IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SPORTSCASTR INC. (d/b/a PANDA INTERACTIVE), Plaintiff, v. SPORTRADAR GROUP AG, and SPORTRADAR AG, Defendants.	Case No. 2:23-cv-00472-JRG JURY TRIAL DEMANDED LEAD CASE
SPORTSCASTR INC. (d/b/a PANDA INTERACTIVE), Plaintiff, v. GENIUS SPORTS LTD., *et al.*, Defendants.	Case No. 2:23-cv-00471-JRG JURY TRIAL DEMANDED

DEFENDANT SPORTRADAR GROUP AG AND SPORTRADAR AG'S
MOTION TO AMEND THE FIRST AMENDED DOCKET CONTROL

Defendants Sportradar Group AG and Sportradar AG (collectively, "Sportradar Defendants"), for good cause shown, hereby move the Court to amend the First Amended Docket Control Order ("DCO") (ECF 93) to provide for additional necessary time and discovery to address the newly asserted antitrust claims in Plaintiff Sportscastr, Inc.'s ("PANDA") Second Amended Complaint ("SAC") (ECF 126). The specific proposed amendments to the DCO are attached as a Proposed Order.[1]

There can be no reasonable debate that the DCO needs to be amended. By way of example, the current deadlines to substantially complete document production, exchange privilege logs, complete fact discovery—including of third parties—complete and exchange expert witness disclosures, perform expert discovery, and draft and submit dispositive motions, simply cannot be met in light of the significant new issues and claims asserted in the SAC. Indeed, Plaintiff PANDA's counsel concedes that at least some extension is necessary, especially "to expand the time available for expert discovery." Ex. A (Mar. 6, 2025 email from PANDA's lead counsel to the Sportradar Defendants' and Genius Sports Defendants' counsel). The Genius Sports Defendants, upon whom PANDA just this week served extensive new discovery demands based upon the new antitrust claims, agree that PANDA's four-week extension is unworkable given the substantial new discovery PANDA is demanding in view of the new claims. Ex. B (Mar. 7, 2025 email from Genius Sports Defendants' counsel to PANDA's and the Sportradar Defendants' counsels, attaching PANDA's Mar. 5, 2025 discovery demand letter).

[1] The Sportradar Defendants also anticipate necessary amendments to the Discovery Order, and propose a March 31, 2025 deadline for the parties to submit such amendments. Proposed Order, p. 7.

[redacted]

I. Background

For 16 months, Plaintiff litigated this action solely as a patent case. Plaintiff filed its initial Complaint in October 2023 asserting only patent claims. ECF 1. Plaintiff filed an Amended Complaint in March 2024, adding a fourth asserted patent. ECF 17. The parties engaged in dispositive motion practice (*e.g.*, ECF 40, 57), began discovery (ECF 43, 45, 94, 103), twice sought and obtained leave to amend the Docket Control Order (ECF 70, 93), and supplemented the protective order (ECF 99). On August 8, 2024, Plaintiff sought leave to amend its infringement contentions to add 117 new claims and numerous additional accused products (ECF 42), which the Court granted on September 30, 2024 (ECF 61). As a result, the DCO was amended to provide additional time necessitated by plaintiff's addition of new claims and accused products. (ECF 61, 70; *see also* ECF 93.)

Then, on February 14, 2025—the last day to amend under the DCO—Plaintiff filed a Second Amended Complaint ("SAC") adding extensive new antitrust allegations and asserting, for the first time, a tying claim under Section 1 of the Sherman Act, 15 U.S.C. § 1, and parallel claim under the Texas Free Enterprise and Antitrust Act of 1983 ("TFEAA"), Tex. Bus. & Comm. Code § 15.01.[2]

PANDA's SAC, however, reveals that Plaintiff has been aware of the facts on which it relies for its alleged antitrust claims since 2020. As the Sportradar Defendants will address in more detail in their forthcoming responsive pleading to the SAC, the SAC alleges that "PANDA entered into an agreement [redacted]

[2] For simplicity, this motion will focus solely on the federal antitrust claims, as claims under the TFEAA are treated identically to federal antitrust claims. *Apani Sw., Inc. v. Coca-Cola Enters., Inc.*, 300 F.3d 620, 628 (5th Cir. 2002) ("Each provision of the [TFEAA] is modeled after a corresponding provision of federal antitrust law. As such, Texas courts are statutorily instructed to interpret the TFEAA in harmony with federal judicial interpretations of equivalent federal laws." (citations omitted)).

