IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JETT ELAD, **Plaintiff,** **v.** **NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,** **Defendant.**	**Case No. 3:25-cv-01981** **Show Cause Hearing: April 3, 2025**

RESPONSE IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Plaintiff seeks relief that is personal to him but the ramifications of the relief he has requested are broad. For decades, the member conferences and schools participating in each of the NCAA's three divisions have developed and maintained eligibility rules that determine the student athletes who can compete in collegiate athletics and the number of years they can compete. These eligibility rules have consistently been upheld by the courts, and for good reason. They ensure that collegiate sports are played by student-athletes, advance the educational mission of the member schools, and ensure that new generations of students can benefit from unique and life-changing opportunities each year.

Plaintiff Jett Elad ("Plaintiff") seeks to invalidate aspects of Division I eligibility bylaws that limit the number of seasons a student-athlete may play intercollegiate sports.[1] More specifically, he requests that the Court grant mandatory injunctive relief that would supersede the Challenged Rules—which provide student-athletes like Plaintiff five years to complete four seasons as a player—to prevent his year of junior college ("JUCO") competition from counting as a season of intercollegiate competition, thereby granting him an additional year.

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[1] The pertinent Bylaws are 12.8, which provides Division I athletes five years to complete four seasons of "intercollegiate competition" in their chosen sports (the "Five-Year Rule"), and 12.02.6, which counts JUCO competition for purposes of the Five-Year Rule (collectively the "Challenged Rules"). (*See* Declaration of Jerry Vaughn ("Vaughn Decl.") ¶¶ 17–21, attached as **Exhibit 1**).

In essence, Plaintiff asks the Court to provide him relief from two aspects of the Challenged Rules and grant him six years to play five seasons of intercollegiate football—despite other athletes being limited to five years to play four seasons.

Plaintiff began his collegiate football career in 2019 at Ohio University. Plaintiff redshirted during the 2019 football season. Plaintiff's 2020 football season, also at Ohio University, was cut short as a result of the COVID-19 pandemic and ultimately did not count against his seasons (four) or years (five) of NCAA eligibility. Plaintiff played for Ohio University during the 2021 football season—his first of four seasons of competition in his second of five years. In the Fall of 2022, Plaintiff transferred to Garden City Community College and played football, completing his second season of competition in his third year of eligibility. Plaintiff then transferred to the University of Nevada at Las Vegas ("UNLV") and played football during the 2023 and 2024 football seasons, completing his third and fourth seasons of intercollegiate competition during his fourth and fifth years of eligibility. At the conclusion of the 2024 college football season, Plaintiff had exhausted both his maximum number of seasons in which he could participate and the number of years in which he had to complete them.

Despite his extended collegiate athletic career, Plaintiff now asks the Court to award him a sixth year of eligibility to play one more season (his fifth as an intercollegiate football player) at Rutgers University ("Rutgers") for the stated goal

of earning money from his name, image, and likeness (NIL). For several independent reasons, the Court should decline his request for the "extraordinary remedy" of a mandatory temporary restraining order and preliminary injunction that would change the status quo across NCAA Division I collegiate athletics.

First, Plaintiff cannot make a clear showing that he is likely to prevail on the merits of any of his asserted claims. With respect to his Sherman Act claim, Plaintiff cannot demonstrate that the Challenged Rules are subject to the Sherman Act, as Plaintiff ignores binding precedent from the Third Circuit holding that eligibility rules—like the Challenged Rules—are not commercial in nature and are accordingly not subject to Sherman Act scrutiny.

Even if the Challenged Rules were commercial, Plaintiff's "evidence" is insufficient. His perfunctory verified complaint is devoid of any economic evidence or analysis. Moreover, he cannot prevail on his breach of contract claim because—even if the NCAA Constitution were a contract that afforded him rights as a third-party beneficiary—there has been no breach. Similarly, he cannot prevail on his good faith and fair dealing claim because declining to except Plaintiff from the operation of NCAA Bylaws does not demonstrate improper purpose or ill motive.

Second, Plaintiff cannot establish that he would face irreparable harm if this case were litigated fully on the merits. As an initial matter, Plaintiff's delay in

seeking injunctive relief weighs against a finding of irreparable harm. Although Plaintiff has known of the expiration of his eligibility since the conclusion of the 2024 season and he has been enrolled at Rutgers for months, he did not file suit until shortly before Spring Practice for the 2025-26 season. He cannot create the emergency that serves as the basis for his requested relief. Moreover, Plaintiff cannot establish irreparable harm because the injuries he claims are fully redressable with money damages, or are too speculative to support issuance of an injunction.

Third, the balance of equities and public interest counsel against injunctive relief. An injunction would disrupt the collegiate experiences and opportunities for tens of thousands of prospective and current student-athletes.

For all of these reasons, Plaintiff's motion should be denied.[2]

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[2] In the past two months, four courts have refused to grant preliminary relief to former student-athletes who, like Plaintiff, had exhausted their eligibility under NCAA rules but sought to play additional seasons because of the promise of potential NIL compensation. *See Osuna Sanchez v. NCAA*, No. 3:25-cv-0062, 2025 U.S. Dist. LEXIS 37500 (E.D. Tenn. Mar. 3, 2025) (denying motion for preliminary injunction); *Goldstein v. NCAA*, No. 3:25-cv-00027, 2025 U.S. Dist. LEXIS 36025 (M.D. Ga. Feb. 28, 2025) (denying motion for preliminary injunction); *Arbolida v. NCAA*, No. 2:25-cv-02079, 2025 U.S. Dist. LEXIS 31283 (D. Kan. Feb. 21, 2025) (denying motion for temporary restraining order and voluntarily dismiss by plaintiff therafter); *Ciulla-Hall v. NCAA*, No. 25-cv-10271, 2025 U.S. Dist. LEXIS 22368 (D. Mass. Feb. 7, 2025) (denying motion for temporary restraining order). The Court should follow the lead of these courts and deny Plaintiff's requested relief.

LEGAL STANDARD

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (emphasis in original) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948, pp. 129–130 (2d ed. 1995)); *accord Figueroa v. Precision Surgical, Inc.*, 423 F. App'x 205, 208 (3d Cir. 2011). In determining whether to issue a preliminary injunction under Federal Rule of Civil Procedure 65, courts consider: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff would suffer irreparable harm absent the injunction; (3) whether granting the injunction would cause substantial harm to others; and (4) the impact of the injunction on the public interest. *Boynes v. Limetree Bay Ventures LLC*, 110 F.4th 604, 609 (3d Cir. 2024). The first two factors are most critical; district courts are to balance the four factors "so long as the party seeking the injunction meets the threshold on the first two." *Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017).

Importantly, Plaintiff does not seek to maintain the status quo; he instead asks the Court to alter the status quo and grant him a special exception from the NCAA Bylaws. "A party seeking a mandatory preliminary injunction that will alter the status quo bears a particularly heavy burden in demonstrating its necessity." *Acierno*

v. New Castle Cnty., 40 F.3d 645, 653 (3d Cir. 1994); *see also Schrier v. Univ. of Co.*, 427 F.3d 1253, 1259 (10th Cir. 2005). To meet this heavy burden, a plaintiff "must establish entitlement to relief by clear evidence." *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 526 (3d Cir. 2018).

ARGUMENT

I. Plaintiff Cannot Meet His Burden to Demonstrate a Likelihood of Success on the Merits.

A. The Challenged Rules Are Not Subject to the Sherman Act.

Plaintiff cannot meet his threshold burden to demonstrate that the Challenged Rules are subject to the Sherman Act, as Plaintiff ignores binding precedent from the Third Circuit holding that eligibility rules—like the Challenged Rules—are not commercial in nature. Plaintiff does not address whether the Challenged Rules are commercial. Instead, he asks the Court to blindly adopt the recent and erroneous *Pavia* decision from the Middle District of Tennessee and employ the "rule of reason" analysis without first establishing that the Act even applies to the Challenged Rules. (Mem., ECF No. 1-3, at 19). This omission is fatal to his Sherman Act claim.

Even were the Challenged Rules subject to Sherman Act review, Plaintiff has failed to meet his burden to put forth evidence of the Challenged Rules' alleged anticompetitive harms. He has similarly failed to establish that the procompetitive benefits of the Challenged Rules could be achieved through substantially less restrictive means. Instead, Plaintiff relies upon *Pavia* and asks this Court to adopt it

wholesale. Even if *Pavia*'s facts were indistinguishable from those at issue, Plaintiff must offer ***evidence*** that supports his request for relief, and he has not done so.

1. The NCAA's Eligibility Rules Are Not Commercial in Nature.

In order to prevail on his Sherman Act claim, Plaintiff must demonstrate that the Challenged Rules are subject to § 1 of the Sherman Act. "Section one, by its terms, does not apply to all conspiracies, but only to those which restrain 'trade or commerce.'" *United States v. Brown Univ.*, 5 F.3d 658, 665 (3d Cir. 1993) (quoting 15 U.S.C. § 1). Therefore, "[i]t is axiomatic that section one of the Sherman Act regulates only transactions that are commercial in nature." *Id.* Plaintiff cannot meet this threshold showing because binding precedent from this Circuit—precedent Plaintiff neglected to cite in his brief—conclusively demonstrates that the NCAA's eligibility rules are not commercial in nature.

It is black-letter law in the Third Circuit that NCAA eligibility rules are not commercial in nature and therefore are not subject to antitrust scrutiny. In *Smith v. NCAA*, 139 F.3d 180, 185 (3d Cir. 1998), *vacated and remanded on other grounds*,[3] 525 U.S. 459 (1999), the Third Circuit considered a challenged eligibility rule that permitted otherwise eligible postbaccalaureate student-athletes to participate in

[3] The Supreme Court denied certiorari on the Third Circuit's ruling regarding the applicability of the Sherman Act, but granted certiorari and vacated and remanded on claims raised under Title IX of the Education Amendments of 1972. *Smith v. NCAA*, 226 F.3d 152, 153, 154 n.1 (3d Cir. 2001).

Division I sports, but only at the Division I institution where the student-athletes obtained their undergraduate degrees. *Id.* The court rejected plaintiff's Sherman Act challenge to the so-called "Postbaccalaureate Bylaw," finding that the NCAA's eligibility rules are not commercial in nature and therefore not subject to the Sherman Act. *Id*. The court explained that the rules are "not related to the NCAA's commercial or business activities," because "eligibility rules primarily seek to ensure fair competition in intercollegiate athletics." *Id.*

Smith remains good law. *See Pittston Co. v. Sedgwick James, Inc.*, 971 F. Supp. 915, 919 (D.N.J. 1997) ("At the outset, it is important to acknowledge that this Court is bound by controlling decisions of the Third Circuit."). In fact, this Court has explicitly recognized the holding in *Smith*. *See Bowers v. NCAA*, 9 F. Supp. 2d 460, 497–98 (D.N.J. 1998) (dismissing claims that challenged "all eligibility requirements," including initial academic qualification requirements); *see also Pennsylvania v. NCAA,* 948 F. Supp. 2d 416, 426–28 (M.D. Pa. 2013); *Pocono Invitational Sports Camp, Inc. v. NCAA*, 317 F. Supp. 2d 569, 584 (E.D. Pa. 2004) (describing "eligibility rules" as "immune from antitrust scrutiny").

The Third Circuit is not an outlier. Other courts have concluded that eligibility rules are not subject to Sherman Act scrutiny. For example, in *Gaines v. NCAA*, the court held that rules denying eligibility to student-athletes who entered a professional sports draft or hired an agent were not "subject to scrutiny under § 2 of

the Sherman Act" because "they are not designed to generate profits in a commercial activity" and instead act to preserve what makes NCAA competition unique. 746 F. Supp. 738, 743 (M.D. Tenn. 1990); *see also Goldstein*, 2025 U.S. Dist. LEXIS 36025, at *10 (holding that the challenged rules are not "commercial in nature despite [Goldstein's] efforts to intertwine them with what he and his agent swear are 'significant' opportunities to capitalize off his NIL."); *Agnew v. NCAA*, 683 F.3d 328, 341 (7th Cir. 2012); *Jones v. NCAA* 392 F. Supp. 295, 303 (D. Mass. 1975); *Adidas Am., Inc. v. NCAA* 40 F. Supp. 2d 1275, 1285 (D. Kan. 1999). The Challenged Rules simply establish who can participate and for how long. They are therefore provisions that "seek to ensure fair competition in intercollegiate athletics," *id.*, and whose "overriding purpose . . . is not to provide the NCAA with commercial advantage[.]'" *Gaines*, 746 F. Supp. at 743–44. *See also Bassett v. NCAA*, 528 F.3d 426, 433 (6th Cir. 2008).

Plaintiff's lone effort to establish that the Challenged Rules are commercial is conclusory and insufficient. He contends that "the transactions between the NCAA and member institutions within these relevant markets are commercial in nature." (Mem., ECF No. 1-3, at 23). The contention that the NCAA engages in certain commercial transactions is both obvious and completely irrelevant to the question before the Court. The "appropriate inquiry is 'whether the rule itself is commercial, not whether the entity promulgating the rule is commercial.'" *Bassett*, 528 F.3d at

433 (quoting *Worldwide Basketball & Sports Tours, Inc. v. NCAA*, 388 F.3d 955, 959 (6th Cir. 2004)); *see also Pennsylvania*, 948 F. Supp. 2d at 425 n.6 (quoting *Bassett*). Here, the Challenged Rules are not commercial and not subject to the Sherman Act.

