STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV017715-910

MEMBERS OF NORTH CAROLINA STATE UNIVERSITY'S 1983 NCAA MEN'S BASKETBALL NATIONAL CHAMPIONSHIP TEAM, aka THE "CARDIAC PACK," including: THURL BAILEY; ALVIN HARRELL BATTLE; WALT DENSMORE; TOMMY DINARDO; TERRENCE PATRICK GANNON; MARTHA LOU MOBLEY, as Administrator of the Estate of QUINTON LEONARD III; GEORGE CALVIN MCCLAIN; COZELL MCQUEEN; ERNIE MYERS; WALTER PROCTOR; HAROLD LEWIS THOMPSON; and MIKE WARREN,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION aka NCAA,

Defendant.

ORDER ON DEFENDANT'S MOTION TO STAY

1. **THIS MATTER** is before the Court on Defendant National Collegiate Athletic Association's ("NCAA") Motion to Stay (ECF No. 47).

2. **THE COURT**, having considered the Motion to Stay, the briefs and submissions of the parties, the arguments of counsel, the applicable law, and all appropriate matters of record, **CONCLUDES**, in its discretion, that the Motion to Stay should be **DENIED** for the reasons set forth below.

INTRODUCTION

3. Over forty years after their highly-publicized national championship victory, Plaintiffs—who are twelve former members of North Carolina State

University's ("N.C. State") 1983 NCAA Division I men's basketball team—are suing the NCAA for allegedly misappropriating their names, images, and likenesses ("NIL"), as well as for engaging in monopolistic conduct and restraint of trade. In its Motion to Stay, the NCAA asks the Court to stay all further proceedings in this matter until the resolution of *Chalmers, et al. v. National Collegiate Athletic Association, et al.*, a putative class action that is currently pending in the United States District Court for the Southern District of New York.[1]

FACTUAL AND PROCEDURAL BACKGROUND

4. The Court recites herein the allegations set forth in Plaintiffs' First Amended Complaint, ("FAC," ECF No. 41), that are relevant to the Motion to Stay.

5. In a nutshell, this lawsuit alleges that the NCAA has maintained an anticompetitive monopoly over the collegiate athletics industry in North Carolina and that it has profited off of this monopoly over the last several decades by refusing to compensate Plaintiffs for the continued use of "their names, images, and likenesses or for their contribution[s] to the evolution of March Madness as a revenue-generating juggernaut." (FAC ¶ 8.)

6. As noted above, the plaintiffs in this case are twelve former members of the 1983 N.C. State men's basketball team: Thurl Bailey, Alvin Harrell Battle, Walt Densmore, Tommy DiNardo, Terrence Patrick Gannon, Quinton Leonard III,[2] George

[1] The NCAA has also filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. (ECF No. 50.) However, the Court elected to defer consideration of that motion until it had ruled on the Motion to Stay.

[2] Plaintiff Martha Lou Mobley brings this lawsuit on behalf of Leonard's estate as its duly appointed Administrator. (FAC ¶ 26.)

Calvin McClain, Cozell McQueen, Ernie Myers, Walter Proctor, Harold Lewis Thompson, and Mike Warren. (FAC ¶¶ 20–32.)

7. The NCAA is an unincorporated association of over 1,100 member schools, conferences, and organizations across the United States and Canada. (FAC ¶ 33.) It "oversees more than half a million student-athletes across its three competitive divisions" and "sponsors more than 90 national championships in 24 sports." (FAC ¶ 52.) The NCAA's headquarters are located in Indianapolis, Indiana, and several of its member schools are located in North Carolina. (FAC ¶¶ 34–34.)

8. In the early 1980s, Plaintiffs attended N.C. State, which is located in Raleigh, North Carolina. (FAC ¶ 19.) N.C. State is a member of the NCAA and is classified by the organization as a "Division I" institution. (*See* FAC ¶ 18.)

9. While attending N.C. State, Plaintiffs all played on the men's basketball team, which is known as the "Wolfpack." (FAC ¶¶ 18, 113.)