[redacted]

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[redacted]" ECF 126, ¶ 85.[3] Panda alleges that "[t]his relationship, however, was terminated abruptly around the time that Sportradar obtained exclusive distribution rights for official real-time league data for the NBA and NHL. (*See, e.g.*, https://www.nba.com/news/nba-extends-u-s-betting-data-partnerships-with-sportradar-and-genius-sports-group.)." (*Id.*) The public press release PANDA cites is dated October 29, 2020. Ex. C (NBA Extends U.S. Betting Data Partnerships With Sportradar and Genius Sports Group (Oct. 29, 2020), https://www.nba.com/news/nba-extends-u-s-betting-data-partnerships-with-sportradar-and-genius-sports-group.)[4] Remarkably, Plaintiff admits that it has engaged in discovery "relevant to PANDA's new antitrust claims ... for well over a year." Ex. A (Mar. 6, 2025 email from PANDA's lead counsel). Thus, according to PANDA itself, it has known of the complained of conduct since October 2020, has been seeking discovery on the claims for "well over a year," yet chose to wait until the last possible day—in 2025—to open a second front in this litigation.

As a result of PANDA's tactics, prejudice requires the Sportradar Defendants to now seek leave to amend both the timing and scope of discovery so that they may fairly defend against PANDA's belated and untimely antitrust claims.[5]

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[3] The Sportradar Defendants reserve all rights to move to dismiss PANDA's legally invalid antitrust claims on numerous grounds, only some of which are briefly discussed in this Motion as they pertain to case scheduling and discovery issues.

[4] Courts can properly take judicial notice of "documents incorporated into the complaint by reference." *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

[5] The DCO requires that PANDA seek leave of Court to add an additional patent, which the Sportradar Defendants understand to mean that leave of court is required to assert additional causes of action (*e.g.*, an additional count of patent infringement). ECF 93, p.6. PANDA neither sought nor obtained leave to amend. The Sportradar Defendants do not concede that PANDA's amendment was proper.

[redacted]

II. Argument

Federal Rule of Civil Procedure 16(b)(4) allows a case's discovery schedule to "be modified only for good cause and with the judge's consent." *See S&W Enters., LLC v. SouthTrust Bank of Alabama, NA*, 315 F.3d 533, 536 (5th Cir. 2003). Good cause is amply shown here as the Sportradar Defendants did not know that they would be litigating antitrust claims until just three weeks ago, more than 16 months after PANDA initiated its patent suit, and 11 months after PANDA filed its First Amended Complaint. *Cf. Force Mos Tech. Co., Ltd. v. ASUSTeK Computer, Inc.*, 2025 WL 422595, at *1 (E.D. Tex. Feb. 6, 2025) (Gilstrap, C.J.) ("Defendant waited until almost the end of fact discovery to disclose its significant defense…," "[s]uch late disclosure has worked a hardship on Plaintiff and the Court.").

As explained further below, PANDA's new, dilatory claims invoke the "inevitably costly and protracted discovery phase" commonly associated with antitrust cases. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (quoting *Asahi Glass Co. v. Pentech Pharms., Inc.*, 289 F. Supp. 2d 986, 995 (N.D. Ill. 2003) (Posner, J., sitting by designation)); *see also id.* at 558-59 (collecting authorities discussing the "extensive scope of discovery in antitrust cases"). Indeed, while PANDA has yet to serve new, antitrust discovery demands on the Sportradar Defendants, the sprawling antitrust discovery demands that PANDA recently served on the Genius Sports Defendants makes clear that PANDA intends for this case to live up to that reputation. *See* Ex. B (PANDA's Mar. 5, 2025 discovery demand letter as attached to Mar. 7, 2025 email from Genius Sports Defendants' counsel to PANDA's and the Sportradar Defendants' counsel). And while the Sportradar Defendants understand and respect this Court's use of the case schedule and discovery limits to focus issues and advance cases to trial, *see R&D Business Systems v. Xerox Corp.*, 150 F.R.D. 87, 89–90 (E.D. Tex. 1993) (citing Parkinson's Law), without modifying both

the scope and timing of discovery in this case, the Sportradar Defendants will be unduly prejudiced in their ability to defend and build a record in what is suddenly an antitrust case.