2. The *Pavia* Decision Mischaracterizes *O'Bannon* and *Alston.*

Plaintiff's likelihood-of-success argument is grounded in *Pavia*, a recent district court decision in Tennessee. *Pavia v. NCAA*, No. 3:24-cv-1336, 2024 U.S. Dist. LEXIS 228736 (M.D. Tenn. Dec. 18, 2024). The *Pavia* court determined that the Challenged Rules are commercial in nature because "in the post-*Alston* world . . . restrictions on who is eligible to play and therefore to negotiate NIL agreements [are] commercial in nature." Id. at *15–16. This determination was error. (*See* Br. of Appellant, *Pavia v. NCAA* No. 24-6153 (6th Cir. Mar. 21, 2025) (ECF No. 15)). Neither *Alston*, nor its predecessor *O'Bannon*, found the NCAA's eligibility rules to be commercial. Both decisions involved compensation rules.

The plaintiffs in *O'Bannon v. NCAA* challenged rules impacting student-athletes' ability to earn NIL compensation. 802 F.3d 1049 (9th Cir. 2015). The *O'Bannon* court found that compensation rules were commercial but it did not find that all NCAA eligibility rules are commercial in nature. Id. at 1065. The court distinguished NIL compensation rules that "clearly regulate the terms of commercial transactions" from "a true 'eligibility' rule, *akin to the rules limiting the number of*

years that student-athletes may play collegiate sports[.]" *Id.* at 1066 (emphasis added).

O'Bannon clarified the line of demarcation between commercial eligibility rules that "clearly regulate the terms of commercial transactions" by "regulat[ing] what compensation NCAA schools may give student-athletes, and how much," and "true 'eligibility' rules." *Id.* The former are subject to the Sherman Act, the latter are not. Under *O'Bannon*, the Challenged Rules, which "limit the number of years that student-athletes may play college sports" are "true 'eligibility' rules" and are not subject to Sherman Act scrutiny. *See Goldstein*, 2025 U.S. Dist. LEXIS 36025, at *16.

Similarly, the Supreme Court's decision in *NCAA v. Alston* did not involve eligibility rules. 594 U.S. 59. As one district court recently explained, "[n]othing in *Alston* states that all NCAA eligibility rules are commercial in nature." *Osuna Sanchez*, 2025 U.S. Dist. LEXIS 37500, at *9 (internal citation omitted). Accordingly, *Alston* left undisturbed prior cases distinguishing commercial rules subject to the Sherman Act from true eligibility rules, like the Challenged Rules, that are non-commercial and beyond the reach of the Sherman Act. *Alston* related exclusively to "compensation restrictions." 594 U.S. at 87. Justice Kavanaugh's concurrence emphasized that *Alston* "involves only a narrow subset of the NCAA's compensation rules," *id.* at 108 (Kavanaugh, J., concurring). As the *Goldstein* court

explained in declining to follow *Pavia*, "*Alston* is more scalpel than ax" and "didn't touch" prior decisions concerning true eligibility rules. *Goldstein*, 2025 U.S. Dist. LEXIS 36025, at *10–11.

The NCAA respectfully disagrees with the decision in *Pavia*, which is not binding on this Court and has been appealed.[4] In finding the Challenged Rules commercial in nature and subject to the Sherman Act, the *Pavia* court made a determination that is not supported by any language in *O'Bannon* or *Alston*: "[i]t necessarily follows that restrictions on who is eligible to play and therefore to negotiate NIL agreements is also commercial in nature." *Pavia,* at *16. The court conflated commercial rules with eligibility rules. The former regulates the terms of

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[4] The NCAA filed its brief to the Sixth Circuit on March 21, 2025. *See* Appellant's Opening Br., *Pavia v. NCAA*, No. 24-6153 (6th Cir. Mar. 21, 2025) (ECF No. 15). In its brief, the NCAA argues that the district court erred (*i*) in ignoring controlling caselaw upholding the legitimacy of the Challenged Rules, including because they have been found to be non-commercial and not subject to the Sherman Act (*see* Br. at 22–31); (*ii*) in invalidating the Challenged Rules based on only a "quick look" rather than a full rule-of-reason analysis (*id.* at 32–35); (*iii*) in crediting Pavia's antitrust product market but purporting to find harm to competition in a market other than the one Pavia actually alleged (*id.* at 35–39); (*iv*) in finding an antitrust violation based on allegations of harm to Pavia alone rather than harm to market-wide competition (*id.* at 39–42); (*v*) in failing to properly evaluate the NCAA's procompetitive justifications (*id.* at 42–43); and (*vi*) in concluding that Pavia would suffer irreparable harm without an injunction, in spite of his unreasonable delay in pursuing his claim and his ability to be made whole with money damages if he succeeded in establishing his claim after a trial on the merits (*id.* at 43–47). Plaintiff's claim suffers from each of the same infirmities as Pavia's, any one of which should have led the district court in *Pavia* to deny the motion for a preliminary injunction.

commercial transactions, the latter does not. This distinction prevents Plaintiff from establishing a likelihood of success on the merits.

3. Even if the Court Concludes that the Challenged Rules Are Commercial in Nature, Plaintiff Cannot Demonstrate a Likelihood of Success on the Merits.

Even if the Sherman Act applied to the Challenged Rules, Plaintiff has not provided the court with "clear evidence" that the Challenged Rules are anticompetitive under the rule of reason. Courts presumptively apply a "rule of reason analysis," where Plaintiff carries "the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market." *Ohio v. Am. Express Co*., 585 U.S. 529, 541 (2018). If Plaintiff meets that burden, "the burden shifts to the defendant to show a procompetitive rationale," *id.*, and upon such a showing the final burden will shift back to "plaintiff to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means," *id* at 542. The rule-of-reason analysis requires "a fact-specific assessment of market power and market structure to assess a challenged restraint's actual effect on competition," *Alston*, 594 U.S. at 81, which is an exceedingly challenging burden to meet on a truncated record. *Ciulla-Hall*, 2025 U.S. Dist. LEXIS 22368, at *8–9. Plaintiff fails at each step.

i. Plaintiff Has Failed to Define the Relevant Market

Before a district court can assess whether a rule has an anticompetitive effect, it is the plaintiff's burden to "define the relevant market." *Am. Express Co.*, 585 U.S. at 542 (cleaned up). "The relevant market is 'the area of effective competition' or the 'arena within which significant substitution in consumption or production occurs.'" *Brantmeier v. NCAA*, No. 1:24-CV-238, 2024 U.S. Dist. LEXIS 182251, at *8–9 (M.D.N.C. Oct. 7, 2024) (quoting *Am. Express Co.*, 585 U.S. at 543). Without defining the relevant market, "there is no way to measure the defendant's ability to lessen or destroy competition." *Am. Express Co.*, 585 U.S. at 543.

Plaintiff pleads no specific facts supporting the existence of a relevant antitrust market for purposes of his Sherman Act claim. He provides no expert analysis or economic evidence to support his allegations. Instead, Plaintiff simply invites the Court to indiscriminately adopt *Pavia*.[5] In the absence of supporting facts or economic evidence to support his proposed market definition, Plaintiff cannot meet his burden of showing a substantial likelihood of success under the rule of reason.

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[5] See Declaration of Dr. Matthew Backus ("Backus Decl.") ¶¶ 20, 27, attached as **Exhibit 2** (noting that Plaintiff offers "no analysis" to support his proposed "labor market for college football athletes in general and NCAA Division I football specifically," and no support for the existence of any alternative market other than the ruling in *Pavia*).

ii. Plaintiff Cannot Meet His Burden to Demonstrate that the Challenged Rules Are Anticompetitive

Plaintiff also cannot establish a likelihood of success in establishing that the Challenged Rules are anticompetitive because he has presented ***no economic evidence*** of the Challenged Rules' effect on the relevant market as a whole. Even if Plaintiffs' allegations were competent evidence at the preliminary injunction stage—and they are not—Plaintiff relies primarily on harm to ***himself*** to advance his claim. His allegations of harm to himself—rather than harm to competition in the relevant market—fail to state a violation of Section 1 of the Sherman Act. (*See* Backus Decl. ¶ 19 ("[H]arms to an individual are distinct from anticompetitive harms.")). *See Eichorn v. AT&T Corp.*, 348 F.3d 131, (3d Cir. 2001) ("[A]n individual plaintiff personally aggrieved by an alleged anti-competitive agreement has not suffered an antitrust injury unless the activity has a wider impact on the competitive market."); *Phila. Taxi Ass'n v. Uber Techs.*, 886 F.3d 332, 338 (3d Cir. 2018); *see also AlphaCard Sys. LLC v. Fery LLC*, No. 19-20110, 2021 U.S. Dist. LEXIS 102098, at *5 (D.N.J. May 31, 2021); *Nat'l Hockey League Players' Ass'n v. Plymouth Whalers Hockey Club,* 325 F.3d 712, 720 (6th Cir. 2003) ("*NHLPA I*").

Plaintiff has not provided evidence of any market-wide impact of the NCAA's Challenged Rules. *See, e.g.*, *Brantmeier*, 2024 U.S. Dist. LEXIS 182251, at *12–13; *Ciulla-Hall v. NCAA*, No. 25-cv-10271, 2025 U.S. Dist. LEXIS 22368, at *7–8 (D. Mass. Feb. 7, 2025). He cannot do so because the NCAA's eligibility rules do

not cause cognizable market harms, *i.e.*, they do not, "reduce[] output, increase[] prices, or decrease[] quality in the relevant market[s]." *Am. Express Co.*, 585 U.S. at 542. (*See* Backus Decl. ¶ 19 ("[A]nticompetitive harm has a precise economic meaning related to reductions in economic welfare resulting from limitations on competitive behavior; it can be identified through increases in price above the competitive level, and reductions in output and quality below the competitive level.") *See also*, *e.g.*, *Rock v. NCAA*, 928 F. Supp. 2d 1010, 1023-24 (S.D. Ind. 2013) (holding plaintiffs "failed to adequately allege anticompetitive effects in their market" from challenged rules capping the length and number of scholarships because they "fail to explain how eliminating either [rule] would lead to the creation of more scholarships," *i.e.*, an impact on price or output). NCAA eligibility rules establish which athletes are eligible for competition, but they do not limit the price of student-athletes' labor. The Challenged Rules likewise do not reduce the number of spots available for the alleged market participants. As discussed below, the Challenged Rules expand output and opportunities by ensuring that participation opportunities are available to incoming students each year.

Plaintiff has similarly failed to provide the court with evidence that the Challenged Rules lessen the total benefits student-athletes receive from schools, including tuition, cost of attendance, etc.; reduce the total number of intercollegiate competition opportunities or participation; or reduce the quality of offerings in the

alleged markets. *Brantmeier*, 2024 U.S. Dist. LEXIS 182251, at *12-14 (refusing to enjoin certain eligibility rules based only on harm to only a "few" individuals). Like Plaintiff, the plaintiff in *Brantmeier* essentially sought to displace other student-athletes from Division I opportunities by obtaining eligibility for herself and a few other similarly situated student-athletes. Alleged harm to a select few cannot, without market-wide evidence, demonstrate harm to competition across the many thousands of student-athletes entering and exiting collegiate competition. *Id.*; *see also Bewley v. NCAA*, No. 23 CV 15570, 2024 U.S. Dist. LEXIS 5131, at *12 (N.D. Ill. Jan. 10, 2024).

Plaintiff does not contend that his inability to participate in the upcoming season at Rutgers will reduce the number of players on Rutgers' football team; Plaintiff's roster spot will just be filled by another player. But as the Sixth Circuit found in reversing the district court's preliminary injunction, the substitution of "one arguably less skilled player for another arguably more skilled player" does not constitute an "economic injury to the market for competition" among teams for player services, even if it "might result in significant personal injury" to an individual player. *NHLPA I*, 325 F.3d at 720 (internal quotation marks omitted); (*see also* Backus Decl. ¶¶ 21–22 ("[T]he loss of eligibility for one player or group of players does not constitute an anticompetitive harm, although it may be associated with the loss of NIL opportunities for that player (or group of players). . . [T]he end

of Mr. Elad's eligibility is the opportunity of a lifetime for someone else. . . . For college athletics, the flow of benefits from outgoing to incoming students only represents a shift in who enjoys those benefits, and does not signify a reduction in overall benefits."). Indeed, Plaintiff's collegiate career exemplifies how time-based eligibility rules expand opportunities for a greater number of student-athletes to participate in Division 1 football. Plaintiff's opportunity to transfer to UNLV was presumably created by the departure of another student-athlete who previously held his roster spot, as is the natural cycling of student-athletes under the NCAA's eligibility rules.

It is also important to distinguish between competition on the field from competition in the economic sense under the antitrust laws. After remand to the district court, the plaintiffs in the NHLPA litigation revised their theory to focus on impact of the challenged eligibility restriction on the "quality of the players . . . and the quality of the hockey games produced as a result," which the Sixth Circuit again appropriately found did not constitute a cognizable "anti-competitive effect within the meaning of the antitrust laws." *Nat. Hockey League Players Ass'n v. Plymouth Whalers Hockey Club*, 419 F.3d 462, 473–74 (6th Cir. 2005) ("*NHLPA II*"). (*See* Backus Decl. ¶ 30 ("Plaintiff also claims anticompetitive harms to consumers because the competitiveness of teams is diminished by the eligibility rules. This argument confuses anticompetitive harm with competitiveness on the field. If we

took the argument on its face, we might also worry about age limitations in Little League sports because they diminish the quality of play, which would be enhanced by the inclusion of older children.")).

