STATE OF NORTH CAROLINA DURHAM COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 26CV000605-310

DUKE UNIVERSITY,

Plaintiff,

v.

DARIAN MENSAH,

Defendant.

EMERGENCY MOTION FOR RECONSIDERATION OF THE TEMPORARY RESTRAINING ORDER, or in the alternative, TO EXPEDITE PRELIMINARY INJUNCTION HEARING

Defendant Darian Mensah ("Mensah") respectfully moves this Court pursuant to North Carolina Rule of Civil Procedure 54(b) to reconsider a narrow portion of the Temporary Restraining Order ("TRO Order") entered on January 21, 2026, in light of new evidence and to prevent manifest injustice. In the alternative, Mensah also respectfully moves to expedite the currently scheduled Preliminary Injunction hearing, which is set for February 2, 2026, to January 23, 2026, for the same reasons – in light of new evidence and to prevent manifest injustice. Counsel for Mensah requested an expedited setting for the Preliminary Injunction hearing in open court and while this matter was pending before a different judge, which the Court denied. However, given the new evidence and to prevent manifest injustice, as well as the Court's assignment of this matter to a different presiding judge who might be able to accommodate a different schedule, reconsideration of both the TRO and the denial of the request to expedite the Preliminary Injunction hearing is appropriate.

After the close of business and on a federal holiday, Duke University filed this action seeking a Temporary Restraining Order and Preliminary Injunction pursuant to North Carolina Rule of Civil Procedure 65 and N.C. Gen. Stat. § 1-569.8. Duke University concedes "this is a simple case" regarding a contract and that "[u]nder the terms of the contract, the parties are

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required to submit to arbitration all disputes, including claims for breach." (Compl., pp. 1-2). According to the allegations of the Complaint, Mensah, who is a collegiate football player, and Duke University have a contractual relationship "with respect to higher education and football." (*Id*. p. 1). Relying on N.C. Gen. Stat. § 1-569.8, Duke University filed to enforce the contract by seeking injunctive relief outside of the arbitration proceeding and noticed a hearing on the Motion for a Temporary Restraining Order to take place the very next day at 10:00 a.m. in Durham County Superior Court. Late in the evening of January 19, 2026, Mensah secured counsel to appear at the hearing and oppose the motion. The undersigned appeared on Mensah's behalf and provided argument and evidence available at the time given the short time frame between Duke University's provision of notice and the hearing. At the time of the hearing, neither Mensah nor counsel was aware of any enrollment deadlines for collegiate institutions who have indicated their interest in Mensah's enrollment. In its oral ruling issued at the conclusion of the hearing, the Court denied that portion of the Motion for a TRO seeking to enjoin Mensah from entering the transfer portal but granted the remaining portions of the Motion for a TRO to temporarily restrain, among other things, Mensah's ability to enroll at another collegiate institution.

As a result of the TRO Order, Mensah is presently permitted to enter the transfer portal, but he may not enroll at another collegiate institution unless and until the Court rules on Plaintiff's request for a preliminary injunction. As the attached Affidavit of Darian Mensah indicates, at the time of the hearing, Mensah was unaware of enrollment deadlines that existed for other collegiate institutions who have indicated their interest in Mensah's enrollment and playing football, and some of these deadlines expire Friday, January 23, 2026. (Mensah Aff. ¶ 10). Consequently, the TRO Order becomes more than "temporary," as it could *permanently* foreclose opportunities for Mensah to enroll at other collegiate institutions. (*Id*. ¶ 12). And, under the current schedule, the

preliminary injunction hearing will occur after critical enrollment deadlines have passed, rendering the Court's ruling as to Mensah's ability to enroll elsewhere a dispositive ruling on that issue. Reconsideration of this narrow portion of the TRO[1] is appropriate in light of the new evidence regarding enrollment deadlines and the manifest injustice that results from that portion of the TRO enjoining Mensah from enrolling at another collegiate institution.

On January 22, 2026, counsel contacted the Court to request a hearing on January 23, 2026, and was instructed to email a copy of the motion to the Clerk so she could proceed to set a hearing. Due to a Microsoft outage, counsel could neither send the email nor receive any communication from the Clerk; however, counsel made multiple phone calls to the Clerk seeking to confirm the setting of the hearing and was unable to do so prior to filing. Counsel for both parties conferred and indicated availability to attend a hearing on January 23, 2026, if set by the Court.

BACKGROUND

1. Plaintiff filed its Verified Complaint and application for temporary and preliminary injunctive relief on January 20, 2026, seeking to prevent Mensah from leaving Duke University. Plaintiff provided Mensah notice around 6:19 p.m. that same day, which was a federal holiday.
2. The Court conducted an expedited TRO hearing approximately sixteen (16) hours after service of the pleadings.
3. Counsel for Mensah appeared to present argument in opposition to the TRO.
4. As part of the hearing, the Court heard evidence and argument as to Mensah's request to enter the transfer portal, as well as the fact the deadline for doing so had expired, with the only remaining action to be Duke University responding to Mensah's request and entering him into the portal in accordance with NCAA guidelines.

