *Baatz,* 814 F.3d at 792 (holding same).

Here, the plaintiffs are Michigan-based, and the alleged wrongful conduct occurred in Michigan. The key witnesses, including University of Michigan officials, BTN executives, and former Michigan athletes, are located in the Sixth Circuit. Requiring Plaintiffs to litigate in SDNY would impose significant hardship, while litigating in Michigan would impose no greater burden on the defendants

than they already assume as part of their nationwide operations. The NCAA and BTN have a significant business presence in Michigan, and routinely litigate in the Sixth Circuit, likely because they are headquartered in the Sixth Circuit.

For these reasons, the first-to-file rule does not mandate transfer. This case involves different parties, different claims, and different factual issues than *Chalmers*, and multiple exceptions to the first-to-file rule apply. Moreover, the balance of convenience favors keeping the case in Michigan, and Defendants' reliance on the rule appears to be an attempt at forum shopping rather than a legitimate effort to promote judicial efficiency. All in all, this is not a classic case justifying application of the first in time rule, namely actions where one party has filed a declaratory judgment action in one district and the other party has filed a legal action for damages in another. See *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp*., 511 F.3d 535 (6th Cir. 2007); and *AmSouth Bank v. Dale*, 386 F.3d 763 (6th Cir. 2004).

Because defendants have failed to demonstrate that transfer is warranted, the court should deny their motion and allow this case to proceed in the Eastern District of Michigan.

III. DEFENDANTS' REQUESTED STAY IS UNJUSTIFIED AND WOULD SEVERELY PREJUDICE PLAINTIFFS.

As a final alternative, Defendants request a stay of proceedings pending resolution of *Chalmers*, reiterating that such a remedy promotes judicial efficiency

and avoids the specter of inconsistent rulings. But the Sixth Circuit disfavors stays which create indefinite delays, cause undue prejudice to plaintiffs, or fail to provide meaningful judicial economy.

A. Legal Standard a Stay of Proceedings.

"A stay of a civil case is an extraordinary remedy that should be granted only when justice so requires." *Chao v. Fleming*, 498 F. Supp. 2d 1034, 1037 (W.D. Mich. 2007). The burden of proof is on the moving party to demonstrate how a stay is necessary and appropriate under the circumstances. In deciding whether to grant a stay, courts will "balance the competing interests of the parties and the interest of the judicial system." *Markel Am. Ins. Co. v. Dolan*, 787 F.Supp.2d 776, 779 (N.D.Ill.2011) (citing *Landis*, 299 U.S. at 254–55, 57 S.Ct. 163 (The court "must weigh competing interests and maintain an even balance.")). Courts generally consider three factors when determining whether to grant a stay: (1) whether a stay will simplify the issues in question and streamline the trial; (2) whether a stay will reduce the burden of litigation on the parties and on the court; and (3) whether a stay will unduly prejudice or tactically disadvantage the non-moving party. *Markel*, 787 F.Supp.2d at 779. Each of these factors weighs against granting a stay in this case.

B. The *Chalmers* Litigation Does Not Resolve the Claims in This Case and a Stay Only Serves to Prejudice Plaintiffs.

Defendants argue *Chalmers* will resolve key legal issues in this case, but once again, Defendants ignore how Defendant BTN is not a party in *Chalmers*. Plaintiffs allege a vertical antitrust conspiracy between the NCAA and BTN, the examination of which will be delayed, potentially for years, if this case is stayed pending resolution of *Chalmers*. See *Perfecta Prods., Inc. v. Expedite Prods., Inc.*, No. 4:11 CV 00146, 2011 WL 1527321 (N.D. Ohio Apr. 20, 2011) (refusing to transfer or stay case when defendant in second-filed case not a party to first-filed case). It makes no sense to stay this case pending resolution of *Chalmers* when the latter case will not resolve Plaintiffs' claims involving BTN. At a minimum, Plaintiffs will be unfairly prejudiced by a stay where the same allows BTN to continue exploiting Plaintiffs' NIL by way of its vertical scheme with the NCAA, none of which will be addressed in *Chalmers*.