A. Tying Legal Principles

Initially, PANDA's tying claims implicate multiple legal issues not present in a patent case, and thus not addressed by the Court or any party over the last 16 months, including in discovery before February 14. "A tying arrangement is one in which the seller will sell one product (referred to as the tying product) only on the condition that buyers also purchase a different product (referred to as the tied product)." ABA Model Jury Instructions in Civil Antitrust Cases 2.E.1 (2016).[6] Prevailing on a tying claim requires the plaintiff to prove eight complex elements:

(1) [Product A] and [product B] are separate and distinct products;
(2) Defendant will sell [product A] only on the condition that the buyer also purchase [product B], or that the buyer not purchase [product B] from any other supplier;
(3) Defendant has sufficient market power with respect to [product A] to enable it to restrain competition as to [product B];
(4) The alleged tying arrangement has foreclosed a substantial volume of commerce as to [product B];
(5) The alleged tying arrangement has unreasonably restrained trade in that it had a substantial adverse effect on competition as to [product B];
(6) Defendant has a financial interest as to [product B];
(7) Defendant's conduct occurred in or affected interstate [or foreign] commerce; and
(8) Plaintiff was injured in its business or property because of the tying arrangement.

[6] "The Fifth Circuit Pattern Jury Instructions does not include circuit-specific antitrust instructions, but refer courts and parties to two sources, including the ABA Antitrust Section's proposed instructions. FIFTH CIRCUIT PATTERN JURY INSTRUCTIONS (CIVIL CASES) § 6 (2020)." *Impax Labs., Inc. v. FTC*, 994 F.3d 484, 497 & n.7 (5th Cir. 2021) (relying on ABA Section of Antitrust Law's Model Jury Instructions). Those 2016 ABA Section of Antitrust Law's Model Jury Instructions are available on Westlaw as an Antitrust Secondary Source.

ABA Model Jury Instructions in Civil Antitrust Cases 2.E.4 (2016).[7] If a plaintiff proves these elements, then a defendant may offer a business justification defense. ABA Model Jury Instructions in Civil Antitrust Cases 2.E.11; *see Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 483 (1992) (discussing the "[f]actual questions … about the validity and sufficiency of each claimed justification" for a tie).

To gather the evidence needed to adequately present their defense (if the antitrust claims survive a motion to dismiss), the Sportradar Defendants will require additional months for 1) third-party discovery, 2) party discovery, and 3) expert discovery. *See Impax Labs.*, 994 F.3d at 498 (affirming antitrust factfinder decision that "relied on industry practice, economic analysis, expert testimony, and adverse credibility findings"). Each source of this necessary discovery is discussed in turn.

B. <u>Good Cause Justifies Expanding the Scope and Timing of Third-Party Discovery</u>

PANDA's new antitrust claims require extensive third-party discovery not contemplated by the existing DCO. The crux of any tying claim "is a seller's exploitation of its market power over the tying product to force buyers to purchase a tied product that buyers either did not want at all or might have preferred to purchase elsewhere." ABA Model Jury Instructions in Civil Antitrust Cases 2.E.2. The inquiry into whether buyers were "forced" to take products they did not otherwise want is essential to avoid "chill[ing] the very conduct the antitrust laws are designed to protect," *Ohio v. Am. Express Co.*, 585 U.S. 529, 546 (2018) (quotation marks omitted), because "tying arrangements … are fully consistent with a free, competitive market,"

[7] PANDA asserts tying claims under both the *per se* and rule of reason modes of analysis. ECF 126, ¶ 332. The only difference in the required elements under a *per se* analysis is the existence of a substantial adverse effect on competition. *Compare* ABA Model Jury Instructions in Civil Antitrust Cases 2.E.3 (2016) *with* ABA Model Jury Instructions in Civil Antitrust Cases 2.E.4 (2016).