The Challenged Rules are like other true eligibility rules, including requirements of high school graduation, minima for GPA and course enrollment, and other criteria that maintain the unique nature of the NCAA's product; namely, that collegiate athletics are played by collegiate athletes pursuing an education. While eligibility rules may impact athletes' ability to participate, such an impact does not establish that they are anticompetitive. As the Seventh Circuit observed, the notion that requiring student-athletes to complete four seasons in five years is a restraint of trade is "absurd." *See Banks v. NCAA*, 977 F.2d 1081, 1090 (7th Cir. 1992) (finding eligibility rules "essential" to participation in NCAA competition and equating the rule at issue denying eligibility to professional draft participants to "permitting a student five calendar years in which to participate in four seasons of intercollegiate athletics").

iii. Even if Plaintiff Had Put Forth Competent Evidence, the Alleged Anticompetitive Effects Do Not Comprise Harms to the Alleged Relevant Market.

Plaintiff does not analyze any anticompetitive effects allegedly caused by the Challenged Rules. Again, he relies upon *Pavia*, which identified two anticompetitive harms: (1) "a competitive advantage to Division I member schools over [JUCOs]"; (2) "disparate treatment of these two groups[.]" (*See* Mem. at 24).[6]

Plaintiff's asserted harms—essentially differential treatment of JUCO transfers in Division I from student-athletes who begin their careers at the Division I level—misconstrues the nature of the Challenged Rules. The Challenged Rules do not, as Plaintiff argues, penalize JUCO transfers. Rather, the Challenged Rules treat all intercollegiate competition in the same manner. What Plaintiff frames as unequal treatment is, in reality, equality: all student athletes get five years to complete in four years of intercollegiate competition. The alternative would be to treat JUCO transfers ***more favorably*** than those student-athletes who first matriculate to a

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6 Alleged harm to JUCOs fails for another reason: it is not a substantial anticompetitive effect ***to the market*** as defined by Plaintiff, the "labor market" for NCAA Division 1 football. (*See* Mem. at 22 (quoting *Pavia*, 2024 U.S. Dist. LEXIS 228736, at *20.) This asserted harm outside of Plaintiff's alleged market is not cognizable. (*See also* Backus Decl. ¶ 25 (observing that the claim that the market includes JUCOs in contradicted by Plaintiff's allegations that there are no "practical alternatives in the relevant markets to participating in [DI] athletics")). This asserted harm outside of Plaintiff's alleged market is not cognizable. *See, e.g.*, *Brantmeier*, 2024 U.S. Dist. LEXIS 182251, at *10 n.3 ("disregard[ing]" arguments concerning "harm outside the defined market").

Division I member institution. There is no evidence in the record that this absence of favorable treatment for JUCO transfers is anticompetitive. Absent competent evidence, whether the Challenged Rules are "equitable" or a "penalty" is a matter of rhetorical framing and one's own perspective. Framing alone does not suffice to meet Plaintiff's evidentiary burden to demonstrate substantial anticompetitive effects from the Challenged Rules.

And—to the extent the purported anticompetitive harm is cognizable—it is not a substantial anticompetitive effect ***to the market***. The effect on the market is neutral because there would be an equal-and-opposite anticompetitive harm to non-JUCO transfers if the Court awards Plaintiff his requested remedy.

At bottom, Plaintiff argues that it is unfair to treat JUCO transfers differently from athletes who matriculate to Division I institutions from high school. Even if Plaintiff's concerns had merit, the Court here is not tasked with determining whether the Challenged Rules are reasonable in light of Plaintiff's individual circumstances. Rather, the relevant inquiry is simply whether the Challenged Rules harm competition in the market. They do not, and Plaintiff offers no proof that they do. Eligibility rules inevitably allow some student-athletes to compete and prevent others from doing so. This tradeoff may evidence harm to the student-athletes in the latter category, but it is not evidence of harm to the market. "[M]erely substitute[ing]

one arguably less skilled player for another arguably more skilled player" is not anticompetitive harm for purposes of the Sherman Act. *NHLPA I*, 325 F.3d at 720.

iv. If the Court Proceeds to Step-Two of the Rule-of-Reason Analysis, the Challenged Rules Have Substantial Pro-Competitive Benefits.

Even if Plaintiff were to meet his burden of showing substantial anticompetitive effects, the challenged eligibility rules have several procompetitive benefits, including: 1) preserving intercollegiate athletics as a unique offering to many prospective and current student-athletes, expanding output; 2) enhancing the experiences of student-athletes; and 3) improving quality of output.

First, several courts have concluded that the NCAA's rules governing who is eligible to compete are procompetitive because they expand output by creating and preserving the unique offerings of Division I athletics. For example, the Seventh Circuit in *Agnew* cited decisions from several sister courts of appeals and explained that "[m]ost—if not all—eligibility rules . . . fall comfortably within the presumption of procompetitiveness afforded to certain NCAA regulations" because those regulations "in college [sports]" are "necessary for the product to exist." 683 F. 3d at 342–43; *see also Smith*, 139 F. 3d at 187 (upholding a graduate student eligibility rule and opining that "in general, the NCAA's eligibility rules allow for the survival of the product, amateur sports, and allow for an even playing field"); *Banks*, 977 F.2d at 1089–90; *McCormack v. NCAA*, 845 F.2d 1338, 1344–45 (5th Cir. 1988) (noting "college football [is] a product distinct from professional football. The

eligibility rules create the product and allow its survival . . . ."); *see also NCAA v. Bd. of Regents*, 468 U.S. 85, 101–02 (1984); *O'Bannon*, 802 F.3d at 1073–74; *Banks v. NCAA*, 746 F. Supp. 850, 861 (N.D. Ind. 1990) ("Courts applying the Rule of Reason have consistently noted the procompetitive effects of NCAA eligibility regulations."). More recently, *Bewley* held that the challenged eligibility rule "directly promotes defendant's 'unique product.'" 2024 U.S. Dist. LEXIS 5131, at *12. As Defendant's expert economist, Dr. Backus, observed: "Differentiation through eligibility rules stimulates consumer demand by creating a unique product offering that expands the market for athletic viewership, even when there are competing offerings that are stronger in absolute athletic performance—in this case, the NFL." (Backus Decl. ¶ 37). Plaintiff does not account for the procompetitive benefits of preserving a differentiated product that the eligibility rules cultivate, and his failure to do so compels the denial of his motion.

Second, the Challenged Rules enhance access to Division I football, both expanding total athletic output and improving quality of output, *i.e.*, improving student-athlete experience. Division I football opportunities are finite, and if student-athletes avail themselves of those opportunities for longer than they are currently eligible, then some student-athletes will necessarily lose opportunities they otherwise would have received. Therefore, if the Challenged Rules were enjoined or additional seasons of competition were mandated, collegiate football programs

will have greater demand for more developed, experienced players, crowding out other student-athletes who would otherwise get the opportunity to replace those no longer eligible. (*See* Backus Decl. ¶ 40 ("If players could gain an advantage in NCAA [DI] football by extending their collegiate football careers, and if the NIL opportunities associated with this are large enough, then we would expect players to do exactly that, and also for teams to seek out these players to obtain a competitive advantage on the field. If enough players and teams engage in this activity, then many players will distort their academic progression to compete in NCAA Division I football, leading to the crowding out players who chose not to do so.")). In other words, like the rules at issue in *Bewley*, the challenged rules herein "directly promote[] [the NCAA's] unique product of amateur sports" by naturally ensuring that after student-athletes have exhausted their allotted period of eligibility, new student-athletes can come in and replace them. 2024 U.S. Dist. LEXIS 5131, at *12; *see also Arbolida v. NCAA*, No. 25-2079-JWB, 2025 U.S. Dist. LEXIS 31283, at *9–10 (D. Kans. Feb. 21, 2025) ("[t]he current eligibility rules . . . seem to increase competition among NCAA member institutions . . . for the limited supply of potential labor, thereby driving up potential compensation for labor market participants.").

The Challenged Rules also protect competitive balance by ensuring that student-athletes compete against their peers and not quasi-professional athletes who

have had several years of additional experience. *See Smith*, 139 F.3d at 187 (holding eligibility "bylaw at issue . . . is a reasonable restraint which furthers the NCAA's goal of fair competition . . . and is thus procompetitive"). The rules ensure more student-athletes participate in Division I football and improve the quality of those student-athletes' experiences by making opportunities more accessible.

Third, the Challenged Rules also improve quality of output by fostering better alignment between Division I athletics and academics. (*See* Vaughn Decl. ¶ 17 ("The bylaws are designed to align the student-athletes' period of athletic competition with their anticipated academic achievement and progress towards a college degree. A student-athlete's eligibility starts upon full-time college enrollment; and it is expected that the period of athletic competition will align with the student-athlete successfully obtaining a baccalaureate degree."). As set forth earlier, enjoining the rules or expanding eligibility would extend the length of student-athletes' collegiate athletics careers. This extension would also extend their academic careers, interrupting the NCAA's goal of progressing student-athletes toward a degree in a timely manner. Put differently, starting the eligibility clock upon full-time enrollment in a college better aligns academic and athletic careers. (*See* Backus Decl. ¶ 45 (summarizing benefits of Challenged Rules as "create[ing] a differentiated sports offering for which there is demand, and also to create opportunities for student-athletes in their communities who may not have

professional level athletic talent or who chose intercollegiate athletics in order to continue competing at a high level *while pursuing an academic degree in a traditional timeframe*" (emphasis added))). Courts have recognized the procompetitive nature of these results—a preserved space for collegiate competition with requirements for entry and an imposed timeframe to exit that cohesively melds NCAA member schools' academic and athletic objectives. *See McCormack*, 845 F. 2d at 1344–45 ("The goal of the NCAA is to integrate athletics with academics. [Eligibility] requirements reasonably further this goal"); *Bowers*, 974 F. Supp. at 461.

v. There Exists No Substantially Less Restrictive Manner by Which the NCAA Could Achieve the Pro-Competitive Benefits of the Challenged Rules.

Plaintiff also fails to establish the challenged rules are "patently and inexplicably stricter than is necessary to achieve the procompetitive benefits." *Alston*, 594 U.S. at 101 (citation and internal quotation marks omitted). This burden is high because "antitrust law does not require businesses to use anything like the least restrictive means of achieving legitimate business purposes," and, instead, "antitrust courts must give wide berth to business judgments before finding liability." *Id*. at 98, 102. "To the contrary, courts should not second-guess 'degrees of reasonable necessity' so that 'the lawfulness of conduct turn[s] upon judgments of degrees of efficiency.'" *Id.* at 98 (quoting *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 227 (D.C. Cir. 1986)). Plaintiff's alternatives must

be "substantially less restrictive" and "virtually as effective in serving the defendant's procompetitive purposes without significantly increased cost." *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 990 (9th Cir. 2023) (cleaned up, citation and internal quotation marks omitted). The alternatives must also be narrowly tailored to achieve Plaintiff's suggested objectives. *See Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 614 F.3d 57, 83 (3d Cir. 2010) (explaining, generally, that "sports-related organizations should have the right to determine for themselves the set of rules that they believe best advance their respective sport."). "Not only do plaintiffs bear the burden at this step, but the Supreme Court has admonished that we must generally afford the NCAA 'ample latitude' to superintend college athletics." *O'Bannon*, 802 F.3d at 1074 (quoting *Regents*, 468 U.S. at 120). Far from narrow relief, Plaintiff seeks to enjoin a broadly applicable eligibility rule, potentially impacting thousands of student-athletes in the middle of the academic year.

The NCAA must have wide berth to make business judgments in promulgating rules that preserve the nature of its product. *See Alston*, 594 U.S. at 91–92. Although some aspects of NCAA competition are commercial, collegiate sports are still a product unique from professional sports, and encompass athletic competition of student-athletes. The Challenged Rules are essential to preserving the collegiate nature of collegiate sports. Without them, JUCO may be used as a

"minor league" to maximize the physical maturity of student athletes before they enter Division I for four full seasons; whereas today, JUCO provides an opportunity for students who lack the physical maturity or grades to compete at a higher level than high school athletics and the potential to one day compete in Division I or professional football.

Moreover, if student-athletes transferring from JUCO institutions are granted extra seasons of intercollegiate competition (which is what Plaintiff is requesting), those athletes will have an unfair advantage over athletes who matriculate to NCAA Division I member institutions from high school. JUCO transfers will be more physically mature, more experienced, and further along in their academic careers—all advantages that non-transferring students do not have.

Additionally, the logic underlying Plaintiff's request to enjoin counting JUCO participation as intercollegiate competition for purposes of the Five-Year Rule applies equally to enjoining the Five-Year Rule altogether. Either way, the Five-Year Rule restricts the time in which an athlete may participate in Division I football. If Plaintiff is correct that he is irreparably harmed by not receiving a fourth season of Division I competition, he is likewise harmed if he does not receive a fifth, sixth, seventh or eighth season. (*See* Backus Decl. ¶ 42 (noting that the Challenged Rules hold in check "the private incentives of individual players seeking a competitive advantage against other players for NIL opportunities and play time" that would

"erode the boundaries of what it means to be an elite student-athlete, the defining feature of NCAA Division I sports")). This Court should exercise the caution encouraged by the Supreme Court in *Alston* and declined Plaintiff's invitation to intrude on the sensible limits on student-athlete eligibility established under the Challenged Rules.