[1] While the instant motion is limited to that portion of the TRO enjoining Mensah from "enrolling at another collegiate institution," Mensah reserves all rights to oppose the full preliminary injunction sought by Duke University.

5. While the parties presented evidence and argument to the Court on the deadline for entering the transfer portal, no similar evidence was presented regarding enrollment deadlines.
6. The Court denied that portion of Plaintiff's request for a TRO to prevent Mensah from "entering the transfer portal" but granted Plaintiff's request for a TRO to enjoin him from, among other things, "enrolling at another collegiate institution."
7. Pursuant to the Court's Order, Mensah is allowed to enter the transfer portal but is unable to enroll at another institution unless and until the Court rules on the Preliminary Injunction.
8. Immediately following the oral ruling granting the TRO, the Court asked if all counsel consented to a Preliminary Injunction hearing on February 2, 2026, which was beyond the 10-day limit prescribed by the North Carolina Rules of Civil Procedure.
9. Counsel for Mensah did not consent and instead requested the Court expedite the hearing on the Preliminary Injunction given the scope and impact of the TRO ruling.
10. The Court denied the request for an expedited hearing, calendared the hearing for February 2, 2026, and *sua sponte* announced that although the Court did not believe recusal was required, he would assign a new judge to preside over this matter to avoid any appearance of a conflict based on his connections to Duke University.
11. At the time the Court denied the TRO and set the February 2, 2026, hearing date, neither Mensah nor his counsel had evidence concerning institutional enrollment deadlines.
12. Following denial of the TRO, Mensah learned that these deadlines will expire on January 23, 2026, and before the currently scheduled Preliminary Injunction hearing on February 2, 2026, such that the TRO's prohibition on enrollment and the existing hearing schedule will cause manifest injustice, including irreparable and unrecoverable harm, to Mensah.
13. The Court's TRO and extended time for hearing on the preliminary injunction could

permanently foreclosure his ability to enroll at another collegiate institution, even if the Court later denies preliminary injunctive relief or if the arbitration ultimately resolves the dispute in Mensah's favor.

14. In light of this new evidence unknown to Mensah during the 16-hour interim between receiving the Motion for a TRO, the TRO hearing, and the Court's setting of the Preliminary Injunction hearing—and also to prevent manifest injustice—Mensah requests the Court reconsider the TRO to deny that portion of Duke University's Motion to temporarily enjoin Mensah from enrolling at another collegiate institution and reconsider the Court's denial of the request to expedite the Preliminary Injunction hearing.

LEGAL STANDARD

Interlocutory orders are "subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." N.C. R. Civ. P. 54(b). "The purpose of a motion to reconsider is not to present a better and more compelling argument that the party could have presented in the original briefs. Rather, the motion is appropriately granted only in narrow circumstances: (1) the discovery of new evidence, (2) an intervening development or change in the controlling law, or (3) the need to correct a clear error or prevent manifest injustice." *Bohn v. Black*, No. 17 CVS 228, 2018 WL 2271150, at *3 (N.C. Super. May 16, 2018) (cleaned up).

Recognizing this standard, Mensah seeks reconsideration of a narrow portion of the Court's TRO Order: the restraint on Mensah to enroll at another institution. Under North Carolina law, a temporary restraining order is an "extraordinary remedy" and "a drastic procedure that operates within an emergency context which recognizes the need for swift action." *La Mack v. Obeid*, No. 14 CVS 12010, 2014 WL 4269112, at *1 (N.C. Super. Aug. 29, 2014); *see also 800 Degrees*

Phillips Place, LLC v. Jensen, No. 25CV016260-590, 2025 WL 1432932, at *4 (N.C. Super. Apr. 07, 2025). "A temporary restraining order ("TRO") may be granted if 'it *clearly appears* from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition.'" *La Mack*, No. 2014 WL 4269112, at *1 (quoting N.C. R. Civ. P. 65(b); collecting cases). "An 'irreparable injury' is not necessarily 'beyond the possibility of repair or possible compensation in damages, but . . . is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *800 Degrees Phillips Place, LLC*, No. 25CV016260-590, 2025 WL 1432932, at *4 (quoting *Barrier v. Troutman*, 231 N.C. 47, 50 (1949)).

