STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
MECKLENBURG COUNTY	25CV045874-590
MITCHELL MAYES, Plaintiff, v. NATIONAL COLLEGIATE ATHLETICS ASSOCIATION, Defendant.	**ORDER ON PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**

1. This matter is before the Court on the motion of plaintiff Mitchell Mayes for a temporary restraining order, which he filed on 2 September 2025. (ECF No. 4).[1]

2. Mayes, a college football player, has exhausted his athletic eligibility under the NCAA's eligibility Bylaws but wishes to continue playing college football. Accordingly, with the motion before the Court, Mayes seeks a temporary restraining order that would enjoin the NCAA "from enforcing Division I Bylaw 12.8," (ECF No. 4 at 1), which generally limits student-athletes to four seasons of participation in college athletics to be completed over a five-year period (the "**Five-Year Rule**"). (Compl. ¶ 13).

[1] While the motion is styled as a "Motion for Temporary Restraining Order and Motion for Preliminary Injunction," this Order addresses only the motion for a temporary restraining order. As the Court instructed counsel, the parties are to promptly notify the Court if either party seeks to further brief or be heard concerning the motion for a preliminary injunction.

3. Mayes filed a verified complaint in Mecklenburg County Superior Court on 2 September 2025, asserting causes of action against the NCAA for alleged antitrust violations of Chapter 75 of the North Carolina General Statutes, unfair or deceptive practices under Chapter 75, breach of contract, negligence, and promissory estoppel. (*See generally* Compl., ECF No. 3). Mayes sought designation as a mandatory complex business case the same day, (ECF No. 6), and the case was promptly designated and assigned to the undersigned Business Court Judge on 3 September 2025. (ECF Nos. 1, 2).

4. Along with his verified complaint, Mayes filed the present motion for temporary restraining order, (ECF No. 4), and a supporting brief, (ECF No. 5), which were accompanied by the affidavits of Dr. B. David Ridpath, Mitchell Mayes, Timothy Albin, and Katherine Renaut, (ECF Nos. 5.2, 5.10, 5.14, 5.16), and the declarations of Robbie Caldwell and Joel G. Maxcy, (ECF Nos. 5.11, 5.20).

5. The matter came before the Court for a hearing on 5 September 2025, with the parties represented by their counsel of record. At the conclusion of the hearing, having considered all appropriate matters of record, the Court determined in its discretion that the motion for a temporary restraining order should be **DENIED** and announced the ruling from the bench in open court.

6. This Order documents the Court's oral ruling. The Court writes this Order primarily for the parties and their counsel, presuming their familiarity with the facts and arguments. As the Court has previously—and very recently—addressed the applicable NCAA Bylaws and several of the claims at issue in this case in

considerable detail in similar cases with which the parties are familiar,[2] the Court only briefly summarizes the dispute and its reasoning.[3]

7. In short, Mayes contends that Rule 12.8 of the Division I NCAA Bylaws—the Five-Year Rule—is both an unreasonable restraint on trade and an unfair or deceptive practice under Chapter 75 of the North Carolina General Statutes. (ECF No. 4 at 1–2; *see also* ECF No. 5 at 17–24). In support, he asserts that there is a relevant labor market for "student-athlete services in NCAA Division I men's football;" that the Five-Year Rule has a "substantial anticompetitive effect" because the "NCAA has sole ability to dictate rules and regulate participation [i]n Division I football" and to thereby restrict student-athletes' eligibility, constrain the labor market, and limit student-athletes' earning power, all without a procompetitive rationale; and that, even so, less-restrictive means would achieve any potential procompetitive rationale for the Five-Year Rule. (ECF No. 5 at 18–22).

8. As to Mayes individually, Mayes acknowledges that he participated in a fifth game during the 2021–2022 football season and that the season therefore counted as a season of competition for purposes of the Five-Year Rule. He contends, however, that his participation in the fifth game was his coach's error; that Mayes had no control over his participation in the game; that the situation is an extenuating circumstance warranting a waiver under the NCAA's Bylaws; that the NCAA has granted other individuals such waivers previously; and that the NCAA's denial of

[2] *E.g.*, *Smith v. NCAA*, 2025 NCBC LEXIS 46 (N.C. Super. Ct. Apr. 25, 2025); *Jones v. NCAA*, 2025 NCBC LEXIS 47 (N.C. Super. Ct. Apr. 25, 2025).
[3] *See* N.C. R. Civ. P. 52(a)(2).

the requested waiver for Mayes is a breach of a contract between the NCAA and its member institutions (of which Mayes contends he is a third-party beneficiary) or otherwise a breach of a purported duty from the NCAA to Mayes.[4] (ECF No. 5 at 23–27; *see also* ECF No. 4 at 2 (asserting that "the Five-Year Rule as applied to Mayes is arbitrary and capricious, and constitutes a breach [of the] implied covenant of good faith and fair dealing, breach of contract, and amounts to negligence")).

