UNITED STATES DISTRICT COURT
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.

Honorable Terrence G. Berg

Magistrate Judge Kimberly G. Altman

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

ORAL ARGUMENT REQUESTED

REPLY IN SUPPORT OF DEFENDANT BIG TEN NETWORK'S MOTION TO DISMISS

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I. PLAINTIFFS' SHERMAN ACT CLAIM AGAINST BTN FAILS.

A. BTN has not entered into an agreement to unlawfully restrain trade.

In their response, Plaintiffs concede that BTN has not entered into any agreement to limit student-athlete compensation. That admission should dispose of their Sherman Act claim against BTN.

Section 1 of the Sherman Act prohibits "contract[s], combination[s] . . . or conspirac[ies]" made "in restraint of trade." 15 U.S.C. § 1. To state a Section 1 violation, a plaintiff must allege that each defendant engaged in "a conscious commitment to a common scheme *designed to achieve an unlawful objective*." *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984) (emphasis added).

Plaintiffs have not met this basic pleading requirement, because they do not allege BTN entered into *any agreement* to limit student-athlete compensation. Plaintiffs admit they "do not allege BTN co-drafted NCAA's bylaws and rules." ECF No. 44, PageID.621. Targeting what they call "*the NCAA* and *Big Ten's* anticompetitive NIL restrictions," *see id.*, PageID.622 (emphasis added), they acknowledge those two institutions—and not BTN—are "the policymakers" behind the alleged restrictions. *Id.*, PageID.621. They also acknowledge BTN "did not create the framework" of those allegedly "anticompetitive arrangements." *Id.*,

PageID.624. Because Plaintiffs admit BTN is not a party to the allegedly unlawful agreement they complain of, their Sherman Act claim must fail. *Monsanto Co.*, 465 U.S. at 764.

Without evidence of BTN's involvement in any unlawful agreement, Plaintiffs are reduced to characterizing BTN's commercial activities as an antitrust conspiracy. But Plaintiffs' wholly-conclusory allegations are insufficient. They allege BTN "generates hundreds of millions of dollars" through "broadcasting rights, advertising, and subscription fees" from its broadcasts and replays of collegiate sporting events, including football games. ECF No. 24, PageID.230 (¶ 21); *see also* PageID.219, 223, 229, 233, 238, 250 (¶¶ 1, 7, 8, 20, 29, 45, 70). Using their response to expand on these allegations, Plaintiffs label BTN's activities, including its media rights agreements, as an "anticompetitive conspiracy." *Id.*, PageID.621. They argue BTN is participating in an unlawful antitrust conspiracy because it "derives substantial revenue" from "broadcast agreements, broadcasts themselves, advertisements, [and] promotional materials." *Id.*, PageID.618.

Notably absent from the Amended Complaint, however, is any plausible allegation that these commercial activities or agreements had a role in restricting Plaintiffs' compensation as student-athletes, which is the complained-of restraint of trade. Plaintiffs do not, and cannot, allege that BTN's downstream media agreements or activities were intended to restrict student-athlete compensation at all. Even

assuming for the sake of argument that the NCAA's bylaws unlawfully restricted Plaintiffs' NIL compensation, Plaintiffs fail to plausibly allege that BTN had any role in advancing those restrictions, or any other intended purpose prohibited by the Sherman Act, as opposed to being the third-party beneficiary of an allegedly unlawful agreement entered by others. *See Monsanto*, 465 U.S. at 764. Plaintiffs have no answer to this.

Plaintiffs also try characterizing BTN's commercial activities and agreements as an unlawful vertical conspiracy. ECF No. 44, PageID.622. That label is also inapt. As alleged, the NCAA's bylaws regarding student-athlete compensation were adopted without BTN's participation. *See* ECF No. 24, PageID.243, 244 (¶¶ 57-59). Because the NCAA adopted those bylaws unilaterally and "[did] not need the acquiescence" of BTN, Plaintiffs cannot claim BTN has participated in any unlawful vertical restraint. *See Int'l Logistics Grp. v. Chrysler Corp.*, 884 F.2d 904, 907 (6th Cir. 1989) (no vertical conspiracy where "the actor imposing the alleged restraint does not . . . need the acquiescence of the other party or any quid pro quo from him.'") (quoting 6 P. Areeda, *Antitrust Law* (1986)).

Plaintiffs cannot make BTN liable under the Sherman Act where BTN has not been a party to any unlawful agreement in restraint of trade. *See Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 436 (6th Cir. 2008). Therefore, Plaintiffs' allegations about BTN are mere "account[s] of a defendant's

commercial efforts," *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007), and they do not state a plausible Sherman Act claim.

B. Plaintiffs fail to plausibly allege BTN caused any antitrust injury.

For similar reasons, Plaintiffs fail to plausibly allege that BTN caused them a cognizable antitrust injury. In arguing to the contrary, Plaintiffs misconstrue the Middle District of Tennessee's ruling in *Marshall v. ESPN*, 111 F. Supp. 3d 815 (M. D. Tenn. 2015), *aff'd* 668 Fed. Appx. 155 (6th Cir. 2016), where BTN was found not to have caused "reduced competition" or "any concomitant antitrust injury." *Id.* at 835.