10. As an institutional member of the NCAA, N.C. State's athletic teams are governed by the NCAA's policies and regulations. (*See* FAC ¶ 50.)

11. Before joining the Wolfpack, Plaintiffs were required by the NCAA's bylaws to sign a form called the "Student-Athlete Statement" (the "SAS"). (FAC ¶¶ 63, 67.) The SAS purportedly serves to verify "an athlete's eligibility for participation in NCAA sports." (FAC ¶ 64.)

12. Although the NCAA has apparently amended the terms of the SAS in recent years, the version of the form that Plaintiffs were required to sign included the following provision:

> You authorize the NCAA [or a third party acting on behalf of the NCAA] to use your name or picture to generally promote NCAA championships or other NCAA events, activities or programs.

(FAC ¶ 66.)

13. At all relevant times, it has been the NCAA's policy that any student-athletes who refuse to sign the SAS are automatically disqualified from participating in NCAA-sponsored programming. (FAC ¶ 65.) Moreover, because "NCAA Division I schools provide the only pathway to professional sports for most student-athletes[,] . . . a student-athlete who refuses to sign the [SAS] gives up not only his or her collegiate athletic career, but any prospect of continuing to the professional level." (FAC ¶¶ 71–72.)

14. Upon signing the SAS, eligible student-athletes who play basketball at select Division I schools (such as N.C. State) can potentially compete in "March Madness," an annual college basketball championship tournament. (FAC ¶¶ 54, 93.)

15. March Madness has evolved into "a cultural phenomenon[,]" and "[t]he final game of the tournament has often been the most watched event on television, surpassing even other landmark broadcasts, such as the Oscar Awards and the Super Bowl." (FAC ¶ 91.) The television and marketing rights associated with March Madness are "major sources of revenue" for the NCAA. (FAC ¶ 54.)

16. In 1983, Plaintiffs helped lead N.C. State's Wolfpack to "an improbable championship victory" in that year's March Madness tournament, "[lighting] a fire under college basketball fans, drawing new viewers and building new loyalties."

(FAC ¶¶ 113, 147.) Plaintiffs' success garnered national media attention and ultimately earned the Wolfpack the "Cardiac Pack" nickname. (FAC ¶¶ 132–33.)

17. In the decades that followed, media coverage generated by N.C. State's performance in the 1983 NCAA tournament yielded "billions of dollars in revenue for the NCAA and its affiliates . . . ." (FAC ¶ 152.) Plaintiffs, however, have not received any portion of these profits for themselves. (FAC ¶ 8.)

18. In this lawsuit, Plaintiffs assert that the NCAA's practice of requiring all student-athletes to sign the SAS unlawfully and deceptively coerces those athletes into forfeiting NIL rights that "they may not even realize they have." (FAC ¶ 70.) Plaintiffs further allege that the NCAA has improperly treated the SAS as conferring a "license in perpetuity for the use of [Plaintiffs'] images and likenesses . . . ." (FAC ¶ 68.) Plaintiffs also contend that the NCAA has unlawfully monopolized the collegiate athletics industry in North Carolina in violation of state antitrust laws. (FAC ¶ 194–96.)

19. On 10 June 2024, Plaintiffs initiated this lawsuit by filing a Complaint in Wake County Superior Court. (ECF No. 3.) That same day, this case was designated as a mandatory complex business case and assigned to the undersigned. (ECF Nos. 1, 2.)

20. On 26 August 2024, Plaintiffs filed the FAC, which is currently their operative pleading.

21. The FAC includes claims for unreasonable restraint of trade in violation of N.C.G.S. §§ 75-1 and 75-2; monopoly maintenance and monopoly leveraging in

violation of N.C.G.S. § 75-2.1; unfair and deceptive trade practices ("UDTP") in violation of N.C.G.S. § 75-1.1; and claims brought under North Carolina common law for misappropriation of name, image, likeness, and publicity rights; invasion of privacy; and unjust enrichment. (FAC ¶¶ 169–238.)

