

**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,

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

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION
TO ALTER OR AMEND JUDGMENT PURSUANT TO
FED. R. CIV. P. 59(e) [ECF NO. 63]**

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INTROUDCTION

This is the final opportunity for this Court to reinstate this case before Plaintiffs are forced to seek redress at the Sixth Circuit Court of Appeals, which, candidly, should not be necessary. Respectfully, Plaintiffs have shown clear error by this Court in its ruling – both in their Motion and in this Reply. Defendants have now been forced to admit that Plaintiffs did not allege a single anticompetitive act, but a conspiracy involving numerous and widespread anticompetitive acts over many years. Plaintiffs respectfully ask this Court to reinstate this case and let Plaintiffs proceed to discovery.

ARGUMENT IN REPLY

Defendants' Response, if anything, confirms that relief under Rule 59(e) is necessary to prevent manifest injustice to Plaintiffs. This is because Defendants now acknowledge that Plaintiffs did not allege a single-act antitrust claim, i.e., a claim predicated exclusively on Plaintiffs' execution of student statement forms. Defendants recognize that Plaintiffs plainly alleged an ongoing conspiracy to exploit the NCAA's bylaws to fix the price that Defendants pay for Plaintiffs' NIL at zero, while monetizing it for their own exclusive gain. Because the parties now agree that Plaintiffs did not advance a single-act antitrust claim, this Court clearly erred by concluding that Plaintiffs' antitrust claim accrued when they were "first affected" by Defendants' anticompetitive actions. Instead, the continuing violations doctrine

applies to those antitrust claims, like Plaintiffs' claim, that are predicated on ongoing price-fixing conspiracies. This Court committed clear error by dismissing Plaintiffs' antitrust claim as time barred.

To conclude otherwise is to ignore controlling Supreme Court precedents. For example, in *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997), the Supreme Court plainly stated that “[a]ntitrust law provides that in the case of a ‘continuing violation,’ say, a price-fixing conspiracy that brings about a series of unlawfully high priced sales over a period of years, **‘each overt act that is part of the violation and that injures the plaintiff,’ e.g., each sale to the plaintiff, ‘starts the statutory period running again, regardless of the plaintiff’s knowledge of the alleged illegality at much earlier times.’**” *Klehr*, 521 U.S. at 189 (1997) (quoting from 2 Areeda ¶ 338b) (emphasis added). Although dictum, the Court’s definition of a continuing antitrust violation in *Klehr* is plainly consistent with its longstanding precedent, starting with *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968). In *Hanover Shoe*, the Court rejected the argument advanced by Defendants (and accepted by this Court), namely that Hanover’s antitrust claim was time-barred because “the earliest impact” on the company occurred outside the limitations period. In rejecting this argument, the Court reasoned as follows:

We are not dealing with a violation which, if it occurs at all, must occur within some specific and limited time span...Rather, we are dealing with conduct which constituted a continuing violation of the Sherman Act and

which inflicted continuing and accumulating harm on Hanover. Although Hanover could have sued in 1912 for the injury then being inflicted, it was equally entitled to sue in 1955.

Hanover Shoe, 392 U.S. at 502 n. 15.

As in *Hanover Shoe*, Defendants' ongoing conspiracy to exploit the NCAA's bylaws – e.g., to fix the price they pay for Plaintiffs' NIL at zero – and monetize the NIL for their own exclusive gain, has caused Plaintiffs continuing and accumulating harm in violation of the Sherman Act.

The Supreme Court's definition of a continuing antitrust violation in *Klehr* is also in accord with its decision in *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321 (1971). In *Zenith*, the issue was “whether Zenith can recover in its 1963 suit for damages suffered after June 1, 1959, as the consequence of pre-1954 conspiratorial conduct.” *Zenith*, 401 U.S. at 338. In resolving this question in favor of Zenith, the Court reasoned as follows:

In the context of a continuing conspiracy to violate the antitrust laws, such as the conspiracy in the instant case, this has usually been understood to mean that ***each time a plaintiff is injured by an act of the defendants a cause of action accrues to him to recover the damages caused by that act and that, as to those damages, the statute of limitations runs from the commission of the act.***

Zenith, 401 U.S. at 338 (emphasis added).

Critically, as in *Zenith*, Plaintiffs would have been unable to sue in 2012 (or earlier) to recover the continuing damages arising in the future from Plaintiffs'

ongoing price-fixing conspiracy, especially given the unforeseeable and evolving nature of the technologies and platforms utilized to exploit their NIL. (Am. Compl. ¶¶ 70-77, ECF No. 24, PageID 250-253).¹ The following reasoning from *Zenith* applies with equal force to this case:

In antitrust and treble-damage actions, refusal to award future profits as too speculative is equivalent to holding that no cause of action has yet accrued for any but those damages already suffered. ***In these instances, the cause of action for future damages, if they ever occur, will accrue only on the date they are suffered; thereafter the plaintiff may sue to recover them at any time within four years from the date they were inflicted...Otherwise future damages that could not be proved within four years of the conduct from which they flowed would be forever incapable of recovery, contrary to the congressional purpose that private actions serve ‘as a bulwark of antitrust enforcement’...***

Zenith, 401 U.S. at 339–340 (emphasis added).