Illinois Tool Works, Inc. v. Independent Ink, Inc., 547 U.S. 28, 45 (2006). PANDA must also show that more than "a single purchaser w[as] 'forced' with respect to the purchase of a tied item," because otherwise "the resultant impact on competition would not be sufficient to warrant the concern of antitrust law." *Jefferson Par. Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 16 (1984), *abrogated on other grounds by Illinois Tool Works*, 547 U.S. 28. The Sportradar Defendants—and likely PANDA and the Genius Sports Defendants—will need to take significant third-party discovery on issues such as whether a substantial number of customers, comprising a substantial volume of commerce, were forced to purchase the alleged tied product.

PANDA's antitrust claims will require substantial third-party discovery of multiple named and unnamed third parties. For example, the SAC alleges that Defendants' customers like FanDuel, DraftKings, and the National Basketball Association were all "forced" to take the tying and tied products (*see* ECF 126, ¶ 121); as well as other customers like [redacted] and [redacted] (ECF 126, ¶ 95); plus unnamed "[c]ustomers" that allegedly "told PANDA that they could not adopt PANDA's sports betting app technology products because they would lose access to official sports league data unless they used Sportradar's sports betting app technology products" (ECF 126, ¶ 25). Assuming, *arguendo,* that there are two or more "customers" that have made this claim, that is at least seven new third parties identified by PANDA that are likely sources of possible discovery.

That is not all. A central issue in tying is whether there are actually two, separate, products present in the market with independent demand for each. ABA Model Jury Instructions in Civil Antitrust Cases 2.E.5. A likely source of whether there are two separate products with sufficient demand for each is PANDA's own "sportsbook and other customers," to which Plaintiff provides its PANDA Studio product that is "used to distribute sports betting data feeds

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alongside live event streaming and commentary in a unified, interactive experience for clients." (ECF 126, ¶ 111.) Those clients, according to PANDA, include "[redacted]" (ECF 126, ¶ 111.) PANDA's claims could therefore lead to third-party discovery from at least eleven known entities, none of which were previously involved in case.

These same third parties likely have information relevant to a host of other issues regarding PANDA's new claims, such as defining the relevant market. In determining the relevant market for PANDA's antitrust claims, "the reality of the marketplace must serve as the lodestar." *Alcatel USA, Inc. v. DGI Techs., Inc.*, 166 F.3d 772, 781 (5th Cir. 1999) (quotation marks omitted); *see also Am. Express Co.*, 585 U.S. at 543 ("Without a definition of the market there is no way to measure the defendant's ability to lessen or destroy competition." (cleaned up)). That understanding requires careful discovery into "'industry or public recognition of the [market] as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.'" *Illumina, Inc. v. FTC*, 88 F.4th 1036, 1049 (5th Cir. 2023) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962)). Simply put, in order to litigate the required "reality of the marketplace," evidence from third parties in these newly alleged relevant markets is essential.

The Sportradar Defendants' proposed amendments to the DCO efficiently address this required new discovery. Specifically, given the need to reduce the burdens on third-parties—who are strangers to PANDA's new antitrust case—the proposed amendments allow for an additional 6 months of time for discovery, including an earlier deadline for third-party discovery, to give third-parties time to produce documents and personnel for depositions. PANDA's

proposed extension of four weeks, by contrast, makes no provision at all for third party discovery. And because these issues were not addressed when the Court set deadlines in what was solely a patent case, there is good cause to amend the DCO to account for PANDA's new antitrust claims.