22. On 1 July 2024, several weeks after filing this lawsuit, several of the same attorneys representing Plaintiffs in the present action initiated the *Chalmers* litigation against the NCAA and its associated entities in the United States District Court for the Southern District of New York. (ECF No. 58.1.)

23. The substantive allegations in *Chalmers* are similar to those in the present case—namely, that the NCAA has violated antitrust laws and wrongfully failed to compensate former collegiate athletes for the use of their names, images, and likenesses over a number of decades. (*See, e.g.*, *Chalmers* Am. Compl. ¶¶ 10, 56, ECF No. 58.2.)

24. The named plaintiffs in *Chalmers* are fifteen former Division I college basketball players who attended various NCAA member universities. None of them are alumni of N.C. State or have any direct connection to the present lawsuit. (*Chalmers* Am. Compl. ¶¶ 15–30.)

25. *Chalmers* has also been brought on behalf of a putative class of former college athletes from around the country, a class which—to date—has not been certified. The Amended Complaint in *Chalmers* defines that class as follows:

> All individual persons who were NCAA student-athletes prior to June 15, 2016, whose image, likeness, or footage has been used or licensed for commercial purposes by the NCAA, the Conferences, or Veritone; or their agents, distributors, contractors, licensees, subsidiaries, affiliates,

> or partners; or anyone acting in concert with any of the foregoing entities or persons.

(*Chalmers* Am. Compl. ¶ 153.)

26. In *Chalmers*, the plaintiffs have asserted claims for unreasonable restraint of trade, group boycott, and refusal to deal under Section 1 of the Sherman Act, 15 U.S.C. § 1; monopolization under Section 2 of the Sherman Act, 15 U.S.C. § 2; and unjust enrichment under federal common law. (*Chalmers* Am. Compl. ¶¶ 172–193.)

27. To support these claims, the Amended Complaint in *Chalmers* includes a number of allegations that overlap with those contained in the FAC here, including assertions concerning the SAS signed by student-athletes, the NCAA's policies, and the NCAA's alleged monopoly over the national collegiate athletics market. (*See, e.g.*, *Chalmers* Am. Compl. ¶¶ 120–128.)

28. On 18 November 2024, the NCAA filed its Motion to Stay in the present action requesting that the Court stay all further proceedings in this matter pending the resolution of *Chalmers*. Plaintiffs oppose the Motion to Stay and contend that they should be permitted to litigate this case in this Court.

29. On 16 December 2024, the Court held a hearing on the Motion to Stay at which all parties were represented by counsel.

30. The Motion to Stay has now been fully briefed and is ripe for resolution.

ANALYSIS

31. The Court's authority to stay a pending action is set out in N.C.G.S. § 1-75.12, which states, in pertinent part, as follows:

> (a) When Stay May be Granted.—If, in any action pending in any court of this State, the judge shall find that it would work substantial injustice for the action to be tried in a court of this State, the judge on motion of any party may enter an order to stay further proceedings in the action in this State. A moving party under this subsection must stipulate his consent to suit in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of trial.

N.C.G.S. § 1-75.12(a).

32. The NCAA argues that—absent a stay—it will face the "substantial injustice" of having to litigate "nearly identical factual and legal claims in multiple forums, risking contradictory and/or inconsistent rulings, and imposing substantial practical and judicial inefficiencies." (Br. Supp. Def.'s Mot. Stay, at 5, ECF No. 49.) In response, Plaintiffs argue that the NCAA has not met its burden under N.C.G.S. § 1-75.12 and that, conversely, it is *Plaintiffs* who would suffer a "substantial injustice" if a stay were to be granted. (Mem. Opp'n Def.'s Mot. Stay, at 1, ECF No. 53.)

33. The decision to stay a matter is "within the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of that discretion." *Lawyers Mutual Liab. Ins. Co. of N.C. v. Nexsen Pruet Jacobs & Pollard*, 112 N.C. App. 353, 356 (1993) (cleaned up).