Importantly, a temporary restraining order cannot "effectively be [a] determination of the ultimate relief available . . . ." *800 Degrees Phillips Place, LLC* v, No. 25CV016260-590, 2025 WL 143293, at *5 (citing *Seaboard Air Line R.R. v. Atl. Coast Line R.R.*, 237 N.C. 88, 96 (1953) (finding trial court's injunction improper where it "would determine by an interlocutory order the ultimate relief sought in this action in accordance with the prayer in plaintiffs complaint")).

As to that portion of this motion seeking to proceed with the Preliminary Injunction hearing on an accelerated timeline, North Carolina appellate courts have recognized and affirmed the trial court's discretion to proceed on shortened notice where circumstances justify expedition, including where the party opposing the motion to be heard has ample opportunity to prepare and respond. In *M.G. Newell Co. v. Wyrick*, the Court of Appeals upheld a hearing conducted on only five hours' notice—rather than the standard five days—finding good cause where the *opposing party* had adequate knowledge of the dispute and opportunity to prepare, and where the objection was based

on timing rather than actual prejudice. 91 N.C. App. 98, 101-02, 370 S.E.2d. 431, 434 (1988). The *Newell* court explained, "Not only did the court have good cause for shortening the notice period but defendant could not have been prejudiced by it, since the purpose of notice is to enable the one charged to prepare his defense." *Id.* at 101, 370 at 434. In other words, good cause to expedite exists where the *opposing party's* ability to respond is not meaningfully impaired.

Additionally, preliminary injunctions exist "to secure preliminary relief to avoid irreparable harm that might occur while the case is decided on the merits." *Tetra Tech Tesoro, Inc. v. JAAAT Tech. Servs.*, LLC, 250 N.C. App. 791, 797, 794 S.E.2d 535, 538 (2016) (citing *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983)). As such, where the passage of time itself creates irreparable harm and effectively decides certain issues on the merits before the court can rule, expedited consideration is consistent with the fundamental purpose of injunctive relief. To otherwise delay the hearing on the motion for preliminary injunction will result in manifest injustice.

ARGUMENT

While Rule 54(b) only requires only one of three instances to merit reconsideration of the TRO Order, here at least *two* bases provide grounds for the relief requested: (1) the discovery of new evidence, and (2) the need to correct a clear error[2] or prevent manifest injustice. *See Bohn,*

[2] Notably, the TRO Order here does not reference the high legal standard for issuance of a temporary restraining order under the North Carolina Rules of Civil Procedure. N.C. R. Civ. P. 65(b) ("A temporary restraining order may be granted . . . only if . . . it *clearly appears* from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant . . . ." (emphasis added)). Instead, the Court makes certain findings "for purposes of this Order" based on what "appears" to the Court from the Verified Complaint. (Order, 1/21/2026, ¶ 20). This distinction of "clearly appears" and "appears" is significant, particularly given the Order's reference throughout to "good cause," which is the standard applied merely for the Court to have jurisdiction to consider the motion while arbitration is pending under N.C. Gen. Stat. § 1-569.8. Indeed, the paragraph finding the temporary restraining order is needed "to prevent irreparable harm to Duke University" references "good cause," and not "clearly appears" or even "appears." (Order, 1/21/2026, ¶ 21). While "good cause" gets Duke University in the courthouse door while arbitration is pending, the ultimate relief of a temporary restraining order must be accompanied by the satisfaction of a much higher—"*extraordinary*"—standard. To the extent the TRO Order fails to apply the correct standard of law to its finding of irreparable harm, clear error exists, which also warrants reconsideration of the enrollment provision.

No. 17 CVS 228, 2018 WL 2271150, at *3.

I. North Carolina law allows reconsideration notwithstanding reassignment to a new presiding judge.

Unless certain circumstances are present, North Carolina law provides that "one Superior Court judge may neither correct another's errors of law; nor modify, overrule, or change the judgment of another Superior Court judge previously made in the same action." *State v. Melton*, 294 N.C. App. 91, 99, 901 S.E.2d 853, 860 (2024) (cleaned up), *aff'd*, 387 N.C. 538, 915 S.E.2d 116 (2025); *see also Calloway v. Ford Motor Co.*, 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972). The North Carolina Court of Appeals recognizes that exception to this rule exists: a "superior court judge may only modify, overrule, or change the order of another superior court judge where the original order was (1) interlocutory, (2) discretionary, and (3) there has been a substantial change of circumstances since the entry of the prior order." *Melton*, 294 N.C. App. at 99, 901 S.E.2d at 860 (2024) (quotation omitted; emphasis added).

Here, the TRO Order is interlocutory, which allows a different judge to modify or change it where there has been a substantial change of circumstances since the entry of the prior order, and here, there has been a substantial change of circumstances since the entry of the prior order. As explained in the accompanied Affidavit of Darian Mensah, new evidence exists that, if not reconsidered in light of the requested temporary restraining order, will result in manifest injustice. For those reasons, reassignment to a different judge does not preclude the newly assigned judge from modifying the TRO Order.