B. Plaintiff Is Not Likely to Succeed on the Merits of His Breach of Contract Claim or His Good Faith and Fair Dealing Claim.

Plaintiff's contract claims strain logic and common sense. In effect, he claims that the NCAA has breached its promises to the Division I member institutions by enforcing the rules that the members themselves created. For obvious reasons, such a contention is untenable. Even assuming the NCAA Constitution is a contract to which Plaintiff is a third-party beneficiary, the NCAA's performance of that contract is not a failure to perform. Similarly, declining to make a special exception for Plaintiff that would give him an additional year of eligibility is not evidence of "improper purpose or ill motive" as required for Plaintiff to prevail on his good faith and fair dealing claim, must prove. (Mem. at 35) (quoting *Sud v. Ness USA, Inc.*, No. 21-cv-12330, 2022 U.S. Dist. LEXIS 100401, at *17 (D.N.J. June 6, 2022)). The *Osuna Sanchez* court rejected similar arguments. 2025 U.S. Dist. LEXIS 37500, at *25.

II. Plaintiff Cannot Meet His High Burden to Demonstrate that He Will Suffer Immediate Irreparable Harm.

A. Plaintiff's Delay in Bringing the Instant Motion Undercuts His Claim to Irreparable Harm.

"[P]reliminary injunctions are generally granted under the theory that there is an urgent need for speedy action to protect the plaintiffs' rights." *Lanin v. Borough of Tenafly*, 515 F. App'x 114, 117–18 (3d Cir. 2013) (internal quotation marks omitted) (quoting *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 275 (2d Cir. 1985)). "Delay in seeking enforcement of those rights . . . tends to indicate at least a reduced need for such drastic, speedy action." *Id*. at 118 (internal quotation marks omitted) (quoting same).

Plaintiff's ability to seek his requested relief is not a recent development. Rather, his challenge was ripe when Plaintiff knew that the NCAA's eligibility rules prohibited him from playing an additional season of Division I intercollegiate football. (*See* Compl. ¶ 33). Moreover, he has been enrolled at Rutgers for several months. Plaintiff did not expeditiously move for injunctive relief. By doing so, he impermissibly manufactured the urgency he argues in support of his request. His Motion can be denied on that basis alone.

B. Plaintiff Cannot Meet His Heightened Burden to Obtain Mandatory Injunctive Relief.

Requests for interim injunctive relief that "alter the status quo," like that here, are "specifically disfavored" and "must be more closely scrutinized." *Schrier v.* 427 F.3d at 1259 (10th Cir. 2005) (citations and internal quotation marks omitted); *see also Doe v. Tennessee*, No. 3:18-cv-0471, 2018 U.S. Dist. LEXIS 184091, at *8 (M.D. Tenn. Oct. 26, 2018); *see, e.g.*, *Brantmeier*, 2024 U.S. Dist. LEXIS 182251, at *3–4 ("'Mandatory preliminary injunctions are 'warranted only in the most extraordinary circumstances.'") (internal citations omitted) (quoting *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 209 (4th Cir. 2024)).

Plaintiff asks this Court to issue a mandatory injunction. He seeks to change the status quo by asking the Court to award him with at least one additional season of Division I eligibility not available to him at present. Plaintiff's request—which asks the Court to substitute its rulemaking judgment for that of the NCAA—is disfavored in the context of a mandatory injunction.

Such a request to alter the status quo is not warranted here by "extreme circumstances." Indeed, Plaintiff is one of many student-athletes who transferred to a Division I member institution from a JUCO and who exhausted eligibility in academic year 2024 (or prior). Given the untold number of other former Division I athletes in the same position as Plaintiff, his individual request is not the product of extraordinary circumstances unique to him which warrant a mandatory injunction.

C. The Harm Alleged Is Not Irreparable.

Plaintiff contends he will be harmed in the absence of an injunction because he will lose an opportunity to participate in Division I sports. He further contends he will lose "attention and acclaim," the ability to "take advantage of an NIL deal he has now signed," and "his chances of earning a contract to play professional football in the United States or Canada upon completion of the 2025-26 season." (Mem., ECF NO. 1-3, at 36). The claimed loss of $500,000 in NIL compensation is not irreparable harm. The Third Circuit "has 'long held that an injury measured in solely monetary terms cannot constitute irreparable harm." *Checker Cab of Phila. Inc. v. Uber Techs., Inc.*, 643 F. App'x 229, 232 (3d Cir. 2016) (quoting *Liberty Lincoln-Mercury, Inc. v. Ford Motor Co.*, 562 F.3d 553, 557 (3d Cir. 2009)).

The remainder of Plaintiff's irreparable harm argument relies on three cases that in turn rely upon *Ohio v. NCAA*, 706 F. Supp. 3d 583 (N.D.W.V. 2023) ("Courts have repeatedly found that 'college students suffer irreparable harm when they are denied the opportunity to play sports.'" (Mem., ECF No. 1-3, at 37) (citing *Williams*, *Fourqurean*, and *Pavia*). Plaintiff, however, was not denied the opportunity to play college football—he played for four seasons. Moreover, *Ohio* is inapposite for several reasons.

Ohio cites six authorities as support for the statement on which Plaintiff relies. *Id.* Each of these decisions involve female student-athletes' statutory rights under

Title IX to the same opportunity to participate in collegiate athletics as male student-athletes.[7] Neither *Ohio* nor the authorities cited therein found that the exhaustion of a student athlete's eligibility under longstanding NCAA bylaws constitutes a denial of the opportunity to participate in collegiate athletics.[8]

When considering non-gender-based eligibility requirements outside of the Title IX context (*e.g.*, GPA requirements, course requirements, etc.), courts have

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[7] *See, e.g., S.A. v. Sioux Falls Sch. Dist.,* No. 4:23-CV-04139-CBK, 2023 WL 6794207, at *3 (D.S.D. Oct. 13, 2023), *appeal dismissed as moot sub nom. S.A., Next Friend Allen v. Sioux Falls Sch. Dist. 49-5*, No. 23-3401, 2024 WL 3219697 (8th Cir. June 28, 2024) (irreparable harm shown where eliminating the gymnastics program violated Title IX and plaintiffs' Fourteenth Amendment rights); *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck,* 370 F.3d 275, 302, n.25 (2d Cir. 2004) (irreparable harm shown where school districts' scheduling decisions created disparity in treatment between boys' and girls' athletic opportunities for Title IX purposes); *Navarro v. Fla. Inst. of Tech., Inc.*, No. 6:22-CV-1950-CEM-EJK, 2023 WL 2078264, at *8 (M.D. Fla. Feb. 17, 2023) (irreparable harm shown where eliminating men's rowing team violated Title IX); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277 (D.Conn. 2009) (finding irreparable harm as a result of a university's decision to disband a women's volleyball team in potential violation of Title IX); *Brooks v. State College Area Sch. Dist.*, 643 F. Supp. 3d 499 (M.D. Pa. 2022) (finding irreparable harm as a result of a school district's failure to accommodate female students wanting to play ice hockey in violation of Title IX); *Mayerova v. Eastern Michigan Univ.*, 346 F. Supp. 3d 983, 998 (E.D. Mich. 2018) (irreparable harm shown where university eliminated women's softball and tennis teams in violation of Title IX).

[8] Additionally, *Ohio* has limited applicability to these facts. It involved interrupting a transferring athlete's ability to participate in a year in which they would otherwise be eligible, thereby treating the student-athlete less favorably than others. 706 F. Supp. 3d at 598–99. Here, Plaintiff is seeking additional eligibility not provided to all collegiate athletes—he is requesting preferential treatment for JUCO transfers compared to student-athletes who enter the Division I ranks from high school.

consistently found the student-athlete did ***not*** suffer irreparable harm. "Courts have routinely rejected the notion that a student suffers irreparable harm by not being permitted to participate in interscholastic athletics." *McGee v. Va. High Sch. League, Inc.*, 801 F. Supp. 2d 526, 531 (W.D. Va. 2011); *see also S.B. ex rel. Brown v. Ballard Cty. Bd. of Educ.*, 780 F. Supp. 2d 560, 569 (W.D. Ky. 2011) (rejecting student's argument that forced transfer to an alternative school for disciplinary reasons would inflict irreparable harm in the form of exclusion from playing on original school's softball team); *Sharon City Sch. Dist. v. PIAA*, No. CIV.A. 9-213, 2009 WL 427373, at *2 (W.D. Pa. Feb. 20, 2009) ("[I]t is well established that ineligibility for participation in interscholastic athletic competitions alone does not constitute irreparable harm"); *Dziewa v. Pa. Interscholastic Ath. Ass'n*, No. 08-5792, 2009 U.S. Dist. LEXIS 3062, at *19 (E.D. Pa. Jan. 16, 2009), at *17–18 (E.D. Pa. Jan. 16, 2009) ("This Court, as well as all other federal courts, have previously and consistently held that ineligibility for participation in interscholastic athletic competitions alone does not constitute irreparable harm."); *Doe v. Portland Pub. Sch.*, 701 F. Supp. 3d 18, 39 (D. Me. 2023) ("Courts have routinely rejected the notion that a student suffers irreparable harm by not being permitted to participate in interscholastic athletics.") (citation omitted); *Revesz v. Pa. Interscholastic Ath. Ass'n, Inc.*, 798 A.2d 830, 837 (Commw. Ct. of Pa. May 21, 2002) ("[T]he loss of

an opportunity to play interscholastic athletics for one year does not constitute irreparable harm.").

In *Hall v. NCAA*, the plaintiff was ineligible to play on a NCAA DI basketball team because he failed to meet the NCAA's minimum GPA requirements. 985 F. Supp. 782, 791 (N.D. Ill. 1997). Hall made the same argument that Plaintiff has advanced in his motion and claimed he would be irreparably harmed by being "denied the opportunity to play major college basketball and pursue his dream of becoming a professional basketball player." *Id*. at 800. The *Hall* court held that plaintiff failed to show irreparable harm and denied the motion for preliminary injunction:

> The Halls claim that, without this preliminary injunction, Reggie w[ill] be denied the opportunity to play major college basketball and pursue his dream of becoming a professional basketball player. However, the Halls presented no evidence that a one season delay will extinguish Reggie's college (and hopeful professional) career, thereby irreparably harming him. In fact, the Court takes judicial notice that numerous basketball players have gone on to stardom in the NBA and other professional leagues despite having missed the first season with their college basketball teams. Thus, while sitting out a year might inconvenience Reggie, he has not shown that such inconvenience would cause harm that would be irreparable.

Id. at 800–01. Plaintiff's request for injunctive relief should be denied for the same reasons.

Moreover, Plaintiff's argument has been rejected by a North Carolina district court on virtually identical facts. The plaintiff in *Kupec v. Atlantic Coast Conf.*

sought to enjoin an athletic conference from denying him a fifth year of eligibility. 399 F. Supp. 1377 (M.D.N.C. 1975). Like Plaintiff, Kupec argued his professional football career would be harmed in the absence of an injunction. *Id*. at 1379. The court denied his request for injunctive relief as too speculative:

> Plaintiff contends that he will suffer great injury to his professional football career if the injunction is denied because another year of eligibility would allow professional football scouts to see him in action once more and thus enable him to be chosen in higher than the fifteenth round draft in which he was selected. It is, however, not a foregone conclusion that even if plaintiff had another good season, he would be chosen for a higher draft. Plaintiff had a season during 1974 that would be the envy of most college quarterbacks but, for some reason, did not rate highly with those individuals in professional football who evaluate college talent. Any injury which the plaintiff might suffer to his professional football career if the injunction is not granted is speculative at best.

Id. As in *Kupec*, Plaintiff's speculative assertion of the benefits of an additional year at Rutgers does not constitute irreparable harm.[9]

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9 Courts have found that intangible benefits that ***might be derived*** from participation like those identified by Plaintiff are too speculative to support the issuance of an injunction. *See Dziewa*, 2009 U.S. Dist. LEXIS 3062, at *19 ("Plaintiffs arguments consist of threatening possibilities, which are speculative, and not the kind of harm that preliminary injunctions were fashioned to address."); *Gregor v. W. Va. Secondary Schs. Activities Comm'n*, No. 2:20-cv-00654, 2020 U.S. Dist. LEXIS 199760, at *10–11 (S.D.W.V. Oct. 27, 2020) (Rejecting the argument as too speculative "that by being denied an opportunity to play on the boys' team and practice with them, [plaintiff] is being harmed because her chances of being recruited to play in college are diminished.").

For the foregoing reasons, Plaintiff has not established that he would suffer irreparable harm in the absence of an injunction. As a result, his request for an injunction must be denied.