34. North Carolina courts typically consider the following factors in determining whether sufficient grounds for a stay exist under N.C.G.S. § 1-75.12:

> (1) the nature of the case, (2) the convenience of the witnesses, (3) the availability of compulsory process to produce witnesses, (4) the relative ease of access to sources of proof, (5) the applicable law, (6) the burden of litigating matters not of local concern, (7) the desirability of litigating matters of local concern in local courts, (8) convenience and access to

> another forum, (9) choice of forum by plaintiff, and (10) all other practical considerations.

Id.

35. "[I]t is not necessary that the trial court find that *all* factors positively support a stay, as long as it is able to conclude that (1) a substantial injustice would result if the trial court denied the stay, (2) the stay is warranted by those factors present, and (3) the alternative forum is convenient, reasonable, and fair." *Id.* at 357. "The ultimate question is whether the particular factors of this particular case lead to the reasoned conclusion that there exists a reasonable, convenient, and fair forum, resort to which would avoid a substantial injustice that would otherwise occur." *Paramount Rx, Inc. v. Duggan*, 2015 NCBC LEXIS 32, at **9–10 (N.C. Super. Ct. Mar. 27, 2015).

36. Plaintiffs and the NCAA each argue that the application of the *Lawyers Mutual* factors results in a finding in their favor. Therefore, the Court will now analyze those factors that are most relevant.

I. Practical Considerations and Nature of the Case

A. The Parties

37. Although the NCAA focuses on the overlap between the parties in the present case and those in *Chalmers*, the degree of overlap is merely partial rather than complete.

38. It bears emphasis that Plaintiffs are not named parties in *Chalmers*. Furthermore, although Plaintiffs could potentially become members of a class that the *Chalmers* court certifies (assuming they elect to "opt in"), no such class has—as

of the present date—been certified. Therefore, unless and until that scenario occurs, there is technically no overlap between the Plaintiffs in the present lawsuit and the plaintiffs in *Chalmers*. Indeed, this Court has previously held that

> [n]o reasonable understanding of "opposing party" would include members of an uncertified class. True, absent class members are treated as parties for some purposes *after* certification. Not so *before* certification: A nonnamed class member is not a party to the class-action litigation before the class is certified. . . . Because an uncertified class is really no class at all, its members are not truly before the presiding court. Certification is the event that, critically, renders them subject to the court's power.

Chambers v. Moses H. Cone Mem'l Hosp., 2021 NCBC LEXIS 106, at **3–4 (N.C. Super. Ct. Dec. 3, 2021) (cleaned up).

39. The NCAA highlights the fact that there is an overlap between Plaintiffs' *attorneys* in this lawsuit and the attorneys representing the named plaintiffs in *Chalmers*. However, the NCAA has failed to cite any legal authority for the proposition that a similarity in the composition of counsel between two cases is a valid legal substitute for a similarity in the actual parties.

40. As a result, this factor militates against granting a stay.

B. First-Filed Rule

41. When parallel lawsuits exist in separate jurisdictions, a number of courts have applied a "first-filed" rule whereby proceedings in the *first*-filed action are prioritized over those in the *later*-filed action. *See, e.g.*, *Wordsworth v. Warren*, 2018 NCBC LEXIS 107, at *10–11 (N.C. Super. Ct. Oct. 15, 2018) (staying later-filed North Carolina lawsuit in favor of earlier-filed Montana actions that were "based on the same misrepresentations alleged in [the North Carolina] lawsuit"); *Inhold, LLC*

v. PureShield, 2021 NCBC LEXIS 2, at *16 (N.C. Super. Ct. Jan. 8, 2021) ("[The first-filed rule], followed by many federal courts, holds that 'where two parallel suits are pending in state and federal court, the first suit should have priority.'" (quoting *VRCompliance LLC v. Homeaway, Inc.*, 715 F.3d 570, 574 (4th Cir. 2013)).

42. "[I]t is well-settled law that a court has broad discretion in applying and construing the first-filed rule[.]" *Atl. Coast Conf. v. Clemson Univ.*, 2024 NCBC LEXIS 92, at **49 (N.C. Super. Ct. July 10, 2024) (quoting *La Mack v. Obeid*, 2015 NCBC LEXIS 24, at **19 (N.C. Super. Ct. Mar. 5, 2015).