C. Good Cause Justifies Expanding the Scope and Timing of Party Discovery

Beyond the necessary third-party discovery, PANDA's decision to wait 16 months before springing untimely antitrust claims requires substantial additional party discovery not previously contemplated by the Court or the Sportradar Defendants. For example, the parties must now litigate the issue of PANDA's alleged antitrust injury. Though its SAC is silent on this score, PANDA's claims are brought pursuant to 15 U.S.C. § 15(a) of the Clayton Act, which confers a right of action only to those "injured in [its] business or property by reason of anything forbidden in the antitrust laws," including Section 1 of the Sherman Act. *See also* ABA Model Jury Instructions in Civil Antitrust Cases 2.E.4 (requiring plaintiff to prove that it was "injured in its business or property because of the tying arrangement"). This statutory language imposes an additional element, called antitrust standing, which PANDA must prove to recover. Antitrust standing is a particular type of harm distinct from any patent analysis. *See Pulse Network, LLC v. Visa, Inc.*, 30 F.4th 480, 488 (5th Cir. 2022) ("The Supreme Court has read this language [in 15 U.S.C. § 15(a)] to impose on antitrust plaintiffs threshold requirements that go beyond Article III standing."). Specifically, PANDA must prove: "1) injury-in-fact, an injury to the plaintiff proximately caused by the defendants' conduct; 2) antitrust injury; and 3) proper plaintiff status, which assures that other parties are not better situated to bring suit." *Id.* (quotation marks omitted). That second requirement, antitrust injury, "precludes recovery for losses resulting from competition, even though such competition was actually caused by conduct violating the

antitrust laws," which requires a factfinder to "isolate which aspect of the defendant's allegedly illegal conduct adversely affected the plaintiff." *Id.* (quotation mark omitted).

Assessing PANDA's alleged antitrust injury will require discovery into both the cause and the quantum of PANDA's alleged harms. For example, the parties will need to establish whether PANDA lost business due to the alleged unlawful conduct or to PANDA's unproven track record, low scale, higher costs, unwillingness to meet a customer's requested price, or any other form of competition on the merits. Harms that result from the normal working of the competitive process are irrelevant as a matter of law to establishing antitrust injury. *See Pulse Network*, 30 F.4th at 488 ("Antitrust injury fleshes out the basic idea that '[t]he antitrust laws were enacted for the protection of *competition*, not *competitors*.'" (quoting *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 338 (1990))). The parties will also need to take discovery into PANDA's sales practices, its cost structure, negotiation history, and ability to offer the same or superior services as the Sportradar Defendants. Without this discovery, not only will the Sportradar Defendants be prejudiced through being unable to build a record, but it will also risk the "mistaken condemnation of legitimate business arrangements" that would "chill the very procompetitive conduct the antitrust laws are designed to protect." *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 99 (2021) (cleaned up).

The Sportradar Defendants will also need time to gather evidence that any purported tying conduct, if proven, was pro-competitive on multiple grounds. *See* ABA Model Jury Instructions in Civil Antitrust Cases 2.E.11. Here, the Sportradar Defendants expect discovery to show that the contractual provisions at issue were designed to protect its customers' data integrity, allow for ease of use, and reduce its customers' costs. And while PANDA likely disagrees with these justifications, it will need to take its own discovery to build its record.

To the extent practicable, the Sportradar Defendants' proposed amendments to the DCO minimizes the "protracted discovery," *Twombly*, 550 U.S. at 558, that PANDA has foisted on the Sportradar Defendants and the Court in the middle of this patent case. In particular, the proposed amendments allow the parties 6 more months to take this extensive discovery, which is fast under any circumstance, let alone in the context of a complex antitrust case. PANDA's suggestion that these issues have been "at the center of PANDA's patent claims for well over a year" (Ex. A (Mar. 6, 2025 email from PANDA's lead counsel)), may well be true for PANDA (conceding that it failed to disclose its intent to assert the new antitrust claims and amend its Complaint), but it is not for the Sportradar Defendants, who spent the last 16 months litigating this case solely as a patent case. Because none of these issues were relevant to PANDA's patent claims, and the Sportradar Defendants have not had any time to seek discovery on and defend against the new claims, they have not been addressed by the Sportradar Defendants. There is thus overwhelming good cause to amend the DCO.

D. Good Cause Justifies Expanding the Scope and Timing of Expert Discovery

Finally, in addition to additional fact discovery, PANDA's antitrust claims will also require extensive additional expert discovery. As noted, PANDA's claims require an examination of the relevant market. *See Am. Express Co.*, 585 U.S. at 543. A relevant market in antitrust cases is defined by "reference to the rule of reasonable interchangeability and cross-elasticity of demand" that "encompass[es] all interchangeable substitute products." *Apani Sw.*, 300 F.3d at 628. This analysis must be done "on a case-by-case basis" that "includes a close examination of the economic reality of the market at issue." *Schlotzsky's, Ltd. v. Sterling Purchasing & Nat'l Distrib. Co.*, 520 F.3d 393, 408 (5th Cir. 2008) (quotation marks omitted). In particular, PANDA must prove both "the relevant product and geographic markets" for each of the relevant markets it asserts were harmed. *Apani Sw.*, 300 F.3d at 626. "[E]conomic

analysis" and "expert testimony" are two common ways for parties to define a relevant market. *See Impax Labs.*, 994 F.3d at 398.