III. The Balance of the Equities and the Public Interest Weigh in the NCAA's Favor.

On a sparse record with no economic analysis, Plaintiff seeks to leverage his unique experience to upend the DI eligibility rules that apply to over 180,000 DI student-athletes over multiple sports. The adverse impact of Plaintiff's requested relief would be immense, implicating the decisions and collegiate careers of tens of thousands of student-athletes. *See Brantmeier*, 2024 U.S. Dist. LEXIS 182251, at *1 (recognizing that requested injunction would reach "any student athlete" while the case was pending). The equities counsel against decisions concerning NCAA eligibility rules, with such sweeping implications, issuing on an expedited basis and truncated record. *See, e.g.*, *Bewley v. NCAA*, 2024 U.S. Dist. LEXIS 5131, at *8–9 (N.D. Ill. Jan. 10, 2024); *Brantmeier*, 2024 U.S. Dist. LEXIS 182251 at *3.

Plaintiff fails to contemplate or address the broader issues created by changing eligibility rules wholesale. He should be commended for his successful collegiate career, both as a student and as an athlete. However, that career has come to an end. He fails to meet the high bar for the extraordinary remedy of a mandatory preliminary injunction that would upend the status quo.

Notably, an injunction sought by a collegiate athlete who similarly requested an additional year of eligibility was denied due to the disproportionate harm to the defendant:

> [E]ven assuming that the plaintiff would somehow be injured, the harm which would be done to the Atlantic Coast Conference (ACC) should the injunction be granted heavily outweighs any injury to the plaintiff. The ACC is a voluntary association of colleges and universities whose goal is basically to regulate university athletics and, hopefully, to keep university athletics from becoming professionalized to the extent that profit making objectives would overshadow educational objectives. In pursuance of its goals, the ACC prescribes standards which must be followed by student athletes and their schools. An injunction would have the effect of usurping the regulatory authority of the ACC and substituting for it the judgment of this Court. Such an action would decrease respect for the ACC's authority and its ability to adequately regulate university sports would thereby be weakened. Thus, the ACC will suffer harm if the injunction is granted far in excess of any harm suffered by the plaintiff if it is not.

Kupec v. Atlantic Coast Conf., 399 F.Supp. 1377, 1379-80 (M.D.N.C. 1975). Defendant faces the same usurpation and harm that led the *Kupec* court to deny Kupec's request for an injunction, and Plaintiff's request for injunctive relief should be denied for the same reason.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's request for preliminary injunctive relief.

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2025, I electronically filed the foregoing **Response to Plaintiff's Motion For Preliminary Injunction** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties and counsel of record.

Dated: March 27, 2025

/s/ Kenneth L. Racowski

Counsel for National Collegiate Athletic Association

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JETT ELAD **Plaintiff,** **v.** **NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,** **Defendant.**	Case No. 3:25-cv-01981 (ZNQ) (JTQ)

DECLARATION OF JERRY VAUGHN IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

A. Personal Background

1. I am currently the Director of Academic and Membership Affairs at the National Collegiate Athletic Association ("NCAA"). I make this declaration of my own personal knowledge and, if called on to do so, could testify competently to the facts stated herein under oath.

2. I have worked for the NCAA for more than ten years. I have worked in my current position as the Director of Academic and Membership Affairs for three years. In this role, I provide director oversight of the team that manages the student-athlete reinstatement team processes for all three Divisions, including the review of extension of eligibility waivers and season of competition waivers. Additionally, I have supported membership governance bodies including the NCAA Division I, II, and III Committees on Student-Athlete Reinstatement, and various working groups that have reviewed the topic of eligibility.

3. Based on my experience, I am familiar with the NCAA's Division I bylaws, policies, and procedures for student-athlete eligibility determinations and waiver requests.

B. The NCAA

4. The NCAA is a voluntary, self-governing association composed of member colleges and universities, and athletic conferences across the country to administer college athletics. Founded over 100 years ago, the NCAA and its member schools strive to coordinate and provide student-athletes safe, fair, and inclusive athletic competition and exceptional academic experiences that foster lifelong well-being. For nearly a century, NCAA member schools and conferences have adopted rules to determine the eligibility of student-athletes to participate in intercollegiate athletics.

5. The NCAA is led by its nearly 1,100 member schools, all of which are four-year institutions and together span three divisions: Division I, Division II, and Division III. Each Division promulgates its own rules and operating guidelines through an established legislative and governance process. Changes to these rules and operating guidelines require legislative action.

6. The policies and rules governing collegiate sports reflect a consensus of views that are as diverse as the NCAA's membership.

C. The Division I Manual—Promulgated By Division I Member Schools—Governs Division I Athletic Competition

7. Division I is currently composed of approximately 350 member colleges and universities that are primarily grouped into conferences. The Division I Manual (the "DI Manual,") sets out the fundamental policies and rules that govern Division I athletic competition for more than 180,000 student-athletes. Each year, representatives of the Division I member schools establish and adopt the rules embodied in the DI Manual.

8. Since 1906, NCAA members have adopted rules regarding the eligibility of student-athletes to participate in intercollegiate sports. A version of the manual has existed for over a century. Prior to the creation of the NCAA's three Divisions—a process known as "federation"—there was a single manual covering all schools. In 1973, the three Divisions were created.

9. The 2024–25 DI Manual is divided into three sections: the NCAA Constitution (Articles 1–6), the Operating Bylaws (Articles 8–22), and the Administrative Bylaws (Article 31).

D. NCAA Member Schools Promote Safe, Fair, and Inclusive Opportunities for Student-Athletes

10. NCAA member schools are committed to the guiding principle of maintaining unparalleled opportunities for student-athletes through safe, fair and inclusive intercollegiate athletics. Some of the many ways the Division I Bylaws accomplish this end are by establishing academic standards for student-athletes prior to and during collegiate enrollment, and limiting the time during which student-athletes are eligible to compete in their chosen sport(s). The eligibility requirements promote collegiate athletics and advance the fundamental purposes of the educational institutions where the student-athletes attend. The eligibility requirements allow the NCAA member schools to serve hundreds of thousands of student-athletes. Prospective student-athletes depend upon current student-athletes' completion of their eligibility to open up new opportunities.

E. Division I Bylaws Generally Allow Student-Athletes to Compete in Four Seasons of Intercollegiate Athletic Competition Within Five Years

11. The NCAA's rules and standards for eligibility in intercollegiate competition have been in place for over a century.

12. Division I athletics eligibility rules determine who competes, against whom they compete, and under what circumstances they compete at the Division I level.

13. These eligibility rules include, among other requirements, that the student-athlete meet initial academic eligibility standards, including high school graduation and a 2.3 grade-point average in a specified number of core courses, and have their amateur status certified. *See* Bylaws 14.3.1.1 and 12.1.

14. Bylaw 12.8, includes a provision that is often referred to as the "Five-Year Rule," which provides in relevant part, as follows:

> a. **Bylaw 12.8 Seasons of Competition: Five-Year Rule.** A student-athlete shall not engage in more than four seasons of intercollegiate competition in any one sport (see Bylaws 12.02.6 and 14.3.3). An institution shall not permit a student-athlete to represent it in intercollegiate competition unless the individual completes all seasons of participation in all sports within the time periods specified below:
>
> i. **Bylaw 12.8.1 Five-Year Rule.** A student-athlete shall complete the student-athlete's seasons of participation within five calendar years from the beginning of the semester or quarter in which the student-athlete first registered for a minimum full-time program of studies in a collegiate institution, with time spent in the armed services, on official religious missions or with recognized foreign aid services of the U.S. government being excepted. For international students, service in the armed forces or on an official religious mission of the student's home country is considered equivalent to such service in the United States.
>
> ii. **Bylaw 12.8.1.1 Determining the Start of the Five-Year Period.** For purposes of starting the count of time under the five-year rule, a student-athlete shall be considered registered at a collegiate institution (domestic or foreign; see Bylaw 14.02.4) when the student-athlete initially registers in a regular term (semester or quarter) of an academic year for a minimum full-time program of studies, as determined by the institution, and attends the student's first day of classes for that term (see Bylaw 12.8.2).

15. The DI Manual makes clear that this rule applies to all collegiate athletics whether a student-athlete plays for a two-year or a four-year institution. It defines "intercollegiate competition" in Bylaw 12.02.6 as follows:

a. **Bylaw 12.02.6 Intercollegiate Competition.** Intercollegiate competition is considered to have occurred when a student-athlete in either a two-year or a four-year collegiate institution does any of the following:

(a) Represents the institution in any contest against outside competition, regardless of how the competition is classified (e.g., scrimmage, exhibition or joint practice session with another institution's team) or whether the student is enrolled in a minimum full-time program of studies;
(b) Competes in the uniform of the institution, or, during the academic year, uses any apparel (excluding apparel no longer used by the institution) received from the institution that includes institutional identification; or
(c) Competes and receives expenses (e.g., transportation, meals, housing, entry fees) from the institution for the competition.

16. The DI Manual defines "Collegiate Institution" in Bylaw 14.02.4 as follows:

a. **14.02.4 Collegiate Institution.** A collegiate institution (for purposes of NCAA legislation) is an institution of higher education that:

(a) Is accredited at the college level by an agency or association recognized by the secretary of the Department of Education and legally authorized to offer at least a one-year program of study creditable toward a degree;

(b) Conducts an intercollegiate athletics program, even though the institution is not accredited at the college level and authorized to offer at least a one-year program of study creditable toward a degree; or

(c) Is located in a foreign country.

17. The bylaws are designed to align the student-athletes' period of athletic competition with their anticipated academic achievement and progress towards a college degree. A student-athlete's eligibility starts upon full-time college enrollment; and it is expected that the period of athletic competition will align with the student-athlete successfully obtaining a baccalaureate degree.

F. The NCAA Approved a Blanket Waiver Permitting Schools to Extend A Division I Student-Athlete's Eligibility Due to the Impact of the COVID-19 Pandemic

18. Given the impact of the COVID-19 pandemic on intercollegiate athletics during the 2020–2021 academic year, the NCAA Division I Council approved a blanket waiver permitting institutions to self-apply a season-of-competition and one-year extension of eligibility waiver. The result for any student-athlete who competed in fall sports during the 2020–2021 academic year was that the student-athlete's season of competition was restored and counted neither toward their four seasons of competition nor five years of eligibility. This effectively created a one-time extension to the Five-Year Rule. The blanket waiver was available not only to NCAA Division I member schools but to all forms of collegiate competition, including two-year institutions.

19. With the application of the COVID-19 waiver, student-athletes could potentially receive an additional year of eligibility, from five years to six years, and the 2020–21 football season would not count as one of their four seasons of competition. The waiver did not change when student-athletes' eligibility clock started under Bylaw 12.8.1.1.

G. Plaintiff Has Engaged in 4 Seasons of Intercollegiate Competition In 5 Years, Including Benefitting From the COVID Exception

20. Upon information and belief, Plaintiff Jett Elad ("Plaintiff") graduated from high school in 2019.

21. Plaintiff then enrolled at Ohio University, a Division I member institution, in the Fall of 2019. Plaintiff took a "redshirt" year during the 2019–2020 academic year football season, which

counted toward his five years of eligibility but not his four seasons of intercollegiate competition. Plaintiff then participated in football competition for Ohio University during the 2020–2021 season, but the season counted neither toward his years of eligibility nor his seasons of intercollegiate competition because of the COVID-19 blanket waiver.

22. During the 2021–2022 football season, Plaintiff participated in nine (9) games for Ohio University, and his participation counted as his second year and first season of intercollegiate competition. Plaintiff withdrew from Ohio University during the fall of 2019.

23. Plaintiff then enrolled at Garden City Community College ("GCCC"), a two-year NJCAA institution. Plaintiff completed his third year and second season of intercollegiate competition at GCCC during the 2022–2023 season.

24. Plaintiff then transferred to the University of Nevada Las Vegas ("UNLV"), a Division I member institution, for whom he competed during the 2023–2024 and 2024–2025 seasons, completing his fourth and fifth years of eligibility and third and fourth seasons of intercollegiate competition, respectively. Plaintiff exhausted his eligibility to participate in intercollegiate football competition during his final season at UNLV.

H. Plaintiff Seeks At Least One Additional Year of Eligibility to Compete in Division I Intercollegiate Football Pursuant to a Blanket Waiver For Which He Does Not Qualify.

25. On December 23, 2024, the NCAA Division I Board of Directors approved a waiver to permit student-athletes who attended and competed at a non-NCAA school for one or more years to remain eligible to compete in Division I during the 2025–2026 academic year if those student-athletes would have otherwise used their final season of eligibility in the 2024–2025 academic year, provided that those same student-athletes meet all other eligibility requirements.

26. Plaintiff does not qualify for the waiver, as he does not have time remaining in his period of eligibility ("five-year rule") and therefore does not meet all other eligibility requirements.

27. Nevertheless, Plaintiff entered the transfer portal and transferred to the Rutgers University ("Rutgers").

28. Shortly after his transfer, Rutgers applied for a waiver on Plaintiff's behalf, requesting that Plaintiff be allowed to compete in intercollegiate football during the 2025-2026 academic year.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on March 26, 2025, in Indianapolis, Indiana.