II. New evidence and the prevention of manifest injustice warrant reconsideration of the TRO Order.

The TRO Order's enjoining Mensah from enrolling in another collegiate institution

requires reconsideration in light of new evidence regarding impending deadlines and to prevent manifest injustice resulting from the expiration of those deadlines. After the Court issued its TRO Order, Mensah discovered that enrollment deadlines at other collegiate institutions who have indicated their interest in his enrollment will expire Friday, January 23, 2026. (Mensah Aff. ¶ 10). Missing this deadline will have the dispositive effect of permanently foreclosing opportunities for Mensah to enroll in another collegiate institution. Had this new evidence been available at the hearing on the Motion for TRO, it is possible the Court—who recognized the significance of the deadline for entering the transfer portal—could have considered it and it could have led to the denial of that portion of Duke University's requested TRO, similar to what the Court did in its ruling to not enjoin entering the transfer portal.

Not only does this new evidence warrant reconsideration under Rule 54(b), but without reconsideration, manifest injustice results: Mensah will likely be permanently foreclosed from the opportunity to enroll at other collegiate institutions. (Mensah Aff. ¶ 12). In that instance, the "temporary" restraining order becomes *permanent*.

Duke University cannot demonstrate—much less "clearly" demonstrate as required for a temporary restraining order—that it will suffer irreparable harm by the Court's denial of their request to enjoin enrollment at another collegiate institution. Indeed, should arbitration—or even a preliminary injunction—result in a favorable ruling and if that decision somehow compels Mensah to enroll at Duke University, then Duke University holds the authority to do that.

III. New evidence and preventing manifest injustice also warrant reconsideration of the denial of the request to expedite the preliminary injunction hearing.

Should this Court deny reconsideration of the TRO Order enjoining Mensah from enrolling in another collegiate institution, Mensah—as the opposing party—seeks an expedited hearing on

the Preliminary Injunction to take place on January 23, 2026. Mensah contends he has sufficient time to meaningfully respond, which provides good cause for granting the instant motion. In light of the new evidence regarding enrollment deadlines, the current hearing date allows timing alone to decide the dispute. As explained above, after the Court denied temporary restraining relief, Mensah learned for the first time that the currently scheduled Preliminary Injunction hearing date would preclude him from the ability to enroll elsewhere before deadlines expire for doing so. Those deadlines will lapse before the Preliminary Injunction hearing, regardless of the outcome on the merits. This is precisely the type of circumstance that justifies expedited scheduling under *Corwin.* The only obstacle to meaningful judicial review is the calendar.

Manifest injustice will result if the Preliminary Injunction hearing occurs after enrollment deadlines have passed. the Court's ruling – granting or denying relief – will no longer have practical effect. That result is inconsistent with the purpose of preliminary injunction proceedings as articulated in *800 Degrees Phillips Place, LLC; Seaboard Air Line R.R.* ; and *Tetra Tech Tesoro.* Advancing the hearing ensures that the Court resolves the dispute before irreparable harm occurs rather than after the harm becomes permanent.

Expediting the hearing will not prejudice Plaintiff. Duke sought emergency relief, presented its arguments at the TRO stage, and is already prepared to litigate the Preliminary Injunction. As in *M.G. Newell,* any objection based on shortened timing would be procedural rather than substantive, as Duke has had ample opportunity to prepare. By contrast, maintaining the current schedule imposes irreversible prejudice on Mensah, who would lose the ability to enroll elsewhere before the Court can rule. Once enrollment and academic deadlines expire, no later judicial ruling can restore the lost opportunity. That harm is irreversible and renders any subsequent injunction ruling ineffectual.

CONCLUSION

WHEREFORE, Defendant Darian Mensah respectfully requests the Court reconsider the TRO Order only to the extent it enjoins enrollment at another collegiate institution in light of new evidence and to prevent manifest injustice. While Mensah reserves all rights to assert arguments in the full injunctive relief sought by Duke University, the instant motion does not seek to disturb the other portions of the TRO Order. Should the Court deny the request for reconsideration of the TRO Order, Mensah respectfully requests the Court reconsider its denial of the request for an expedited Preliminary Injunction hearing and set an expedited Preliminary Injunction hearing on January 23, 2026, or at the Court's earliest convenience.

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Dated: January 22, 2026

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **EMERGENCY MOTION FOR RECONSIDERATION OF THE TEMPORARY RESTRAINING ORDER, OR IN THE ALTERNATIVE, TO EXPEDITE PRELIMINARY INJUNCTION HEARING** has been electronically filed using the Court's electronic filing system, which will automatically send notice of filing to all counsel of record as addressed:

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This the 22nd day of January, 2026.

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