Setting aside for the moment its numerous fatal flaws, PANDA's SAC alleges at least five new relevant markets in this case. Specifically, PANDA alleges three Tying Markets, one Alternative Tying Market, and one Tied Market. (ECF 126, ¶¶ 101-02, 123.) The parties will have to litigate the product and geographic boundaries on each. On the product market inquiry, expert discovery is essential, whether through a quantitative, cross-elasticity of demand analysis (*see Apani Sw.*, 300 F.3d at 628), or a qualitative *Brown Shoe* analysis (*see Illumina*, 88 F.4th at 1049), or both. Moreover, as noted above, PANDA's tying claims require it to demonstrate that there are two separate product markets, which entails an inquiry into whether "there is a sufficient demand for the purchase of [the tied product] separate from [the tying product]." *Jefferson Parish Hosp. Dist.*, 466 U.S. at 21-22. Opining on whether this demand exists in sufficient forms to qualify as a separate product is a standard topic of antitrust expert opinion on both economic and industry practice issues.

Expert discovery will also be critical on the geographic element of PANDA's relevant markets. Although PANDA assumes that state laws "do not affect the operation of the parties' sports betting products" (ECF 126, ¶ 114), in reality "determinants that affect the behavior of market participants may also be considered such as regulatory constraints impeding the free flow of competing goods into the area." *Apani Sw.*, 300 F.3d at 626. For example, some states do not allow online betting, while other states license betting operators and regulate what events may be bet on. *See, e.g.*, Vixio, U.S. Sports Leagues Remain High on Official Data Value as Pushback Begins (Mar. 23, 2023), https://www.vixio.com/insights/gc-us-sports-leagues-remain-high-official-data-value-pushback-begins. And PANDA's alternative assumption that the Sportradar

Defendants have market power in "the fifty [sic] individual U.S. states and territories" (ECF 126, ¶ 115) will require expert analysis on how the relevant market should be defined in the numerous states and territories that have not legalized online sports betting.

Outside of relevant market issues, expert testimony will be required on numerous other substantive antitrust elements. For example, PANDA must show that the Sportradar Defendants' conduct "foreclosed a substantial volume of commerce" as to the tying product. ABA Model Jury Instructions in Civil Antitrust Cases 2.E.3. Determining those purportedly foreclosed volumes and their relationship to the overall volume of commerce is another traditional focus of antitrust expert discovery.

The Sportradar Defendants' proposed amendments to the DCO allow for additional time for the parties to take necessary fact and substantial new expert discovery. In particular, the proposed amendments adjust the deadlines to give the parties 6 additional weeks from the close of fact discovery to take expert discovery, including additional time to file initial expert disclosures, rebuttal expert disclosures, and have experts sit for their depositions. They also adjust the deadlines for filing motions *in limine*.

Even counsel for PANDA agrees that there should be at least some extension of time for expert discovery. Ex. A (Mar. 6, 2025 email from PANDA's lead counsel). The Sportradar Defendants attempted to fashion an amended DCO within a total of six additional months, however, in several instances that would unavoidably result in important deadlines falling during or on holidays when experts and witnesses will not be available. Accordingly, the attached proposed Amended DCO seeks a fair and equitable balance to reduce the prejudice Defendants will incur. And because none of this discovery was necessary or even contemplated by the Sportradar Defendants before February 14, good cause is shown to amend and allow adequate

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time for expert discovery.

III. Proportional Extensions of Patent-Related Deadlines are Also Appropriate

PANDA makes clear that its case is now based upon allegations that the Defendants are purportedly "illegally using [PANDA's] own patented technology against [it] by packaging it with their platform, tying it to their exclusive data, and effectively shutting the door to fair competition." Ex. D (Mar. 3, 2025 PANDA public statement on its SAC). PANDA's allegations intentionally intertwine the new antitrust allegations with its patent contentions. As such, the deadlines in the DCO relating to the patent allegations must also be extended to allow Defendants to fairly address and defend against both the antitrust and patent allegations.