Further, this case and *Chalmers* are materially different for several reasons. First, the parties are not the same. *Chalmers* is brought by NCAA basketball players, whereas this case involves former University of Michigan football players. This distinction is critical because different sports, schools, and conferences have been affected by NIL commercialization in different ways.

Second, the legal theories and factual issues are distinct. While *Chalmers* primarily concerns the NCAA's general NIL policies, this case is focused on the

specific commercialization of Michigan football players' NIL by BTN and the Big Ten. The NCAA's licensing arrangements with television networks and advertisers have disproportionately benefited from the University of Michigan's athletic program, and those issues will not be addressed in *Chalmers*.

When "material factual differences exist" between the two cases, the pressing need for a stay is not established. *Cheshire Hunt, Inc. v. U.S.*, 149 Fed. Cl. 216, 221 (2020). For example, in *Cheshire Hunt*, the Federal Court of Claims denied a motion to stay, pending resolution of another case, finding the instant case involved a specific historic regulatory taking, wile a related case involved existing use of property and an action to quiet title. *Id.* The court also noted each action requested different forms of relief (injunctive relief and quiet title in the related case and monetary damages in the instant case). Accordingly, the court denied the motion to stay proceedings. *Id* at 222.

Because *Chalmers* does not fully resolve Plaintiffs' claims against all Defendants or address the unique NIL commercialization issues in this case, a stay would not simplify litigation but would instead cause unnecessary delay and inefficiency. For example, *NanoLogix, Inc. v. Novak*, No. 4:13-CV-1000, 2013 WL 6443376, (N.D. Ohio Dec. 9, 2013), the court held all elements of the first-to-file rule were met where two identical actions pended in the Northern District of California (filed first) and the Northern District of Ohio (filed second). Still, the

court recognized that allowing the second action to proceed "without interruption, is chosen when the district court has determined that the first-to-file rule, either by its own terms or by a quirk of equity, does not apply" *Id* at *3. Next, the court noted both actions (like this one and *Chalmers*) were subject to motions to dismiss, which pended for several months thereby delaying discovery. *Id* at *4. Mindful of this, the court reused to transfer or stay the case because doing so would "further delay an overlong conflict." *Id.* "Whether their dispute lands in California or Ohio, the parties must conduct discovery, and continuing to defer discovery serves no purpose. Pursuant to its broad discretion to resolve a first-to-file conundrum equitably, the Court orders this case to proceed to discovery." *Id*. This Court should hold likewise.

CONCLUSION AND RELIEF REQUESTED

Defendants fail to meet their burden of proving a transfer or a stay is warranted. Plaintiffs' choice of forum in the Eastern District of Michigan is entitled to substantial deference, as it is the most appropriate venue given the location of key witnesses, evidence, and the harm suffered by Plaintiffs. The first-to-file rule does not mandate transfer because *Chalmers* is factually and legally distinct, involving different parties, claims, and defendants, including the Big Ten Network, which is not a party in *Chalmers*. Further, a stay will unduly prejudice plaintiffs by delaying their ability to obtain relief while allowing Defendants to

continue profiting from the unauthorized commercialization of their NIL. Accordingly, Plaintiffs respectfully request that this Court deny Defendants' motion in its entirety.

For the reasons elaborated above, this Honorable Court should deny Defendants' Motion to Transfer Venue or, in the Alternative, Stay Proceedings (ECF No. 39).

Respectfully submitted,

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Dated: March 13, 2025

PROOF OF SERVICE

I declare under penalty of perjury that on March 13, 2025, I served a copy of the foregoing instrument via electronic filing through the Eastern District of Michigan, Southern Division, efile website. The above statement is true to the best of my knowledge and information.

/s/ *Karrie Ohlsson*