43. Courts typically decline to apply the rule when "plaintiffs file a complaint merely as a strategic maneuver to choose a favorable forum"—such as a preemptive declaratory judgment action. *La Mack*, 2015 NCBC LEXIS 24, at **17; *see also Coca-Cola Bottling Co. Consol. v. Durham Coca-Cola Bottling Co.*, 141 N.C. App. 569, 579 (2000) ("[I]n situations in which two suits involving overlapping issues are pending in separate jurisdictions, priority should not necessarily be given to a declaratory suit simply because it was filed earlier. Rather, if the plaintiff in the declaratory suit was on notice at the time of filing that the defendant was planning to file suit, a court should look beyond the filing dates to determine whether the declaratory suit is merely a strategic maneuver to achieve a preferable forum.").

44. Here, it is not entirely clear that the first-filed rule is triggered given that—as explained above—the present action and *Chalmers* are not "parallel" lawsuits in light of the dissimilarity between the two sets of plaintiffs.

45. Nevertheless, assuming *arguendo* that the first-filed rule is applicable, it would support Plaintiffs' position because the present lawsuit *is* the first-filed of the two actions. As previously discussed, the present action was filed on 10 June 2024, and *Chalmers* was filed on 1 July 2024. Moreover, there is nothing in the record suggesting that Plaintiffs have engaged in the type of strategic maneuvering that courts have relied upon in declining to follow the first-filed rule.

46. Therefore, this factor supports the denial of a stay.

II. Applicable Law

47. With regard to the law applicable to the two lawsuits, the present lawsuit is based entirely on North Carolina law. *Chalmers*, conversely, involves claims arising solely under federal law.

48. As noted above, Plaintiffs' FAC asserts, in part, claims under three state law antitrust statutes. Although it is true—as the NCAA argues—that courts addressing claims arising under North Carolina's antitrust statutes often look to federal courts' interpretations of analogous federal antitrust laws for guidance, our State's courts are not in any way bound by such federal decisions on issues of North Carolina law. *See, e.g.*, *Rose v. Vulcan Materials Co.*, 282 N.C. 643, 655 (1973) ("[T]he body of law applying the Sherman Act, although not binding upon this Court in applying G.S. 75-1, is nonetheless instructive in determining the full reach of that statute.").

49. Moreover, the FAC also contains claims under this State's common law and for UDTP.

50. The present record offers no indication that any claims under North Carolina law will be litigated in *Chalmers*.

51. Thus, this factor weighs against the issuance of a stay.

III. Plaintiffs' Choice of Forum

52. "A plaintiff's choice of forum is typically given significant weight in the Court's determination of whether denying a motion to stay would cause . . . a substantial injustice." *Wordsworth*, 2018 NCBC LEXIS 107, at *10. This is particularly true where "plaintiffs select their home forum to bring suit." *La Mack*, 2015 NCBC LEXIS 24, at **17.

53. Here, eight of the twelve Plaintiffs in this lawsuit are currently citizens of North Carolina. None are citizens of New York. (FAC ¶¶ 20–32.)

54. It is also worth noting that the NCAA—by virtue of the locations of its member institutions—is deemed to be a citizen of all fifty states. *See Estate of Mazza v. NCAA*, 2018 U.S. Dist. LEXIS 149723, at *3 (D.N.J. Sept. 4, 2018) ("For the purposes of subject matter jurisdiction, an unincorporated association is deemed a citizen of every state where its members are citizens.") (cleaned up).

55. Plaintiffs specifically chose to litigate this matter in North Carolina state court—a choice that is entitled to a high degree of deference. *See Barings LLC v. Fowler*, 2025 NCBC LEXIS 15, at *3–4 (N.C. Super. Ct. Feb. 13, 2025) ("Here, Barings's choice of forum deserves great deference. This is so because North Carolina is Barings's home forum. As this Court has stressed, the plaintiffs' choice of forum is

given great deference, especially when plaintiffs select their home forum to bring suit." (cleaned up)).