Moreover, the DCO deadlines should be extended to conform to the amended schedule and the Court's Model Order Focusing Patent Claims and Prior Art to Reduce Costs, which will benefit the Court and the parties by narrowing the number of Asserted Claims from 124 claims (every claim of every Asserted Patent) to 32 claims (Model Order, ¶ 2). To that end, the Sportradar Defendants have agreed to a modified version of the Model Order to facilitate the necessary narrowing, however, that modified version would result in the narrowing of Asserted Claims on the same date as PANDA's reply claim construction brief – resulting in the Court receiving briefing on claim terms that are not actually in dispute. The proposed extensions of the claim construction deadlines will also serve to narrow the Asserted Claims under the Model Order's schedule—and, accordingly, the disputed claim terms for construction—prior to claim construction briefing, to the benefit of the Court and the Parties. And, doing so will not prejudice any of the parties.

The Court should proportionally adjust the DCO's patent-specific deadlines to align with the overall case schedule to avoid prejudice to the Defendants and to provide for the orderly litigation of this case.

IV. Conclusion

For the foregoing reasons, the Sportradar Defendants respectfully request that the Court grant this Motion and amend the First Amended Docket Control Order.

Date: March 7, 2025

Respectfully Submitted,

By: */s/ Michael C. Smith*

David A. Roodman, #38109MO
daroodman@bclplaw.com
Nick E. Williamson, #56925MO
nick.williamson@bclplaw.com
George G. Brell #69850MO
george.brell@bclplaw.com
BRYAN CAVE LEIGHTON PAISNER LLP
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone (314) 259-2000

George Patrick Watson (*pro hac vice*)
patrick.watson@bclplaw.com
Lindsay Sklar Johnson (*pro hac vice*)
lindsay.johnson@bclplaw.com
BRYAN CAVE LEIGHTON PAISNER LLP
One Atlantic Center, 14th Floor
1201 W. Peachtree St., N.W.
Atlanta, GA 30309-3471
Telephone (404) 572-6600

David B. Schwartz (*pro hac vice*)
david.schwartz@bclplaw.com
BRYAN CAVE LEIGHTON PAISNER LLP
1155 F Street NW, Suite 700
Washington, DC 20004-1357
Telephone (202) 508-6000

Michael C. Smith
State Bar No. 18650410
Michael.Smith@solidcounsel.com
SCHEEF & STONE
113 East Austin Street

[redacted]

Marshall, TX 75670
Telephone (903) 938-8900

ATTORNEYS FOR DEFENDANTS SPORTRADAR GROUP AG AND SPORTRADAR AG

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via electronic mail this 7th day of March 2025. Any other counsel of record in the case will be served by first class mail.

/s/ Michael C. Smith

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for the Sportradar Defendants, the Genius Sports Defendants, and PANDA have complied with the meet and confer requirement in Local Rule CV-7(h). The required personal conference occurred on March 4, 2025 between Nick Williamson and Michael Smith (counsel for the Sportradar Defendants, via videoconference), James Lomeo (counsel for the Genius Sports Defendants, via telephone), and Matthew Wood (counsel for the Plaintiff PANDA, via telephone). The parties engaged in additional communications via email following that meet and confer. Plaintiff PANDA agrees that the DCO should be amended, but no agreement could be reached because Plaintiff PANDA maintains that a shorter extension is appropriate. The Genius Sports Defendants take no position with respect to the Sportradar Defendants' proposed amended DCO, but note that PANDA's proposed four-week extension is unworkable given the substantial new discovery it is demanding in view of the new claims. Discussions have conclusively ended in an impasse, leaving an open issue for the court to resolve.

/s/ Michael C. Smith

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CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify under Local Rule CV-5(a)(7)(B) that the foregoing Motion is authorized to be filed under seal pursuant to Paragraph 16 of the Protective Order (ECF 94) because it contains Designated Material as defined in the Protective Order, namely, so-designated information from Paragraphs 85, 95, and 111 of Plaintiff PANDA's Second Amended Complaint (ECF 126).

/s/ Michael C. Smith