Jerry Vaughn
National Collegiate Athletic Association

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JETT ELAD

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Defendant

Case No. 3:25-cv-01981

DECLARATION OF DR. MATTHEW BACKUS

March 27, 2025

I. Introduction

A. Qualifications

1. My name is Matthew Backus. I am an economist in the field of industrial organization. I hold a Ph.D. in Economics from the University of Michigan at Ann Arbor, and I am currently an associate professor in the Economic Analysis and Policy Group at the Haas School of Business as well as the Department of Economics at the University of California, Berkeley. I have previously held full-time positions at Cornell University and Columbia University, and I have held visiting faculty positions at New York University, Princeton University, University of Pennsylvania, and Yale University. I have been a research associate with the National Bureau of Economic Research ("NBER") since 2024 (previously a Faculty Research Fellow since 2015), and a Research Affiliate with the Centre for Economic and Policy Research ("CEPR") since 2019. Both the NBER and CEPR are independent, non-partisan, private organizations that operate on an invite-only basis to bring together the leading scholars in various fields of economics and thereby facilitate the advancement and dissemination of economic research.[1]

2. At U.C. Berkeley I teach a course on antitrust in the Haas School of Business that attracts MBA students, policy students, and law students, as well as a course on industrial organization for Ph.D. students in economics and related fields. My own research in industrial organization has been published in the leading general interest economics journals, including Econometrica, The Quarterly Journal of Economics, The Journal of Political Economy, and The Review of Economic Studies. My work has been supported financially by grants from the National Science Foundation and the Alfred P. Sloan Foundation.

[1]National Bureau of Economic Research, "About the NBER," available at https://www.nber.org/about-nber; Center for Economic Policy Research, "About CEPR," available at https://cepr.org/about

3. In addition, I have served as a referee for almost every top journal in economics, including The American Economic Review, Econometrica, The Quarterly Journal of Economics, The Journal of Political Economy, and The Review of Economic Studies, among others, as well as a merit reviewer for the National Science Foundation, and a Program Committee member for numerous academic conferences. In my capacity as a referee, reviewer, and program committee member, my job is to evaluate research submissions for the quality of the theoretical and empirical analysis. A copy of my CV is attached as Appendix A.

B. Case Background

4. Plaintiff Jett Elad challenges National Collegiate Athletic Association ("NCAA") rules governing eligibility for intercollegiate competition, including the NCAA eligibility bylaws that set the five years or four seasons that a student-athlete is eligible to compete in NCAA collegiate athletics ("Five-Year Rule") and bylaws that define "intercollegiate competition" to include competition at "a two-year or a four-year college institution" ("Intercollegiate Competition Rule")."[2] In particular, Mr. Elad alleges anticompetitive harm because the NCAA Division I eligibility rules that include a season spent competing in Junior College ("JUCO") toward the total allowable years and number of seasons within which student-athletes can compete in the NCAA. He claims enforcement of this rule will cause him irreparable harm and that this rule also harms Junior Colleges and consumers of college athletics. He therefore requests not only a waiver of the Rules to allow him to play in the 2025-2026 football season at Rutgers, but also a prohibition of the Five-Year Rule in general.

[2] Jett Elad, Plaintiff, vs. National Collegiate Athletic Association, Defendant, Verified Complaint and Demand for Trial By Jury, dated March 20, 2025 ("Complaint") cites Bylaws 12.8.1 and 12.02.6, Complaint ¶¶17-18.

5. Mr. Elad is a college football player who most recently competed at the University of Nevada, Las Vegas ("UNLV"). He started his college career Ohio University for the 2019-2020 season, during which he was red-shirted, received a blanket waiver for the 2020-2021 Covid year, played in the 2021-2022 season, and left the program in the fall of 2022, to attend Garden City Community College. The Complaint states that this was due to his not meeting degree progression and GPA requirements (eligibility requirements) "and had no choice but to enroll at a Junior College in order to regain his academic standing."[3] He competed in intercollegiate football there during the 2022-2023 and then when he regained his NCAA eligibility, he transferred to UNLV and played football for two seasons.[4] This exhausted his 5-year eligibility. He nevertheless entered the transfer portal and was given an offer by Rutgers to enroll there and play football.[5] He asked for, and was denied, a waiver of enforcement of the Five-Year Rule.

6. The NCAA's eligibility rules are outlined in bylaws to the NCAA Division I Manual, which governs Division I athletic competition for approximately 350 member schools and more than 180,000 student-athletes.[6] The eligibility rules outline criteria for participation along several dimensions, including high school graduation status and minimum GPA.[7]

7. Mr. Elad claims the NCAA has "illegally restrained and suppressed competition in the relevant markets through its refusal to waive the Five-Year Rule as it applies to Mr. Elad's semester attending a Junior College.[8] The Complaint states the relevant market is "the

[3] Complaint, ¶31.
[4] Complaint, ¶¶32-33.
[5] Complaint, ¶37.
[6] National Collegiate Athletic Association, "Our Division I Members," available at https://www.ncaa.org/sports/2021/5/11/our-division-i-members
[7] National Collegiate Athletic Association, "2024-25 NCAA Division I Manual", August 9, 2024 ("NCAA Division I Manual"), available at https://www.ncaapublications.com/p-4701-2024-2025-ncaa-division-i-manual.aspx
[8] Complaint, ¶66.

labor market for college football athletes in general and NCAA Division I football specifically."[9]

8. He also claims Breach of Contract, and Breach of Implied Covenant of Good Faith and Fair Dealing, which are not part of my assignment to assess.

C. Assignment

9. I have been retained by counsel for the NCAA as an economics expert to evaluate the economic claims that Plaintiff has presented in his complaint. In completing this assignment, I consider whether Plaintiff has presented evidence of the economic conditions needed to show the challenged eligibility rules harm competition. In particular, I consider whether he has established anticompetitive harm from the challenged rules and whether he has addressed the potential procompetitive benefits of the challenged rules.

10. I was also asked to assess from an economic perspective whether there is a reliable basis to infer harm to JUCOs and harm to consumers of NCAA Division I football from the NCAA decision to decline a waiver of the Five-Year Rule for Mr. Elad or from the enforcement of the Five-Year Rule in general.

11. I have reviewed Plaintiff's Complaint, the Memorandum of Law in Support of Plaintiff's Application for an Order to Show Cause with Temporary Restraints and a Preliminary Injunction ("Memorandum"), as well as relevant economic literature and publicly available data. The materials I have relied upon in in preparing this report are attached as Appendix B. My work is ongoing. I reserve the right to revise or expand my work as new information becomes available to me, or as requested by counsel to respond to additional arguments.

[9] Complaint, ¶44.

12. I am being compensated for my work in this matter at my consulting rate of $1,250 per hour. I have been assisted in this matter by staff at Compass Lexecon, who have worked under my direction. I receive compensation from Compass Lexecon based on its collected staff billings for its support of me in this matter. My compensation in this matter is in no way contingent or based on the content of my opinion or the outcome of this or any other matter.

13. I am trained in economics, not the law. Although my work and research in antitrust economics often sits at the boundary of the two, in what follows I opine only on the economic substance of the case, and I offer no opinion on matters of law.

II. Summary of Opinions

14. Plaintiff's complaint does not substantiate claims of anticompetitive harm. Transfers of the opportunity to play NCAA Division I football between student-athletes do not affect output or prices for NCAA Division I football student-athletes and do not have a market-wide impact in either of Plaintiff's alleged relevant markets: "the labor market for college football athletes in general and NCAA Division I football specifically."[10]

15. Plaintiff's complaint does not provide evidence of or otherwise reliably define a relevant labor or product market that includes JUCO football and therefore cannot demonstrate anticompetitive harm within these markets.

16. Plaintiff merely asserts, without evidence, anticompetitive harm by the Five-Year Rule eligibility to on-field competition (NCAA Division I football) and to consumers. Mere speculation on consumer views does not provide reliable evidence of harm.

[10] Complaint, ¶44.

17. Plaintiff does not address or weigh the procompetitive reasons for eligibility rules for the production, and continued popularity, of NCAA Division I football. Indeed, eligibility rules help define the essential characteristics of the NCAA Division I product overall (sports played by college students pursuing degrees) and for individual sports (e.g., men's wrestling, women's soccer).

18. A "no rules" environment is not consistent with the mission of the NCAA, or its member universities to provide for the health, welfare and education of its student-athletes. Plaintiff appears to ignore or dismiss these goals, and characterizes rules made by the NCAA as the "practical equivalent of horizontal agreements."[11]

III. Plaintiff's Complaint does not Substantiate Claims of Anticompetitive Harm

19. From the outset, it is useful to clarify that the notion of anticompetitive harm has a precise economic meaning related to reductions in economic welfare resulting from limitations on competitive behavior; it can be identified through increases in price above the competitive level, and reductions in output and quality below the competitive level. This has two immediate implications: first, not all restrictions on market participants are anticompetitive. Many restrictions have the effect of facilitating efficient markets. Second, harms to an individual are distinct from anticompetitive harms. A firm is "harmed" when it loses a contract to a more efficient rival, but this is simply the market at work.

20. Plaintiff claims that the relevant market is "the labor market for college football athletes in general and NCAA Division I football specifically," but offers no analysis to support this market definition. Within the relevant market, Plaintiff claims that three parties

[11] Complaint, ¶52.

suffer anticompetitive effects: Elad and similarly situated athletes, junior colleges, and consumers of college football. I will consider these cases in turn.

A. Plaintiff's loss of eligibility is not an anticompetitive harm.

21. To begin with, the loss of eligibility for one player or group of players does not constitute an anticompetitive harm, although it may be associated with the loss of NIL opportunities for that player (or group of players). However, the end of Mr. Elad's eligibility is the opportunity of a lifetime for someone else. Indeed, the Complaint states that his roster space would be filled by another player if he does not receive a waiver to play in the 2025-2026 season. And his prospective spot at Rutgers was due to the cycling-off of student-athletes from that roster. There is a normal flow of benefits from outgoing to incoming students under the Five-Year Rule.

22. Anticompetitive harm arises from a loss of output and higher pricing to consumers. For college athletics, the flow of benefits from outgoing to incoming students only represents a shift in who enjoys those benefits, and does not signify a reduction in overall benefits. Mr. Elad's slot would be easily filled because of the limited annual number of NCAA Division I football roster slots available and tens of thousands of eligible players from newly-graduated high school football players each year, to those in NCAA Division II, NCAA Division III, foreign, as well JUCO programs.[12] The supply of football players exceeds demand for NCAA Division I football team slots, and so the end of a student-athlete's

[12] Statistics to consider: There were 33,355 participants in NCAA Division I football in 2024 with 21,014 in Division II and 26,429 in Division III. (https://www.ncaa.org/sports/2018/10/10/ncaa-sports-sponsorship-and-participation-rates-database.aspx); The National Federation of State High School Associations (NFHS) reports over 1 million (1,031,508) boys high school football players in the 2023-2024 season. https://www.nfhs.org/media/7213111/2023-24-nfhs-participation-survey-full.pdf . If roughly one quarter graduate every year, that is about 250,000 potential candidates, with some percentage meeting NCAA Division I eligibility. In 2015, the NCAA reported 3% of high school football players played NCAA Division I football. https://www.ncaa.org/sports/2015/3/2/estimated-probability-of-competing-in-college-athletics.aspx
In context, assuming roughly one quarter of the NCAA Division I slots turn over every year, that is only about 8300 slots (25% of the 33,355 participants is 8,338).

eligibility does not create anticompetitive harm as new supply of athletes overwhelms the few slots made available through implementation of eligibility rules.

B. Plaintiff does not demonstrate anticompetitive harm to Junior Colleges because they are not in the relevant antitrust market.

23. Antitrust economics uses market definition to define the scope of potential harms and anticompetitive conduct. From the FTC and DOJ 2023 Merger Guidelines, "A relevant antitrust market is an area of effective competition, comprising both product (or service) and geographic elements. The outer boundaries of a relevant product market are determined by the 'reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it.'"[13]

24. Plaintiff claims that Junior Colleges are in the relevant antitrust market. This implies a "reasonable interchangeability of use," or equivalently, a high degree of substitutability, between playing football at a JUCO and at a NCAA Division I university. It is an essential step in Plaintiff's argument because if this were not the case, then it would not be possible for there to be an antitrust harm to JUCOs. If playing football at a JUCO does not display "reasonable interchangeability" for the elite caliber of student-athletes seeking to play football at a NCAA Division I university, then it is impossible that the contested eligibility rules could, as Plaintiff claims, "harm the Junior Colleges' ability to compete with Division I schools for talented athletes"[14] because they would not be competing with NCAA Division I schools in the first place.

25. However, the claim that JUCOs are in the relevant antitrust market is contradicted by Plaintiff's complaint, which, after enumerating the significant benefits of

[13] FTC and DOJ 2023 Merger Guidelines 4.2.
[14] Complaint, ¶54.

NCAA Division I athletics, concludes "The most talented student-athletes have no practical alternatives in the relevant markets to participating in Division I athletics."[15] Similarly, the Memorandum argues "its member schools collectively enjoy a monopoly in the market for student-athlete services."[16] The Memorandum continues, "There are no practical alternatives for college athletics to participation in Division I of the NCAA, and student athletes have nowhere else to sell their labor. The NCAA exerts exclusive control over its member institutions and college athletics in antitrust markets."[17]

26. Moreover, the inclusion of JUCOs, which are members of the NJCAA league, would be inconsistent with the market definition employed by the court in cases cited in the Plaintiff's Memorandum, which cites *Pavia* citing *Alston*, "[T]he Supreme Court recognized that 'NCAA's Division I essentially *is* the relevant market for elite college football.'"[18]

27. The only support offered by the Plaintiff for including JUCOs in the relevant antitrust market is the ruling in *Pavia*, which differs from even the Complaint in *Pavia*. In particular, the Complaint in *Pavia* concerned itself with harms in "the market for Division I football players,"[19] not NJCAA football players or football players more generally.