56. Moreover, as Plaintiffs note in their response brief, the granting of a stay would likely result in a significant delay in their ability to seek relief. If certification of a class is granted in *Chalmers*, the class would likely include thousands of athletes who participated in NCAA athletic programs from hundreds of different institutions prior to 15 June 2016. As a result of the ensuing complexity of the litigation, it could easily be years before *Chalmers* is fully resolved.

57. Here, conversely, this lawsuit involves a discrete group of twelve former athletes—all of whom played for a specific university during a specific year. Therefore, the litigation and ultimate resolution of this lawsuit should proceed at a considerably quicker pace.

58. Accordingly, deference to Plaintiffs' choice of forum supports the denial of a stay.

IV. Desirability of Litigating Matters of Local Concern in Local Courts

59. It cannot reasonably be denied that North Carolina has a strong interest in having this case litigated in its courts.

60. This lawsuit involves former members of a basketball team representing a North Carolina public university who contend that the NCAA unjustly enriched itself at their expense by engaging in monopolistic and tortious conduct involving the use of their names, images, and likenesses in connection with their participation in an athletic program based in this State. Moreover, all twelve Plaintiffs lived in North

Carolina during the period most relevant to this case, and a majority of them continue to reside here.

61. Additionally, as discussed earlier, all of the actions by the NCAA that Plaintiffs reference in the FAC are alleged to have violated the laws of North Carolina.

62. This factor likewise weighs against the entry of a stay.

V. Remaining *Lawyers Mutual* Factors

63. The Court has thoroughly considered the remaining *Lawyers Mutual* factors and finds that they are largely in equipoise. However, the discussion above makes clear that the nature of this litigation, the identity of the parties, the substantive law applicable to Plaintiffs' claims, deference to Plaintiffs' choice of forum, North Carolina's interest in the adjudication of this case, and the potential for prejudice to Plaintiffs if the NCAA's motion were granted all strongly support the denial of a stay on these facts.

64. In addition, the Court has carefully reviewed cases involving analogous stay motions and is satisfied that the denial of a stay here is consistent with the principles set forth therein. *See, e.g.*, *Herron v. Gold Standard Baking, Inc.*, 2023 U.S. Dist. LEXIS 221740, at *6–7 (N.D. Ill. Dec. 13, 2023) (denying motion to stay where an "individual plaintiff [sought] to litigate her own claim in federal court separate from a putative class action in state court" and noting that the individual plaintiff had "every right to pursue her BIPA claim on an individual basis"); *Halbert v. Credit Suisse AG*, 358 F. Supp. 3d 1283, 1289 (N.D. Ala. 2018) (denying request

for stay where plaintiffs were also part of a putative class in a separate class action pending in another jurisdiction that had not been certified).

65. Although the NCAA would no doubt prefer for all claims on this subject to be litigated in a single lawsuit, it has failed to show that a denial of a stay here would amount to a "substantial injustice." *See Muter v. Muter*, 203 N.C. App. 129, 134 (2010) ("The trial court was not required to decide the most convenient or ideal venue for resolving this matter but only to determine whether defendant proved that proceeding in North Carolina would work a substantial injustice on her. Here, we conclude that the trial court did not abuse its discretion in determining that it would not."); *see also Am. Motorists Ins. Co. v. Avnet, Inc.*, 98 N.C. App. 385, 388 (1990) ("There is nothing in the record to suggest that North Carolina is an inconvenient forum for the adjudication of these claims. We therefore find that the stay of AMICO's action for declaratory relief was improperly granted and that it should be reversed.").

CONCLUSION

THEREFORE, based on the exercise of its discretion, the Court concludes that the NCAA's Motion to Stay is **DENIED**.[3]

SO ORDERED, this the 25th day of March, 2025.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases

[3] The Court will schedule a hearing on the NCAA's Rule 12(b)(6) motion at a later date.