UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

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 BIG TEN CONFERENCE,

Defendants.

Hon. Terrence G. Berg

Magistrate Judge Kimberly G. Altman

Case No. 2:24-12355-TGB-KGA

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants National Collegiate Athletic Association, The Big Ten Conference Inc., and Big Ten Network, by and through their undersigned counsel, respectfully submit this Notice of Supplemental Authority in support of their Motion to Dismiss this case, Dkt. 40.

On August 6, 2025, Judge Mark A. Davis of the North Carolina Business Court issued the attached Order and Opinion in *Bailey v. National Collegiate Athletic Association*, Case No. 24-cv-017715-910 (N.C. Super. Ct.), dismissing claims—similar to those brought by Plaintiffs in this action—arising from use of copyrighted game footage. *See Bailey v. Nat'l Collegiate Athletic Ass'n*, 2025 WL 2256311 (N.C. Super. Ct. Aug. 6, 2025). Like the courts in *Chalmers v. National Collegiate Athletic Association*, Case No. 1:24-cv-05008 (S.D.N.Y. July 1, 2024), Dkt. 127, and *Pryor v. National Collegiate Athletic Association*, Case No. 2:24-cv-4019 (S.D. Ohio), Dkt. 59, Judge Davis concluded that each of the *Bailey* plaintiffs' state law antitrust, unfair and deceptive trade practices, misappropriation, invasion of privacy, and unjust enrichment claims were untimely and not subject to the continuing wrong doctrine. *Bailey*, 2025 WL 2256311, at *4–10. In addition to finding plaintiffs' claims barred by the applicable statutes of limitations, Judge Davis determined that North Carolina law did not give the *Bailey* plaintiffs the right to challenge the use of their images in game footage from a broadcast sporting event. *Id.* at *11–14. Judge

Davis further explained that North Carolina law is consistent with the decision in *Marshall v. ESPN Inc.*, 111 F. Supp. 3d 815, 825 (M.D. Tenn. 2015), *aff'd*, 668 F. App'x 155, 157 (6th Cir. 2016), which "rejected the notion that participants in an athletic contest possess a right of publicity in broadcasts (or rebroadcasts) of the event." *Id.* at *13–14. Finally, Judge Davis also concluded that even if the *Bailey* plaintiffs had a legally enforceable right of publicity in the game footage at issue, their claims would be preempted by the federal Copyright Act of 1976. *Id.* at *15–22.

The defects mandating dismissal of the claims brought in *Bailey* are identical to the defects Defendants have argued require dismissal of Plaintiffs' Amended Complaint in this case. *See, e.g.*, Mot. to Dismiss, Dkt. 40. *Bailey* thus further confirms that Defendants' joint motion to dismiss this case should be granted.

Dated: August 11, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2025, I electronically filed the Notice of Supplemental Authority with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties and counsel of record.

Dated: August 11, 2025

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