Dismissing *Marshall*, Plaintiffs argue the result turned solely on a Tennessee statute that permitted the use of a "player's" name or likeness in connection with sports broadcasts. ECF No. 44, PageID.628; *see* Tenn. Code Ann. §47-25-1107(a). However, the district court explicitly stated its decision relied on the Sixth Circuit's use of the antitrust injury doctrine "to bar recovery where the asserted injury, *although linked to an alleged violation of the antitrust laws, flows directly from conduct that is not itself an antitrust violation*." *Id.*, 11 F. Supp. 3d at 835 (emphasis added) (quoting *Ky. Speedway LLC v. National Ass'n of Stock Car Auto Racing*, 588 F.3d 908, 920 (6th Cir. 2009)).

Because BTN's commercial activity "is not itself an antitrust violation," *see Ky. Speedway LLC*, 588 F.3d at 920, Plaintiffs cannot suffer an antitrust injury from

BTN's conduct, and Plaintiffs' Sherman Act claim fails on the first factor of the antitrust injury analysis. *Southaven Land Co., Inc. v. Malone & Hyde, Inc.*, 715 F.2d 1079, 1085 (6th Cir. 1983) (listing the factors). And nothing in *Alston* alters that established analytical framework. Like the claim against BTN in *Marshall*, Plaintiffs' Sherman Act claim against BTN should be dismissed.

II. PLAINTIFFS FAIL TO STATE AN UNJUST ENRICHMENT CLAIM AGAINST BTN.

A. Plaintiffs fail to allege they provided a direct benefit to, or had direct contact with, BTN.

To defend their unjust enrichment claim, Plaintiffs argue there is no "direct benefit" requirement in Michigan law. But they ignore the fundamental requirement that an unjust enrichment plaintiff have *direct contact* with the defendant. Plaintiffs have had no direct contact with BTN, and so their unjust enrichment claim fails.

Typically, Michigan courts employ the doctrine of unjust enrichment "where the defendant directly receives a benefit from the plaintiff." *Smith v. Glenmark Generics, Inc., USA*, No. 315898, 2014 Mich. App. LEXIS 1524 at *1 (Mich. Ct. App. 2014); *Belle Isle Grill Corp. v. City of Detroit*, 666 N.W.2d 271, 280 (Mich. Ct. App. 2003); *see also Trotta v. Am. Airlines, Inc.*, No. 2:23-CV-12258-TGB-CI, 2024 U.S. Dist. LEXIS 195795, *15-16 (Berg., J.) (E.D. Mich. 2024) (an unjust enrichment plaintiff must "show that she provided a 'direct benefit' to the defendant . . . ."); *Storey v. Attends Healthcare Prods.*, No. 15-CV-13577, 2016 U.S. Dist.

LEXIS 72505, *12 (E.D. Mich. June 3, 2016).

Against these cases, Plaintiffs cite (in a footnote) *Kammer Asphalt Paving Co., Inc. v. East China Township Schools*, 504 N.W.2d 635 (1993) for the proposition that Michigan law has no direct benefit requirement. In *Kammer*, a plaintiff subcontractor who "indirectly" provided a benefit to a defendant property owner was permitted to pursue an unjust enrichment claim. *Id.*, 504 N.W. 2d at 641. While it is true that the plaintiff in *Kammer* was not in privity with the defendant, the two parties "were in direct contact with one another" when the plaintiff provided the benefit. *See Schechner v. Whirlpool Corp.*, 237 F. Supp. 3d 601, 618 (E.D. Mich. 2017) (quoting *Smith* at *1 and reconciling *Kammer* with other Michigan unjust enrichment case law).

Understood properly, *Kammer* is consistent with BTN's position. Plaintiffs argue that BTN would impose a privity requirement on their unjust enrichment claim, *see* ECF No. 44, PageID.631, but that is not correct. BTN is arguing, consistent with *Kammer* and with in-district decisions in *Schechner*, *Trotta*, and *Storey*, that Plaintiffs must allege they at least "had some sort of direct interaction" with BTN. *Schechner*, 237 F. Supp. 3d at 618 (quoting *Storey* at *12). Here, Plaintiffs have not done so. They allege they directly participated in Big Ten and NCAA athletic competitions, but they make no allegation they have had any contact, interaction, or relationship of any kind with BTN. Therefore, under Michigan unjust

enrichment law, Plaintiffs' claim against BTN fails.

B. Plaintiffs fail to allege BTN had a causal role in any unjust enrichment.

Additionally, because BTN is downstream of the NCAA and Big Ten's allegedly inequitable restrictions on student-athlete compensation, BTN has not played a causal role in any unjust enrichment. *Jackson v. Southfield Neighborhood Revitalization Initiative*, 2023 WL 6164992, at *21 (Mich. Ct. App. 2023).

CONCLUSION

BTN respectfully requests that the Court dismiss Plaintiffs' Sherman Act and unjust enrichment claims under Federal Rule of Civil Procedure 12(b)(6).

Dated: April 14, 2025

Respectfully submitted,

/s/ Bradley R. Hutter

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2025, I caused the foregoing Reply in support of Defendant Big Ten Network, LLC's Motion to Dismiss to be electronically filed with the Clerk of the Court using the CM/ECF system.

/s/ Bradley R. Hutter
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