28. Plaintiff offers no analysis in support of the assertion that JUCOs are in meaningful competition with NCAA Division I schools for football talent. Importantly, from an economic perspective, the fact that some athletes transfer from the JUCO to NCAA

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[15] Complaint, ¶48.
[16] Memorandum, p.5
[17] Memorandum, p.21.
[18] Memorandum, p.23. See also O'Bannon v. NCAA, 802 F.3d 1049, 1064-65 (9th Cir. 2015) ("The court found that very few athletes talented enough to play FBS football or Division I basketball opt not to attend an FBS/Division I school; hardly any choose to attend an FCS, Division II, or Division III school or to compete in minor or foreign professional sports leagues. . . Thus, the court concluded the market specifically for FBS football and Division I basketball scholarships is cognizable under the antitrust laws because 'there are no professional [or college] football or basketball leagues capable of supplying a substitute for the bundle of goods and services that FBS football and Division I basketball schools provide.'" (quoting O'Bannon v. NCAA, 7 F. Supp. 3d 955, 966–67 (N.D. Cal. 2014))).
[19] *Pavia* Complaint, ¶45.

Division I schools does not indicate substitutability. The degree of substitution between two products is an attribute of demand for the products *when both products are in a consumer's choice set*. If an athlete is not admitted to a NCAA Division I school or fails to retain academic eligibility, then their choice to enroll in a JUCO does not speak to substitutability. Mr. Elad's own case is instructive on this point: he chose to participate in JUCO athletics only because he lost his eligibility to compete in NCAA Division I athletics—not because, with both options in hand, JUCO athletics were more attractive or an option he would have even considered under circumstances in which Division I participation remained an option for him. And when he regained his eligibility, then consistent with claims of the unique benefits of NCAA Division I athletics in the Complaint and Memorandum, the choice to return was no choice at all. To demonstrate that JUCOs compete with NCAA Division I schools, Plaintiff needs to show a reasonable degree of substitution for student athletes *who are admitted to both NCJAA and NCAA Division I athletic programs.*

29. I do not know whether Plaintiff intends to present such evidence at trial. However, if I defer to the market definition employed by the court in *Alston*, or if I accept Plaintiff's own claims that "there are no practical alternatives for college athletics to participation in Division I of the NCAA," then I must conclude that Plaintiff's arguments that JUCOs suffer anticompetitive harm is in error, since JUCOs would not compete in the same antitrust market with NCAA Division I programs.[20]

[20] In addition, the court in *Arbolida v. NCAA*, No. 25-2079-JWB, 2025 U.S. Dist. LEXIS 31283 (D. Kan. Feb. 21, 2025) also questions the substitutability of JUCOs for Division I institutions. "The court also questions the implied assumption in Plaintiff's briefs and the opinions by courts such as the Middle District of Tennessee in *Pavia*, 2024 WL 5159888 at *11, that JUCOs and NCAA Division I member institutions are perfect substitutes. Based on the *Pavia* decision, Plaintiff here contends that the NCAA intercollegiate competition rules drive students to Division I schools over JUCOs. Although the record in this case is not developed enough to provide a comprehensive comparison, there appears to be a reputational, resource, and monetary difference between JUCOs and Division I member institutions that makes them weak substitutes independent of the NCAA rules for eligibility."

C. Plaintiff's claim that consumers are harmed by the eligibility rules confuses competition on the field with the economic notion of competition in antitrust.

30. Plaintiff also claims anticompetitive harms to consumers because the competitiveness of teams is diminished by the eligibility rules. This argument confuses anticompetitive harm with competitiveness on the field. If we took the argument on its face, we might also worry about age limitations in Little League sports because they diminish the quality of play, which would be enhanced by the inclusion of older children. Anti-doping rules in most sports could be construed to harm consumers by restricting athletes to the slower, weaker performance of the unenhanced human body. A similar conclusion follows for the prohibition of "supershoes" from Iron Man competitions.[21]

31. What is common to these examples and Plaintiff's argument is that they misconstrue the notion of "quality" in the economic concept of anticompetitive harms. If athletes and fans cared *only* for the level of athletic performance, then there would be no need for specialized leagues, whether for different ages, different genders, or for differently abled athletes. For football, the NCAA would be made irrelevant by the NFL. The fact that these eligibility-restricted leagues do have a fan following is testament to the idea that consumers care about more than just athletic proficiency and performance. There is value in creating opportunities for athletes who are not ready, or who never will be ready, to play at the highest levels of professional sports. The "quality" that these eligibility-restricted leagues provide for athletes and for fans is the differentiation through the careful balance of eligibility rules that provide a unique sporting product and athletic experience within the educational missions of the universities. NCAA eligibility rules, including GPA, progression to degree and the Five-Year Rule, tie athletic participation to full-time academic enrollment and ensure student-

[21] https://www.ironman.com/resources/rules-and-policies/prohibited-running-shoes

athletes progress toward a degree."[22] I will discuss this point further in the next section as I consider procompetitive benefits from the rules.

IV. Plaintiff's complaint does not consider or weigh potential procompetitive benefits of the challenged rules or the effects of eliminating them

A. "Procompetitive Benefits" has a specific meaning

32. The concept of procompetitive benefits reflects the notion that some rules and practices that deviate from unlimited competition may nonetheless encourage competition and lead to increased overall economic welfare. Increases in economic welfare can come from restraints that lower total costs, improve quality, or expand output, including expanded output through the creation of new products that would not otherwise be feasible.

33. Plaintiff merely asserts benefits to competition, JUCOs and consumers from elimination of the Five-Year Rule with respect to JUCOs, but provides no evidence of this. Importantly, the Plaintiff does not consider or weigh potential negative effects of the elimination of the Five-Year Rule on student-athlete health, welfare or safety and general fan interest and support for NCAA Division 1 football.

[22] National Collegiate Athletic Association, "Staying on Track to Graduate" site explains "Because we believe success in the classroom is just as important as winning on the field, we have standards to ensure student-athletes make progress toward a degree – every year and every season. They need to meet these standards to be eligible to play." Specifically, for Division I, "40 percent of required coursework for a degree must be complete by the end of the second year, 60 percent by the end of the third year and 80 percent by the end of their fourth year. Student-athletes are allowed five years of eligibility and athletically related financial aid. All Division I student-athletes must earn at least six credit hours each term to be eligible for the following term and must meet minimum grade-point average requirements related to the school's GPA standards for graduation." https://www.ncaa.org/sports/2021/2/10/student-athletes-current-staying-track-graduate.aspx Mr. Elad acceded to the requirements of such eligibility rules when he left a Division I institution to regain his academic standing and eligibility to play NCAA Division I football again.

B. Eligibility rules preserve intercollegiate competition as a differentiated product that creates value for athletes

34. The history of the NCAA provides context for the need for reasonable rule-making for safety and academic enrichment. These objectives also are aligned with the member institutions' objectives and the preservation of a differentiated product that creates value for athletes and consumers of NCAA football.

35. The NCAA was founded in 1906 out of concern for the health and safety of students being injured or killed during football games, leaving fans outraged and resulting in some universities suspending football programs.[23] The regulations put in place benefited students, universities and fans, allowing the intercollegiate sport to exist and expand from those early days.

36. An unregulated "free for all" is not in keeping with the mission, priorities and duties of the NCAA and its member colleges and universities to its students.[24] Indeed, taken to its logical extreme, unlimited years at JUCO or other non-NCAA institutions, no GPA, academic progression, gender, or other eligibility requirements could result in substantial distortions to the educational and competitive goals of universities and students.

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[23] "The NCAA, a member-led organization, was founded in 1906 to regulate the rules of college sport and protect young athletes. At the start of the 20th century, mass formations and gang tackling gave football a reputation as a brutal sport. During the 1904 season alone, there were 18 deaths and 159 serious injuries on the field. At the college level, hired players not enrolled in school often filled out rosters. Some colleges and universities halted football on their campuses. The public outcry grew for the sport to be reformed or abolished. In October 1905, President Theodore Roosevelt, a longtime football fan, called together athletics leaders from some of the top football schools — Harvard, Princeton and Yale — and urged them to clean up the game. As football deaths and injuries continued to mount during the 1905 season, New York University Chancellor Henry M. MacCracken convened a meeting of 13 schools in December to reform football playing rules. Soon after, on Dec. 28 in New York, 62 colleges and universities became charter members of the Intercollegiate Athletic Association of the United States, the precursor to the NCAA." https://www.ncaa.org/sports/2021/5/4/history.aspx

[24] The NCAA's stated mission is "Provide a world-class athletics and academic experience for student-athletes that fosters lifelong well-being." And priorities that include, among others: Coordinate and deliver safe, fair and inclusive competition directly and by Association members; Set rules and guidelines and provide enforcement; Create programs that support outstanding performance on and off the field; and Deliver excellent and inclusive championships. https://www.ncaa.org/sports/2021/6/28/mission-and-priorities.aspx

37. Further, in the absence of eligibility rules that define the set of student-athletes, NCAA Division I football would lose its defining feature. Differentiation through eligibility rules stimulates consumer demand by creating a unique product offering that expands the market for athletic viewership, even when there are competing offerings that are stronger in absolute athletic performance—in this case, the NFL. This logic underlies the enduring popularity of the Paralympics despite the Olympics, the Women's National Soccer League despite the National Premier Soccer League, and the Senior PGA tour despite the PGA tour, and myriad other eligibility-defined athletic leagues.

38. As an economist, I cannot opine on the *exact* optimal set of eligibility rules that will balance the competing concerns of athlete safety, consumer interest, and academic progression. However, insofar as it is the mission of the NCAA to find that balance, and insofar as the NCAA's incentives are aligned with that mission, there is sound economic reason to defer to their expertise rather than litigating the detailed features of the product offering that is college athletics. Moreover, as I will discuss in the next section, there is no reason offered in the Complaint to suggest that the NCAA or member institutions enjoy pecuniary benefits from the contested rules, other than the pro-competitive benefits I discuss, that would distort their incentives away from that mission.

39. Economic analysis does, however, inform the necessity of such league-wide rules, including the contested ones. League-wide rules are necessary to preserve the unique NCAA athletic offering because each individual team has a private incentive to enroll older, more physically developed, and more experienced athletes to gain a competitive advantage on the field. The pro-competitive benefits that the rules accomplish suffer a "tragedy of the

commons"[25] insofar as all teams benefit from the consumer interest and fair play accomplished by eligibility rules, but an individual team might privately benefit by flaunting those rules. For this critical reason, the NCAA serves an important role in preserving the pro-competitive benefits by committing to enforce rules league-wide.

40. An economic analysis of the rules in question must consider the new equilibrium in a world without them. If players could gain an advantage in NCAA Division I football by extending their collegiate football careers, and if the NIL opportunities associated with this are large enough, then we would expect players to do exactly that, and also for teams to seek out these players to obtain a competitive advantage on the field. If enough players and teams engage in this activity, then many players will distort their academic progression to compete in NCAA Division I football, leading to the crowding out players who chose not to do so.

41. Additionally, the responses of student-athletes and schools to rules that would extend eligibility can be evaluated in practice by looking at a recent temporary change in eligibility rules in response to the COVID-19 pandemic. As the NCAA's COVID-19 Waiver relating to eligibility rules effectively allowed student-athletes one additional season, the crowding-out effect predicted by economic theory impacted many sports, including NCAA Division I football. While the 12 Football Bowl Subdivision programs in Texas signed 289 high school recruits in 2019 and 263 in 2020, the same programs only signed 203 high school recruits in 2021 and 210 in 2022.[26] Athletic Directors and coaches have also expressed

[25] Andreu Mas-Colell, Michael D. Whinston, and Jerry R. Green, *Microeconomic Theory,* (New York Oxford: Oxford University Press, 1995), p. 236.

[26] Craven, Mike. "Blame Covid Exemption, Not Transfer Portal, for Shrinking Numbers in Recruiting." *Dave Campbell's Texas Football*, available at www.texasfootball.com/article/2023/01/31/blame-covid-exemption-not-transfer-portal-for-shrinking-numbers-in-recruiting.

concern regarding this "crowding out" effect. Atlantic Coast Conference Commissioner Jim Philips stated that, "what this has caused [] is a pushback on freshmen and younger players and opportunities because some of the student-athletes with additional years have been kept in the system," while Peter Girgis, an assistant coach at Serra High School, said that "guys across college sports are just going to be older now… so coaches want to follow that trend and put together a team of the most skilled and experienced 20-plus-year-[olds] instead of adding a bunch of 18-year-[olds] with potential."[27]

42. To summarize, just as the private incentives of individual teams seeking advantage on the field are held in check by the eligibility rules, so are the private incentives of individual players seeking a competitive advantage against other players for NIL opportunities and play time. These private incentives would otherwise erode the boundaries of what it means to be an elite *student*-athlete, the defining feature of NCAA Division I sports. In this "tragedy of the commons," regulating these private incentives yields procompetitive benefits for all parties. Specifically, it preserves the differentiated athletic product that stimulates consumer interest and creates opportunities for student-athletes, and preserves the academic careers of student-athletes as well by mitigating incentives for student-athletes to distort their path.