Therefore, Defendants’ acknowledgment that Plaintiffs did not plead a single-act antitrust theory mandates relief under Rule 59(e). As set forth above (and in Plaintiffs’ motion), the price-fixing antitrust conspiracy alleged by Plaintiffs is plainly viable under *Klehr*, *Hanover Shoe*, and *Zenith*. Defendants and this Court, respectfully, ignored these precedents and instead clearly erred by relying on precedent that is plainly distinguishable. For example, in their Response, Defendants

¹ Plaintiffs allege that “[e]ven after student-athletes have graduated, the NCAA, the Big Ten, BTN, its partners, and affiliates continue to exploit their names, images, and likenesses.” (Am. Compl. ¶ 70, ECF No. 24, PageID 250).

continue to inexplicably place heavy reliance on *Z Technologies Corp. v. Lubrizol Corp.*, 753 F.3d 594 (6th Cir. 2014), which, if anything, illuminates the stark disconnect between Defendants’ arguments and Plaintiffs’ allegations. (Def. Response, ECF No. 63, PageID 890). *Z Techs.* would perhaps bind this Court *if* this case involved “price increases following a merger or acquisition,” as opposed to the price-fixing conspiracy alleged in their FAC. *Z Techs.*, 763 F.3d at 600. But facts and context matter. Indeed, in *Z Techs.*, the Court plainly acknowledged that “while the Supreme Court has never directly limited the scope of the continuing violations doctrine, *it appears to have employed the doctrine only in conspiracy and monopolization cases not involving mergers or acquisitions*,” as in this case. *Z Techs.*, 753 F.3d at 599 (emphasis added). Importantly, the Sixth Circuit has elsewhere recognized that *Klehr* “reiterates...that a new § 1 claim arises each time a company sells a price-fixed product.” *In re Travel Agent Comm’n Antitrust Litig.*, 583 F.3d 896, 902 (6th Cir. 2009). And as set forth in Plaintiffs’ motion, this understanding of the continuing violations doctrine is in accord with precedents in other Circuits. *See, e.g., In re Pre-Filled Propane Tank Antitrust Litig.*, 860 F.3d 1059 (8th Cir. 2017) (en banc); *Oliver v. SD-3C LLC*, 751 F.3d 1081 (9th Cir. 2014); *In re Cotton Yarn Antitrust Litig.*, 505 F.3d 274 (4th Cir. 2007); and *Morton’s Mkt., Inc. v. Gustafson’s Dairy Inc.*, 198 F.3d 823 (11th Cir. 1999), *amended in part*, 211 F.3d 1224 (11th Cir. 2000). All in all, these precedents illuminate that it is the

Defendants who miss the mark – and wildly so – by predicating their statute of limitations argument on when Plaintiffs were “first affected” by Defendants’ price-fixing conspiracy, which is immaterial. (Defs. Response p. 3, ECF No. 63, PageID 889). This Court clearly erred by accepting Defendants’ argument and dismissing Plaintiffs’ FAC with prejudice.

Finally, Defendants’ Response also confirms that this Court clearly erred by concluding that Plaintiffs’ unjust enrichment claim is time-barred. Simply put, this is a claim for restitution of income generated from the monetization of Plaintiffs’ NIL, not a claim to recover Plaintiffs’ NIL. Although Defendants and this Court gloss over this distinction, it is very important. Under Michigan law, “[a] claim accrues only when suit may be maintained thereon.” *Smith v. Dep’t of Treasury*, 163 Mich. App. 179, 183; 414 N.W.2d 374, 376 (Mich. 1987), *cert den*, 486 U.S.1023 (1988). A suit for unjust enrichment lies when there is an entitlement to restitution. “The phrase ‘unjust enrichment’ is used in law to characterize the result or effect of a failure to make restitution of or for property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor.” *Buell v. Orion State Bank*, 327 Mich. 43, 56, 41 N.W.2d 472 (Mich. 1950). *See also Kammer Asphalt Paving Co., Inc. v. East China Twp. Sch.*, 443 Mich. 176, 185, 504 N.W.2d 635 (Mich. 1993); and *Wright v Genesee Cnty*, 504 Mich. 410, 418; 934 NW2d 805, 809 (Mich. 2019). Thus, simply put, because Plaintiffs do not seek

restitution of their NIL, their unjust enrichment claim did not accrue, as this Court concluded, when Defendants took their NIL. Instead, because Plaintiffs seek restitution of the income generated by the monetization of their NIL, their unjust enrichment claim is timely as long as Defendants monetize it.

CONCLUSION

For these reasons, Plaintiffs respectfully submit that this Court's dismissal of their FAC at the pleadings stage is the result of clear error and, if uncorrected, will cause them manifest injustice by denying them the opportunity to prove their case.

RELIEF REQUESTED

Plaintiffs DENARD ROBINSON, BRAYLON EDWARDS, MICHAEL MARTIN, and SHAWN CRABLE respectfully request this Honorable Court grant them relief from its Order Granting Defendants' Motions to Dismiss; Denying Defendants' Motion to Change Venue or, In the Alternative, To Stay Proceedings; and Denying Plaintiffs' Motion to Certify Class (ECF 59) pursuant to Rule 59(e).

Respectfully submitted,

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Dated: November 25, 2025

PROOF OF SERVICE

I declare under penalty of perjury that on November 25, 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

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