9. Without the ability to continue playing college football, Mayes claims he will be irreparably harmed—primarily due to his decreased opportunity to play and improve his skills, as well as lost compensation and publicity. (Compl. ¶ 77).

10. The NCAA, on the other hand, argues that Mayes unduly delayed in seeking injunctive relief, cannot establish irreparable harm, has failed to show a likelihood of success on the merits, and otherwise is not entitled to injunctive relief based on a balancing of the equities. (*See generally* ECF No. 12). Among other things, the NCAA notes that Mayes has known of the NCAA's Bylaws and his failed redshirt attempt since at least 2021, and Mayes has known of the need for an eligibility waiver for additional participation years since then. (ECF No. 12 at 6–12). Yet Mayes sought emergency relief only in September 2025, months after the NCAA initially denied his waiver and after the 2025–2026 football season started.

11. The purpose of immediate injunctive relief "is ordinarily to preserve the *status quo* . . . [and i]ts issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *A.E.P. Indus., Inc. v.*

[4] Plaintiff's counsel was unable to articulate the scope of, or any legal basis for, this purported duty during the hearing.

McClure, 308 N.C. 393, 400 (1983) (quoting *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357 (1980)). To prevail on a request for injunctive relief, the movant must demonstrate a reasonable likelihood of success on the merits and a likelihood of irreparable loss or irreparable injury in the absence of an injunction. *Id.* at 401.

12. An "irreparable injury" is not necessarily "beyond the possibility of repair or possible compensation in damages, but . . . is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *Barrier v. Troutman*, 231 N.C. 47, 50 (1949).

13. A movant's delay in seeking injunctive relief may heavily influence a court's determination as to whether irreparable harm is reasonably likely. *See generally Smith*, 2025 NCBC LEXIS 46; *Jones*, 2025 NCBC LEXIS 47; *see also, e.g.*, *Glob. Textile All., Inc. v. TDI Worldwide, LLC*, 2017 NCBC LEXIS 108, at *11 (N.C. Super. Ct. Nov. 21, 2017) ("One significant measure of . . . immediate and irreparable harm is the haste with which the moving party seeks injunctive relief." (citations omitted)); *see also N. Iredell Neighbors for Rural Life v. Iredell Cnty.*, 196 N.C. App. 68, 79 (2009) (affirming denial of injunction pending appeal where "some two months" passed "without any contention by plaintiffs of an urgent threat of irreparable harm"); *W&W Partners, Inc. v. Ferrell Land Co.*, 2018 NCBC LEXIS 210, at *12 (N.C. Super. Ct. Mar. 8, 2018) (denying injunction after plaintiffs waited eight months after learning of underlying dispute before filing suit); *Am. Air Filter Co. v. Price*,

2017 NCBC LEXIS 9, at *13–15 (N.C. Super. Ct. Feb. 3, 2017) (denying preliminary injunction after four-month delay).

14. Here, Mayes has failed to meet his burden to warrant the issuance of a temporary restraining order.

15. Mayes had ample opportunity to sue the NCAA and to seek injunctive relief in the months and years leading up to this suit, yet he undisputedly did not do so. Mayes did not sue or seek injunctive relief in July 2024, despite knowing that an NCAA eligibility waiver was necessary for him to keep playing after the 2024–2025 season. (Compl. ¶¶ 45–49). After the NCAA initially denied an eligibility waiver for Mayes on 19 February 2025, Mayes did not promptly seek court intervention, nor did he do so when the NCAA denied an appeal of that decision in April 2025. (Compl. ¶¶ 49–63). Months passed after those denials, with football season imminently approaching, yet Mayes declined to seek court intervention. (Compl. ¶¶ 52–67).