[27] Associated Press. "Covid-19 Led to Extra College Eligibility. Those 5th-Year Players Are Set for Their Last Runs." *NBC Sports*, October 30, 2024, available at www.nbcsports.com/college-basketball/news/covid-19-led-to-extra-college-eligibility-those-5th-year-players-are-set-for-their-last-runs; Noguchi, Kealoha. "How Covid-19 and Other NCAA Rule Changes Are Impacting Men's Basketball Recruitment." *Long Beach Current,* February 3, 2022, available at lbcurrent.com/sports/2022/02/03/how-covid-19-and-other-ncaa-rule-changes-are-impacting-mens-basketball-recruitment.

C. Procompetitive benefits offer a rationale for the NCAA's restriction that is not otherwise explained by the Plaintiff's theory of anticompetitive behavior.

43. The existence of exceptions to NCAA Eligibility rules does not render arguments for procompetitive benefits pretextual; they are consistent with careful balancing of the competing objectives of the NCAA in a complicated landscape with student-athletes who come from varied backgrounds and face unique individual challenges in their pursuit of both academic and athletic success. Plaintiff's theory of anticompetitive effects does not offer any rationale for how the NCAA or its member schools would benefit, financially or otherwise, from the challenged rules. Indeed, taking Plaintiff's argument about downstream harm to consumers on its face,[28] the NCAA and member institutions would be worse off insofar as the challenged rules reduce demand for Division I NCAA athletic events, raising the question of why the NCAA would maintain them. In contrast, the procompetitive benefits I have discussed alongside the NCAA's mission provide a rationale for the challenged rules.

44. Plaintiff proposes removing the challenged eligibility rules without seriously considering why they exist. The risks of such a proposed remedy are encapsulated by the writer G.K. Chesterton:

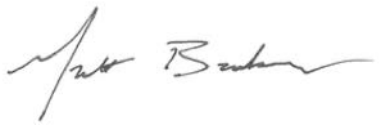
> "There exists in such a case a certain institution or law; let us say, for the sake of simplicity, a fence or gate erected across a road. The more modern type of reformer goes gaily up to it and says, 'I don't see the use of this; let us clear it away.' To which the more intelligent type of reformer will do well to answer: 'If you don't see the use of it, I certainly won't let you clear it away. Go away and think. Then, when you can come back and tell me that you do see the use of it, I may allow you to destroy it.'"

45. Plaintiff mistakenly alleges that there are no procompetitive benefits to the challenged rules.[29] A straightforward answer is that the NCAA member schools have a rule in

[28] Complaint, ¶55.
[29] Memorandum, p.28.

place limiting eligibility based on full-time enrollment in a collegiate institution in order to create a differentiated sports offering for which there is demand, and also to create opportunities for student-athletes in their communities who may not have professional level athletic talent or who chose intercollegiate athletics in order to continue competing at a high level while pursuing an academic degree in a traditional timeframe. Both motivations support the contention that the rules create procompetitive benefits.

Signed this 27th day of March, 2025.



Dr. Matthew Backus

Appendix A

MATTHEW BACKUS

backus@berkeley.edu
https://mbackus.github.io/

PRIMARY APPOINTMENTS

- Associate Professor, Haas School of Business, UC Berkeley, 2024–
- Associate Professor, Department of Economics, UC Berkeley, 2024–

OTHER APPOINTMENTS

- Board of Editors, AEJ: Micro, 2025–
- Research Associate, National Bureau of Economic Research, 2024–
- Research Affiliate, Centre for Economic and Policy Research, 2019–

PRIOR APPOINTMENTS

- Assistant Professor, Haas School of Business, UC Berkeley, 2022–2024
- Assistant Professor, Department of Economics, UC Berkeley, 2022–2024
- Faculty Research Fellow, National Bureau of Economic Research, 2016–2024
- Philip H. Geier Jr. Associate Professor, Economics, Columbia Business School, 2019–2022
- Assistant Professor, Economics, Columbia Business School, 2015–2019
- Assistant Professor, Department of Economics, Cornell University, 2013–2015
- Postdoctoral Scholar, eBay Research Labs, 2012–2013

EDUCATION

- Ph.D. Economics, University of Michigan, 2012
- M.A. Economics, University of Toronto, 2006
- B.A. Economics and Philosophy, American University, 2003

PUBLICATIONS

- **Dynamic Demand Estimation in Auction Markets**
  with Greg Lewis
  Review of Economic Studies, Vol 92, Issue 2, March 2025, pp. 837–872.
- **Expectation, Disappointment, and Exit: Evidence on Reference Point Formation from an Online Marketplace**
  with Thomas Blake, Dimitriy Masterov, and Steven Tadelis
  Journal of the European Economic Association, Vol. 20, Issue 1, February 2022, pp. 116–149
- **Common Ownership in America: 1980–2017**
  with Chris Conlon and Michael Sinkinson
  AEJ: Microeconomics, Vol. 13 Issue 3, August 2021, pp. 273–308
  AEJ Best Paper Award
- **Why is Productivity Correlated with Competition?**
  Econometrica, Vol. 88 Issue 6, November 2020, pp. 2415–2444
  EARIE 2014 YEEA, 9th Paul Geroski Prize for Most Significant Policy Contribution
- **I Don't Know**
  with Andrew Little
  American Political Science Review, Vol. 114 Issue 3, August 2020, pp. 724–743

- **Sequential Bargaining in the Field: Evidence from Millions of Online Bargaining Interactions**
  with Thomas Blake, Brad Larsen, and Steven Tadelis
  Quarterly Journal of Economics, Vol. 135 Issue 3, August 2020, pp. 1319–1361
- **Theory and Measurement of Common Ownership**
  with Chris Conlon and Michael Sinkinson
  American Economic Review P&P, Vol. 110 Issue 5, May 2020, pp. 557–560
- **The Empirical Content of Cheap-Talk Signaling: An Application to Bargaining**
  with Tom Blake and Steven Tadelis
  Journal of Political Economy, Vol. 127 Issue 4, August 2019, pp. 1599–1628
- **Is Sniping a Problem in Online Auction Markets?**
  with Tom Blake, Dimitriy Masterov, and Steven Tadelis
  Proceedings of the 24th ACM International World Wide Web Conference, 2015
- **Search Costs and Equilibrium Price Dispersion in Auction Markets**
  with Joseph Podwol and Henry Schneider
  European Economic Review, Vol. 71, November 2014, pp. 173–192

WORKING PAPERS

- **Common Ownership and Competition in the Ready-to-Eat Cereal Industry**
  with Chris Conlon and Michael Sinkinson
  Econometrica, revise and resubmit
- **Communication, Learning, and Bargaining Breakdown: An Empirical Analysis**
  with Thomas Blake, Jett Pettus, and Steven Tadelis
  EC'21, extended abstract
  Management Science, accepted

RECENT AND UPCOMING TALKS

- 2024–2025: ASSA Meetings, EARIE, FTC, IESE, NYU Stern
- 2023–2024: Indiana University Kelley, KU Leuven, Peder Sather Conference on Industrial Organization, Northwestern Kellogg, University of Arizona, WEIA Annual Meetings
- 2022–2023: Microsoft Research, UBC Summer IO Conference, UCLA

GRANTS

- "Bilateral Bargaining through the Lens of Big Data" (with Brad Larsen, Matt Taddy, and Steven Tadelis)
  National Science Foundation Grant, SES – 1629060
  Award Amount: $403,036
  Award Duration: September 2016–August 2021
- "Dynamic Auction Markets" (with Greg Lewis)
  National Science Foundation Grant, SES – 1463810
  Award Amount: $131,156
  Award Duration: September 2014–August 2018
- "Consumer Surplus and Distributional Concerns" (with Jett Pettus)
  Alfred P. Sloan Foundation Grant, G-2021-16988
  Award Amount: $357,127
  Award Duration: January 2022–December 2024

CURRENT TEACHING

- Berkeley UGBA 117: Antitrust
- Berkeley EWMBA/MBA 217: Antitrust
- Berkeley ECON 220B: Industrial Organization

PAST TEACHING

- Berkeley MBA 201A: Economics for Business Decision Making
- Columbia GR6254: Industrial Organization II (PhD)
- Columbia B6200: Managerial Economics (MBA)
- Columbia B5200: Managerial Economics (EMBA)
- Columbia B8260: Market Design (MBA)
- Wharton MGEC611/612: Microeconomics for Managers (MBA)
- Cornell ECON 7510: Industrial Organization (PhD)
- Cornell ECON 4610: Industrial Organization (undergraduate)

ANTITRUST TESTIMONY

- *Brantmeier v. NCAA*: Expert Declaration (July 30, 2024)
- *Pavia v. NCAA*: Expert Declaration (November 22, 2024)
- *Wade v. NCAA*: Expert Declaration (January 8, 2025)
- *Fourqurean v. NCAA*: Expert Declaration (February 3, 2025)

OTHER ANTITRUST

- ABA Panel: "The Google Search Decision: What Comes Next?" (2024)
- USC Analysis Group Conference Panel: "AI, Privacy, Big Data, and Competition – How to Address the Overlaps" (2024)
- FTC v. Microsoft: Amicus brief in support of defendant (2023)
- ABA Panel: "Auto Repair in the Age of Telematics - Right to Repair, Antitrust, and Consumer Protection" (2023)
- ABA Panel: "Breaking News: Amazon and FTC" (2023)

OUTSIDE ACTIVITIES

- Board of Directors, Feminist Press, 2019– (Treasurer, 2021–)
- Consulting Researcher, eBay Research Labs, 2013–

Last updated March, 2025.

Appendix B

Documents Considered List

Academic Articles

- Mas-Colell, Andreu, Michael D. Whinston, and Jerry R. Green. Microeconomic Theory. New York: Oxford University Press, 1995, p. 236.

Guidelines

- FTC and DOJ. 2023 Merger Guidelines, §4.2.

Legal Documents

- Jett Elad, Plaintiff, vs. National Collegiate Athletic Association, Defendant, Verified Complaint and Demand for Trial By Jury, dated March 20, 2025 ("Complaint")
- Memorandum of Law in Support of Plaintiff's Application for an Order to Show Cause with Temporary Restraints and a Preliminary Injunction ("Memorandum").
- *O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015).
- *O'Bannon v. NCAA*, 7 F. Supp. 3d 955 (N.D. Cal. 2014).
- *Arbolida v. NCAA*, No. 25-2079-JWB, 2025 U.S. Dist. LEXIS 31283 (D. Kans. Feb. 21, 2025).
- Pavia v. NCAA, Complaint, Middle District of Tennessee, 2024 (on file with counsel).

Publicly Available Reports

- National Collegiate Athletic Association. 2024-25 NCAA Division I Manual, August 9, 2024. Available at: https://www.ncaapublications.com/p-4701-2024-2025-ncaa-division-i-manual.aspx
- National Federation of State High School Associations. 2023-24 NFHS Participation Survey – Full Report. Available at: https://www.nfhs.org/media/7213111/2023-24-nfhs-participation-survey-full.pdf

Websites / Online Content

- National Bureau of Economic Research. "About the NBER." Available at: https://www.nber.org/about-nber
- Center for Economic Policy Research. "About CEPR." Available at: https://cepr.org/about
- National Collegiate Athletic Association. "Our Division I Members." Available at: https://www.ncaa.org/sports/2021/5/11/our-division-i-members

- National Collegiate Athletic Association. "NCAA Sports Sponsorship and Participation Rates Database." Available at: https://www.ncaa.org/sports/2018/10/10/ncaa-sports-sponsorship-and-participation-rates-database.aspx
- National Collegiate Athletic Association. "Transfer Terms." February 13, 2015. Available at: https://www.ncaa.org
- National Collegiate Athletic Association. "History." Available at: https://www.ncaa.org/sports/2021/5/4/history.aspx
- National Collegiate Athletic Association. "Mission and Priorities." Available at: https://www.ncaa.org/sports/2021/6/28/mission-and-priorities.aspx
- Ironman. "Prohibited Running Shoes." Available at: https://www.ironman.com/resources/rules-and-policies/prohibited-running-shoes
- Craven, Mike. "Blame Covid Exemption, Not Transfer Portal, for Shrinking Numbers in Recruiting." Dave Campbell's Texas Football. Available at: https://www.texasfootball.com/article/2023/01/31/blame-covid-exemption-not-transfer-portal-for-shrinking-numbers-in-recruiting
- Associated Press. "Covid-19 Led to Extra College Eligibility. Those 5th-Year Players Are Set for Their Last Runs." NBC Sports, October 30, 2024. Available at: https://www.nbcsports.com/college-basketball/news/covid-19-led-to-extra-college-eligibility-those-5th-year-players-are-set-for-their-last-runs
- Noguchi, Kealoha. "How Covid-19 and Other NCAA Rule Changes Are Impacting Men's Basketball Recruitment." Long Beach Current, February 3, 2022. Available at: https://lbcurrent.com/sports/2022/02/03/how-covid-19-and-other-ncaa-rule-changes-are-impacting-mens-basketball-recruitment
- National Collegiate Athletic Association. "Estimated Probability of Competing in College Athletics." Available at: https://www.ncaa.org/sports/2015/3/2/estimated-probability-of-competing-in-college-athletics.aspx
- National Collegiate Athletic Association. "Staying on Track to Graduate." Available at: https://www.ncaa.org/sports/2021/2/10/student-athletes-current-staying-track-graduate.aspx