16. Most vexingly, while Mayes contends that the irreparable harm in this case is primarily his inability to play college football, Mayes willingly exacerbated this purported harm. As his counsel conceded during the hearing, Mayes intentionally delayed filing this action until after his team's first game of the season while his counsel sought to obtain additional putative expert evidence. Though counsel argued that the first game (against Appalachian State University) was less important than the second game (against the University of North Carolina at Chapel Hill) based on the potential television and market exposure differences between the games, counsel was unable to meaningfully reconcile the argument that missing games is

irreparably harmful with Mayes's decision to delay filing suit, knowing that he would therefore miss at least the first game of the season. (*See* ECF No. 5.3 (Team Schedule)).

17. Ultimately, as in similar NCAA eligibility cases, Mayes has failed to demonstrate a likelihood of irreparable harm and has instead exacerbated the purported harm by his own delay. *E.g.*, *Smith*, 2025 NCBC LEXIS 46, at *31–32 (denying injunctive relief); *Jones*, 2025 NCBC LEXIS 47, at *29–30 (same); *see Arbolida v. NCAA*, 2025 U.S. Dist. LEXIS 31283, at 2–3 (D. Kan. Feb. 21, 2025) (denying injunctive relief when plaintiff's alleged injury was "due in part to [p]laintiff's own actions in waiting to file the present suit" until "the day of his team's first game"); *Ciulla-Hall v. NCAA*, 2025 U.S. Dist. LEXIS 22368, at 8–9 (D. Mass. Feb. 7, 2025) (denying motion where "emergency circumstances . . . appear[ed] at least in part attributable to [the plaintiff's] delay in seeking injunctive relief. . . .").

18. Mayes's failure to demonstrate a likelihood of irreparable harm is a sufficient independent basis on which to deny Mayes's motion for a temporary restraining order.

19. Even moving on to consider Mayes's likelihood of success on the merits, however, the Court determines that Mayes:

a. has failed to state a claim for promissory estoppel and thus has no likelihood of success on that basis, *Fifth Ave. United Methodist Church of Wilmington v. N.C. Conf., Se. Jurisdiction, of United Methodist Church, Inc.*, 297 N.C. App. 246, 267 (2024) ("[P]romissory estoppel has

not been officially recognized as an affirmative cause of action under North Carolina law.");

b. has failed to demonstrate a likelihood of success on the merits of either the third-party-beneficiary breach of contract or the negligence causes of action, *Metric Constructors, Inc. v. Indus. Risk Insurers*, 102 N.C. App. 59, 63 (1991) ("A plaintiff bringing suit on a third-party beneficiary theory states enough to give the substantive elements of the claim when the allegations in his complaint 'show: '(1) the existence of a contract between two other persons; (2) that the contract was valid and enforceable; and (3) that the contract was entered into for his direct, and not incidental, benefit.'" (citations omitted)); *Babb v. Bynum & Murphrey, PLLC*, 182 N.C. App. 750, 752 (2007) ("'The essential elements of any negligence claim are the existence of a legal duty or standard of care owed to the plaintiff by the defendant, breach of that duty, and a causal relationship between the breach of duty and certain actual injury or loss sustained by the plaintiff.'" (citation omitted)); and

c. has shown merely a possibility, rather than a reasonable likelihood, of success on the merits for alleged antitrust violations and unfair or deceptive practices under Chapter 75, *SciGrip, Inc. v. Osae*, 373 N.C. 409, 426 (2020) ("'In order to establish a prima facie claim for unfair trade practices, a plaintiff must show: (1) defendant committed an unfair or deceptive act or practice, (2) the action in question was in or

affecting commerce, and (3) the act proximately caused injury to the plaintiff.'" (citations omitted)); *Smith*, 2025 NCBC LEXIS 46, at *25–26 ("'To establish a claim for restraint of trade under North Carolina law, a party must plead '(1) a contract, combination, or conspiracy; (2) that imposed an unreasonable restraint of trade.'" (citation omitted)).

20. Beyond the failure to demonstrate a likelihood of irreparable harm, Mayes's failure to demonstrate a reasonable likelihood of success on the merits of at least one of his claims is a further independent basis on which to deny his motion.

21. Thus, considering all appropriate matters of record and having balanced the equities and potential harms as between the parties, the Court determines that Mayes has failed to meet his burden to warrant the issuance of a temporary restraining order and that the motion should be denied.

22. Accordingly, in the exercise of its discretion, the Court **DENIES** Mayes's motion for a temporary restraining order.

SO ORDERED, the 11th day of September 2025.

/s/ Matthew T. Houston

Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases