

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

2311 RACING LLC d/b/a 23XI RACING and  
FRONT ROW MOTORSPORTS, INC.,

Plaintiffs,

v.

NATIONAL ASSOCIATION FOR STOCK  
CAR AUTO RACING, LLC and JAMES  
FRANCE,

Defendants.

ORAL ARGUMENT REQUESTED

Public Redacted Version

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR A PRELIMINARY INJUNCTION**

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## PRELIMINARY STATEMENT

This is a case about Defendants' unlawful monopolization of premier stock car racing, and their abuse of that monopoly power to impose anticompetitive "take-it-or-leave-it" terms upon Plaintiffs and the other teams who hold charters that give them the right to compete in all NASCAR Cup Series races. Defendants presented these racing teams with a Hobson's choice: either accept a new 2025 Charter Agreement with monopsonistic terms designed to enrich Defendants at the expense of the teams and drivers—while also forcing the teams to "release" their antitrust rights—or lose their charters entirely, destroying their investments and threatening to drive them out of business. Plaintiffs are the only teams that stood up to Defendants' coercion and refused to sign the new Charter Agreement.

Plaintiffs have filed antitrust claims against Defendants to bring an end to their unlawful monopoly. However, if Plaintiffs cannot obtain charters for the 2025 season without giving up their antitrust rights, they will suffer severe and irreparable harm. They have brought this motion for a preliminary injunction so that they can continue to compete in Cup Series events under the terms of the 2025 Charter Agreements without risking forfeiture of their antitrust claims.

Plaintiffs easily meet the standards for preliminary relief. They have a likelihood of success of prevailing in their Sherman Act Section 2 claim that Defendants engaged in a series of exclusionary actions to maintain their monopoly in the relevant input market for premier stock car racing teams in the United States. They also will suffer irreparable harm if they are forced to either risk releasing their antitrust rights to break up the NASCAR monopoly or suffer the irreparable consequences of having to compete without a charter.

The balance of the equities tips decidedly in Plaintiffs' favor. Defendants will suffer no cognizable harm if Plaintiffs are permitted to compete during the pendency of this litigation under the terms of the 2025 Charter Agreements that NASCAR has offered to them. By contrast, without

the ability to compete with the assured racing slots in Cup Series events, Plaintiffs will suffer a host of irreparable harms, including the threatened loss of sponsors, drivers, goodwill, employees, and irreplaceable opportunities to compete. And the public interest favors allowing these popular teams to continue to compete in Cup Series events, while they prosecute antitrust claims that further the interests of not just racing teams, but also sponsors, broadcasters, communities, and fans.

### **STATEMENT OF FACTS**

#### **A. NASCAR Exercises Monopoly Power in the Relevant Input Market**

The France family and NASCAR have exercised monopsony power as the only premier stock car racing series in the United States. As set forth in the expert declaration of sports economist Dr. Rascher, because there are no competitive alternatives to NASCAR's Cup Series for a premier stock car racing team, NASCAR and the France family have been able to exercise their monopsony power to impose anticompetitive terms on the teams as the entry cost for competing. Rascher Decl. ¶¶ 6, 39, 66-86.

#### **B. NASCAR's Exclusionary Conduct to Maintain its Monopsony Power.**

Defendants have not acquired or maintained their monopoly power through superior skill or better products or prices. Instead, they have engaged in a series of exclusionary acts with the purpose and effect of maintaining their power. *Id.* ¶¶ 40-49.

First, Defendants have engaged in exclusionary acts to lock up the limited supply of top-tier racetracks capable of hosting premier stock car races. *Id.* ¶¶ 41-47. A track must be able to put on a high-quality event and have an opportunity to turn a profit, meaning, at a minimum, having a per-day capacity of ~25,000 spectators and meeting other requirements regarding safety, infrastructure, track surface, side-by-side racing capability, promotional pedigree, operational and mechanical facilities, insurance, and guest services capability, plus the experience and staffing

capability to successfully hold such an event. There are relatively few racetracks in the United States with these capabilities. Jenkins Decl. ¶¶ 12–17.

To block the entry of a potential competing stock car racing series, NASCAR has forced tracks it does not own to enter into exclusivity provisions as a condition of hosting a Cup Series race. Rascher Decl. ¶ 45. Defendants further cemented their control over the tracks needed to compete by spending \$2 billion to acquire International Speedway Corporation (“ISC”), a company that owns about half the racetracks on the Cup Series schedule.<sup>1</sup> This gave Defendants the ability to directly exclude any other stock car racing series from having races at those tracks. Rascher Decl. ¶ 45.

Second, Defendants have engaged in exclusionary acts to force the chartered teams—that are independent contractors—to agree that they will [REDACTED]  
[REDACTED]  
[REDACTED]. Ex. 1, 2016 Charter Agreement § 6.6. This protects Defendants’ monopoly by blocking the teams—who are best positioned to help form a rival premier racing series—from doing so. Rascher Decl. ¶¶ 48-49.

Third, Defendants acquired the Automobile Racing Club of America (“ARCA”)—its one potential competitor with national exposure. When ARCA announced a renewed media deal that would “showcase our product to millions of viewers annually in the highest quality live television production format,” reaching as many as 84.5 million homes,<sup>2</sup> Defendants were quick to purchase

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<sup>1</sup> *ISC Completes Closing of Acquisition by NASCAR*, NASDAQ (Oct. 18, 2019), <https://www.nasdaq.com/press-release/isc-completes-closing-of-acquisition-by-nascar-2019-10-18>.

<sup>2</sup> *ARCA Signs 3-Year Broadcast Agreement with FOX Sports*, FOX SPORTS (Jan. 12, 2018), <https://www.foxsports.com/presspass/blog/2018/01/12/arca-signs-3-year-broadcast-agreement-fox-sports/>.

ARCA and relegate it to a feeder series for NASCAR, rather than allow it to continue growing into a competitor to the Cup Series.<sup>3</sup> Rascher Decl. ¶¶ 13, 22.

Fourth, Defendants adopted anticompetitive terms with respect to the “Next Gen” cars that teams were required to use in Cup Series races beginning in 2022. Under these restrictions, teams must purchase parts for the Next Gen car from NASCAR’s hand-picked single-source suppliers. *See, e.g.*, Ex. 1, 2016 Charter Agreement § 3.7; Ex. 3, NASCAR Rules § 14.1. Further, after spending millions of dollars on these parts and cars, the teams [REDACTED]. Rascher Decl. ¶¶ 53-59.

The combined effect of these exclusionary acts has been to maintain Defendants’ monopoly power through anticompetitive means. Rascher Decl. ¶ 37.

**C. Defendants Impose Anticompetitive Terms in the 2025 Charter Agreements.**

The 2016 Charter Agreements expire at the end of 2024, and the teams spent the last two years trying to negotiate with NASCAR to agree upon a fairer Charter Agreement. But Defendants had a different plan. They have used their monopsony power to force the teams to either accept onerous terms in the 2025 Charter Agreement, or face the prospect of losing their investments and having no charters at all. Polk Decl. ¶ 29; Jenkins Decl. ¶¶ 32–36.

This culminated with NASCAR’s “take-it-or-leave-it” offer on September 6, 2024. Polk Decl. ¶ 29. NASCAR sent the teams what it declared to be a “final” version of the 2025 Charter Agreement and gave them mere hours to either sign, without changes, or risk losing their charters entirely. Lauletta Decl. ¶¶ 2-4.

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<sup>3</sup> *NASCAR purchases ARCA: What does it mean?*, YAHOO! SPORTS (Apr. 27, 2018), <https://sports.yahoo.com/nascar-purchases-arca-mean-185217538.html>.



NASCAR exercised its monopsony power to impose one-sided economic terms that were far less than the teams could have obtained in a competitive market. Rascher Decl. ¶¶ 69-80; Polk Decl. ¶¶ 21–29. Among other things, the 2025 Charter Agreement: does not provide a fair split of revenues so that the teams do not have a reasonable chance to earn a return on their investment; seizes control over team intellectual property rights (to be used for NASCAR’s benefit); does not provide permanent charters so that teams can maximize enterprise value; and does not give teams the ability to resist NASCAR rules that increase team costs. *See* Ex. 2, 2025 Charter Agreement §§ 2, 4, 5.14; Polk Decl. ¶ 22; Jenkins Decl. ¶ 28.

Without any competitive alternative, all teams but Plaintiffs succumbed to Defendants’ monopsony power and signed the 2025 Charter Agreements. One team owner said he signed “under duress” and another said that the signing was “coerced.”<sup>4</sup> Another was more graphic: “They put a gun to our head and we had to sign.”<sup>5</sup>

**D. Plaintiffs Refused to Sign the 2025 Charter Agreements Because They Would Not Risk Releasing Their Antitrust Rights.**

Plaintiffs each own two expiring 2016 Charter Agreements and have contractual agreements to purchase a third Charter Agreement that remain in escrow. Polk Decl. ¶ 9–14; Jenkins Decl. ¶¶ 5, 9. Plaintiffs are not willing to let Defendants continue to use their monopsony power to injure them and the rest of the industry. They have accordingly filed this lawsuit to restore competition. Polk Decl. ¶ 30–31; Jenkins Decl. ¶ 36.

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<sup>4</sup> Matt Weaver, *NASCAR makes bold move to end charter negotiations but two teams didn’t budge*, SPORTSNAUT (Sept. 10, 2024), <https://sportsnaut.com/nascar-charter-update-michael-jordan-denny-hamlin-no-deal/>.

<sup>5</sup> Jeff Gluck and Jordan Bianchi, *Michael Jordan’s 23XI, Front Row Motorsports explain why they’re NASCAR charter holdouts*, THE ATHLETIC (Sept. 8, 2024), <https://www.nytimes.com/athletic/5753700/2024/09/08/michael-jordan-nascar-23xi-front-row-charters/>.



The 2025 Charter Agreement includes a mandatory provision that Defendants contend would release the antitrust claims of any team that signs the Agreement.

[REDACTED]

Ex. 2, 2025 Charter Agreement § 10.3. While these release terms are not a model of clarity, Plaintiffs could not sign the 2025 Charter Agreement and risk forfeiting their antitrust rights. Polk Decl. ¶ 31; Jenkins Decl. ¶ 36.

As Dr. Rascher explains, including the mandatory release in the 2025 Charter Agreement to attempt to shield Defendants from an antitrust claim by the victims most likely to challenge Defendants' monopoly is another exclusionary action designed to maintain Defendants' monopsony power. Rascher Decl. ¶¶ 64-65.

**E. Plaintiffs Will Suffer Irreparable Harm without a Preliminary Injunction.**

Without preliminary relief, Plaintiffs will be irreparably harmed. On the one hand, if Plaintiffs were to sign the 2025 Charter Agreement without an injunction against Defendants' enforcement of the release, they would run the risk of losing their antitrust rights.

On the other hand, if Plaintiffs continue to decline to enter into the 2025 Charter Agreement to preserve their antitrust claims, their only option will be to compete as "open" teams with no assurance of a spot in any Cup Series race. This will lead to the irreparable harm of possibly losing irreplaceable drivers, sponsors, goodwill, employees, and competitive opportunities. It will also cause Plaintiffs to lose [REDACTED] of dollars in revenue each season, threatening the existence of their racing teams. Polk Decl. ¶ 34; Jenkins Decl. ¶ 46.

## ARGUMENT

A plaintiff seeking a preliminary injunction “must demonstrate that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Vitkus v. Blinken*, 79 F.4th 352, 361 (4th Cir. 2023). “Crafting a preliminary injunction is an exercise in discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents.” *Coastal Lab ’ys, Inc. v. Jolly*, 2021 WL 1599224, at \*6 (D. Md. Apr. 23, 2021).

Plaintiffs ask the Court to preserve the status quo during the pendency of this litigation by issuing a preliminary injunction that would: (1) allow Plaintiffs to continue to compete as chartered teams, as they have done for years, by racing under the terms of the 2025 Charter Agreement NASCAR offered to them; and (2) enjoin Defendants from enforcing Section 10.3 of those Charter Agreements as a claimed release of the antitrust claims Plaintiffs are pursuing.<sup>6</sup>

### **I. Plaintiffs have a Likelihood of Success on the Merits**

“[P]laintiffs seeking preliminary injunctions must demonstrate that they are likely to succeed on the merits,” but “need not show a certainty of success.” *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013). Plaintiffs can obtain the requested preliminary injunction by showing that it will likely prevail on one of its claims. *See Roe v. Dep’t of Def.*, 947 F.3d 207, 234 (4th Cir. 2020), *as amended* (Jan. 14, 2020).

Plaintiffs will likely succeed on their claim for unlawful monopolization. A Section 2 violation requires: “(1) the possession of monopoly power in the relevant market and (2) the

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<sup>6</sup> Plaintiffs further believe that Section 10.3 does not clearly extend to Plaintiffs antitrust claims. Accordingly, the Court could declare that the release does not apply, which would also permit Plaintiffs to sign the 2025 Charter Agreement while pursuing their antitrust rights.

willful acquisition or maintenance of that power.” *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966). “[A] monopolist violates [Section] 2 when it use[s] [its] monopoly power to foreclose competition, to gain a competitive advantage, or to destroy a competitor.” *Duke Energy Carolinas, LLC v. NTE Carolinas II, LLC*, 111 F.4th 337, 353 (4th Cir. 2024) (internal quotations omitted). Courts evaluating Section 2 claims must determine if plaintiffs can prove that the defendants acquired or maintained their monopoly power through exclusionary acts rather than legitimate competition. *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 605 (1985) (conduct is predatory if it “attempt[s] to exclude rivals on some basis other than efficiency”); *Advanced Health-Care Servs., Inc. v. Radford Cmty. Hosp.*, 910 F.2d 139, 147 (4th Cir. 1990) (“key to distinguishing legal exclusion from improper, or predatory, exclusion is whether the exclusion was based on superior efficiency”).

**A. Defendants Possess Monopoly Power in the Relevant Input Market**

The relevant market for Plaintiffs’ Section 2 claim is the input market for premier stock car racing teams in the United States. Premier stock car racing is a distinct form of automobile racing with unique cars and highly specialized racing teams for which other types of motorsports like Formula 1 and IndyCar are not substitutes.<sup>7</sup> Rascher Decl. ¶¶ 19-30.

NASCAR’s Cup Series is the only premier stock car racing series in the United States. As a result, NASCAR is the only purchaser with a 100% market share. Rascher Decl. ¶ 31. This

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<sup>7</sup> In a prior antitrust action against NASCAR, the plaintiff alleged a relevant *output* market for stock car racing to fans and did not prove that other forms of racing did not compete with stock car racing. *Kentucky Speedway, LLC v. NASCAR*, 2008 WL 113987, at \*4 (E.D. Ky. Jan. 7, 2008), *aff’d*, 588 F.3d 908 (6th Cir. 2009). Here, by contrast, Plaintiffs are alleging an input market for stock car racing teams for which no other type of racing is a substitute. Just as football players can only compete for a professional football team—whether or not football competes with other sports for fans—a stock car racing team can only compete in stock car racing events. *See* Rascher Decl. ¶¶ 27-30.

easily meets the test for proving monopoly power (called monopsony power in an input market). *See Grinnell Corp.*, 384 U.S. at 571; *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 450 (4th Cir. 2011) (monopolization found where “defendant controlled seventy to one hundred per cent of the relevant market”); *Duke Energy*, 111 F.4th at 353 (monopoly power not at issue “given [defendant’s] durably high market share, which stands at or approaching 90%”) (internal quotations omitted). Further, Defendants have exercised that power to exclude all competitors, which is itself evidence of monopoly power. *See, e.g.*, Rascher Decl. ¶¶ 21, 31-36, 42, 48; *United States v. E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956) (“Monopoly power is the power to control prices or exclude competition.”).

**B. Defendants Have Willfully Maintained Their Monopoly Power**

As Dr. Rascher shows, Defendants have not maintained their monopsony power through superior skill or business acumen. Instead, at France’s direction, NASCAR has engaged in a series of exclusionary acts to block competition and maintain monopoly power. Rascher Decl. ¶¶ 37-65. These exclusionary acts include: (a) NASCAR’s acquisition of, and exclusive agreements with, top-tier tracks to deny competitors access to this essential resource; (b) restrictive covenants preventing independent contractor charter teams from competing in non-NASCAR stock car racing events; (c) restrictive provisions preventing use of Next Gen cars and parts in non-NASCAR events; (d) the acquisition of ARCA to eliminate potential competition; and (e) the use of the mandatory release provision in the 2025 Charter Agreement to block charter teams, the most efficient enforcers of the antitrust laws, from challenging NASCAR’s monopoly. *Id.* ¶¶ 13, 37-65.

As the Fourth Circuit has explained:

In a monopolization case conduct must always be analyzed “as a whole.” A monopolist bent on preserving its dominant position is likely to engage in repeated and varied exclusionary practices. Each one viewed in isolation might be viewed as de minimis or an error in judgment, but the pattern gives increased plausibility to the claim.

*Duke Energy*, 111 F.4th at 355 (quoting Areeda & Hovenkamp, *Antitrust Law* ¶ 310c7 (4th and 5th eds. 2024)).

Here, NASCAR has engaged in a combination of exclusionary acts to maintain its monopoly power: acquiring ISC to control almost half of the Cup Series racetracks; acquiring ARCA to eliminate a potential competitor; imposing no-competition covenants on the chartered race teams; and requiring those teams to race through Next Gen cars that are banned from being used in any non-NASCAR events. Rascher Decl. ¶¶ 13, 37-65.

It is well-established that it violates Section 2 to acquire or maintain power through an acquisition, Areeda & Hovenkamp ¶ 701 (5th ed. 2024) (“a monopolist’s acquisition of a ‘likely’ entrant into the market ... is presumptively anticompetitive”), or through restrictive covenants that deny a competitor access to the resources—here the teams and drivers and tracks—needed to compete. *See Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 605 (1985) (refusal to provide competitor access to resource needed to compete constituted unlawful monopolization); *see also United States v. Microsoft Corp.*, 253 F.3d 34, 70 (D.C. Cir. 2001) (“[A] monopolist’s use of exclusive contracts ... may give rise to a [Section] 2 violation”). Here, there is a limited supply of top-tier tracks and NASCAR has them under its control. Rascher Decl. ¶¶ 42-47. The use of acquisitions to maintain a monopoly are a quintessential example of an exclusionary act. *See U.S. Dep’t of Justice & Fed. Trade Comm’n, Merger Guidelines* § 2.6(A)(2023).

Defendants have also imposed their mandatory release to shield their monopoly position from legal attack. Such a coerced release of antitrust claims is itself a Section 2 violation when engaged in by a monopolist to preserve its power. *See Ingram Corp. v. J. Ray McDermott & Co.*, 698 F.2d 1295, 1315 (5th Cir. 1983) (“another case may someday arise where the release itself was an integral part of a scheme to violate antitrust laws and therefore will not be construed to



extinguish antitrust claims”) (internal quotations omitted); *Carter v. Twentieth Century-Fox Film Corp.*, 127 F. Supp. 675, 680 (W.D. Mo. 1955) (release obtained as “another of the means used by the conspirator to accomplish the monopolistic result” may not be valid). Indeed, a release purporting to waive future antitrust claims is precluded as a matter of public policy. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 n.19 (1985) (a prospective waiver of antitrust claims is “condemn[ed] ... as against public policy”); *In-re Am. Express Merchants’ Litig.*, 667 F.3d 204, 214 (2d. Cir. 2012), *rev’d on other grounds*, 570 U.S. 228 (2013) (“[A] waiver of future liability under the federal antitrust statutes is void as a matter of public policy.”).

**C. Plaintiffs Can Show Antitrust Injury**

Finally, plaintiffs can show that there is a likelihood that they have suffered antitrust injury from the below-market terms imposed by Defendants through the exercise of their monopsony power in the 2016 and 2025 Charter Agreements. Rascher Decl. ¶¶ 68-80. These antitrust injuries flow directly from Defendants’ unlawful monopolization. *Novell, Inc. v. Microsoft Corp.*, 505 F.3d 302, 311 (4th Cir. 2007).

**II. Plaintiffs Will Suffer Irreparable Harm**

Without a preliminary injunction, Plaintiffs face irreparable harm that is “actual and imminent” and “cannot be undone through monetary remedies” if they are forced to either risk forfeiting their rights under the antitrust laws or risk losing their irreplaceable sponsors, drivers, and competitive opportunities by competing as open teams without a charter. *Tiffany v. Forbes Custom Boats, Inc.*, 1992 WL 67358, at \*8 (4th Cir. Apr. 6, 1992), *corrected* (Apr. 27, 1992).

The essential purpose of a preliminary injunction is “preventing the irreparable loss of rights before judgment.” *Sierra On-Line, Inc. v. Phx. Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Enjoining Defendants from enforcing the release so that Plaintiffs can compete under the



2025 Charter Agreements without risking the loss of their antitrust rights falls squarely within this objective.

Alternatively, if Plaintiffs have to compete as open teams, their irreparable injuries will also be severe. Polk Decl. ¶ 33–42; Jenkins Decl. ¶¶ 37–47. An open team is not assured any spot in a Cup Series race, and there is a risk that irreplaceable sponsors and drivers could abandon Plaintiffs if they have to compete as open teams and do not qualify for all of their races. Polk Decl. ¶¶ 35–38; Jenkins Decl. ¶¶ 37–47; Rascher Decl. ¶¶ 81–86. The potential loss of their star drivers would cause irreparable harm to Plaintiffs. *See Navient Sols., LLC v. United States*, 141 Fed. Cl. 181, 184 (2018). Similarly, the loss of goodwill with sponsors and fans due to not being able to compete in important races would constitute irreparable harm. *See Eco Fiber Inc. v. Vance*, 2024 WL 3092773, at \*4 (W.D.N.C. June 21, 2024) (Whitney, J.) (“[T]he loss of goodwill in the relevant industry ... [is] difficult to quantify in terms of money damages and thus may justify injunctive relief.”); *Marland v. Trump*, 498 F. Supp. 3d 624, 641 (E.D. Pa. 2020) (finding irreparable harm where “Plaintiffs will lose the ability to engage with their millions of followers on TikTok, and the related brand sponsorships”); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994), *abrogated on other grounds by Winter*, 555 U.S. 7 (“permanent loss of ... goodwill” is “irreparable injury”); *Signature Flight Support Cor. v. Landow Aviation Ltd. P’ship*, 442 F. App’x 776, 784–85 (4th Cir. 2011) (affirming injunction where irreparable injuries included loss of goodwill); *R.J. Reynolds Tobacco Co. v. Phillip Morris Inc.*, 60 F. Supp. 2d 502, 509 (M.D.N.C. 1999) (granting preliminary injunction when “[p]laintiffs [will] suffer irreparable injury in the form of lost goodwill and lost advertising opportunities, and incalculable harm to their respective competitive positions”).

Indeed, without charters, Plaintiffs may not qualify for critical competitive opportunities, like the Daytona 500, that are essential for keeping goodwill with fans and earning enough revenues to keep afloat. Polk Decl. ¶¶ 39–40; Jenkins Decl. ¶¶ 39, 42; Rascher Decl. ¶¶ 82-83. Such lost opportunities to compete in a professional sport are unique injuries that damages cannot be remedied. See, e.g., *Brady v. Nat'l Football League*, 779 F. Supp. 2d 992, 1035 (D. Minn.), *abrogated on other grounds*, 644 F.3d 661 (8th Cir. 2011) (“irreparable harm has been found, and preliminary injunctive relief granted, in cases in which professional athletes’ ability to play, or to play for their team of choice, was threatened”) (collecting cases).

While Plaintiffs are determined to compete as open cars if necessary, the threat to the viability of their businesses in doing so is substantial. It costs at least [REDACTED] in operational expenses alone just to outfit and get one car to the track. Jenkins Decl. ¶ 22. Plaintiffs project they will lose [REDACTED] of dollars in revenues as open competitors. Polk Decl. ¶ 34; Jenkins Decl. ¶ 46. Sustaining such losses for a long period could threaten Plaintiffs’ continued existence—further evidence of irreparable harm. See *Eco Fiber*, 2024 WL 3092773, at \*4 (Whitney, J.) (“irreparable harm may [] exist where the moving party’s business cannot survive absent a preliminary injunction”); *Fed. Leasing, Inc. v. Underwriters at Lloyd’s*, 650 F.2d 495, 500 (4th Cir. 1981) (finding irreparable harm where party “seeks to preserve its existence and its business”); *Southtech Orthopedics, Inc. v. Dingus*, 428 F. Supp. 2d 410, 418 (E.D.N.C. 2006) (“Generally, it is in cases where a defendant’s conduct threatens to cripple or substantially alter a going concern that irreparable harm will be found....”).

In addition, NASCAR has the power to exclude open competitors completely because the 2025 Charter Agreement allows it [REDACTED]

[REDACTED]. Ex. 2, 2025 Charter Agreement § 3.2. The result is

that absent the ability to compete under the 2025 Charter Agreement, Plaintiffs will face the risk that NASCAR will eliminate open competition entirely.

### **III. The Balance of the Equities Favor an Injunction**

The balance of equities strongly favors Plaintiffs because either their antitrust rights or their very existence will be threatened without a preliminary injunction, whereas the only “harm” that Defendants will incur is defending their antitrust violations. *Starbucks Corp. v. McKinney*, 144 S. Ct. 1570, 1585 (2024) (Jackson, J. concurring in part and dissenting in part) (“When evaluating the balance of the equities, district courts ... are prohibited from crediting a party’s desire to continue engaging in an alleged violation of the [law].”); *Ramirez v. U.S. Immigr. & Customs Enf’t*, 568 F. Supp. 3d 10, 34 n.9 (D.D.C. 2021) (finding that there is “no proper interest in continuing to violate” the law).

Further, Defendants will not suffer harm if Plaintiffs are able to compete under the terms of the 2025 Charter Agreement (other than the mandatory release) that Defendants have offered to them. *See Roso-Lino Beverage Distributors, Inc. v. Coca-Cola Bottling Co. of New York*, 749 F.2d 124, 126 (2d Cir. 1984) (“equities tip decidedly in favor” of movant where it is “unlikely that [non-movant] will suffer greatly if the eleven-year relationship is continued” whereas “on the other hand, [movants] stand to lose their business forever”).

### **IV. The Public Interest Weighs in Favor of an Injunction**

Finally, blocking enforcement of the mandatory “release” will serve the public interest. Courts find that preliminary injunctions serve the public interest where the relief prevents a party from enforcing anticompetitive practices. *See, e.g., Ohio v. NCAA*, 706 F. Supp. 3d 583, 600 (N.D. W. Va. 2023). The public will also be benefitted if Plaintiffs can continue to compete with charters, so that fans can come out to see the teams and drivers they support.

## CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court issue the requested preliminary injunction.



Dated: October 9, 2024

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This motion complies with the word limitation set forth in Rule 3(b)(iv) of the Standing Order Governing Civil Case Management Before the Honorable Frank D. Whitney because, excluding the parts of the document exempted by Rule 3(b)(iv), the Motion contains a total of 4,493 words.

No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard on-line legal research sources Westlaw, Lexis, FastCase, and Bloomberg. Every statement and every citation to an authority in this document has been checked by an attorney in this case and/or a paralegal working at his/her direction (or the party making the filing if acting pro se) as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION** was electronically filed using the Court's CM/ECF system, which will automatically send notice of this filing to counsel of record for all parties, and I caused an unredacted copy of the foregoing to be served on counsel of record for all parties, including:

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Jeffrey L. Kessler



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

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2311 RACING, LLC d/b/a 23XI Racing, and  
FRONT ROW MOTORSPORTS, INC.,

Plaintiffs,

v.

NATIONAL ASSOCIATION FOR STOCK  
CAR AUTO RACING, LLC and JAMES  
FRANCE

Defendants.

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Civil Action No. 3:24-cv-886

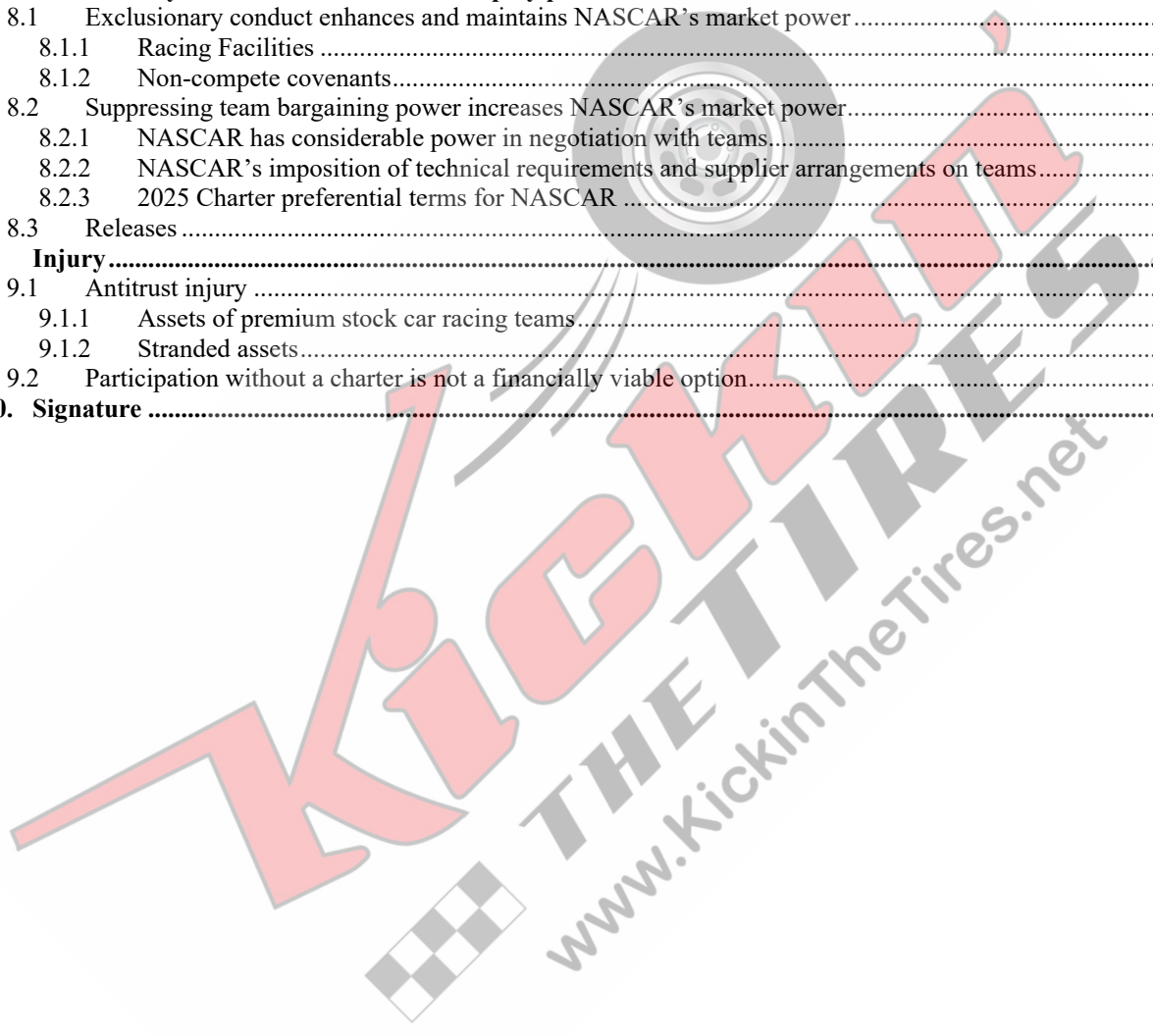
**DECLARATION OF DANIEL A.  
RASCHER**

October 9, 2024

PUBLIC REDACTED VERSION

*Highly Confidential*

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## 1. SCOPE OF DECLARATION

1. My name is Daniel A. Rascher. At the University of San Francisco (USF), I am Professor and Director of Academic Programs for the Master of Science in Sport Management program. I teach courses in sport economics and finance and applied research methods to graduate students. I am also a Partner of OSKR, LLC, an economic consulting firm specializing in applying economic analysis to complex legal issues, as well as President of SportsEconomics, LLC, an economic, finance, and marketing research consulting firm focused on the sports industry. Formerly, I was an Assistant Professor and Associate Professor at USF, an Assistant Professor at the University of Massachusetts, Amherst, and have taught courses at Stanford University, Northwestern University, and the IE Business School in Madrid, Spain. I was also previously a Principal at LECG, LLC, a provider of expert economic consulting services.
2. I received a Ph.D. in Economics from the University of California at Berkeley, having focused on the fields of industrial organization, econometrics, and labor economics. I have published numerous articles, book chapters, and a textbook in the field of sports economics and finance and have worked on over one hundred consulting projects involving the sports, entertainment, and tourism industries. I have consulted with counsel for both plaintiffs and defendants on a variety of lawsuits and non-litigation investigations, including the economics of antitrust, class certification, and the estimation of reasonable damages in cases involving sports and specifically motorsports.
3. I am also certified as a valuation analyst (Certified Valuation Analyst) by the National Association of Certified Valuators and Analysts. Attached as Appendix A is my curriculum vitae, which includes my qualifications as an expert witness and my testimonial experience, including my publications from the last 10 years and all cases in the last 4 years where I testified at trial or was deposed.
4. I am being compensated at an hourly rate of \$750 per hour, plus reimbursement of expenses. In my work on this matter, I have been assisted by OSKR staff, working under my supervision and control. I have no direct financial interest in the outcome of this matter. I reserve the right to supplement this declaration.

## 2. ALLEGATIONS AND ASSIGNMENT

### 5. Plaintiffs Allege Monopolization by NASCAR:

- a) Plaintiffs allege that defendants have monopolized “the input market for premier stock car racing teams, which a premier stock car racing circuit requires to produce its premier racing series product” in the United States.<sup>1</sup> And in doing so, Defendants have extracted non-competitive economic rents (or profits) through economically exclusionary conduct and other anticompetitive conduct that has maintained NASCAR’s monopsony power in this market as well as exploiting it.
- b) I further understand that plaintiffs allege that NASCAR’s dominant position arose and was maintained as the result of anticompetitive and exclusionary practices that NASCAR utilized, including by ensuring that its premier racing series (the “Cup Series”) did not compete with any other premier stock car racing series to utilize the services of premier stock car racing teams. Specifically, plaintiffs allege that NASCAR has acquired and maintained its monopsony position by acquiring a racing circuit and racetracks, implementing various practices that restrict other non-NASCAR events on racetracks that are suitable for premier stock racing, as well as the requirement in all charter agreements of non-compete restrictions that prevent premier stock car teams from participating in races outside of NASCAR’s circuit or without NASCAR’s permission. Additionally, NASCAR has maintained its monopsony power by engaging in other exclusionary acts, including creating and implementing the “Next Gen” restrictions and mandating all 2025 charter holders sign a release of all potential legal claims, including antitrust claims, which precludes the efficient enforcement of the antitrust laws against NASCAR.
- c) Finally, I understand that plaintiffs allege that NASCAR’s conduct suppresses the bargaining power of premier stock car racing teams, further enhancing NASCAR’s monopsony market power.

6. I have been asked by counsel for plaintiffs to (1) assess the alleged relevant market and determine whether NASCAR has market power in the alleged relevant market (i.e.,

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<sup>1</sup> Complaint at paragraphs 117–18.

compute NASCAR's share of the relevant market and determine whether NASCAR is a monopsonist in the relevant market), (2) if so, whether NASCAR harmed competition by engaging in economically exclusionary or other anticompetitive practices to maintain or expand its monopsony power, and (3) whether NASCAR exercised this monopsony power in a manner that injured plaintiff racing teams (including but not limited to irreparable harm from the current proposed charter).

### 3. BACKGROUND

7. Founded in 1948, NASCAR utilizes the services of independently owned stock car racing teams.<sup>2</sup> Each of these stock car racing teams undertakes economic investments to compete in NASCAR-sanctioned events and at facilities owned by NASCAR.<sup>3</sup>
8. The financial viability of stock car racing teams depends on their economic return (from NASCAR and team sponsors), relative to the investment required to participate.<sup>4</sup> Each season, individual stock car racing teams face uncertainty in the level of return from NASCAR, which depends in part on prize money from race performance, and on the level of return from sponsors, which also depends on race performance and on overall economic fluctuations, as I describe further in Section 7.3.
9. The volatile return for stock car racing teams, relative to the level of investment required to participate, has resulted in difficulty maintaining good financial performance.<sup>5</sup> In contrast, NASCAR operates profitably as a private, independent business with a broader revenue

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<sup>2</sup> "NASCAR History," NASCAR. Accessed October 7, 2024 at <https://www.nascar.com/nascar-history>; "List of NASCAR Racing Teams," NASCAR. Accessed October 7, 2024 at <https://www.nascar.com/racing-teams/>; Luvender, Steve, "What is NASCAR? How it started, grew to today," NASCAR. Accessed October 7, 2024 at <https://nascar101.nascar.com/2021/07/05/what-is-nascar-how-it-started-grew-to-today/>.

<sup>3</sup> Belson, Ken, "NASCAR and Its Race Teams Fight Over the Sport's Future," New York Times, May 1, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>.

<sup>4</sup> Belson, Ken, "NASCAR and Its Race Teams Fight Over the Sport's Future," New York Times, May 1, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>; Declaration of Bob Jenkins ("Jenkins Declaration"), paragraphs 7–10.

<sup>5</sup> "Is NASCAR Racing Profitable for Teams?," MotorRacingSports.com. Accessed October 7, 2024 at <https://motorracingsports.com/is-nascar-racing-profitable-for-teams/>; Belson, Ken, "NASCAR and Its Race Teams Fight Over the Sport's Future," New York Times, May 1, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>.



stream.<sup>6</sup> As the sole purchaser of premier stock car racing team services in the United States bargaining with several independently operated teams, NASCAR has bargaining power to secure for itself economic profits that the combined operations of NASCAR and the racing teams generate.

10. In July 2014, nine stock car racing teams formed the Race Team Alliance (RTA) to further the interests of all Charter Cup teams by negotiating with NASCAR for better terms.<sup>7</sup> NASCAR initially opposed its formation.<sup>8</sup> In 2016, RTA and NASCAR announced a jointly developed Charter Agreement system that mitigated some of the financial risks racing teams faced by guaranteeing race participation throughout NASCAR's premier Cup Series season to each team holding one or more of 36 charters.<sup>9</sup> This charter system also imposed restrictive terms on the teams that would serve to support NASCAR's extraction of economic profits, without increasing the share of NASCAR revenue available to teams. Of the 19 teams owning one or more charters in 2016, only seven will remain heading into 2025, indicating that teams have continued to face difficult financial prospects even with the charter system.<sup>10</sup>
11. Among restrictive provisions in the 2016 Charter Agreements, stock car racing team owners must agree to an extensive non-compete provision.<sup>11</sup> Under this provision, owners

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<sup>6</sup> "The Profitability Analysis of NASCAR," F M De Automovilismo. Accessed October 7, 2024 at <https://www.fmdeautomovilismo.com/the-profitability-analysis-of-nascar/>.

<sup>7</sup> Ryan, Nate, "NASCAR's most powerful teams form Race Team Alliance," USA Today, July 7, 2014. Accessed October 7, 2024 at <https://www.usatoday.com/story/sports/nascar/2014/07/07/nascar-teams-form-business-alliance/12288547/>.

<sup>8</sup> "NASCAR chairman Brian France says listening to the consensus voice of the newly formed Race Team Alliance would be a 'bad idea.'" Gluck, Jeff, "NASCAR's Brian France says Race Team Alliance unnecessary," USA Today, July 21, 2014. Accessed October 7, 2024 at <https://www.usatoday.com/story/sports/nascar/2014/07/21/race-team-alliance-brian-france/12967329/>.

<sup>9</sup> Long, Dustin, "NASCAR announces charter system for Sprint Cup team owners," NBC Sports, February 9, 2016. Accessed October 7, 2024 at <https://www.nbcsports.com/nascar/news/nascar-announces-charter-system-for-sprint-cup-team-owners>.

<sup>10</sup> One of the seven remaining charters holders, Front Row, stated it has never made a profit since 2016. "It's always been in the loss column, some years a lot worse than other years." Long, Dustin, "Friday 5: Front Row Motorsports finds ways to make charter system work for it," NBC Sports, May 31, 2024. Accessed October 7, 2024 at <https://www.nbcsports.com/nascar/news/friday-5-front-row-motorsports-finds-ways-to-make-charter-system-work-for-it>.

<sup>11</sup> Charter owners [REDACTED]

cannot race or participate in any other stock car racing circuit throughout the entirety of the agreement. In addition, NASCAR restricts the ability of teams to transfer their charters.

For example, [REDACTED]

[REDACTED].<sup>12</sup>

12. Further contributing to NASCAR's ability to extract economic profits from stock car racing is NASCAR's Next Gen Car Program. This program expands NASCAR's control over racing teams' economic decisions by requiring teams to buy or acquire specific car parts directly from NASCAR's hand selected single-source suppliers, while also continuing to limit what teams are allowed to do with acquired parts.<sup>13</sup>
13. NASCAR extended its control over stock car racing in the United States by acquiring the Automobile Racing Club of America (ARCA) in 2018 shortly after ARCA signed a new tv deal with Fox Sports in January 2018 that would bring ARCA to 84.5 million households.<sup>14</sup> ARCA operated a stock car series in a smaller geographic region than NASCAR and with fewer races (and adjacent related market for acquiring stock car teams' racing services) but with sufficient popularity to garner broadcast deals (prior to the acquisition by NASCAR)

[REDACTED]  
2016 Charter Agreement, Section 6.6.

12. 2016 Charter Agreement, Section 8.1. The 2025 Charter Agreement imposes additional rules on transfers, including [REDACTED]

[REDACTED]. 2025 Charter Agreement Section 8.1.2.

13. The 2024 NASCAR Rule Book [REDACTED] Further, the Rule Book mentions a [REDACTED]. There is a provision in the Rule Book that reads, [REDACTED]

[REDACTED] 2024 NASCAR Rule Book, Section 14.1. I address the control of parts and cars further in Section 8.2.2. See also Jenkins Declaration, paragraphs 19–23.

14. Kelly, Godwin, "NASCAR buys Midwest-based ARCA series," The Daytona Beach News-Journal, April 27, 2018. Accessed October 7, 2024 at <https://www.news-journalonline.com/story/news/regional/motor-racing/2018/04/27/nascar-buys-midwest-based-arca-series/12368181007/>; "ARCA Signs 3-Year Broadcast Agreement with FOX Sports," FOX Sports January 12, 2018. Accessed October 7, 2024 at <https://www.foxsports.com/presspass/blog/2018/01/12/arca-signs-3-year-broadcast-agreement-fox-sports/>.

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such as the aforementioned one with Fox Sports and also CBS Sports.<sup>15</sup> After the acquisition, ARCA was not even potentially a competitive entrant to NASCAR in the market for the acquisition of premier stock car teams' racing services.

14. Additionally, in 2019, NASCAR fully acquired International Speedway Corporation (ISC) outright (though the France family, which owns a controlling stake in NASCAR, already owned a controlling stake in ISC).<sup>16</sup> ISC owned 12 premier racetracks that NASCAR now fully controls.<sup>17</sup> This control enables NASCAR to restrict any potential stock car racing series from making use of these facilities.
15. For teams to obtain charters guaranteeing NASCAR race participation after 2024, NASCAR required they sign a new 2025 Charter Agreement with more restrictive terms.<sup>18</sup> This agreement includes a broader non-compete clause than the 2016 Charter Agreement, expanding the scope of the non-compete clause from stock car racing (only) to most other automobile and truck racing (with only certain specific exceptions),<sup>19</sup> as well as continuing

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<sup>15</sup> "ARCA, FOX Sports Announce Multi-year Broadcast Agreement," SVG News, February 13, 2015. Accessed October 7, 2024 at <https://www.sportsvideo.org/2015/02/13/arca-fox-sports-announce-multi-year-broadcast-agreement/>; "CBS Sports To Televisе Live ARCA Race In 2015," Performance Racing Industry March 16, 2015. Accessed October 7, 2024 at <https://www.performanceracing.com/magazine/industry-news/03-16-2015/cbs-sports-televisе-live-arca-race-2015/>; "ARCA extends broadcast deal with Fox Sports," BlackBook Motorsports, December 12, 2022. Accessed October 7, 2024 at <https://www.blackbookmotorsport.com/news/arca-extends-broadcast-deal-with-fox-sports/>. This is one type of evidence of reasonable probability of entry, according to the 2023 Horizontal Merger Guidelines, and the change from monopoly buyer to duopoly buyers would have been a substantial change in concentration, which addresses both of the criteria for identifying "potential entrants" ("Merger Guidelines," U.S. Department of Justice and the Federal Trade Commission," December 18, 2023, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/2023\\_merger\\_guidelines\\_final\\_12.18.2023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf)).

<sup>16</sup> Long, Mark, "NASCAR buys International Speedway Corp. for \$2B," The Florida Times-Union, May 22, 2019. Accessed October 7, 2024 at <https://www.jacksonville.com/story/sports/nascar/2019/05/22/nascar-buys-international-speedway-corp-for-2b/5089070007/>; International Speedway Corporation Form 10-Q for the quarterly period ended August 31, 2019, p. 9. Accessed October 7, 2024 at <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000051548/000005154819000043/a831201910-q.htm>.

<sup>17</sup> Long, Mark, "NASCAR buys International Speedway Corp. for \$2B," The Florida Times-Union, May 22, 2019. Accessed October 7, 2024 at <https://www.jacksonville.com/story/sports/nascar/2019/05/22/nascar-buys-international-speedway-corp-for-2b/5089070007/>.

<sup>18</sup> Complaint, paragraphs 21–23.

<sup>19</sup> Unlike the 2016 Charter Agreement that did not contemplate any restriction on anything other than professional stock car racing, the 2025 Charter Agreement prohibits [REDACTED]

to include restrictive release provision that could limit teams' legal claims and preclude the efficient enforcement of the antitrust laws against NASCAR.

#### **4. MATERIALS RELIED UPON**

16. In carrying out this assignment, I have relied upon a number of information sources, including materials provided by counsel, party declarations, and third-party files, laid out in full in Appendix B. I also rely on my years of experience and training as an economist and my knowledge of the relevant literature. To the extent I specifically cite an article or study, I include that title in this report and in my list of relied upon materials in Appendix B

#### **5. ORGANIZATION OF THIS DECLARATION**

17. Section 6 of this declaration summarizes my opinions. Section 7 provides the details of my analysis of the relevant market and NASCAR market power. Section 8 explains why the challenged conduct is anticompetitive. Section 9 describes the antitrust injury to plaintiffs arising from the harm to competition caused by NASCAR's anticompetitive.

#### **6. SUMMARY OF OPINIONS**

18. Based on my review of the information provided to date, including public sources, and my research and analysis, knowledge, and qualifications, it is my opinion that:
- a) For the assessment of the competitive effects of the challenged conduct in this matter, there is a relevant market for the purchase of premier stock car teams' racing services in the United States, in which NASCAR, as the sole purchaser, has monopsony market power (buyer-side monopoly market power).
  - b) NASCAR engages in conduct that maintains and preserves its market power in the relevant market for the purchase of stock car team racing services, harming competition in that market.

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[REDACTED] (2025 Charter Agreement Section 6.6).

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- c) As a result of the harm to competition caused by defendants' conduct, premier stock car teams have experienced and will continue to experience antitrust injury.

## 7. RELEVANT MARKET

19. Plaintiffs allege antitrust injury occurring through harm to competition in the market for purchase of premier stock car teams' racing services. In this market, premier stock car teams are sellers and NASCAR is the sole buyer. These teams provide a necessary input to the producer, NASCAR, of a premier stock car racing circuit, the Cup Series, in the relevant geographic market, which is the United States.<sup>20</sup>
20. It is my conclusion that, for the assessment of the competitive effects of the challenged conduct in this matter, there is a relevant market for the purchase of premier stock car teams' racing services in the United States. I also conclude that NASCAR is a monopsonist (the sole purchaser in this market, i.e., a buyer-side monopolist) with monopsony market power (i.e., buyer-side monopoly power) in that market.

### 7.1 STOCK CAR RACING DEFINES THE RELEVANT MARKET

21. An antitrust relevant product market is a set of products for which the availability of substitutes outside of the set is insufficient to constrain pricing inside of the set. In the case of an input market, the economic question is the scope of potential purchasers of the inputs and the ability of the sellers to substitute among competing purchasers. I assess the most likely competitive substitutes and determine that only entities producing premier stock car races would be sufficiently substitutable purchasers of premier stock car teams' racing services. NASCAR is currently the only such entity.
22. NASCAR is the single downstream customer (monopsonist) of racing services provided by premier stock car teams (whether they be charter teams or non-charter, "open" teams). NASCAR provides compensation to teams in exchange for their services in the form of prize money and other pooled revenue distributions.<sup>21</sup> NASCAR purchases stock car racing

<sup>20</sup> Complaint, paragraphs 117–18.

<sup>21</sup> According to Exhibit B of the 2016 NASCAR Cup Series Charter Member Agreement, [REDACTED]

[REDACTED] Based on television revenue increases, the total would have



services within tiers of quality – the most elite racing occurs in the Cup Series, and the next tier is the Xfinity Series.<sup>22</sup> NASCAR also owns the ARCA Menards Series, which functions as a feeder to NASCAR’s national tours.<sup>23</sup> As all of these series are operated by the same entity, NASCAR would be a monopsonist in any tier of stock car racing or across stock car racing as a whole, within the United States. Thus, “stock car racing” would be sufficient for defining a relevant market to analyze the competitive effects of the challenged conduct, regardless of whether various tiers are their own relevant markets.

23. However, both technical and empirical economic evidence make clear that even within stock car racing, premier stock car racing teams (qualified to compete in the Cup Series) and other stock car racing teams are not easily substituted for each other. Physically, the cars that run in the Cup Series and in NASCAR’s Xfinity Series cannot be run in the other series. They are technically different and non-interchangeable.<sup>24</sup> Because the Xfinity series offers far less potential prize money (by an order of magnitude<sup>25</sup>), it serves as a training ground for drivers,<sup>26</sup> but typically those drivers are not good enough to drive a Next Gen

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grown to about [REDACTED] for 2023 and [REDACTED] in 2024. 23XI projected 2025 revenue of [REDACTED], with two cars/charters, with about [REDACTED] coming from NASCAR, of which [REDACTED] would come from NASCAR direct distributions and [REDACTED] from expected prize money. 23XI 2023-2025 Financial Information 10-02-24.xlsm.

- <sup>22</sup> “NASCAR’s three national series, how they work,” NASCAR. Accessed October 7, 2024 at <https://nascar101.nascar.com/2021/07/22/nascars-three-national-series-how-they-work/>. NASCAR also produces the Craftsman Truck Series (which is not a stock car race circuit).
- <sup>23</sup> “ARCA Re-Ups With Menards, Sets 2025 Schedule,” Speed Sport, September 27, 2024. Accessed October 7, 2024 at <https://www.speedsport.com/nascar/arca/arca-re-ups-with-menards-sets-2025-schedule/>.
- <sup>24</sup> Jenkins Declaration, paragraph 49: “While NASCAR runs the Xfinity Series, it is not comparable to the Cup Series. For one, the cars in the Xfinity Series are different from the cars in the Cup Series. The Xfinity Series does not use the Next Gen car. Front Row would have to start from scratch if we wanted to run a car in the Xfinity Series.”
- <sup>25</sup> Jenkins Declaration, paragraph 49: “There is significantly less money available in the Xfinity Series, whether it be through race purses or sponsorships.” For example, Cup Series prize money is substantially higher than Xfinity Series prize money for the Daytona (\$28M vs \$4M) and New Hampshire (\$8M vs \$1M) weekends. “NASCAR Cup Series, Xfinity purses for New Hampshire weekend revealed,” On3, June 20, 2024. Accessed October 7, 2024 at <https://www.on3.com/pro/news/nascar-cup-series-xfinity-purses-for-new-hampshire-weekend-revealed/>; “Daytona 500 purse revealed for Cup Series, Xfinity, and Trucks,” On3, February 14, 2024. Accessed October 7, 2024 at <https://www.on3.com/pro/news/daytona-500-purse-revealed-for-cup-series-xfinity-and-trucks-nascar/>.
- <sup>26</sup> Jenkins Declaration, paragraph 49: “... the Xfinity Series is NASCAR’s ‘minor leagues.’”

stock car in the Cup Series – driving styles and race strategies differ between the two series.<sup>27</sup>

24. Historically, some Cup Series drivers (not teams) did seek out additional competition opportunities in other NASCAR-sponsored series, such as the Xfinity. But over time, NASCAR has adopted rules to limit that overlap. Currently a Cup Series Driver is:

- Excluded from Xfinity and Craftsman Trucks regular-season finale and playoffs races;
- Not eligible for Xfinity Dash 4 Cash and the Triple Truck Challenge;
- Limited to participating in five Xfinity races;
- Limited to participating in five Craftsman Trucks races.<sup>28</sup>

25. The introduction of a new generations of cars has caused the Cup Series to diverge more and more from the Xfinity Series:

“The Cup Series entered the “Next Gen” era in 2022. Since the 2013 introduction of the Next-Gen car, the cars have grown noticeably further apart in terms of how they look and drive. ... Fans love to see such different formulas in both series. It allows both to stand on their own quite well, and it creates a unique style of racing depending on the series. ... The Xfinity Series and Cup Series could not be more different from each other. They both come from different times and different design philosophies in NASCAR history, and the result is two very different race cars and racing series.”<sup>29</sup>

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<sup>27</sup> “What’s the Difference Between NASCAR Trucks, Xfinity, and Cup?,” The Daily Downforce, March 3, 2024. Accessed October 7, 2024 at <https://dailydownforce.com/whats-the-difference-between-nascar-trucks-xfinity-and-cup/>.

<sup>28</sup> “Driver Eligibility,” NASCAR. Accessed October 7, 2024 at <https://nascar101.nascar.com/driver-eligibility/>.

“As in years past, points-earning NASCAR Cup Series regulars above the three-year experience threshold also will be barred from participating in the regular-season finale and playoffs for the other two national circuits. Events in the Xfinity Series’ Dash 4 Cash and the Craftsman Trucks’ Triple Truck Challenge will also be off limits. Wednesday’s announcement continues a trend of reducing the impact of NASCAR Cup Series drivers in the Xfinity Series and Craftsman Trucks in an effort to better showcase those series’ competitors.”

“Under the 2020 guidelines, drivers with more than three years of premier series experience will be limited in their lower-series participation. The amount of Xfinity Series races allowed for those veterans will trim from seven to five. The allowable participation for the Craftsman Trucks will remain at five races.”

<sup>29</sup> “What is the difference between a NASCAR Xfinity Series Car and a NASCAR Cup Series Car?,” The Daily Downforce, April 12, 2024. Accessed October 7, 2024 at <https://dailydownforce.com/what-is-the-difference-between-a-nascar-xfinity-series-car-and-a-nascar-cup-series-car/>.

26. This lack of substitution across the different tiers of quality isolates “premier stock car racing” when defining a relevant antitrust market. With divergence in cars and driving styles, the prospect of a team shifting operations becomes more costly, inhibiting substitution. As a result, as an empirical matter of empirical observation, I have not observed Cup Series teams voluntarily relegating themselves to the Xfinity Series, nor Xfinity Series teams commonly moving up to regular participation in the Cup Series.<sup>30</sup> As a matter of economics, therefore, there is strong evidence that the stock car racing teams participating in the “minor leagues” of stock car racing are not viable substitutes for teams qualified to participate in the market for premier stock car racing services. Thus, teams in the Xfinity Series (or other minor leagues) are not participants in the relevant market.

## **7.2 OTHER MOTORSPORTS ARE NOT IN THE RELEVANT MARKET**

27. Entities providing other motorsports entertainment in the United States are not purchasers of premier stock car racing services. Formula 1 and IndyCar are not substitute purchasers because they produce races of open-wheeled cars,<sup>31</sup> which require substantially different capital investment and team expertise than closed-wheel stock car racing. The cars are built largely by different manufacturers.<sup>32</sup> The tracks are different and in different locations.<sup>33</sup> The NASCAR Next Gen requirements specify vehicles incompatible with Formula One and

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<sup>30</sup> The cost difference is substantial, which means it would take more than a small increase in compensation to make it profitable for a business to shift up – see, for example, “Making the jump from Xfinity to Cup is massive, so the action of teams moving up from the Xfinity to Cup Series is not common. ...Moving to a full-time team requires a charter, which costs \$10s of millions.” “The Next Xfinity Teams to go to Cup,” The Daily Downforce, July 19, 2024. Accessed October 7, 2024 at <https://dailydownforce.com/the-next-xfinity-teams-to-go-to-cup/>.

<sup>31</sup> Hasbollah, Ray, “Open-Wheel vs Closed-Wheel Racing What Are The Differences,” TOC. Accessed October 7, 2024 at <https://www.toc.edu/my/automotiveandmotorsports-hub/open-wheel-vs-closed-wheel-racing-what-are-the-differences>

<sup>32</sup> Chevrolet, Ford, and Toyota manufacture NASCAR vehicles. “List of NASCAR Racing Teams,” NASCAR. Accessed October 7, 2024 at <https://www.nascar.com/racing-teams/>. Chevrolet also manufactures engines for IndyCar, but many teams use Honda engines, and IndyCar chassis are made by Dallara Automobili. “Anatomy of an INDYCAR,” INDYCAR Series. Accessed October 7, 2024 at <https://www.indycar.com/Fan-Info/INDYCAR-101/Introduction-To-INDYCAR/Anatomy-Of-An-INDYCAR>. Formula 1 vehicles are built by an entirely different set of manufacturers from NASCAR. See “2024 Constructor Standings,” Formula One.” Accessed October 7, 2024 at <https://www.formula1.com/en/results/2024/team>.

<sup>33</sup> “Formula 1 vs. NASCAR,” International Motor Sports Hall of Fame, January 6, 2023. Accessed October 7, 2024 at <https://www.motorsportshalloffame.com/formula-1-vs-nascar/>.

IndyCar.<sup>34</sup> Drivers who attempt to move from closed-wheel to open-wheel racing face a substantial performance loss.<sup>35</sup> Sponsorship deals for Formula 1 and IndyCar differ from NASCAR's.<sup>36</sup> These differences mean that, for premium stock car racing teams, there is not competing substitute source of revenue other than NASCAR.

28. Sports car racing involves two-seater, closed wheel cars that are different from NASCAR stock cars. Race producers in the United States, Grand Am, acquired by NASCAR in 2008,<sup>37</sup> and the American Le Mans, merged in 2014 to become the WeatherTech SportsCar Championship, for which IMSA, owned by NASCAR, is the sanctioning body.<sup>38</sup> Other motorsports include touring car and production car racing, which in the United States do not constitute substantial professional racing.<sup>39</sup>
29. Some motorsports teams operate both stock car teams and open wheel teams, but this is an example of diversified but not complementary production. These motorsports teams cannot

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<sup>34</sup> "Formula 1 vs. NASCAR," International Motor Sports Hall of Fame, January 6, 2023. Accessed October 7, 2024 at <https://www.motorsportshalloffame.com/formula-1-vs-nascar/>; Horner, Scott, "Is IndyCar the same as NASCAR? And other auto racing FAQs," Indianapolis Star, April 18, 2023. Accessed October 7, 2024 at <https://www.indystar.com/story/sports/motor/2023/04/18/indycar-vs-nascar-differences-which-car-is-faster-bigger-roger-penske/70073914007/>.

<sup>35</sup> Jenkins Declaration, paragraph 50: "Other racing circuits, like Formula 1 and the IndyCar Series, are not stock car racing circuits. Simply put, Front Row is not built to compete in either competition. Those competitions require completely different cars, different skill sets from the drivers, and different pit crews. Whereas the premier stock car racing offered in the Cup Series is more about mechanical knowledge, Formula 1 and IndyCar are more engineering driven. They are different sports. There is simply no other circuit in which Front Row can compete as a premier stock car racing team other than with the NASCAR monopoly." Drivers may debut in NASCAR's Craftsman Truck Series before moving on to Xfinity and Cup Series stock car racing ("NASCAR's three national series, how they work," NASCAR. Accessed October 7, 2024 at <https://nascar101.nascar.com/2021/07/22/nascars-three-national-series-how-they-work/>).

<sup>36</sup> Engle, Greg. "One Sponsor Lives In Both The NASCAR And F1 Worlds," Forbes February 18, 2024. Accessed October 7, 2024 at <https://www.forbes.com/sites/gregengle/2024/02/18/one-sponsor-lives-in-both-the-nascar-and-f1-worlds/>.

<sup>37</sup> "NASCAR Holdings to Acquire Grand-Am," Motorsport, September 5, 2008. Accessed October 7, 2024 at <https://au.motorsport.com/grandam/news/nascar-holdings-to-acquire-grand-am/2787983/>.

<sup>38</sup> Cole Sith, Steven, "Grand-Am, American Le Mans series to merge," Autoweek, September 4, 2012. Accessed October 7, 2024 at <https://www.autoweek.com/racing/more-racing/a1956056/grand-am-american-le-mans-series-merge/>; "IMSA WeatherTech Sports Car Championship," Multimatic Motorsports. Accessed October 7, 2024 at <https://www.multimaticmotorsports.com/programmes/weathertech-sportscar-championship/>; "NASCAR," Governors Highway Safety Association. Accessed October 7, 2024 at <https://www.ghsa.org/members/nascar>.

<sup>39</sup> Collins, Jason and Kurt Spurlock, "From F1 to drag racing: Here's a breakdown of all the major types of car racing," The Manual, July 26, 2024. Accessed October 7, 2024 at <https://www.themanual.com/auto/types-of-car-racing/>.



use their stock car teams to compete in Formula 1 or IndyCar races, nor can they use their open wheel teams to compete in NASCAR races.

30. In sum, because the teams have tens of millions invested in stock cars and no experience or investment in other types of racing cars, they are not substitutes. As an example, American football and global football (a.k.a. soccer) offer very different opportunities for athletes who provide premier athletic services, to the point where no current NFL players previously played competitive soccer in college (with the exception of place kickers).<sup>40</sup>

### 7.3 NASCAR HAS MARKET POWER IN THE RELEVANT MARKET

31. No other producer of stock car races in the United States has popularity, attendance, television audiences, and sponsorship arrangements similar to NASCAR.<sup>41</sup> In terms of revenue, NASCAR accounts for 100 percent of premier stock car racing in the United States (with the Cup Series), as well as a dominant majority of all stock car racing in the United States across its various circuits. As a consequence of its dominant position in

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<sup>40</sup> There are three former college soccer players currently in the NFL. All three are “soccer-style” placekickers, a very specialized position, typically limited to one per team. Howell, Maria. “3 current NFL kickers who began their careers as NCAA soccer players,” NCAA.com, September 13, 2024. Accessed October 7, 2024 at <https://www.ncaa.com/news/soccer-men/article/2024-09-12/3-current-nfl-kickers-who-began-their-careers-ncaa-soccer-players>.

<sup>41</sup> NASCAR is “far and away the most popular national association” in stock car racing (Nash, Tom, “The State of the Racing Industry,” Motor, March 2003. Accessed October 7, 2024 at <https://www.motor.com/magazine-summary/state-racing-industry-march-2003/>). It is the most-watched motorsport series in the U.S. and is considered one of the most popular motorsport series in the world (Fronstretch Staff, “The Most Popular Motorsports in the World,” Fronstretch, January 10, 2022. Accessed October 7, 2024 at <https://frontstretch.com/2022/01/10/the-most-popular-motorsports-in-the-world/>). In 2023, the Daytona 500 drew roughly 150,000 attendees, surpassing the NFL Super Bowl’s attendance of 67,800 (Bushard, Brian, “Biggest Live Audience For A Sports Event In 2023? It Wasn’t The Super Bowl Or Kentucky Derby,” Forbes, July 2, 2023. Accessed on October 7, 2024 at <https://www.forbes.com/sites/brianbushard/2023/07/02/biggest-live-audience-for-a-sports-event-in-2023-it-wasnt-the-super-bowl-or-kentucky-derby/>). According to Austin Karp, managing editor at Sports Business Journal, NASCAR is attractive to television advertisers because “few other properties aside from National Football League games can draw live audiences of nearly three million people on a Sunday afternoon” (Coffee, Patrick, “Nascar Targets Diverse Audiences to Expand Viewership, Despite Anti-DEI Backlash,” The Wall Street Journal, January 26, 2024. Accessed October 7, 2024 at <https://www.wsj.com/articles/nascar-targets-diverse-audiences-to-expand-viewership-despite-anti-dei-backlash-b6a0d14c>). NASCAR secured its “most lucrative media rights deal by annual value in its history” in 2023 - a \$7.7 billion broadcast deal over seven years in which NBC, Fox, Amazon, and Warner Bros Discovery will split domestic coverage between 2025 and 2031 (Brittle, Cian, “Nascar’s US\$7.7bn TV deal: Why the annual value went up, who gets what, and the impact on fans,” BlackBook Motorsport, December 11, 2023. Accessed October 7, 2024 at <https://www.blackbookmotorsport.com/features/nascar-tv-rights-deal-explainer-nbc-fox-amazon-tnt-discovery-cw-network>).



premier stock car racing, NASCAR is a monopsonistic purchaser of premier stock car team racing services.

32. There is no significant economically substitutable source of revenue for stock car teams other than what they earn from NASCAR. An economic substitute would be a source of revenue that stock car teams could earn by providing their services to parties other than NASCAR, in the event that NASCAR does not provide sufficient compensation. If there were a viable competitor to NASCAR in the production of premier stock car racing as an output in the United States, the services of premier stock car racing teams would be offered in a more competitive input market. This possibility of substitution, if it existed, could serve to restrain compensation decreases by NASCAR. However, because there is no viable alternative producer of races, there is no viable alternative acquirer of premier stock car team racing services as an input.
33. Premier stock car racing teams earn revenue from sponsorships, but only through regular participation in NASCAR events.<sup>42</sup> Team sponsorship revenue is, for teams, an economic complement to revenue from NASCAR, not an economic substitute.<sup>43</sup> Rather, the value of

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<sup>42</sup> NASCAR teams are independent businesses that make 65% to 85% of their revenues from sponsorships (Belson, Ken, "NASCAR and Its Race Teams Fight Over the Sport's Future," New York Times, May 1, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>; Stern, Adam, "NASCAR teams dig deep for sponsors," Sports Business Journal, July 17, 2023. Accessed October 7, 2024 at <https://www.sportsbusinessjournal.com/Journal/Issues/2023/07/17/Upfront/motorsports.aspx>). These sponsorships depend on regular event participation, as sponsors view the cars as "200 mile per hour billboards that provide a return on investment insofar as they yield exposure beyond what sponsors could otherwise purchase in standard advertising channels." (Bothner, M. S., Kang, J., & Stuart, T. E. (2007). Competitive Crowding and Risk Taking in a Tournament: Evidence from NASCAR Racing. Administrative Science Quarterly, 52(2), 208–247. Citing Ronfeldt, D. 2001 "Social science at 190 mph on NASCAR's biggest super speedways." <http://www.firstmonday.dk/issues/issue5Z2/ronfeldt/>). Additionally, "Sponsorships in particular are greatly affected by a team's winnings in a season, with premium sponsors looking to make deals with successful teams with a good record of victories or at least high placements" ("Is NASCAR Racing Profitable for Teams?," MotorRacingSports.com. Accessed October 7, 2024 at <https://motorracingsports.com/is-nascar-racing-profitable-for-teams/>).

<sup>43</sup> A NASCAR team generates revenues from sponsorships, merchandise sales, and, from NASCAR, race winnings plus shares of media rights deals and broadcast advertising ("Is NASCAR Racing Profitable for Teams?," MotorRacingSports.com. Accessed October 7, 2024 at <https://motorracingsports.com/is-nascar-racing-profitable-for-teams/>; Engle, Greg, "NASCAR Faces Financial Challenges: Sponsor Revenues Decline Amid Talks With Teams," Forbes, August 5, 2024. Accessed October 7, 2024 at <https://www.forbes.com/sites/gregengle/2024/08/05/nascar-faces-financial-challenges-sponsor-revenues-decline-amid-talks-with-teams/>). Success on the track not only increases race winnings - where "each race can be worth anything from \$4 to \$7 million on average depending on its size, scale, and prestige" ("Is NASCAR Racing Profitable for Teams?," MotorRacingSports.com. Accessed October 7, 2024 at

these sponsorship opportunities is contingent on visibility, which in turn is contingent on consistently qualifying for races.<sup>44</sup> Team sponsorship revenue is substantial and vital for team operations.<sup>45</sup> This economic complement to providing racing services to NASCAR to earn prize money and revenue distributions can enable teams to earn enough complementary (because demand from sponsors is directly tied to racing performance) revenue to succeed financially.<sup>46</sup>

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<https://motorracingsports.com/is-nascar-racing-profitable-for-teams/>) - but also enhances the team's visibility. This heightened visibility makes the team more attractive to sponsors who view the cars as “200 mile per hour billboards.” (Bothner, M. S., Kang, J., & Stuart, T. E. (2007). Competitive Crowding and Risk Taking in a Tournament: Evidence from NASCAR Racing. *Administrative Science Quarterly*, 52(2), 208–247. Citing Ronfeldt, D. 2001 “Social science at 190 mph on NASCAR's biggest super speedways.” <http://www.firstmonday.dk/issues/issue5Z2/ronfeldt/>).

<sup>44</sup> See, for example, Rothhoff, K. W., Depken, C. A., & Groothuis, P. A. (2014). Influences on sponsorship deals in NASCAR: indirect evidence from time on camera. *Applied Economics*, 46(19), 2277–2289. <https://doi.org/10.1080/00036846.2014.899672>, which found that while “winning a race will contribute to a driver’s VTOC, other driver attributes matter as much, if not more.” Among the variables besides winning that are driven by race participation were “leading laps,” and “finishing races.”

<sup>45</sup> Team sponsorship revenue for 15 Cup Series teams was about \$753 million in 2023 and \$772 million in 2024, according to Forbes reporting on GlobalData’s “The Business of NASCAR” (Engle, Greg, “NASCAR Faces Financial Challenges: Sponsor Revenues Decline Amid Talks With Teams,” *Forbes*, August 5, 2024, accessed October 7, 2024 at <https://www.forbes.com/sites/gregengle/2024/08/05/nascar-faces-financial-challenges-sponsor-revenues-decline-amid-talks-with-teams/>). While the total sponsorship for these teams grow year-over-year by 2 percent, the individual team revenues are much more volatile: the sponsorships revenue changes ranged from a drop of 49 percent to an increase of 170 percent, with a standard deviation exceeding 50 percent.

<sup>46</sup> For example, according to Pruitt, S.W., Cornwell, T.B., & Clark, J.M. (2004). The NASCAR Phenomenon: Auto Racing Sponsorships and Shareholder Wealth. *Journal of Advertising Research*, 44(3), 281-296, p. 291:

“The variable WINSTON CUP, reflecting the total number of NASCAR Winston Cup (championship) points won by the sponsored car in the last full year of racing just prior to the initiation of the sponsorship, was included to capture the wealth effects of being associated with particularly successful (or particularly unsuccessful) NASCAR teams. Because White (2002) notes that the prospect of consistent television exposure is obviously a significant benefit of the typical NASCAR sponsorship, and because winning teams are much more likely to garner extensive television exposure (and Winston Cup points) than back-running ‘also rans’ (see, e.g., Quester, 1997), it is hypothesized that the correlation between sponsorship initiation abnormal returns and the variable WINSTON CUP will be positive. ... The positive and statistically significant coefficient for the variable WINSTON CUP is consistent with a priori expectations and clearly indicates that the initiation of a NASCAR sponsorship with a highly successful team is more positively received by investors than a sponsorship with a mid- or lower-tier team.”

(Note: “Winston Cup” was the former name of the current NASCAR premier series). Similar results hold for Formula One according to Jensen, J. A., Cobbs, J. B., Mazer, A., & Tyler, B. D. (2024). Analyzing Brand Strategy on an International Scale: The Sponsorship Performance Cycle in Formula One Racing. *Journal of International Marketing*, 32(3), 23-42, p. 35:

“The hazard ratio for the driver championship variable (HR =.97) indicates that every title won over the team’s history by its drivers reduces the probability of a sponsoring firm exiting a brand partnership with that team by 3.4%. Similarly, the hazard ratio for the variable reflecting historical achievement in the constructor point standings (HR =1.02) indicates that as each team’s best finish in the standings gets one spot worse (i.e., numerically higher), the probability that a sponsoring

34. NASCAR is the sole entity determining entry into Cup Series races and because there are no rival premier stock car racing services, NASCAR is thus the sole entity determining entry into the relevant market. Only through a NASCAR charter can a stock car racing team secure guaranteed entry into all Cup Series events.<sup>47</sup> Thus, only charter teams can guarantee, prior to qualification runs, some level of prize revenue from race participation and only charter teams can guarantee season-long, repeat exposure for team sponsors. Expected exposure, repeated over time, is a key consideration for potential sponsoring organizations and the primary factor controlling team sponsorship revenue.<sup>48</sup>
35. NASCAR's control of charters is economically significant for stock car racing teams. "Open" teams (stock car racing teams that do not have a NASCAR charter) can attempt to participate in Cup Series events by qualifying in each individual race.<sup>49</sup> Qualification requires traveling to the race location and participating in qualifying races before the actual race.<sup>50</sup> Open teams must incur the costs of qualification without any guarantee of having a slot in the actual race (which charter teams will always have). Thus, open teams cannot provide the same assurance of exposure for team sponsors. Also, open teams can earn prize money for successful participation, but do not receive payments from any of the other NASCAR revenue pools that charter teams share, as I describe in Section 9.2.

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firm exits increases by 2.2%. Finally, we operationalized recent team performance through a variable that reflected a team's total constructor points earned during each season. The hazard ratio (HR=.99) indicates that every one point earned by the team reduces the probability of the sponsoring firm exiting at the end of the season by .09%."

<sup>47</sup> "How the NASCAR Charter system works," NASCAR, September 22, 2020. Accessed October 7, 2024 at <https://www.nascar.com/news-media/2020/09/22/how-the-nascar-charter-system-works/>.

<sup>48</sup> For example, time on camera, which translates into value for sponsors, is related to team performance. Rotthoff, K. W., Depken, C. A., & Groothuis, P. A. (2014). Influences on sponsorship deals in NASCAR: indirect evidence from time on camera. *Applied Economics*, 46(19), 2277–2289. <https://doi.org/10.1080/00036846.2014.899672>, p. 2288.

<sup>49</sup> "NASCAR Cup Series 2024 Qualifying Procedures," Silly Season Site. Accessed October 7, 2024 at <https://www.jayski.com/nascar-cup-series/nascar-cup-series-2024-qualifying-procedures/>.

<sup>50</sup> See, for example, "How Daytona 500 qualifying works; Bluegreen Vacations Duels procedure," NASCAR, February 13, 2023. Accessed October 7, 2024 at <https://www.nascar.com/news-media/2023/02/13/nascar-cup-series-how-daytona-500-qualifying-works/>.

36. Individual stock car teams do not have market power. They compete against each other to secure access to NASCAR sanctioned events and to attract sponsorship deals.<sup>51</sup> Each team makes investments in staff and technology to develop an attractive brand (an intangible asset) for sponsors. As I explain further in Section 9, a stock car racing team only maintains the value of its brand from one season to the next by participating regularly in sanctioned races throughout each season.

## **8. EXCLUSIONARY ACTS USED TO MAINTAIN MONOPOLY POWER**

37. NASCAR engages in conduct that maintains and preserves its market power in the relevant market for the purchase of stock car team racing services, harming competition in that market. This conduct includes foreclosing potential entrants from acquiring necessary inputs into the production of premier stock car racing – foreclosure of inputs restricts output of premier stock car racing and also decreases return on investments made by premier stock car teams. This conduct also includes using monopsony power to channel expenditures by premier stock car teams to NASCAR and other suppliers aligned with NASCAR, which controls innovation and increases the costs that premier stock car teams must incur in order to participate as NASCAR charter teams.<sup>52</sup>

38. The 2025 Charter expands preferential contract terms for NASCAR including, notably, permitting more entities (and France family members) affiliated with NASCAR to own charters to participate in the Cup Series directly, without previously existing limitations on such relationships (as I describe in Section 8.2.3). Such expansion of direct ownership

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<sup>51</sup> For example, Belson, Ken, “NASCAR and Its Race Teams Fight Over the Sport’s Future,” New York Times, May 1, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>; Stern, Adam, “NASCAR teams dig deep for sponsors,” Sports Business Journal, July 17, 2023. Accessed October 7, 2024 at <https://www.sportsbusinessjournal.com/Journal/Issues/2023/07/17/Upfront/motorsports.aspx>; Dwivedi, Neha, “Ross Chastain’s Boss Discloses How They Stole \$110 Billion NASCAR Sponsor Under Tony Stewart’s Watch,” Essentially Sports, July 31, 2023. Accessed October 7, 2024 at <https://www.essentiallysports.com/nascar-news-ross-chastains-boss-discloses-how-they-stole-billion-nascar-sponsor-under-tony-stewarts-watch/>; Ghosh, Nilavro, “‘Lots Of Snakes In This Sport’ - Xfinity Star Sounds Off On Stolen NASCAR Sponsorship; Fans Stand In Disagreement,” Essentially Sports, February 6, 2024. Accessed October 7, 2024 at <https://www.essentiallysports.com/nascar-news-lots-of-snakes-in-this-sport-xfinity-series-star-natalie-decker-sounds-off-on-stolen-nascar-sponsorship-fans-stand-in-disagreement/>.

<sup>52</sup> Complaint, ¶¶ 13, 98–100.



options would further undermine economic incentives to negotiate competitive terms with independent premier stock car teams.<sup>53</sup>

39. In contrast to maintaining a monopsony with superior business acumen, more attractive purchasing practices or better pricing, the defendants used exclusionary acts. NASCAR instead ensured that there was no other entity competing to acquire the racing services of premier stock car teams. NASCAR did not compete to be the superior buyer of premium stock car teams' racing services – defendants instead ensured that NASCAR has been the only buyer. NASCAR did not compete to provide better compensation for the use of premium stock car teams' racing services – defendants instead ensured that NASCAR controlled access to the sources of compensation. In sum, the practices listed below fall in the latter category, anticompetitive exclusionary conduct, instead of the former category, procompetitive business practices, because it is the reduction or prevention of competition that provides benefit to defendants from the conduct, as opposed to benefits flowing from improved output, quality, or pricing.<sup>54</sup>

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<sup>53</sup> The flip side is when the monopsonist has fewer outside options, as is the case when a franchisor licenses to large owners that are *not* affiliated with the franchisor: “. . . multi-unit ownership might be detrimental to the chain if it increases the franchisee's bargaining power or his capacity to behave opportunistically vis-à-vis the franchisor.” (Kalnins & Lafontaine, “Multi-Unit Ownership in Franchising: Evidence from the Fast-Food Industry in Texas,” *The RAND Journal of Economics*, Winter, 2004, Vol. 35, No. 4, pp. 747-761 at p. 749).

<sup>54</sup> Jonathan Baker, in “Exclusion as a core competition concern” (*Antitrust Law Journal*, 2013, Vol. 78, No. 3, pp. 527-89) explains the core economic concepts underlying the determination of the anticompetitive effect of conduct labelled as exclusionary and surveys the relevant economic literature: “The harm to competition that arises from exclusion and collusion can be understood within a common economic framework. Indeed, the economic reasons for concern about anticompetitive collusion are substantially the same as the reasons for concern about anticompetitive exclusion.” (p. 556); “This discussion adopts the convention common in the economics literature of describing competitive harms in terms of increased prices and a reduction in output. This framework encompasses a wider range of harms than may be apparent. It includes reductions in product quality, which can be understood as increases in the quality-adjusted price. It may also account for reductions in the rate of innovation, as conduct that reduces competition also tends to discourage innovation.” (p. 556, fn. 141); “The possibility that competition could be harmed through exclusionary conduct has been well established in the economics literature for decades. *E.g.*, Richard R. Nelson, *Increased Rents from Increased Costs: A Paradox of Value Theory*, 65 *J. Pol. Econ.* 387 (1957); Steven C. Salop & David T. Scheffman, *Cost-Raising Strategies*, 36 *J. Indus. Econ.* 19 (1987); Oliver E. Williamson, *Wage Rates as a Barrier to Entry; The Pennington Case in Perspective*, 82 *Q.J. Econ.* 85 (1968).” (p. 557, fn. 144); “The economic mechanisms by which excluding firms foreclose their rivals could work through raising input prices (input foreclosure), as with the four methods just set forth, but they could also operate by reducing rivals' access to the market (customer foreclosure).” (p. 564); “If the exclusionary conduct is undertaken by a dominant firm, for example, and the dominant firm excludes all significant fringe rivals (those that are not capacity-constrained or otherwise have a high cost of expansion) and entrants, the dominant firm would not face any competitive threats.” (p. 565, fn. 190).



## 8.1 EXCLUSIONARY CONDUCT ENHANCES AND MAINTAINS NASCAR'S MARKET POWER

40. NASCAR's exclusionary conduct maintains its monopsony power by preventing potential entrants into stock car racing from competing with NASCAR in the acquisition of services from premier stock car racing teams and thus undermining NASCAR's market power in the relevant market.<sup>55</sup> This conduct includes 1) controlling a large share of the concentrated ownership of suitable stock car racetracks in the United States, 2) securing exclusive use of stock car racetracks owned by others (including the only other owner of a large share of suitable stock car racing facilities), and 3) securing non-compete provisions from premier stock car teams seeking the secure access to sanctioned racing events necessary for attracting sponsorship deals.

### 8.1.1 Racing Facilities

41. One tool for protecting existing monopoly/monopsony power is to erect barriers to competitive entry, thereby ensuring that competitors cannot challenge the incumbent even if the competitive product is potentially more efficient and might be more popular. In premier stock car racing, the largest such barrier to entry is the existence of suitable venues: tracks designed for stock car racing with capacity large enough to host a premier event.
42. NASCAR's conduct of denying any other potential premier stock car racing series access to the high-quality racing facilities (i.e., tracks) needed to stage successful premier stock car races contributes to ensuring that NASCAR is the only premier stock car racing series in the United States and, thus, the only entity that acquires the services of premier stock car racing teams.

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<sup>55</sup> The possibility of entry can serve to control price increase (or, in this case, price decreases to inputs) even if actual entry does not occur: "If the market is working well even a firm with a 100% market share might have no ability to raise prices above the competitive level for a significant period." Lande, Robert H., "Market Power Without a Large Market Share: The Role of Imperfect Information and Other 'Consumer Protection' Market Failures," U.S. Department of Justice Website Archives, March 8, 2007. Accessed October 7, 2024 at <https://www.justice.gov/archives/atr/market-power-without-large-market-share-role-imperfect-information-and-other-consumer-protection>. Conversely, conduct that serves to deter entry that could otherwise occur is conduct that provides more pricing power, i.e., more market power.

43. In the current 2024 season, the Cup Series consists of 36 races (and 4 exhibition events), including 10 Cup Playoff events, across 26 tracks.<sup>56</sup> NASCAR operates Cup Series races on a variety of tracks around the United States. NASCAR races are generally held on oval-shaped tracks categorized as “short tracks,” “intermediate tracks,” “speedways” and “superspeedways,” which vary in length, surface, and banking.<sup>57</sup> However, of the over 40 tracks currently used for NASCAR races, 14 are “road courses” that incorporate right turns and “often wind through the surrounding scenery.”<sup>58</sup> For the majority of courses, there are some common physical characteristics:

Most of today's NASCAR NEXTEL Cup series races are held on high-speed oval tracks with banked turns; generally speaking, the greater the degree of banking in the turns, the faster the cars can go through them. Ovals of more than one mile in length are considered superspeedways, because the longer straightaways allow the cars to reach higher speeds. Only three of the current oval tracks are less than one mile in length.

The majority of ovals have a curved frontstretch, and these are known as “tri-ovals” or “D-shaped tracks.” Those with four distinct turns (such as the Indianapolis Motor Speedway) are sometimes referred to as “quad ovals.” All the oval-track races are run counterclockwise, meaning they have only left-hand turns. [Some] races are held on road courses, which feature numerous left- and right-hand corners with little or no banking.<sup>59</sup>

44. In addition to the physical design of the course for stock car racing, the economics of a high-revenue premier stock car racing series like NASCAR’s Cup Series requires many

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<sup>56</sup> ESPN identifies 36 Cup Series races in 2024 (Including the All Star Race as a single race and not including Clash at the Coliseum, Duel #1, Duel #2, and the Daytona 500). “2024 NASCAR Cup Series Schedule,” ESPN. Accessed October 7, 2024 at [https://www.espn.com/racing/schedule/\\_/year/2024](https://www.espn.com/racing/schedule/_/year/2024); “List of NASCAR Tracks,” NASCAR. Accessed October 7, 2024 at <https://www.nascar.com/tracks/> (stating “The NASCAR Cup Series currently races on 26 different tracks” under the “NASCAR TRACK FAQs.” In total, NASCAR.com lists 47 “NASCAR” tracks (not limited to Cup Series) and identifies 16 as owned by NASCAR and 12 as owned by Speedway Motorsports). NASCAR lists 38 Cup Series tracks in 2024 (including the Clash at the Coliseum). “2024 NASCAR Cup Series Stage Lengths,” NASCAR. Accessed October 7, 2024 at <https://nascar101.nascar.com/wp-content/uploads/sites/48/2024/01/17/2024-NCS-STAGE-LENGTHS.pdf>.

<sup>57</sup> Sk Desk, “Are All NASCAR tracks Oval?” Sportskeeda, May 10, 2024. Accessed October 7, 2024 at <https://www.sportskeeda.com/nascar/are-all-nascar-tracks-oval>; “List of NASCAR Tracks,” NASCAR. Accessed October 7, 2024 at <https://www.nascar.com/tracks/>.

<sup>58</sup> “List of NASCAR Tracks,” NASCAR. Accessed October 7, 2024 at <https://www.nascar.com/tracks/>.

<sup>59</sup> Auto Editors of Consumer Guide, “NASCAR Race Car Tracks,” HowStuffWorks. Accessed October 7, 2024 at <https://auto.howstuffworks.com/auto-racing/nascar/race-tracks/nascar-tracks.htm>.

courses with large attendance capacity.<sup>60</sup> At the beginning of the 2016 Charter, the 21 top capacity tracks for NASCAR could manage attendance ranging from 33,000 to 146,000.<sup>61</sup>

45. The vast majority of the racing facilities required to produce premier stock car racing (and, thus, be a purchaser of premier stock car teams' racing services) are in the hands of two firms, ISC and SMI.<sup>62</sup> In 2019, NASCAR took over ISC (which had been controlled by the France family), turning it into a wholly owned subsidiary.<sup>63</sup> NASCAR requires that

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<sup>60</sup> NASCAR's Cup Series has traditionally attracted large crowds. In the early 2000s, NASCAR was "routinely drawing crowds well over 50,000 to 100,000 essentially for every Cup Series race" (Stern, Adam, "NASCAR sees positive trends in attendance," Sports Business Journal, May 9, 2022. Accessed October 7, 2024 at <https://www.sportsbusinessjournal.com/Journal/Issues/2022/05/09/Upfront/Motorsports.aspx>). Although NASCAR stopped releasing attendance estimates in 2013 (Ryan, Nate, "NASCAR will no longer provide attendance estimates," USA Today, February 16, 2013. Accessed October 7, 2024 at <https://www.usatoday.com/story/sports/nascar/2013/02/16/nascar-tracks-attendance/1925205/>), recent data still show the need for courses with large attendance capacity: in 2022, NASCAR counted eight Cup sellouts, including its race at Martinsville Speedway (capacity of about 65,000), at the Daytona International Speedway (capacity 101,000), and at the Phoenix Raceway (capacity 42,000). See Stern, Adam, "NASCAR counts eight Cup sellouts in 2022," Sports Business Journal, October 31, 2022. Accessed October 7, 2024 at <https://www.sportsbusinessjournal.com/Daily/Morning-Buzz/2022/10/31/NASCAR-F1-attendance-sellouts.aspx>; Gastelu, Gary, "NASCAR's Daytona 500 is sold out with over 101,000 fans expected," Fox News, January 13, 2022. Accessed on October 7, 2024 at <https://www.foxnews.com/auto/nascars-daytona-500-sold-out-101000-fans>; Track Release, "Phoenix Raceway is sold out for NASCAR's Ruoff Mortgage 500," NASCAR. Accessed October 7, 2024 at <https://www.nascar.com/news-media/2022/03/13/phoenix-raceway-is-sold-out-for-nascars-ruoff-mortgage-500/>; "NASCAR Tracks," NASCAR, July 5, 2022 via the Wayback Machine. Accessed October 7, 2024 at <https://web.archive.org/web/20220705164218/https://nascar101.nascar.com/nascar-tracks-phoenix-raceway/>.

<sup>61</sup> Long, Dustin, "What tracks have the largest seating capacity in NASCAR?" NBC Sports, March 28, 2016. Accessed October 7, 2024 at <https://www.nbcsports.com/nascar/news/what-tracks-have-the-largest-seating-capacities-in-nascar>.

<sup>62</sup> Previously, these two firms "control[led] all but three (Pocono, Dover and Indianapolis) major venues" in stock car racing. (Pearce, Al, "Speedway Motorsports Inc.'s Merger With Sonic Financial Corp. Is Not Expected To Rock NASCAR Schedule," Autoweek.com, July 26, 2019. Accessed October 7, 2024 at <https://www.autoweek.com/racing/nascar/a2145151/speedway-motorsports-incs-merger-sonic-financial-corp-not/>). Now, SMI also owns Dover. See "Speedway Motorsports buys NASCAR Dover track in Delaware," USA Today, November 8, 2021. Accessed October 8, 2024 at <https://www.usatoday.com/story/sports/nascar/2021/11/08/speedway-motorsports-buys-nascar-dover-track-in-delaware/49328317/>.

<sup>63</sup> "NASCAR paid to purchase the publicly traded International Speedway Corp., a deal which closed last Friday and includes 100 percent ownership of 12 tracks that currently host a combined 19 Cup races" (Bianchi, Jordan, "NASCAR-International Speedway Corp. merger is likely first of many big changes to come," The Athletic, NYTimes.com, October 24, 2019. Accessed October 7, 2024 at <https://www.nytimes.com/athletic/1316104/2019/10/24/nascar-international-speedway-corp-merger-is-likely-first-of-many-big-changes-to-come/>.) "[T]he deal now gives the US stock car racing series control of all ISC venues that stage events on its schedule. ISC owned 13 tracks, which collectively hosted 19 of the 36 events on Nascar's premier Monster Energy Cup Series. As well as those, Nascar now owns Iowa Speedway, which hosts Xfinity and Truck races." (Dixon, Ed, "Nascar completes US\$2bn merger with track giant ISC," Sportspromedia.com, October 21, 2019. Accessed October 7, 2024 at <https://www.sportspromedia.com/news/nascar-isc-merger-completed-iowa-speedway/>.)

racetracks hosting a NASCAR event cannot host any other national premier stock car racing event.<sup>64</sup>

46. NASCAR's direct ownership of tracks combined with these exclusivity arrangements, creates an environment where a would-be new entrant into premier stock car racing would be unable to find sufficient facilities to contest NASCAR's monopoly. Even if such entry might not ultimately prove successful, periods of competition among rival sanctioning bodies in motorsports can provide racing teams (in this case, stock car racing teams) with their best opportunities for successful bargaining. When there are two competing acquirers of teams' services, teams' shares goes up – compensation to teams was one of the reasons CART split off from IndyCar in open-wheel racing.<sup>65</sup>
47. While NASCAR exercises this particular exclusivity over racetracks, which is a different input than premier stock car racing teams, the effect is to prevent any entry into the relevant market for the acquisition of premier stock car teams' racing services. Without adequate premier stock car racetrack facilities, there can be no rival competitors producing premier stock car racing series in the United States and thus there are no other substitutes to NASCAR to which teams can sell their racing services. In essence, without a rival race circuit, there cannot be competitive demand for racing services.

### 8.1.2 Non-compete covenants

48. In premier stock car racing, another key barrier to entry is the acquisition of a suitable pool of competing premier stock car racing teams. As with racetracks, NASCAR has also taken steps to deny access to teams operating as sellers in the alleged relevant market by locking

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<sup>64</sup> The Complaint cites to an example agreement that describes the exclusivity requirement (Complaint. ¶ 88, citing Secs. and Exch. Comm'n Form 8-K, Dover Motorsports, Inc., June 2, 2020): "In recognition of the importance and stature of the Event and the Series, the financial significance of agreements with NASCAR Rights Affiliates, and the sanction granted under this Agreement, during the Term of this Agreement PROMOTER covenants *not to promote, host, conduct or stage, nor allow any third party(s) to promote, host, conduct or stage, a stock car racing event at the Facility that attempts to duplicate, emulate, imitate, copy, simulate and/or mimic the NASCAR National Series*; or uses the same or similar race vehicles, rules, competitors, trademarks, trade dress, and/or 'look and feel' of the NASCAR National Series; or would create confusion in the public; or would in any way dilute the stature, impact and value of the NASCAR National Series, NASCAR, NEM, NASCAR Rights Affiliates and others."

<sup>65</sup> "By the end of 1978 the team owners had broken away and founded Championship Auto Racing Teams (CART) to take control of sanctioned racing from USAC." ("The Tumultuous History of IndyCar," BurnsStainless.com. Accessed October 7, 2024 at <https://burnsstainless.com/blogs/articles-1/the-tumultuous-history-of-indycar>).



up charter teams beyond their period of race participation. Not only are 2016 charter teams contractually prohibited from racing in any other professional stock car racing during the term of the agreement but are also prohibited from [REDACTED] [REDACTED] in order to join a competitor creates conditions where such circuit switching is cost prohibitive for teams, thereby limiting the supply of racing services that could be available to an alternative purchaser.

49. These non-compete covenants are more stringent (and thus more anticompetitive) in the 2025 Charter, further locking existing teams into the Cup Series and preventing the creation of any other viable premium stock car racing series.<sup>66</sup> On top of this, NASCAR has also taken steps to ensure that even if a team were [REDACTED], it

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<sup>66</sup> The 2016 Charter Agreement prohibits participating in any other professional stock car racing in Section 6.6 (emphasis added):

[REDACTED]

In contrast, while the 2025 Charter Agreement also [REDACTED] the non-compete is broader because it expands the scope from “professional stock car racing” to all automobile or truck motorsports racing with certain enumerated exceptions:

[REDACTED]

(2025 Charter Agreement § 6.6, emphasis added).



would not be able to use its existing stock cars, as NASCAR claims control of certain critical mechanical parts, such as the engine, as I discuss in more detail in Section 8.2.2.

## **8.2 SUPPRESSING TEAM BARGAINING POWER INCREASES NASCAR'S MARKET POWER**

50. NASCAR suppresses the bargaining power of premier stock car teams, which increases NASCAR's ability to extract rents through non-competitive pricing.<sup>67</sup> This conduct includes 1) requiring teams to use preferred suppliers, 2) imposing technical strictures and supply arrangements that lock teams into NASCAR participation by imposing high switching costs, and 3) preferential new charter terms including the provision for NASCAR to assume ownership of Cup Series charters (thus reducing the incentives to negotiate fairly with independent teams).

### **8.2.1 NASCAR has considerable power in negotiation with teams**

51. As discussed above, NASCAR both owns and has exclusive arrangements with the tracks needed to create premier stock car racing<sup>68</sup> and non-compete covenants with premium stock car racing teams. As the only entity acquiring premium stock car teams' racing services, there are no alternatives for teams to complying with the technical regulations and parameters NASCAR sets for Cup Series participation, other than exiting. This means NASCAR has unilateral authority to increase teams' costs and to force them to buy from NASCAR's hand-picked single-source suppliers (as I describe in Section 8.2.2).<sup>69</sup>

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<sup>67</sup> Conduct by a monopolist that weakens the bargaining power of companies providing inputs strengthens the ability of the monopolist to suppress prices for those inputs, which is an enhancement of market power. Bloomberg reports that this is one of the reasons the US FTC chose to challenge Kroger's acquisition of Albertson (Kaye, Danielle, "Kroger-Albertsons Suit Wields Antitrust to Protect Union Workers," Bloomberg Law, February 29, 2024. Accessed October 1, 2024 at <https://news.bloomberglaw.com/antitrust/kroger-albertsons-suit-spotlights-unions-in-novel-labor-approach>).

<sup>68</sup> "NASCAR today announced that it has successfully closed its acquisition of International Speedway Corporation ('ISC'), merging its operations into one, new company moving forward. The new company will remain based in Daytona Beach, Florida and will continue as NASCAR. As part of this process, ISC has been delisted from NASDAQ. In leading the new, combined company, Jim France will serve as the Chairman and Chief Executive Officer, with Lesa France Kennedy as Executive Vice Chair. Steve Phelps has been appointed President and will oversee all operations of the merged entity." ("NASCAR closes merger with ISC," NASCAR, October 18, 2019. Accessed October 7, 2024 at <https://www.nascar.com/news-media/2019/10/18/nascar-closes-merger-isc/>).

<sup>69</sup> NASCAR can increase bargaining power by owning stock car racing assets or by controlling access to stock car racing (See, for example, Rajan, R. G., & Zingales, L. (1998). Power in a Theory of the Firm. The Quarterly Journal of Economics, 113(2), 387-432).

52. Anticompetitive conduct related to this situation would include conduct that suppresses teams' bargaining power in the face of NASCAR's monopsony. An example of such conduct would be imposing technical specifications that go beyond competitive issues (such as, possibly, safety or parity across teams) and instead serve to increase NASCAR's ability to extract more money from the teams by setting requirements that further constrain teams from competing or raising revenue elsewhere or otherwise negotiating with NASCAR.

**8.2.2 NASCAR's imposition of technical requirements and supplier arrangements on teams**

53. Following the 2018 season, NASCAR announced its "Next Gen" car program, the effect of which was to expand NASCAR's market power over premier stock car racing teams. As the only entity acquiring premium stock car teams' racing services, there are no alternatives for teams to complying with the technical regulations and parameters NASCAR sets for Cup Series participation, other than exiting. This means NASCAR has unilateral authority to increase teams' costs and to force them to buy from NASCAR's hand-picked single-source suppliers.

54. NASCAR asserts unilateral authority to require Cup Series teams to race only cars that comply with whatever technical regulations and parameters that NASCAR sets, and not to use the cars and equipment for anything other than Cup Series racing. With the Next Gen rollout, NASCAR's rules prohibit modifications to Next Gen parts and assemblies from specified vendors, while also limiting the quantities of purchases of such parts and assemblies in excess of current use and dictating where and how service can occur.<sup>70</sup> The

<sup>70</sup> See 2024 NASCAR Rule Book § 10.5.2.3

; 2024 NASCAR Rule Book, § 10.5.2.5

NASCAR Rule Book, § 14.1

); 2024

Next Gen program locks premier stock car teams into NASCAR Cup Series participation by forcing expenditures that provide no value outside of NASCAR Cup Series racing, thus increasing switching costs.

55. With the Next Gen car, NASCAR established not only technical specifications for the cars and parts but also changed the rules regarding what teams can do with parts. Under the Next Gen program, each Next Gen car's parts remain under some control by NASCAR, as described below.
56. NASCAR introduced the Next Gen car between the 2016 and 2025 Charter Agreements. NASCAR announced the program in 2018 and teams first used Next Gen cars for the 2022 season. The Charter Agreements do not explicitly mention Next Gen, but establish the foundation for such a program: [REDACTED]®  
[REDACTED]  
[REDACTED]<sup>71</sup> – the requirements for teams arise from the NASCAR Rule Book and not explicitly from the Charter Agreements that teams sign.
57. Teams are now required to expend millions of dollars to acquire the car parts dictated by NASCAR, including requirements on quantity to purchase and parts that may be less durable, or, in the case of carbon fiber bodies, more durable but not repairable.<sup>72</sup> However, such expenditures do not provide teams with free ownership of these parts – teams are restricted in what they can do with parts and are forbidden from using the cars containing these parts in any other racing event or any other use. In essence, the Next Gen program

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<sup>71</sup> 2016 Charter Agreement, Section 3.7. Jenkins Declaration, paragraph 19.

<sup>72</sup> “23XI and other Cup Series teams were required to pay for these parts and build the Next Gen carts to compete in all Cup Series races, incurring approximately \$3 million per year just to purchase the required parts for its cars for an entire Cup Series season.” (Declaration of Curtis Polk, paragraph 17); Belson, Ken, “NASCAR and Its Race Teams Fight Over the Sport’s Future,” New York Times, May 1, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>.

shackles the intangible assets of a premium stock car racing team to the tangible assets (equipment) controlled by NASCAR, which inhibits any team from switching.<sup>73</sup>

58. Other than ensuring participation in Cup Series races, these Next Gen expenditures provide only limited contribution to team assets (because of limitations on use and transfer of equipment). Any increase in the physical equipment assets is limited when NASCAR retains control of how parts are used.<sup>74</sup> Financially and economically, the Next Gen expenditures have similarities to charter fees or franchise fees – a cost of participation rather than an investment in physical property, money that teams have to spend in order to have the Cup Series race participation necessary for developing the intangible assets related to team performance that can then lead to sponsorship revenue.
59. In addition to terms controlling the use of materials, the requirements to make purchases from preferred suppliers means that premier stock car teams lose their bargaining power not only with NASCAR when bargaining for output compensation but also with suppliers when bargaining over input expenses.

### **8.2.3 2025 Charter preferential terms for NASCAR**

60. The 2025 Charter includes additional preferential terms for NASCAR that further erode the bargaining power of premier stock car teams.
61. The 2025 Charter would expand the ability of entities and family members related to NASCAR and the France family to operate in the Cup series as competitors. NASCAR Event Management (“NEM”) used to be prohibited from giving a charter directly to a some

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<sup>73</sup> “We are forbidden from using any of the parts purchased through the Next Gen program to make a race car for use outside of the Cup Series. NASCAR’s regulations are so stringent that 23XI cannot even take a Next Gen car out of our shop and run it unless it is during one of NASCAR’s sanctioned testing days, practices, qualifying events, or race days. This requires us to travel to NASCAR sanctioned testing days and practices and incur substantial costs to do so.” (Declaration of Curtis Polk, paragraph 19).

<sup>74</sup> “The Next Gen requirements dictated by NASCAR caused 23XI and other racing teams to incur significant costs that they could not control. It also dictated how the teams could operate these cars. For instance, under the Next Gen requirements, teams are unable to make unilateral decisions as to whether they can reuse parts or repair parts that become damaged.” (Declaration of Curtis Polk, paragraph 18).

France family members, but the new charter allows any France family member to start a team and acquire a charter.<sup>75</sup>

62. This broadens for NASCAR and related parties the “outside option” when negotiating with premier stock car teams.<sup>76</sup> If a team does not acquiesce to the required terms, then NASCAR need not seek out a substitute to acquire the charter – NASCAR can acquire the charter itself. Buyers of inputs seek pricing that balances the return from low prices with the loss of necessary inputs. When the buyer itself can provide the necessary inputs, this pushes the balance toward the buyer and away from the seller.<sup>77</sup> In this fashion, the ability to own its own charters increases NASCAR’s market power in the acquisition of premier stock car team racing services.
63. Also, NASCAR presented the 2025 Charter as a take-it-or-leave-it offer to all existing charter teams, with a very short amount of time to make a decision.<sup>78</sup> Such tactics deprive teams of the time needed to gather information, compare costs, or identify alternatives that

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<sup>75</sup> Section 3.1(d) of the 2025 Charter Agreement says (emphasis added):



<sup>76</sup> “Equity ownership by the downstream firm has the role of decreasing the outside option of the upstream firm’s entrepreneur and lowering his or her payoff from bargaining with the downstream firm.” Sudipto Dasgupta and Zhigang Tao. “Bargaining, Bonding, and Partial Ownership,” *International Economic Review*, Aug., 2000, Vol. 41, No. 3, pp. 609- 635.

<sup>77</sup> “If the seller has relationship-specific investments and switching is costless for the buyer, the latter may threaten to switch away” Mehmet Bac, “Switching Costs and Screening Efficiency of Incomplete Contracts” *The Canadian Journal of Economics / Revue canadienne d’Economie*, Nov., 2000, Vol. 33, No. 4, pp. 1034-1048.

<sup>78</sup> Declaration of Steve Lauletta, Oct. 9, 2024, paragraphs 2-4; Fryer, Jenna, “NASCAR has finalized a new charter agreement. Team co-owner Michael Jordan won’t sign it,” *Associated Press*, September 9, 2024. Accessed October 7, 2024 at <https://apnews.com/article/nascar-charters-michael-jordan-423f18857461af57fc7da7bd7f2dd130>; Bianchi, Jordan and Jeff Gluck, “NASCAR Cup Series teams sign charter agreement extension, minus 2 holdouts,” *New York Times*, September 7, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/athletic/5751885/2024/09/07/nascar-charter-agreement-extension/>



meet the needs of parties on both sides of the agreement.<sup>79</sup> In particular, NASCAR's refusal to continue negotiations with the teams collectively, in conjunction with the short timeline, prevented teams from ascertaining the changes that would most benefit the teams collectively while imposing the least cost on NASCAR – i.e., more economically efficient outcomes.

### 8.3 RELEASES

64. The 2025 Charter (and the 2016 Charter, which applies to an earlier period) includes language about releasing the rights of teams to pursue legal action against NASCAR. To the extent that such release language in the 2025 Charter nullifies the ability of teams to pursue antitrust claims, such release language would serve to increase NASCAR's market power by precluding the efficient enforcement of the antitrust laws against NASCAR. This is because the ability to resort to antitrust legal action is an economically important option for small parties negotiating with larger entities.<sup>80</sup>
65. For example, I understand that the release language precludes the teams, who are the most likely private antitrust plaintiffs, being blocked with respect to bringing antitrust claims related to the relevant market for teams services. Teams are the most likely antitrust plaintiffs, from an economic perspective, because they are the directly injured from the harm to competition in that input market.

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<sup>79</sup> See, for example, "...we show that licensing through a take-it-or-leave-it offer realizes the worst bargaining outcome from the viewpoint of social welfare" and "...to avoid full bargaining power for the technology-holding firm, a policy maker should not recommend the take-it-or-leave-it offer mechanism under quantity competition between two firms." Shin Kishimoto, "The welfare effect of bargaining power in the licensing of a cost-reducing technology," *Journal of Economics*, Vol. 129, No. 2 (2020), pp. 173-193.

<sup>80</sup> Similarly, a 2022 report from the US Department of the Treasury called *The State of Labor Market Competition* "reaffirms the urgent need to promote competition in labor markets and increase workers' bargaining power. A central finding is that the American labor market is characterized by high levels of employer power. Sources of this market power include natural labor market frictions, employer concentration, and anti-competitive labor market practices. Employers exploit this market power by holding wages and certain non-wage benefits beneath their competitive level." (<https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf>). A waiver of antitrust liability over acquisition of inputs does not serve to promote competition – instead of increasing bargaining power for the seller of the input, such release would increase bargaining power for the buyer of the input.

## 9. INJURY

66. Defendants' conduct has produced actual anticompetitive effects, as described in the previous section. As a result of this harm to competition, premier stock car teams have experienced and will continue to experience antitrust injury.
67. NASCAR's anticompetitive conduct injures the suppliers of premier stock car team racing services by suppressing the teams' ability to develop their assets (and the profit that can be earned from those assets), inflating the cost for teams to participate in premier stock car races, and undermining the teams' ability to negotiate jointly with NASCAR on terms of the Cup Series charter. Operating a premier stock car racing team without acquiring a NASCAR charter is not a viable option, due to NASCAR's conduct.

### 9.1 ANTITRUST INJURY

68. Plaintiffs and other premier stock car teams experienced antitrust injury under the 2016 Charter. Requiring stock car racing teams to agree to the 2025 Charter in order to guarantee regular participation in sanctioned races would further injure plaintiffs and other stock car racing teams. Forcing a false choice creates injury that is, at least in part, irreparable (meaning that the injury degrades value that cannot be erased with equivalent investment). On the one hand, a team can contractually acquiesce to NASCAR's monopsonistic conduct related to the 2025 Charter that limits the team's ability to earn profits on the assets developed through the team's prior investments even further than the limitations imposed by the 2016 Charter. The alternative is to refuse to sign and therefore lose guaranteed Cup Series participation going forward, which would lead rapidly to the decay of most of the value of the team's intangible assets.<sup>81</sup>

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<sup>81</sup> "Obsolescence of intangible capital can result from several causes: lack of continued investment (maintenance) in intangibles; the arrival of new/or better vintages of intangibles; or other reasons exogenous to the firm. For instance, brand value may be forgotten if marketing expenses are not kept up; management and production processes may become obsolete as new methods appear; knowledge can be lost when employees depart; and data that is not up-to-date becomes less useful. For intangible capital, reversing or slowing the extent of depreciation due to obsolescence requires investment that involves innovation and whose outcome may be more uncertain than replacement of physical capital." (Nicolas Crouzet, Janice C. Eberly, Andrea L. Eisfeldt and Dimitris Papanikolaou, "The Economics of Intangible Capital," *The Journal of Economic Perspectives*, Summer 2022, Vol. 36, No. 3, pp. 29-52).

69. Premier stock car teams have to sign a charter that limits profits or strand and devalue specialized assets developed through large sunk costs. If there were an option to sign a charter that did not incorporate the anticompetitive conduct described in Section 8 that renders the contract terms far less favorable than what would exist in a more competitive market, then that would be the best option for teams. However, the only charter available is the 2025 Charter (and the 2016 Charter before that), which limits teams' asset development and the revenue teams earn, and increases teams' costs. The only other option would be to proceed without signing a charter, which is not a viable option.

#### 9.1.1 Assets of premium stock car racing teams

70. Each stock car racing team develops, through its investments and operations, intangible assets in its brand and goodwill, as well as tangible assets such as equipment and tools.<sup>82</sup> The intangible assets include expected performance, technology, and workforce-in-place. These intangible assets are valuable for attracting lucrative sponsorship deals, but only when the stock car racing team participates regularly in sanctioned events.

##### 9.1.1.1 Expected performance

71. The expected performance of a premier stock car racing team has value through two channels. There is value through prize money obtained directly from NASCAR but there is even more value available through sponsorships, which hinge critically on participation in elite stock car racing.<sup>83</sup> Sponsors value teams that perform well and also have the ability to

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<sup>82</sup> "Like physical capital, intangibles require investment, which is commonly observed in functions like research and development, marketing, or human capital and skill accumulation" (Nicolas Crouzet, Janice C. Eberly, Andrea L. Eisfeldt and Dimitris Papanikolaou, "The Economics of Intangible Capital," *The Journal of Economic Perspectives*, Summer 2022, Vol. 36, No. 3, pp. 29-52).

<sup>83</sup> NASCAR teams are independent businesses that make 65% to 85% of their revenues from sponsorships Belson, Ken, "NASCAR and Its Race Teams Fight Over the Sport's Future," *New York Times*, May 1, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>; Stern, Adam, "NASCAR teams dig deep for sponsors," *Sports Business Journal*, July 17, 2023. Accessed October 7, 2024 at <https://www.sportsbusinessjournal.com/Journal/Issues/2023/07/17/Upfront/motorsports.aspx>. These sponsorships depend on regular event participation, as sponsors view the cars as "200 mile per hour billboards" that provide a return on investment insofar as they yield exposure beyond what sponsors could otherwise purchase in standard advertising channels." Bothner, Kand and Stuart (2007). "Competitive Crowding and Risk Taking in a Tournament: Evidence from NASCAR Racing." *Administrative Science Quarterly*. 52(2). Citing Ronfeldt, D. 2001 "Social science at 190 mph on NASCAR's biggest super speedways." <https://firstmonday.org/ojs/index.php/fm/article/download/727/636/>. Additionally, "Sponsorships in particular

change sponsorships (to a different team or with different financial terms) from one season to the next, depending on the length/terms of their contracts. As a result, sponsorship money gravitates to teams that have made the past investments necessary to establish a winning record, but also flows quickly away from teams whose performance falls short of expectations.<sup>84</sup> Stewart-Haas Racing is an example of a once successful team that could not survive performance shortfalls:

“The lack of on-track performance is not something that keeps current sponsors happy or attracts new ones. On the NASCAR side amid the lack of on-track performance Stewart-Haas Racing saw the departure of eight Cup series sponsors at the end of 2023. Those included Busch Light, Gearwrench, Go Bowling, Hunt Brothers Pizza, Magical Vacation Planner, Pristine Auction, Rheem, and Smithfield. Both Busch and Smithfield were major sponsors for the team.”<sup>85</sup>

72. Ultimately, Stewart-Haas Racing will be closing down: “Stewart-Haas Racing, which has won two Cup titles and captured 69 wins since its formation in 2009, will close after the 2024 season, shuttering a four-car Cup operation.”<sup>86</sup> One of four charters will be operated in 2025 by the new Haas Factory Team.<sup>87</sup>

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are greatly affected by a team’s winnings in a season, with premium sponsors looking to make deals with successful teams with a good record of victories or at least high placements.” “Is NASCAR Racing Profitable for Teams?,” Motor Racing Sports. Accessed October 7, 2024 at <https://motorracingsports.com/is-nascar-racing-profitable-for-teams/>.

<sup>84</sup> Published empirical research confirms this in motorsports, in general – for example, Pruitt, Cornwall and Clark, “The NASCAR Phenomenon: Auto Racing Sponsorships and Shareholder Wealth,” *Journal of Advertising Research*, September 2024, pp. 281-296, at 292 demonstrating the significant relationship of cup points to sponsor shareholder wealth, and Jensen, Cobbs, Mazer and Tyler, “Analyzing Brand Strategy on an International Scale: The Sponsorship Performance Cycle in Formula One Racing,” *Journal of International Marketing*, 2024, Vol. 32(3), pp. 23-42, at p. 33 demonstrating the significant effect of performance on retention of sponsors in Formula One racing.

<sup>85</sup> Engle, Greg. “Sponsorship Issues At Stewart Haas Racing Aren’t Really Issues,” *Forbes*, January 16, 2024. Accessed October 7, 2024 at <https://www.forbes.com/sites/gregengle/2024/01/16/sponsorship-issues-at-stewart-haas-racing-arent-really-issues/>.

<sup>86</sup> Pockrass, Bob. “Stewart-Haas Racing ceasing Cup operations after 2024, selling four charters,” *Fox Sports*, May 29, 2024. Accessed October 7, 2024 at <https://www.foxsports.com/stories/nascar/stewart-haas-racing-ceasing-cup-operations-after-2024-selling-four-charters>.

<sup>87</sup> “Haas Factory Team to operate one Cup charter, two Xfinity teams in 2025,” *NASCAR*, June 20, 2024. Accessed October 8, 2024 at <https://www.nascar.com/news-media/2024/06/20/haas-factory-team-cup-xfinity-2025-plans/>; Wolkin, Joseph. “Gene Haas To Remain In Nascar With The Formation Of Haas Factory Team,” *Forbes*, June 20, 2024. Accessed on October 8, 2024 at <https://www.forbes.com/sites/josephwolkin/2024/06/20/gene-haas-to-remain-in-nascar-with-the-formation-of-haas-factory-team/>.



73. The intangible asset related to performance can exceed the value of past investments (thus leading to a profit for the team) but degrades rapidly if insufficient current expenditures fail to maintain the team's performance record. This degradation occurs to the extreme when a team fails to appear in premier races at all. Similarly, the substantial probability of adverse race events and the extended impact such events can have on even the most seasoned teams and drivers contributes to the rapid decay of this intangible asset.<sup>88</sup>

#### 9.1.1.2 Technology

74. Public sources report that the cost to field a new car in the Cup Series is currently estimated to be around \$18 million.<sup>89</sup> After the first year, according to public sources, operating costs for a single car can run around \$10 million annually.<sup>90</sup> For the 2024 season, 23XI expects to spend over [REDACTED] on car parts, [REDACTED] on driver compensation, [REDACTED] in compensation to other staff, and [REDACTED] in other competition-related expenses.<sup>91</sup> In 2025, it projects that its costs will increase by about [REDACTED]. Front Row spends at least [REDACTED] annually alone on operational costs to race just one car (up from [REDACTED] before 2019).<sup>92</sup>

<sup>88</sup> "Drivers who missed time due to injury," NASCAR, September 4, 2016. Accessed October 7, 2024 at <https://www.nascar.com/gallery/drivers-who-missed-time-due-to-injury/>. "Similar to the way in which physical capital may be destroyed as a result of a natural disaster, intangibles can be destroyed by other disasters: corporate scandals; violation of intellectual property laws by private actors or expropriation by governments; employees with key skills leaving the organization; changes in laws; or shifts in consumer tastes (for example, when a sports team changes its brand name in response to shifting cultural norms). The forces driving depreciation of intangibles can lead to large and abrupt negative shocks in the form of rare disasters to the accumulation of intangible capital." Nicolas Crouzet, Janice C. Eberly, Andrea L. Eisfeldt and Dimitris Papanikolaou, "The Economics of Intangible Capital," *The Journal of Economic Perspectives*, Summer 2022, Vol. 36, No. 3, pp. 29-52.

<sup>89</sup> McCarthy, Tyler, "How Do You Start A New NASCAR Team? What To Know," USA Network, October 19, 2022. Accessed October 7, 2024 at <https://www.usanetwork.com/usa-insider/how-to-start-new-nascar-team>. In 2020, plaintiff 23XI acquired a charter for \$4.7 million and then spent \$5 million to begin operations in 2021, while adding another charter for \$13.5 million, for a total outlay of \$23 million by the end of 2021, and then spent \$35 million to build a facility to house their Next Gen cars (Declaration of Curtis Polk, paragraphs 9-13).

<sup>90</sup> "How Much Does It Cost To Field a One-Car NASCAR Team?," Rookie Road, January 6, 2024. Accessed October 7, 2024 at <https://www.rookieRoad.com/how-much-does-it-cost-to-field-a-one-car-nascar-team-9907779/>

<sup>91</sup> Declaration of Curtis Polk, paragraph 15; 23XI 2023-2025 Financial Information 10-02-24.xlsm.

<sup>92</sup> Jenkins Declaration at paragraph 22.



75. To the extent that NASCAR limits the choices of technology that stock car teams can make and the control of key technology (as I describe in Section 8.2.2), stock car teams are inhibited from diverse innovation and the consequent intangible assets related to unique high-quality products. Furthermore, NASCAR's control of technology options restricts the potential applications for inputs that premier stock car teams acquire to NASCAR races.<sup>93</sup> In addition, limitations on the ability of teams to own their cars and parts without restriction locks the team into NASCAR participation, precluding consideration of outside options.
76. The technical requirements that NASCAR imposes on premier stock car teams seeking Cup Series charters come at considerable cost to the teams. In addition, charter requirements to deal with NASCAR-approved suppliers limits a team's ability to purchase technical inputs through competitive negotiations with suppliers (as I discuss in Section 8.2.2). This further increases team costs and degrades the potential profit that can flow from the team's assets.
77. All of these consequences of NASCAR's conduct inhibit the development of intangible asset value related to technology. Furthermore, the one-sided power of NASCAR to shift technical requirements over the course of the charter agreement means that the value of the intangible asset associated with technology decays rapidly even if the team continues NASCAR operations.

#### 9.1.1.3 Workforce in place

78. Similarly, premier stock car teams are teams – groups of people with disparate skill sets whose value working together with synergy is greater than the value each individual brings to the team.<sup>94</sup> Instability within team (high turnover) would rapidly degrade the intangible

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<sup>93</sup> Existing NASCAR parts became practically worthless after NextGen introduction, and NextGen parts that are not durable cannot be use for anything other than NASCAR races. Belson, Ken, "NASCAR and Its Race Teams Fight Over the Sport's Future," New York Times, May 1, 2024. Accessed October 7, 2024 at <https://www.nytimes.com/2024/05/01/business/nascar-racing-teams-charters.html>. Limiting supply sources also introduces supply chain bottlenecks that can increase costs and delay repairs. "Parts shortage for Next Gen car may water down Duel at Daytona," ESPN, February 16, 2022. Accessed October 7, 2024 at [https://www.espn.com/racing/nascar/story/\\_/id/33304823/parts-shortage-next-gen-car-water-duel-daytona](https://www.espn.com/racing/nascar/story/_/id/33304823/parts-shortage-next-gen-car-water-duel-daytona).

<sup>94</sup> "Managers may accrue income from intangible assets such as organization processes or corporate culture." Nicolas Crouzet, Janice C. Eberly, Andrea L. Eisfeldt and Dimitris Papanikolaou, "The Economics of Intangible Capital," The Journal of Economic Perspectives, Summer 2022, Vol. 36, No. 3, pp. 29-52. "To run our team with two Cup Series cars, 23XI has approximately 100 full-time employees. In order to run a third Cup Series team, we will need to add between 27 and 32 full-time employees." (Declaration of Curtis Polk, paragraph 15).

asset of the workforce-in-place. In order to retain their workforce value, teams require surety of continued profitable participation in premier stock car racing events. Difficulty retaining key team members can go hand-in-hand with performance shortfalls and sponsor losses:

“The 2023 NASCAR Cup Season was a nightmare for Tony Stewart’s Ford Team Stewart Haas Racing. They failed to secure a single win last season, and other than Kevin Harvick, no driver could produce a performance worthy of a win. One of the major disappointments for the side was that the team couldn’t help Harvick secure a win in his retirement year.

“Harvick wasn’t the only veteran to leave the team. Aric Almirola , who has been driving the No:10 Mustang, retired from full-time racing and joined Joe Gibbs Racing to drive part-time in the Xfinity Series. Josh Berry replaced Harvick, and Almirola was replaced by Noah Gragson , two racers who aren’t known for their ability to attract sponsors.

“This is a major issue for SHR as the latest partners page website update has revealed that eight sponsors have potentially ended their partnership. These are primary sponsors who featured in multiple races in the 2023 season. Most of them were primary sponsors of Harvick, who either left the sport or moved on to other teams.”<sup>95</sup>

79. NASCAR’s conduct makes it so that teams must sign the Cup Series charter and abide by the terms of the charter in order to obtain the requisite surety of ongoing operations.<sup>96</sup>

### 9.1.2 Stranded assets

80. Taken together, each premier stock car team has value in its intangible assets of historical performance, technology, and workforce-in-place, but that value is dependent on

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<sup>95</sup> Joy, Justin, “Tony Stewart’s Stewart Haas Racing lost eight primary sponsors ahead of 2024,” *Yardbarker*, “January 13, 2024. Accessed October 7, 2024 at [https://www.yardbarker.com/nascar/articles/tony\\_stewarts\\_stewart\\_haas\\_racing\\_lost\\_eight\\_primary\\_sponsors\\_a\\_head\\_of\\_2024/s1\\_17325\\_39808545](https://www.yardbarker.com/nascar/articles/tony_stewarts_stewart_haas_racing_lost_eight_primary_sponsors_a_head_of_2024/s1_17325_39808545).

<sup>96</sup> “Decisions about asset ownership-and hence firm boundaries are important because control over assets gives the owner bargaining power when unforeseen or uncovered contingencies force parties to negotiate how their relationship should be continued. The owner of an asset can decide how it should be used and by whom, subject only to the constraints of the law and the obligations implied by specific contracts. Assets become bargaining levers that influence the terms of new agreements and hence the future payoffs from investing in the relationship.” Bengt Holmström and John Roberts, “The Boundaries of the Firm Revisited,” *The Journal of Economic Perspectives*, Autumn, 1998, Vol. 12, No. 4 (Autumn, 1998), pp. 73-94.

maintaining, year after year, active participation in a full season of premier stock car races. The only option currently available to stock car teams to achieve this participation is through the NASCAR Cup Series charters, which are also the means by which NASCAR is able to extract value from the teams and limit the potential profits for teams. The choice to teams is this: continue with a Cup Series charter and let NASCAR reap most of the benefits of the team's valuable assets or abandon the Cup Series charter and destroy the value of the team's intangible assets.<sup>97</sup>

## 9.2 PARTICIPATION WITHOUT A CHARTER IS NOT A FINANCIALLY VIABLE OPTION

81. For premier stock car teams, attempting to participate in NASCAR Cup Series races without any Cup Series charter slots is not a financially viable option. Given how teams with charters can face challenges maintaining profitable operations (as discussed in Section 8.2.2), the likelihood of succeeding when operating without a charter is even lower – revenues are lower and costs are at least as high, possibly higher.
82. As a matter of economics, many of the most lucrative and stable team sponsorship arrangements would occur with teams that can best guarantee repeated, season-long exposure.<sup>98</sup> This means revenues are lower for premier stock car teams who do not own a Cup Series charter that guarantees participation in every race.

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<sup>97</sup> “‘Contractual assets’ can often be created rather inexpensively to serve some of the same purposes that the theory normally assigns to ownership: to provide levers that give bargaining power and thereby enhance investment incentives. What we have in mind here are contracts that allocate decision rights much like ownership; for instance, exclusive dealing contracts such as Nucor's, or licensing agreements of various kinds. Such ‘governance contracts’ are powerful vehicles for regulating market relationship.” Bengt Holmström and John Roberts, “The Boundaries of the Firm Revisited,” *The Journal of Economic Perspectives*, Autumn, 1998, Vol. 12, No. 4 (Autumn, 1998), pp. 73-94; see, also, Klein, Benjamin, Robert Crawford, and Armen Alchian, “Vertical Integration, Appropriable Rents and the Competitive Contracting Process,” *Journal of Law and Economics*, XXI (1978), 297-326.

<sup>98</sup> “The vast majority of sponsorship literature on matching considers the communication value of sponsor-event pairings and suggests that the theoretical development of brand image depends on establishing a link between the two.” T. Bettina Cornwell, Clinton S. Weeks and Donald P. Roy, “Sponsorship-Linked Marketing: Opening the Black Box.” *Journal of Advertising*, Vol. 34, No. 2, pp. 21-42; “A fundamental desired outcome of sponsorships is brand awareness.” Beth A. Cianfrone, “Rising Above the Clutter: Brand Awareness of Sponsorships,” *Sport & Entertainment Review*, 2018, 4, 9-13, [https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1034&context=kin\\_health\\_facpub](https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1034&context=kin_health_facpub); “Repeated exposure at sports events can play a major role in building brand recognition and developing customer loyalty, as consistent association with popular events and teams becomes ingrained in the minds of audiences.” “Why is sport event sponsorship one of the fastest growing promotional activities today?” MCI News and Insights. Accessed October 7, 2024 at <https://www.wearmci.com/en/thoughts/sport-event-sponsorship>. See also Jenkins

83. Charter teams are eligible to receive a much larger set of revenues from NASCAR. For the ongoing 2024 season, open teams are eligible to receive race purses for races in which they compete. These payments are based on the team's finishing position in the race and range from around [REDACTED] (last-place finish at one of the Daytona Qualifying Races) to around [REDACTED] (first place at the main Daytona race).<sup>99</sup> Teams — including open teams — that finish in one of the top 25 positions for the season would also receive “Year-end Point Fund” ranging from around [REDACTED] to around [REDACTED].<sup>100</sup> Charter teams are eligible for these same payments along with other payouts: under the proposed 2025 Charter Agreement, charter teams would also receive [REDACTED] [REDACTED].<sup>101</sup> In some cases, [REDACTED] may also be eligible for additional “Special Awards” or “Contingency Awards.”<sup>102</sup>
84. In addition, costs are at least as high for running an open car as for running a car with a charter, possibly higher. The costs of the technical requirements developed by NASCAR during the term of the 2016 Charter are substantial even relative to the volatile revenue of charter teams and, thus, even more substantial relative to the even more volatile and lower revenue of participation without any charter. Premier stock car teams would also face higher costs (more difficulty) in retaining high-quality drivers and workforce-in-place. Without the relative financial surety of a charter, team members could not be assured of continuing in their position from one season to the next (possibly even from one race to the next).<sup>103</sup>

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Declaration, paragraph 33–41. See also, “23XI would run the risk of losing good will and critical relationships with its key sponsors. Under our sponsorship agreements, each sponsored Cup Series car is required to run in each Cup Series race in order for the team to earn the sponsorship payments. Failure to attempt to qualify or qualify for a race could result in a reduction in the amount of sponsorship dollars received. But even more significantly, if a sponsored race car does not compete in important Cup Series races, we will run the risk of losing our goodwill and relationship with these sponsors entirely.” (Declaration of Curtis Polk, paragraph 35).

<sup>99</sup> 2024 Open Owner Agreement, Exhibit A.

<sup>100</sup> 2024 Open Owner Agreement, Exhibit A.

<sup>101</sup> 2025 Charter Agreement, Exhibit B.

<sup>102</sup> 2025 Charter Agreement, Section 3.1 (b) and Exhibit A.

<sup>103</sup> Devgania, Chintan, “Non-Permanent Charter System: Cup Series Teams That Succumbed to NASCAR’s Ignorance,” Essentially Sports, May 19, 2024. Accessed October 7, 2024 at <https://www.essentiallysports.com/nascar-news-non-permanent-charter-system-cup-series-teams-that-succumbed-to-nascars-ignorance/>. “While non-charter teams can truly make the most of fielding a race, the







## 10. SIGNATURE

I certify that, to the best of my knowledge and belief:

- The statements of fact in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and are my personal, unbiased and professional analyses, opinions and conclusions.
- I have no personal interest or bias with respect to the parties involved.
- My compensation is not contingent on an action or event resulting from the analyses, conclusions or opinions of this report.

DANIEL A. RASCHER declares under penalty of perjury, pursuant to 28 U.S.C. §1746, that the preceding is true and correct.

Signed on the 9th of October, 2024, in Orinda, CA



Daniel A. Rascher

**CONFIDENTIAL**

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**EDUCATION**

B.A., Economics, University of California at San Diego.

Ph.D., Economics, University of California at Berkeley.

Dissertation Title, *Organization and Outcomes: A Study of the Sports Industry*

Certified Valuation Analyst (CVA) by the National Association of Certified Valuators and Analysts

**PRESENT POSITIONS**

University of San Francisco

Director of Academic Programs for the Sport Management Program, 2002-current

Professor of Sport Management, 2010-current

Associate Professor of Sport Management, 2005-2010

Assistant Professor of Sport Management, 2000-2005

Adjunct Professor of Sport Management, 1999-2000

- M.A. Course – Sport Economics and Finance
- M.A. Course – Master’s Project in Sport Management
- M.A. Course – Sport Business Research Methods

SportsEconomics, LLC ([www.sportseconomics.com](http://www.sportseconomics.com))

Founder and President, 1998-current

Performed economic analysis for sports industry clients including multiple projects involving the NFL, NBA, NASCAR, NCAA, NHRA, NHL, MLS, ATP, AHL, professional cycling, media companies, sports commissions and government agencies, event management, B2B enterprises, and IHRSA. Specialized in industrial organization, antitrust, valuations, market research, labor issues, financial modeling, strategy, economic impact, and feasibility research.

OSKR, LLC ([www.oskr.com](http://www.oskr.com))

Co-Founder and Partner, 2008-current

Performed economic analysis for clients involved in sports and other industries, including insurance, technology, automotive, television, and consumer products.

**PREVIOUS ACADEMIC EXPERIENCE**

STANFORD UNIVERSITY, taught franchise relocation & stadium financing course, Summer 2020

NORTHWESTERN UNIVERSITY, taught sports economics and finance course, Winter 2014

IE BUSINESS SCHOOL (Madrid, Spain), taught sports economics and finance course, 2010-2013

UNIVERSITY OF MASSACHUSETTS AT AMHERST, Sport Management Department

Assistant Professor, 1997-1998

\* M.S. Courses—Principles of Sport Business Management, Applied Sport Business Management

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Institute of Sports Law and Ethics (University of the Pacific). Board Member, 2011-2017

## PREVIOUS CONSULTING EXPERIENCE

LECG, LLC

Affiliate, 2003-2007; Principal, 2000-2003; Senior Economist, 1998-2000

- \* Performed economic analysis for sports industry clients including multiple projects involving the NFL, MLB, NBA, NHL, PGA, Formula One racing, CART, and Premier League Football (soccer). Specialized in industrial organization, antitrust, M&As, valuations, and damages analysis.
- \* Provided testimony for cases involving sports industry clients, including damages analysis and liability.
- \* 40% of work related to antitrust litigation, 20% IP and breach of contract damages litigation, 20% merger related, and 20% management consulting.
- \* 60% of work involved the sports and entertainment industries, 15% involved technology, and 25% in other industries including agriculture, transportation, and energy.

UNIVERSITY OF CALIFORNIA AT BERKELEY, Competitive Semiconductor Manufacturing Program

Visiting Scholar, Institute of Industrial Relations, 1998-2000

Research Fellow, 1995-1997

- \* Funded by the Alfred P. Sloan Foundation, the CSM study is an interdisciplinary project that analyzes the determinants of high performance in semiconductor manufacturing.
- \* Research on HR, training, small sample analyses and generalizability of case study results.

NATIONAL ECONOMIC RESEARCH ASSOCIATES, Summer 1994; January-August 1995

Research Assistant

- \* Research on the energy industry, on transmission pricing, and on the economic damages of contract breaches.

QUANTUM CONSULTING, 1992-1994

Research Assistant

- \* Developed a model and a software package using spline techniques to weather-normalize energy usage, allowing the PUC to evaluate regulation policies.

## HONORS AND AWARDS

Sonny Vaccaro Impact Award (*College Sport Research Institute, Univ. of South Carolina*), 2023

Outstanding Antitrust Litigation Achievement in Economics (*American Antitrust Institute*), 2021

Lifetime Achievement Award (*Applied Sport Management Association*), 2019

Research Fellow of the *North American Society for Sport Management*, 2009

College of Arts & Sciences Collective Achievement Award, 2009

Innovation Award Winner (for the innovative use of technology in teaching), 2004. From the *Center for Instruction and Technology*, University of San Francisco.

Research Grant for the Study of Human Resource Systems (*Alfred P. Sloan Foundation*), 1995-1997.

Newton-Booth Fellowship for graduate study at University of California at Berkeley, 1990-1991.

#### PEER-REVIEWED JOURNAL ARTICLES

“Who Are Our Fans: An Application of Principal Component-Cluster Technique Analysis to Market Segmentation of College Football Fans,” with Kenneth Cortsen, Mark Nagel, and Tiffany Richardson. *Journal of Applied Sport Management*, 13(1), 2021.

“Economic Development Effects of Major and Minor League Teams and Stadia,” with Nola Agha. *Journal of Sports Economics*, 21(1), 2020.

“Is there a Consensus?: An Experimental Trial to Test the Sufficiency of Methodologies Used to Measure Economic Impact,” with Giseob Hyun and Mark Nagel. *Journal of Applied Business and Economics*, 22(11), 2020.

“Coaching Salary Disparity and Team Performance: Evidence from the Football Bowl Subdivision,” with Alex Traugutt, Alan Morse, and Brian Fowler. *Journal of Applied Business and Economics*, 22(1), 2020.

“Cartel Behavior in US College Sports: An Analysis of NCAA Football Enforcement Actions from 1990-2011,” with Mark Nagel, Richard Southall, and Nick Fulton. *Journal of NCAA Compliance*, July-August, 2019.

“The Unique Economic Aspects of Sports,” with Joel Maxcy and Andrew D. Schwarz. *Journal of Global Sport Management* (July, 2019).

“Making a Difference: Bridging the Gap Between the Ivory Tower & the Community.” *Journal of Applied Sport Management*, 11(2), 2019.

“Because It’s Worth It: Why Schools Violate NCAA Rules and the Impact of Getting Caught in Division I Basketball,” with Andrey Tselikov, Andrew D. Schwarz, and Mark Nagel. *Journal of Issues in Intercollegiate Athletics*, 12, 2019. Article of the year in the publication for 2019.

“Determining fair market value for Duke’s Sporting Goods Store,” with Michael Goldman. In *Case Studies in Sport Management*, 6(1), 2017.

“The Beckham Effect: Examining the Longitudinal Impact of a Star Performer on League Marketing, Novelty, and Scarcity,” with Stephen Shapiro and Tim DeSchriver. In *European Sport Marketing Quarterly*, 17(5), 2017.

“What Drives Endorsement Earnings for Superstar Athletes?” with Terence Eddy and Giseob Hyun. In *Journal of Applied Sport Management*, Vol. 9, No. 2, Summer 2017.



“A Smaller Window to the University: The Impact of Athletic De-Escalation on Status and Reputation,” with Michael Hutchinson and Kimi Jennings. In *Journal of Intercollegiate Sport*, Vol. 9, No. 1, June 2016.

“If We Build It, Will They Come?: Examining the Effect of Expansion Teams and Soccer-Specific Stadiums on Major League Soccer Attendance,” with Steve Shapiro and Tim DeSchriver. In *Sport, Business, and Management: An International Journal*, Vol. 6, No. 2, Spring 2016.

“An Explanation of Economic Impact: Why Positive Impacts Can Exist for Smaller Sports,” with Nola Agha. In *Sport, Business, and Management: An International Journal*, Vol. 6, No. 2, Spring 2016.

“Where is Everyone? An Examination of Attendance at College Football Bowl Games,” with Terence Eddy. In *International Journal of Sport Finance*, Vol. 11, No. 2, February 2016.

“Tracking the Dollars: How Economic Impact Studies can Actually Benefit Managerial Decision Making,” with Michael Goldman. In *Sport & Entertainment Review*, Vol 1, No. 1, February 2015.

“Sport Pricing Research: Past, Present, and Future,” with Joris Drayer. In *Sport Marketing Quarterly*, Vol. 22, No. 3, September 2013.

“The Antitrust Implications of “Paperless Ticketing” on Secondary Markets,” with Andrew D. Schwarz. In *Journal of Competition Law and Economics*, Vol. 9, No. 3, 2013.

“An Examination of Underlying Consumer Demand and Sport Pricing Using Secondary Market Data” with Joris Drayer and Chad McEvoy. In *Sport Management Review*, Vol. 15, No. 4, November 2012.

“Smooth Operators: Recent Collective Bargaining in Major League Baseball” with Tim DeSchriver, 2012. In *International Journal of Sport Finance*, 7(2).

“Financial Risk Management: The Role of a New Stadium in Minimizing the Variation in Franchise Revenues” with Matt Brown, Mark Nagel, and Chad McEvoy. In *Journal of Sports Economics*, Vol. 13, No. 3, August 2012.

“Factors Affecting the Price of Luxury Suites in Major North American Sports Facilities” with Tim DeSchriver and Steve Shapiro. In *Journal of Sport Management*, Vol. 26, No. 3, May 2012.

“Free Ride, Take it Easy: An Empirical Analysis of Adverse Incentives Caused by Revenue Sharing” with Matthew Brown, Mark Nagel, and Chad McEvoy. In *Journal of Sport Management*, Vol. 25, No. 5, September 2011.

“Simulation in Sport Finance,” with Joris Drayer. *Simulation & Gaming: An Interdisciplinary Journal of Theory, Practice, and Research* Vol. 41, No. 2, April 2010.

“Where did National Hockey League Fans go During the 2004-2005 Lockout?: An Analysis of Economic Competition Between Leagues,” with Matthew Brown, Mark Nagel, and Chad McEvoy. In *International Journal of Sport Management and Marketing*, Vol. 5, Nos. 1, 2, January 2009.



“The Effects of Roster Turnover on Demand in the National Basketball Association,” with Steve Shapiro, Alan Morse, and Chad McEvoy. In *International Journal of Sport Finance*, Vol. 3, No. 1, February 2008.

“Variable Ticket Pricing in Major League Baseball” with Chad McEvoy, Mark Nagel, and Matthew Brown. In *Journal of Sport Management*, Vol. 21, No. 3, July 2007.

“Do Fans Want Close Contests?: A Test of the Uncertainty of Outcome Hypothesis in the National Basketball Association” with John Paul Solmes. In *International Journal of Sport Finance*, Vol. 3, No. 2, August 2007.

“The Use of Simulation Technology in Sport Finance Courses: The Case of the Oakland A’s Baseball Business Simulator” with Joris Drayer. In *Sport Management Education Journal* Vol. 1, No. 1, May 2007.

“Washington “Redskins” – Disparaging Term or Valuable Tradition?: Legal and Economic Issues Concerning *Harjo v. Pro-Football, Inc.*” with Mark Nagel. In *Fordham Intellectual Property, Media, and Entertainment Law Journal*, Vol. XVII, No. 3, Spring 2007.

“Treatment of Travel Expenses by Golf Course Patrons: Sunk or Bundled Costs and the First and Third Laws of Demand,” with Matthew Brown, Chad McEvoy, and Mark Nagel. In *International Journal of Sport Finance*, Vol. 2, No. 1, February 2007.

“Major League Baseball Anti-Trust Immunity: Examining the Legal and Financial Implications of Relocation Rules” with Mark Nagel, Matthew Brown, and Chad McEvoy. In *Entertainment and Sports Law Journal*, Vol. 4, No. 3, December 2006.

“The Use of Public Funds for Private Benefit: An Examination of the Relationship between Public Stadium Funding and Ticket Prices in the National Football League” with Matthew Brown and Wesley Ward. In *International Journal of Sport Finance*, Vol. 1, No. 2, June 2006.

“An Analysis of Expansion and Relocation Sites for Major League Soccer” with Matthew Baehr, Jason Wolfe, and Steven Frohwerk. In *International Journal of Sport Management*, Vol. 7, No. 1, January 2006.

“Revenue and Wealth Maximization in the National Football League: The Impact of Stadia” with Matthew Brown, Mark Nagel, and Chad McEvoy. In *Sport Marketing Quarterly*, Vol. 13, No. 4, December 2004.

“NBA Expansion and Relocation: A Viability Study of Various Cities” with Heather Rascher. In *Journal of Sport Management*, Vol. 18, No. 3, July 2004.

“Does Bat Day Make Cents?: The Effect of Promotions on the Demand for Baseball,” with Mark McDonald. In *Journal of Sport Management*, Vol. 14, No. 1, January 2000.

“The NBA, Exit Discrimination, and Career Earnings,” with Ha Hoang. In *Industrial Relations*, Vol. 38, No. 1, January 1999.

## BOOKS

“Handbook of Sport Finance” with Mark Nagel. Edward Elgar Publishing. (forthcoming).

“Financial Management in the Sport Industry” 4<sup>th</sup> ed. with Matthew Brown, Mark Nagel, and Chad McEvoy. Routledge, Inc., (forthcoming). A textbook.

“Financial Management in the Sport Industry” 3<sup>rd</sup> ed. with Matthew Brown, Mark Nagel, and Chad McEvoy. Routledge, Inc., 2021. A textbook.

“Financial Management in the Sport Industry” 2<sup>nd</sup> ed. with Matthew Brown, Mark Nagel, and Chad McEvoy. Routledge, Inc., 2015. A textbook.

“Financial Management in the Sport Industry” with Matthew Brown, Mark Nagel, and Chad McEvoy. Holcomb Hathaway, Inc., June 2010. A textbook.

## BOOK CHAPTERS

“Sporting Goods and Sports Licensing,” with Mark Nagel in *The Governance of Sports*, edited by Bonnie Tiell for Human Kinetics, (2024 – 2<sup>nd</sup> ed., 2020 – 1<sup>st</sup> ed.).

“The Relevance of a Gamified Football/Soccer Development Platform,” with Kenneth Cortsen in *Interactive Sports Technologies: Performance, Participation, Safety*, edited by Michael Filimowicz and Veronika Tzankova for Routledge (2022).

“The application of sports technology and sports data for commercial purposes,” with Kenneth Cortsen in *The Use of Technology in Sport – Emerging Challenges*, (2018).

“Valuing Highly Profitable Sports Franchises – A Hybrid Income and Market Approach,” in *Sports Business* edited by Kenneth Cortsen (forthcoming).

“The Use of Price-to-Revenue Ratios in Valuing Sports Franchises,” in *Sports Business* edited by Kenneth Cortsen (forthcoming).

“Competitive Equity: Can there be Balance between Athletes’ Rights and a Level Playing Field?” with Andrew D. Schwarz in E. Comeaux (ed.), *College Athletes’ Rights and Well-Being: Critical Perspectives on Policy and Practice*. Baltimore: Johns Hopkins University Press, (2017).

“Illustrations of Price Discrimination in Baseball” with Andrew D. Schwarz in L. Kahane and S. Shmanske eds., *Economics Through Sports*, Oxford: Oxford University Press, (2012).

“The Expanding Global Consumer Market for American Sports: The World Baseball Classic” with Mark Nagel, Chad McEvoy, and Matt Brown in G. Mildner, and C. Santo, eds., *Sport and Public Policy*, Champaign, IL: Human Kinetics, 2010.

“Franchise Relocations, Expansions, and Mergers in Professional Sports Leagues.” In B. Humphreys, and D. Howard, eds., *The Business of Sports*, pp. 67-106. Westport, CT: Praeger, 2008.

“Collective Bargaining in Sport” with M. Nagel, M. Brown, and C. McEvoy. In *Encyclopedia of World Sport*, pp.335-339. Great Barrington, MA: Berkshire Publishing, 2005.

“The Role of Stadia in the USA: Wealth Maximization in the National Football League” with Matthew Brown and Mark Nagel in G. Trosien & M. Dinkel (eds.), *Grenzen Des Sportkonsums* (Frontiers of Sport Commerce), Heidelberg, Germany: SRH Learnlife AG, 2003.

“A Test of the Optimal Positive Production Network Externality in Major League Baseball,” in E. Gustafson and L. Hadley, eds., *Sports Economics: Current Research*, 1999. Praeger Press.

“A Model of a Professional Sports League,” in W. Hendricks (ed.), *Advances in the Economics of Sport*, vol. 2. June 1997, JAI Press, Inc.

## BOOK REVIEWS

“Review of: Much More Than a Game: Players, Owners, and American Baseball Since 1921”, by Robert F. Burk in *Journal of Economic Literature*, Vol. 40(3), September 2002, pp. 949-951.

## NON-PEER REVIEWED ARTICLES

“Special Issue Introduction: Name, Image, and Likeness and the National Collegiate Athletic Association,” with Steven Salaga, Natasha Brison, Joseph Cooper, and Andy Schwarz in *Journal of Sport Management*, 2023.

“Data Science for Football Business – Clustering Analysis,” with Kenneth Cortsen and Bas Schnater in *FCBusiness*, 132, April 2021.

“Competitive Balance in Sports: “Peculiar Economics” over the last Thirty Years,” with Andrew D. Schwarz. In *Competition*, 29(2), Fall 2019.

“How The \$200+ Million Settlement For COA Payments Was Calculated,” with Andrew D. Schwarz. In *Athletic Director U.*, May 2017.

“Rich Men’s Toys – Applying Valuation Methods to the Business of Professional Sports” in *Valuation Strategies*, March/April 2015.

“Competitive Balance in Sports: “Peculiar Economics” Over the Last Quarter Century,” with Andrew. D. Schwarz. In *Entertainment, Arts, and Sports Law Journal*, 24(1), Spring 2013.

“The Impact on Demand from Winning in College Football and Basketball: Are College Athletes More Valuable than Professional Athletes?” with Chad McEvoy. In *Selected Proceedings of the Santa Clara University Sports Law Symposium*, September 2012.

“The Economics of Competitive Balance on the Field and in the Courts” in *Selected Proceedings of the Santa Clara University Sports Law Symposium*, 2011.

“5 Themes from 50 Economic Impact Studies” in *SportsEconomics Perspectives*, Issue 5, 2010.

“What is the Value of Control of a Sports Enterprise?: Controlling Interest Premiums in Sports Valuations” in *SportsEconomics Perspectives*, Issue 4, April 2008.

“Executive Interview: Charlie Faas, Executive Vice President and CFO of Silicon Valley Sports and Entertainment.” in *International Journal of Sport Finance*, Vol. 2, No. 2, June 2007.

“Executive Interview: Dan Champeau, Managing Director, and Chad Lewis, Analyst with Fitch.” in *International Journal of Sport Finance*, Vol. 2, No. 1, February 2007.

“Executive Interview: Dennis Wilcox, Principal with Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co., L.P.A.” in *International Journal of Sport Finance*, Vol. 1, No. 4, November 2006.

“Executive Interview: Randy Vataha, Founder of Game Plan, LLC” with Dennis Howard in *International Journal of Sport Finance*, Vol. 1, No. 2, June 2006.

“Executive Interview: Mitchell H. Ziets, President and CEO of MZ Sports, LLC” in *International Journal of Sport Finance*, Vol. 1, No. 1, February 2006.

“The Oakland Baseball Simworld: Enabling Students to Simulate the Management of a Baseball Organization” in *Journal of Sports Economics*, Vol. 6, No. 3, August 2005.

“Examining the Viability of Various Cities for NBA Expansion or Relocation” with Heather Rascher in *SportsEconomics Perspectives*, Issue 2, April 2002.

“Following a Dollar: the economic impact of a sports event is greater than the sum of its parts” by Nola Agha in *SportsTravel Magazine*, Vol. 6, No. 10, November/December 2002. Heather Rascher and Daniel Rascher contributed to the article.

“Real Impact: understanding the basics of economic impact generated by sports events” in *SportsTravel Magazine*, Vol. 6, No. 7, July/August 2002. Reprinted in four regional sports commission newsletters.

“What is the Size of the Sports Industry?,” in *SportsEconomics Perspectives*, Issue 1, August 2001.

“Neither Reasonable nor Necessary: “Amateurism” in Big-Time College Sports”, with Andrew D. Schwarz. In *Antitrust* (Spring 2000 Special Sports Issue).

“What Brings Fans to the Ballpark?,” with Nola Agha in *FoxSportsBiz.com*, Spring 2000.

#### RE-PUBLICATIONS

Republication of “Competitive Balance in Sports: “Peculiar Economics” over the last Thirty Years,” with Andrew D. Schwarz. In *Entertainment and Sports Law Journal*, 31(1), Winter 2020.

Republication of “Do Fans Want Close Contests? A Test of the Uncertainty of Outcome Hypothesis in the National Basketball Association”, with John Paul G. Solmes in *Recent Developments in the Economics of Sport*, ed. Wladimir Andreff; *The International Library of Critical Writings in Economics*, 2011, Sudbury, MA: Jones & Bartlett.

Republication of “Variable Ticket Pricing in Major League Baseball”, with Chad McEvoy, Mark Nagel, and Matthew Brown *The Business of Sports*, ed. Scott Rosner and Kenneth Shropshire, 2011, Elgar Pub., United Kingdom.

Republication of “What Brings Fans to the Ballpark?,” with Nola Agha in *Brilliant Results* 2005.

Republication of “What is the Size of the Sports Industry?,” in *Brilliant Results* 2005.



Republication of “Neither Reasonable nor Necessary: “Amateurism” in Big-Time College Sports”, with Andrew D. Schwarz in *The Economics of Sport, Vol. I*, ed. Andrew Zimbalist; *The International Library of Critical Writings in Economics* 135, 2001, Elgar, Northampton, MA.

#### MONOGRAPHS

“The Effect of Human Resource Systems on Fab Performance,” with Clair Brown, in C. Brown (ed.), *The Competitive Semiconductor Manufacturing Human Resources Project: Final Report*, 1997.

“Inter-industry Comparisons: Lessons from the Semiconductor Industry,” with Rene Kamita, in C. Brown (ed.), *The Competitive Semiconductor Manufacturing Human Resources Project: Final Report*, 1997.

“Problem-Solving Structures; A Case Study of Two U.S. Semiconductor Fabs,” in C. Brown (ed.), *The Competitive Semiconductor Manufacturing Human Resources Project: Final Report*, 1997.

“Transferability of Case Study Research: An Example from the Semiconductor Industry,” with Clair Brown, in C. Brown (ed.), *The Competitive Semiconductor Manufacturing Human Resources Project: 2<sup>nd</sup> Interim Report*, 1996.

“Headcount and Turnover,” in C. Brown (ed.), *The Competitive Semiconductor Manufacturing Human Resources Project: 2<sup>nd</sup> Interim Report*, 1996.

“Training,” with Jumbi Edulbehram in C. Brown (ed.), *The Competitive Semiconductor Manufacturing Human Resources Project: 2<sup>nd</sup> Interim Report*, 1996.

#### WORKING PAPERS & ARTICLES UNDER REVIEW

“The Impact of COVID-19 on Employment and Output in the Leisure and Tourism Industries,” with Lali Odosashvili and Mark Nagel. *In Review*. 2023.

“Commentary: Maximizing the Emergency Use of Public Stadiums and Arenas,” with Mark Nagel and Tiffany Richardson. 2021.

“College Football and Basketball Fans Don’t Root for Laundry: A Comparison of the Effect of Winning on Demand between College and Professional Football and Basketball,” with Mark Nagel and Giseob Hyun. 2020.

“Optimal Markets for NFL Franchises.” 2020.

“Would the Oakland A’s Relocation to San Jose Harm the Sharks – A Case Study of Competition Across Professional Sports Teams” with Chad McEvoy, Matt Brown, and Mark Nagel. 2016.

“The Practical Use of Variable Ticket Pricing in Major League Baseball” with Chad McEvoy, Matt Brown, and Mark Nagel. 2012.

“An Analysis and Assessment of Intercollegiate Athletics at the University of San Francisco” with Jeremy Howell. 2011.



“Counting Local Residents in Economic Impact Analysis: New Findings from Sporting Events” with Richard Irwin. 2008.

“Perverse Incentives with the NCAA Basketball Tournament Seeding Process” with Matthew Brown, Chad McEvoy, and Mark Nagel. 2006.

“Do the Giants Compete with the A’s: The Degree of Competition Between Teams” with Matthew Brown, Chad McEvoy and Mark Nagel. 2006.

“Forecasting Model of Airport Economic Impacts” with Alan Rozzi and Christopher Gillis. 2004.

“Psychic Impact of Professional Sports: A Case Study of a City Without Major Professional Sports” with Matthew Brown, Mark Nagel, and Chad McEvoy. 2003.

“The Use of New Technology and Human Resource Systems in Improving Semiconductor Manufacturing Performance”, with Clair Brown and Greg Pinnsonneault, Working Paper, University of California at Berkeley, 1999.

#### INVITED SPEAKING ENGAGEMENTS

“Sports & Entertainment Districts,” panelist, San Jose Chamber of Commerce, 2024.

“Getting into the Sports Industry,” panelist, The Young Sports Talent Investment Forum, 2023.

“The Business of Sports.” Lecture at the Oregon Law Summer Sports Institute, University of Oregon, 2023.

“Economics of College Sports,” guest speaking in Intercollegiate Sports Management, St. Mary’s College, 2023.

“Economics of College Sports,” guest speaking in Sports Finance, University of Delaware, 2023.

“Financial Management in the Sport Industry,” invited masterclass presentation for Sportin Global, 2023.

“Legal and Economic Issues in the NCAA: A Review of 20 Years of Litigation,” with Andy Schwarz and Mark Nagel, University of South Carolina, College Sport Research Institute, 2023.

“The Business of Intercollegiate Sports,” invited guest speaker in Andy Dolich’s Make Sense of the Madness course on college sports, Stanford University, 2023.

“An Economist Goes to the Game,” invited co-host for *New Books Network* podcast, 2022.

“The Business of Sports.” Lecture at the Oregon Law Summer Sports Institute, University of Oregon, 2022.

“Big Stakes Antitrust Trial: In Re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation,” panelist at the 31<sup>st</sup> Golden State Institute Conference (2021).

“Economics of College Sports,” guest speaking in Sports Finance, University of Delaware, 2021.

“The Business of Intercollegiate Sports,” guest speaking in Issues in Sports Economics, University of West Florida, 2021.

“Professional Sports Franchise Location & Development.” Guest speaker in Sports Law & Ethics course at California Lutheran University. 2021.

“The Business of Sports.” Guest speaker at Sport Administration course, University of Louisville, 2021.

“The Business of Sports.” Lecture at the Oregon Law Summer Sports Institute, University of Oregon, 2021.

“Sports Economics, Analytics, and Decision Making - 7 Case Studies,” Theme Speaker 1, International Webinar on Sports Management, hosted by Sports Authority of India, Seshadripuram Educational Trust, Seshadripuram Evening Degree College, 2021.

“Economics of College Athletes,” guest speaking in Sports Finance, University of Northern Colorado, 2021.

“Sports Antitrust Economics – Raiders & Regents,” with Andy Schwarz in Sports Law, University of San Diego Law School, February, 2021.

“Research Thoughts & Methods” in Doctoral Research Seminar, Sport Management Department, University of South Carolina, January, 2021.

“Is there a Consensus?: An Experimental Trial to Test the Sufficiency of Methodologies Used to Measure Economic Impact in Sports.” Keynote Speaker at the 1<sup>st</sup> International Congress of Iranian Scientific Association of Sport Management, Tehran, Iran in March, 2021.

“Government Impact on Financial Aspects of Sports,” at the International Conference on Governance and Integrity in Sport, Saudi Arabia, December, 2020.

“State of Play: Antitrust and the NCAA,” panelist on a program hosted by the New York State Bar Association and the California Lawyers Association, November 19, 2020.

“Sports Commercialization and the Global Sports Economy” with Kenneth Cortsen. Masterclass for Australian Sports Technologies Network, November 17, 2020.

“Economic and Financial Management of U.S. Professional Sports” presented at Loyola University, Seville, Spain, November 12, 2020.

“The Importance of Sound Data Analysis for Decision-Making in the Sports Industry” at Sportin Global Summit. 2020.

“The New Normal of the Sport Industry” at HiVE 24HR Liveathon. 2020.

“Play Time Sessions – A Series of Digital Conference Sessions on Gaming & Esports” presented by GIMA Esports. 2020.

“Practicing as a Sports Lawyer: Antitrust and Beyond.” Sponsored by the American Bar Association’s Section of Antitrust Law and Trade, Sports and Professional Associations. 2020.

“Economics of Sports.” Lecture at the Oregon Law Summer Sports Institute, University of Oregon, 2020.

“Economics of College Sports,” guest speaking in Sports Finance, University of Delaware, 2020.

“Economics of College Athletes,” guest speaking in Sports Finance, University of Northern Colorado, 2020.

“Stadium Financing,” guest speaking in Introduction to Sports Business, UCLA’s Anderson School of Business, 2019.

“Economics of College Sports,” discussion at the Oregon Law Summer Sports Institute, University of Oregon, 2019.

“Forging Industry Partnerships and Engaging in Applied Sport Management Research,” with Weight, E., Love, A., McEvoy, C. Presentation for the Applied Sport Management Conference, 2019.

“Making a Difference: Bridging the Gap Between the Ivory Tower & the Community.” Keynote Address, Applied Sport Management Association, 2019.

“Economics of Sports.” Lectures at the Oregon Law Summer Sports Institute, University of Oregon, 2018.

“The Business of Sports”, presented at the Sports Business Club at Sonoma State University Business School, May 2018.

“The Business of the Olympics,” guest speaker in sports journalism course at Medill School of Journalism at Northwestern University, 2018.

“Economics of Sports.” Lectures at the Oregon Law Summer Sports Institute, University of Oregon, 2017.

“College-Sport Research and Litigation: Theory and Practice Leading to Action.” Panelist at College Sport Research Institute Symposium at the University of South Carolina, 2017.

“Economics of Sports.” Lectures at the Oregon Law Summer Sports Institute, University of Oregon, 2016.

“The Business of Intercollegiate Sports,” presented in the sport management department’s sport law course, University of Toronto, 2016.

“Economics of Sports.” Lectures at the Oregon Law Summer Sports Institute, University of Oregon, 2015.

“The Business of Intercollegiate Sports” presented in the sport management masters program, University of Arkansas, 2015.

Panelist on “The Future of Intercollegiate Athletics: The Players’ Perspective,” at the Sports Law and Business Conference at Arizona State University, 2015.

Panelist on “Intersection of Business and Sports Law,” at the Sports and Entertainment Law Forum, presented by the University of Oregon Law School, 2015.

“The Economics of College Athletics Departments” presented in the masters in collegiate athletics program, college athletics in a digital era course, University of San Francisco, 2015.

“The Business of Intercollegiate Sports,” presented in the sport management department’s sport law course, University of Toronto, 2014.

“Economics of Sports.” Lectures at the Oregon Law Summer Sports Institute, University of Oregon, 2014.

“The Finances of College Sports,” presented in Matthew Brown’s sport finance course, Ohio University, 2014.

“Antitrust Economics and Sports,” presented in Professor Robert Elias’s Politics and Sport course, University of San Francisco, 2014.

“The Economics of the Sports Industry,” presented to the Haas School of Business, U.C. Berkeley, 2014.

“Economic Impact in Sports.” Presentation in the masters in sports business program at New York University (NYU) as part of the Faculty-in-Residence program. 2013.

“Pricing the Game Experience,” with Stephen Shapiro and Tim DeSchriver. Invited research presentation at *Sport Entertainment & Venues Tomorrow* conference, 2013, University of South Carolina.

“Academia and the Industry: Opportunities for Meaningful Research Collaboration.” Invited panelist at *Sport Entertainment & Venues Tomorrow* conference, 2013, University of South Carolina.

“Sports Sponsorships in 2013,” Panelist at Court Vision (Sheppard Mullin Sports Law Speaker Series and SLA). Continuing Legal Education (CLE) units program. 2013.

“Using Contract Law to Tackle the Coaching Carousel – Commentary.” Presented at University of San Francisco, *Sports & Entertainment Law Association*, 2013.

“Sports Economics, Analytics, and Decision Making: 8 Examples.” Invited speaker at the *IEG Sports Analytics Innovation Summit*, 2012

“ ‘Paperless Ticketing’ and its Impact on the Secondary Market: An Economic Analysis with Antitrust Implications” with Andy Schwarz. Presented at U.C. Berkeley, Boalt Law School’s *Sports and Entertainment Law Society*, 2011.

“Financial Valuation of Sports Assets,” presented at the *Sport Management Today Video Conference Series* at the IE Business School, 2011

“Financial Valuation of Sports Assets,” presented to the *Sport Management Department* at the University of Northern Denmark, 2011.



“Economic Impact in Sports,” presented to the *Sport Management Department* at the University of Northern Denmark, 2011.

“The Economics of the Sports Industry,” presented to the *Sports Business Association* at U.C. Irvine, 2011.

“Is Free Riding a Problem in Sports Leagues?: Adverse Incentives Caused by Revenue Sharing” with Mark Nagel, Chad McEvoy, and Matt Brown. Presented at the *Economics Lecture Series* at Sonoma State University Business School, April 2010.

“Economics for Antitrust Lawyers: Application to Class Certification” presented to Lieff Cabraser Heimann & Bernstein for Continuing Legal Education (CLE) units. November 2009.

“Economics for Antitrust Lawyers: Market Structure and Economic Modeling” presented to Lieff Cabraser Heimann & Bernstein for Continuing Legal Education (CLE) units. October 2009.

“Sports Stadium Financing in Today’s Economy” presented to the Rotary Club of San Jose, May 2009.

“The Economic Impact of Liberty Bowl Memorial Stadium,” presented at the University of Memphis, *Issues in College Sports* lecture series (invited panelist), March 2007.

“The Economics of the Sports Industry,” presented to the MBA Program at the Haas School of Business, U.C. Berkeley, January 2007.

“Stadium Financing – Dallas Cowboys Case,” presented to the MBA Program at the Graduate School of Business, Stanford University, 2006.

“Taking the Gown to Town: Research and Consulting for the Sport Industry.” Invited presentation at the Past President’s Workshop, *North American Society for Sport Management*, June 2006.

“Various Topics in Sports Economics,” presented at the Wednesday Workshop on Economics Research, California State University, East Bay, 2005.

“Stadium Financing – Dallas Cowboys Case,” presented to the MBA Program at the Graduate School of Business, Stanford University, 2005.

“The Economics of the Sports Industry,” presented to the MBA Program at the Haas School of Business, U.C. Berkeley, 2005.

“The Economic Impact of General Aviation Airports: An Econometric Model,” presented at Niche Ventures Spring Meeting, 2004.

“The Economics of the Sports Industry,” presented to the MBA Program at the Haas School of Business, U.C. Berkeley, 2004.

“Oral Testimony Regarding California State Senate Bill 193, Student Athletes’ Bill of Rights”. 2003. Testimony to the California State Senate Subcommittee on Entertainment.



“The Economics of the Sports Industry,” presented to the MBA Program at the Haas School of Business, U.C. Berkeley, 2003.

“The Use of New Technology and Human Resource Systems in Improving Semiconductor Manufacturing Performance,” with Clair Brown and Greg Pinsonneault. Presented at *The Wharton School, University of Pennsylvania*, 1999.

#### CONFERENCE PRESENTATIONS

“Is there a Consensus?: An Experimental Trial to Test the Sufficiency of Methodologies Used to Measure Economic Impact,” with Giseob Hyun and Mark Nagel. Presentation at *Applied Sport Management Association*, February 2020.

“Is there a Consensus?: A Test of Methodologies Used to Measure Economic Impact,” with Giseob Hyun and Mark Nagel. Presentation at *Applied Business and Entrepreneurship Association International*, November 2019.

“Because It’s Worth It: Why Schools Violate NCAA Rules and the Impact of Getting Caught in Division I Basketball,” with Andrey Tselikov, Andrew D. Schwarz, and Mark Nagel. Presentation at *Applied Business and Entrepreneurship Association International*, November 2018.

“College Football and Basketball Fans Don’t Root for Laundry: A comparison of the effect of winning on attendance and television viewership between big-time college football and basketball and the NBA and NFL,” with Mark Nagel. Presentation at *Applied Business and Entrepreneurship Association International*, November 2017. (voted Best Paper Award for session)

“Financial Valuation of a Sporting Goods Retail Store,” with Mark Nagel and Matthew Brown. Poster presentation at *North American Society for Sport Management*, May 2016.

“Cartel Behavior in United States College Sports: An Analysis of National Collegiate Athletic Association Football Enforcement Actions from 1990 to 2011,” with Mark Nagel, Richard Southall, and Nick Fulton. Presented at *Western Economics Association International*, January 2016.

“The College Basketball Players’ Labor Market: *Ex Ante* versus *Ex Post* Valuations” with David Berri and Robert Brown. Presented at *Western Economics Association International*, July 2015.

“What drives Endorsement Values for Superstar Athletes?” with Terry Eddy and Giseob Hyun. Presented at *Sport Management Association of Australia and New Zealand*, November 2014.

“The Beckham Effect: David Beckham’s Impact on Major League Soccer, 2007-2012,” with Stephen Shapiro and Tim DeSchraver. Presented at *North American Society for Sport Management*, May 2014.

“Where is Everyone? An Examination of Consumer Demand for College Football Bowl Games,” with Terry Eddy and Rebecca Stewart. Presented at *Collegiate Sports Research Institute* conference, April 2014.

“If We Build It, Will You Come?: Examining the Effect of Expansion Teams and Soccer-Specific Stadiums on Major League Soccer Attendance,” with Stephen Shapiro and Tim DeSchraver. Presented at *North American Society for Sport Management*, May 2013.

“Should San Jose say ‘No Way’ to the Oakland A’s,” with Mark Nagel and Matt Brown. Presented at *North American Society for Sport Management*, May 2013.

Panel member for “Financial Issues in Intercollegiate Sports.” Presented at the *Santa Clara University Sports Law Symposium*, 2012.

“What's in a Name?: Does the Amount and Source of Public Financing Impact Team Names?” with Nola Agha and Matt Brown. Presented at *Western Economics Association International*, July 2012.

“When Can Economic Impact be Positive? Twelve conditions that explain why smaller sports have bigger impacts” with Nola Agha. Presented at *Western Economics Association International*, July 2012.

“Reflections on the MLB Collective Bargaining Agreement.” Part of a symposium on the Economics of Labor-Management Relations in Sports Today at *Western Economics Association International*, July 2012.

“The Economics of Competitive Balance on the Field and in the Courts.” Presented at the *Santa Clara University Sports Law Symposium*, 2011.

“ ‘Paperless Ticketing’ and its Impact on the Secondary Market: An Economic Analysis with Antitrust Implications” with Andy Schwarz. Presented at *International Association of Venue Managers*, July 2011.

“ ‘Paperless Ticketing’ and its Impact on the Secondary Market: An Economic Analysis with Antitrust Implications” with Andy Schwarz. Presented at *TicketSummit*, July 2011.

“ ‘Paperless Ticketing’ and its Impact on the Secondary Market: An Economic Analysis with Antitrust Implications” with Andy Schwarz. Presented at *Western Economics Association International*, July 2011.

“Financial Risk Management: The Role of a New Stadium in Minimizing the Variation in Franchise Revenues” with Matt Brown, Chad McEvoy, and Mark Nagel. Presented at *Western Economics Association International*, July 2011.

“A Panel Study of Factors Affecting Attendance at Major League Soccer Contests: 2007-2010” with Tim DeSchriver. Presented at the *Sport Marketing Association IX* conference in New Orleans, October 2010.

“The NCAA and the Prisoner’s Dilemma”. Presented at the *Sports Law Symposium* at the University of Santa Clara Law School, September 2010.

“Financial Risk Management: The Role of a New Stadium in Minimizing the Variation in Franchise Revenues” with Matt Brown, Chad McEvoy, and Mark Nagel. Presented at *North American Society for Sport Management*, May 2010.

“An Analysis of the Value of Intercollegiate Athletics to its University: Methods”. Presented at the *Scholarly Conference on College Sport*, April 2010.

“Demand, Consumer Surplus, and Pricing Inefficiency in the NFL: A Case Study of the Secondary Ticket Market Using StubHub” with Joris Drayer and Chad McEvoy. Presented at *North American Society for Sport Management*, May 2009.

“Luxury Suite Pricing in North American Sports Facilities” with Tim DeSchriver. Presented at *North American Society for Sport Management*, May 2009.

“A Smorgasbord of Lessons Learned from Economic Impact Studies” Presented at *North American Society for Sport Management*, June 2008.

“Globalization and Sport Finance: What is True and What is Myth?” with Mark Nagel and Ross Booth. Presented at the *Sport Management Association of Australia and New Zealand*, November 2007.

“Exploring the Myth that a Better Seed in the NCAA Men’s Basketball Tournament results in an *ex ante* Higher Payout” with Mark Nagel, Matt Brown, and Chad McEvoy. Presented at the *Sport Management Association of Australia and New Zealand*, November 2007.

“Oakland A’s Baseball Simulator” with Joris Drayer. Presented at *North American Society for Sport Management*, June 2007.

“Teaching Sport Financial Management: A Symposium” with Timothy DeSchriver, Matthew Brown, and Michael Mondello. Presented at *North American Society for Sport Management*, June 2007.

“The Economics of the Sports Industry,” presented to the MBA Program at the Haas School of Business, U.C. Berkeley, January 2007.

“Practical Strategies for Variable Ticket Pricing in Professional Sports” with Chad McEvoy, Matt Brown, and Mark Nagel. Presented at *Sport Marketing Association IV*, November 2006.

“Do the Giants Compete with the A’s: The Degree of Competition Between Teams”, presented at *Western Economic Association International*, July 2006.

“Do the Giants Compete with the A’s: The Degree of Competition Between Teams”, presented at *North American Society for Sport Management*, June 2006.

“Measuring Sponsorship Return on Investment: A Need for Quantitative Analysis” with Matt Brown, Mark Nagel, and Chad McEvoy. Presented at *Sport Marketing Association III*, November 2005.

“The Use of Economic Impact Analysis for Marketing Purposes” with Dick Irwin and Matt Brown. Presented at *Sport Marketing Association III*, November 2005.

“Is Free Riding a Problem in Sports Leagues?: Adverse Incentives Caused by Revenue Sharing” with Mark Nagel, Chad McEvoy, and Matt Brown. Presented at *Western Economic Association International*, July 2005.

“Public Funds for Private Benefit: Equity Issues in Sport Stadia Funding and the Question of Who Really Pays,” with Matt Brown and Mark Nagel. Presented at *North American Society for Sport Management*, June 2005.

“Is Free Riding a Problem in Sports Leagues?: Adverse Incentives Caused by Revenue Sharing” with Mark Nagel, Chad McEvoy, and Matt Brown. Presented at *North American Society for Sport Management*, June 2005.

“Is Free Riding a Problem in Sports Leagues?: Adverse Incentives Caused by Revenue Sharing” with Mark Nagel, Chad McEvoy, and Matt Brown. Accepted by *Sport Management Association of Australia and New Zealand*, Nov. 2004.

“Redskins: Legal, Financial, and Policy Issues relative to Harjo v. Pro-Football, Inc.” with Richard Southall, Matt Brown, and Mark Nagel. Presented at *North American Society for the Sociology of Sport*, Nov. 2004.

“An Analysis of Distance Traveled and Tourism Economic Impact: A Test of the Alchian-Allen Theorem” with Matt Brown, Mark Nagel, and Chad McEvoy. Presented at *Sport Marketing Association II* conference, Nov. 2004.

“Is Free Riding a Problem in Sports Leagues?: Adverse Incentives Caused by Revenue Sharing” with Mark Nagel, Chad McEvoy, and Matt Brown. Presented at *Sport Marketing Association II* conference, Nov. 2004.

“Beyond The Economic Impact Study: Examining Economic Impact Data for Support of the Third Law of Demand” with Matthew Brown, Mark Nagel, and Chad McEvoy. Presented at *North American Society for Sport Management*, 2004.

“Optimal Variable Ticket Pricing in Major League Baseball” with Mark Nagel, Chad McEvoy, and Matthew Brown. Presented at *North American Society for Sport Management*, 2004.

“*Clarett v. NFL*: Age Eligibility Rules and Antitrust Law in Professional Sports” with Chad McEvoy, Mark Nagel, and Matt Brown. Presented at *Sport and Recreation Law Association*, 2004.

“Variable Pricing in Baseball: Or, What Economists Would Just Call ‘Pricing’,” presented at *Western Economic Association International*, 2003.

“The Impact of Stadia on Wealth Maximization in the National Football League: To Build or Renovate?” with Matthew Brown, Mark Nagel, and Chad McEvoy. Presented at *North American Society for Sport Management*, 2003.

“Major League Baseball’s Antitrust Immunity: Examining the Financial Implications of Relocation Rules,” with Matthew Brown and Mark Nagel. Presented at *Society for the Study of the Legal Aspects of Sport and Physical Activity*, 2003.

“Locational Choice in the NBA: An Examination of Potential Cities for Expansion or Relocation,” presented at *North American Society for Sport Management*, 2002.

Panel discussant on the effects of the economy on the business of sports at *Sports Facilities and Franchises Forum*, Dallas, TX 2002 (presented by SportsBusiness Journal).

“Psychic Impact Findings in Sports,” presented at *Sport Management Association of Australia and New Zealand*, 2001.



“Locational Choice in the NBA: An Examination of Potential Cities for Expansion or Relocation” presented at *Sport Management Association of Australia and New Zealand*, 2001.

“Psychic Impact as a Decision Making Criterion,” presented at the *North American Society for Sport Management*, 2000.

“Economic Impact Methods,” presented at the *North American Society for Sport Management*, 2000.

“Valuation of Naming Rights,” presented at the *Sports Finance Forum*, 2000.

“ ‘Amateurism’ in Big-Time College Sports,” presented at the *Western Economic Association International*, 1999.

“Does Bat Day Make Cents?: The Effect of Promotions on the Demand for Baseball,” with Mark McDonald. Presented at the *17<sup>th</sup> Annual Consumer Psychology Conference*, 1998.

“A Test of the Optimal Positive Production Network Externality in Major League Baseball,” presented at the *North American Society for Sport Management Conference*, 1998.

“A Test of the Optimal Positive Production Network Externality in Major League Baseball,” presented at the *Western Economic Association International*, 1998.

“The NBA, Exit Discrimination, and Career Earnings,” presented at the *Western Economic Association International*, 1997.

“Sports Salary Determination,” presented at the *International Atlantic Economic Society Conference*, 1997.

“A Model of a Professional Sports League,” presented at the *International Atlantic Economic Society Conference*, 1996.

“Transferability of Case Study Research: An Example from the Semiconductor Industry,” presented at the *American Society of Training and Development Conference*, 1996.

#### **EDITORIAL/REVIEWER BOARDS OF PEER-REVIEWED JOURNALS**

*Frontiers in Sports and Active Living – Sports Management and Marketing*, 2020 – present

*International Journal of Sport Management and Marketing*, 2011 – present

*International Journal of Sports Marketing and Sponsorship*, 2021 – present

*International Journal of Sport Finance*, 2006 – present (founding member)

*Journal of Risk and Financial Management*, 2019 – present

*Journal of Sport Management*, 2003 – present

Associate Editor, 2010 – 2012

Co-Editor of Special Issue, 2022

*Journal of Quantitative Analysis in Sports*, 2005 – 2012 (founding member)

*Case Studies in Sport Management*, 2011 – 2019 (founding member)

*Sport Management Review*, 2001 – 2008

**REFEREE FOR PEER-REVIEWED JOURNALS & GRANTING AGENCIES**

*American Behavioral Scientist*, 2008  
*Applied Economics Letters*, 2018  
*Applied Economics*, 2020, 2021  
*Axioms*, 2017  
*Case Studies in Sport Management*, 2012, 2014a, 2014b, 2015, 2017, 2019  
*Communication & Sport*, 2019, 2020  
*Contemporary Economic Policy*, 2004, 2021  
*Eastern Economic Journal*, 2010  
*Economic Inquiry*, 2008, 2010, 2011  
*Economics and Business Letters*, 2018  
*European Sport Management Quarterly*, 2012, 2020, 2021, 2022  
*Frontiers in Sports and Active Living*, 2021a, 2021b, 2022  
*Future Internet*, 2019, 2020  
*Industrial Relations*, 1993, 2000, 2000, 2001, 2013  
*International Journal of Financial Studies*, 2018  
*International Journal of Sport Communication*, 2011  
*International Journal of Sport Finance*, 2005, 2006a, 2006b, 2006c, 2007a, 2007b, 2008a, 2008b, 2010, 2011, 2012, 2013, 2014a, 2014b, 2014c, 2015, 2017, 2018, 2019, 2022a, 2022b, 2023  
*International Journal of Sport Management and Marketing*, 2005, 2010, 2013, 2014, 2017, 2021  
*International Journal of Sports Marketing and Sponsorship*, 2016, 2018a, 2018b, 2019, 2021a, 2021b, 2021c, 2021d, 2022, 2023a, 2023b  
*International Journal of Sport Policy and Politics*, 2014  
*International Review for the Sociology of Sport*, 2012  
*Journal for the Study of Sport and Athletes in Education*, 2021a, 2021b  
*Journal of Economic Surveys*, 2024  
*Journal of Functional Morphology and Kinesiology*, 2018  
*Journal of Global Sport Management*, 2018, 2024  
*Journal of Industrial Economics*, 1997  
*Journal of Intercollegiate Sport*, 2016, 2021, 2022  
*Journal of Issues in Intercollegiate Athletics*, 2021  
*Journal of Sport Management*, 2001, 2002, 2003a, 2003b, 2004a, 2004b, 2004c, 2004d, 2004e, 2005a, 2005b, 2005c, 2005d, 2006a, 2006b, 2006c, 2006d, 2006e, 2006f, 2006g, 2006h, 2006i, 2007a, 2007b, 2007c, 2007d, 2008a, 2008b, 2008c, 2008d, 2009a, 2009b, 2009c, 2009d, 2009e, 2009f, 2009g, 2010a, 2010b, 2010c, 2010d, 2011a, 2011b, 2013, 2013b, 2014, 2015a, 2015b, 2016a, 2016b, 2016c, 2016d, 2017a, 2017b, 2017c, 2017d, 2018a, 2018b, 2018c, 2018d, 2019a, 2019b, 2019c, 2019d, 2019e, 2020a, 2020b, 2020c, 2020d, 2021, 2023, 2024  
*Journal of Sports Economics*, 2003, 2007, 2008a, 2008b, 2009, 2010, 2011, 2012a, 2012b, 2014a, 2014b, 2015a, 2015b, 2016, 2018, 2019a, 2019b, 2021, 2022a, 2022b, 2023  
*Journal of Venue and Event Management*, 2012  
*Journal of the Quantitative Analysis of Sports*, 2005, 2006a, 2006b, 2007  
*Mathematical Problems in Engineering*, 2018  
*Perceptual and Motor Skills*, 2009  
*Review of Economics and Statistics*, 2017  
*Review of Industrial Organization*, 2012, 2013, 2015  
*SAGE Open*, 2021

*Soccer & Society*, 2014, 2015, 2020  
*Southern Economic Journal*, 2001, 2007a, 2007b  
*Sport, Business and Management: An International Journal*, 2011, 2012, 2013, 2017, 2018, 2023a, 2023b  
*Sport Management Review*, 2002a, 2002b, 2003a, 2003b, 2003c, 2003d, 2004a, 2004b, 2004c, 2006a, 2006b, 2006c, 2007a, 2007b, 2007c, 2010a, 2010b, 2011, 2015, 2016, 2017, 2020  
*Sport Marketing Quarterly*, 2015, 2018  
*Sustainability*, 2018, 2021a, 2021b

External review of \$250,000 grant proposal for the *Social Sciences and Humanities Research Council of Canada*, 2008

#### **PROFESSIONAL AFFILIATIONS (CURRENT AND PREVIOUS)**

American Bar Association  
American Economic Association  
National Association of Certified Valuation Analysts  
North American Society for Sport Management  
North American Association of Sports Economists  
Sport and Recreation Law Association  
Sport Marketing Association  
Sports Lawyers Association  
Western Economic Association International

#### **TESTIMONY**

Provided economic analysis for the settlement in *Carter v. NCAA*. 2024

Provided expert reports, deposition, and trial testimony in *In Re NFL Sunday Ticket Antitrust Litigation*. 2024.

Provided expert reports and deposition testimony in *Hubbard v. NCAA*. 2024.

Provided expert reports and deposition testimony in *In Re College Athlete NIL Litigation*. 2024.

Provided deposition and trial testimony regarding liability and economic damages in *San Francisco Federal Credit Union v. San Francisco Municipal Transportation Agency*. 2021.

Provided expert reports and deposition testimony regarding class certification and damages in *Shields et al. v. FINA*. 2021.

Provided expert report pertaining to alleged financial harm from lost career earnings related to RICO claims in *Bowen v. adidas*. 2021.

Provided expert report and trial testimony pertaining to financial harm of alleged mismanagement of professional tennis client in *Mirjana Lucic v. IMG Worldwide*. 2021.

“An Economics Perspective on NIL at the Community College Level” presented at a public hearing of the Senate Bill 206 (Skinner-D, 2019) Statutory Community College Athlete Name, Image, and Likeness Working Group, November 10, 2020.

Provided expert report and deposition pertaining to financial harm of alleged misleading advertising in *The People of the State of California v. Hertz et al.* 2019.

Financial and economic analysis and testimony at a hearing of baseball and *AT&T Park* for Assessment Appeals Board (property tax dispute). 2018.

Provided arbitration testimony on damages regarding an NBA agent and agency in *ISE v. Dan Fegan.* 2018.

Provided trial and deposition testimony and multiple expert reports pertaining to class certification, liability, damages, and injunction issues in college sports in the federal lawsuit *In Re: NCAA Athletic GIA Cap Antitrust Litigation.* 2015-18.

Provided expert report pertaining to damages in auto racing case between a driver and his agent in *Sports Management Network v. Kurt Busch.* 2018.

Public testimony on forecast of economic impact of Rocky Mountain Sports Park on Windsor, CO to the Windsor City Council. 2017.

Provided expert report pertaining to the economics of ticketing and personal seat licenses (PSLs) in *RCN Capital v. Los Angeles Rams.* 2017.

Provided trial testimony (and multiple reports and depositions) on financial harm pertaining to *FTC v. DirecTV.* 2017.

Provided declaration pertaining to the economics of ticketing for sports and entertainment in *Glickman et al. v. Live Nation et al.* 2016.

Provided declaration pertaining to the economics of ticketing for sports and entertainment in *Pollard v. AEG Live, et al.* 2016.

Provided declaration pertaining to the economics of ticketing for sports and entertainment in *Finkelman v. NFL.* 2016.

Provided deposition testimony and submitted two expert reports pertaining to class certification issues in college football in *Rock v. NCAA.* 2014-16.

Submitted an expert report on damages pertaining to an endorsement relationship in *Frank Thomas v. Reebok.* 2015.

Provided deposition testimony and submitted an expert report pertaining to the economic relationship between two boxing entities in *Garcia v. Top Rank, Inc.* 2015.

Provided trial testimony (and multiple reports and depositions) on class certification issues, damages, and antitrust economics in regards to group licensing for former and current college football and basketball players in *O'Bannon et al. v. NCAA.* 2013-14.

Submitted three expert reports regarding lost earnings for a Major League Baseball player in *Backe et al. v. Fertitta Hospitality, LLC et al.* 2013.



Submitted two expert reports on class certification issues in regards to ticket holder lawsuit in *Phillips et al. v. Comcast Spectacor et al.* 2013.

Submitted expert report in a federal case involving defamation of character in the boxing industry (*Pacquiao v. Mayweather Jr. et al.*). 2012.

Provided deposition testimony and prepared expert report regarding an alleged sponsorship breach of contract in motorsports (*Vici Racing, LLC v. T-Mobile USA, Inc.*). 2012.

Prepared expert witness testimony on trade secrets case involving the sports consulting industry (*Sport Management Research Institute v. Keehn*). 2011.

Provided deposition testimony on the value of a minor league baseball team and related damages from an alleged breach of a facility lease permit (*Long Beach Armada v. City of Long Beach*). 2011.

Provided deposition testimony on the value of athlete endorsements in a breach of contract case involving an NBA player and a charter school business in an arbitration proceeding (*D Wade's Place v. Dwyane Wade*). 2010.

Provided deposition testimony on the value of athlete endorsements in a breach of contract case involving an NBA player and a restaurant investment in a state court proceeding (*Rodberg v. Dwyane Wade*). 2010.

Submitted two reports and provided deposition and arbitration testimony regarding damages related to how media coverage has impacted an NFL team's brand (*Kiffin v. Raiders*). 2009.

Submitted expert report, rebuttal report, gave deposition and trial testimony in federal court (*Adderley et al. v NFLPA & NFLPI*). 2008.

Public testimony on economic impact of a Major League Soccer stadium in San Jose to the San Jose City Council. 2008.

Public testimony on economic impact of six sports and cultural events in San Jose to the San Jose City Council. 2007.

Submitted expert report, rebuttal report, and testified at arbitration hearing on the financial valuation of Major League Soccer (*Rothenberg v. Major League Soccer, LLC*). 2006.

Named expert witness for a Major League Baseball club to analyze a punitive damages claim from an injury at a baseball game (*Bueno v. Rangers*). 2006.

Prepared expert testimony on liability and damages related to the operations of a minor baseball league on behalf of the league's owner (*Don Altman et al., v. Jeffrey Mallet, et al.*). Case was settled prior to deposition. 2004.

Public testimony on economic impact of an existing and new professional football stadium in Irving, TX to the Irving City Council (two council meetings). 2004.

Testimony on college athletics regarding Senate Bill 193 to the California State Senate Subcommittee on Entertainment. 2003.

Public testimony on economic impact of a downtown entertainment district in Sacramento to the Sacramento City Council (two council meetings). 2003.

Determination of IP valuation and damages from a clothing endorsement alleged breach of contract for PGA Tour player (*Stankowski v. Bugle Boy*). Submitted expert report. Case was settled prior to deposition. 2000.

Deposition testimony in breach of contract matter concerning sponsorship damages analysis in the auto racing industry (*Parente v. Della Penna Racing*). 2000.

Public testimony on forecast of economic impact of Pan Am Games on San Antonio to the San Antonio City Council. 1999.

Updated August 2024



## **Appendix B**

### **Documents Relied Upon**

#### **Legal Filings**

Complaint, October 2, 2024.

#### **Fact Declarations**

Declaration of Bob Jenkins in Support of Plaintiffs' Motion for a Preliminary Injunction, October 9, 2024.

Declaration of Curtis Polk in Support of Plaintiffs' Motion for a Preliminary Injunction, October 9, 2024.

Declaration of Steve Lauletta in Support of Plaintiffs' Motion for a Preliminary Injunction, October 9, 2024.

#### **Guidelines and Agreements**

2016 Charter Agreement.

2023 Horizontal Merger Guidelines.

2024 NASCAR Rule Book.

2024 Open Owner Agreement, Exhibit A.

2025 Charter Agreement.

#### **Produced Documents (Reviewed in Native Format)**

23XI 2023-2025 Financial Information 10-02-24.xlsx.

#### **Literature, Articles and Publications**

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Baker, J. (2013). "Exclusion as a Core Competition Concern," Antitrust Law Journal, 78(3).

Benjamin, K., Crawford, R. and Alchian, A. (1978). "Vertical Integration, Appropriable Rents and the Competitive Contracting Process," Journal of Law and Economics, XXI.

Bothner, M., Kand, J. and Stuart, T. (2007). "Competitive Crowding and Risk Taking in a Tournament: Evidence from NASCAR Racing," Administrative Science Quarterly, 52(2).

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- Cornwell, T.B., Weeks, C. and Roy, D. (2013). "Sponsorship-Linked Marketing: Opening the Black Box," Journal of Advertising, 34(2).
- Crouzet, N., Eberly, J., Einfeldt, A. and Papanikolaou, D. (2022). "The Economics of Intangible Capital," The Journal of Economic Perspectives, 36(3).
- Dasgupta, S. and Tao, Z. (2000). "Bargaining, Bonding, and Partial Ownership," International Economic Review, 41(3).
- Holmström, B. and Roberts, J. (1998). "The Boundaries of the Firm Revisited," The Journal of Economic Perspectives, Autumn, 12(4).
- Jensen, J., Cobbs, J., Mazer, A. and Tyler, D. (2024). "Analyzing Brand Strategy on an International Scale: The Sponsorship Performance Cycle in Formula One Racing," Journal of International Marketing, 32(3).
- Kalnins, A. and Lafontaine, F. (2004). "Multi-Unit Ownership in Franchising: Evidence from the Fast-Food Industry in Texas," The RAND Journal of Economics, 35(4).
- Kishimoto, S. (2020). "The Welfare Effect of Bargaining Power in the Licensing of a Cost-Reducing Technology," Journal of Economics, 129(2).
- Pruitt, S., Cornwall, T.B. and Clark, J. (2004). "The NASCAR Phenomenon: Auto Racing Sponsorships and Shareholder Wealth," Journal of Advertising Research, 44(3).
- Rajan, R. and Zingales, L. (1998). "Power in a Theory of the Firm," The Quarterly Journal of Economics, 113(2).
- Rothhoff, K., Depken, C. and Groothuis, P. (2014). "Influences on Sponsorship Deals in NASCAR: Indirect Evidence from Time on Camera," Applied Economics, 46(19).

### **Third Party Sources**

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[https://www.espn.com/racing/nascar/story/\\_/id/33304823/parts-shortage-next-gen-car-water-duel-daytona](https://www.espn.com/racing/nascar/story/_/id/33304823/parts-shortage-next-gen-car-water-duel-daytona)  
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<https://www.nascar.com/news-media/2020/09/22/how-the-nascar-charter-system-works/>

<https://www.nascar.com/news-media/2022/03/13/phoenix-raceway-is-sold-out-for-nascars-ruoff-mortgage-500/>

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<https://www.nascar.com/news-media/2024/06/20/haas-factory-team-cup-xfinity-2025-plans/>

<https://www.nascar.com/racing-teams/>

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

2311 RACING LLC d/b/a 23XI RACING,  
and FRONT ROW MOTORSPORTS, INC.,

Plaintiffs,

v.

NATIONAL ASSOCIATION FOR STOCK  
CAR AUTO RACING, LLC and  
JAMES FRANCE,

Defendants.

Civil Action No. 3:24-cv-886

PUBLIC REDACTED VERSION

**DECLARATION OF BOB JENKINS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Bob Jenkins, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the owner of Plaintiff Front Row Motorsports, Inc. ("Front Row"). Front Row was founded in 2004 and currently runs cars in the National Association for Stock Car Auto Racing, LLC ("NASCAR") Cup Series and NASCAR Craftsman Truck Series. Due to the anticompetitive actions and monopoly position of NASCAR and Jim France, Front Row is facing the choice of either losing our charters to compete in the NASCAR Cup Series or risking losing our antitrust rights. I urge the Court to grant our request for a preliminary injunction so that we can continue to compete under the charter system while also pursuing our claims against NASCAR.

2. Front Row is a corporation organized under the laws of Tennessee, with its principal place of business in Tennessee. Front Row is registered to transact business in the state of North Carolina.

3. As the owner of Front Row, I oversee the day-to-day operations of the entire business.

### **FRONT ROW'S ENTRY INTO CUP SERIES RACING**

4. I have been involved with NASCAR since 2004. Front Row began running part-time in the NASCAR Cup Series and NASCAR Craftsman Truck Series in 2004 as Means-Jenkins Motorsports, Inc. under a partnership with Jimmy Means and me. I became the sole team owner in 2005.

5. Because NASCAR operates the only premier stock car racing circuit, it is the only place where teams like Front Row can compete. In 2016, Front Row received two charters from NASCAR and signed two corresponding 2016 Charter Agreements, which run through December 31, 2024.

6. Due to these two charters, Front Row currently runs two full-time cars in the Cup Series: the "34" chartered car for Michael McDowell and the "38" chartered car for Todd Gilliland.

7. Under Front Row, McDowell has won NASCAR Cup Series Races at the 2021 Daytona 500, the 2023 Verizon 200 at Indianapolis Motor Speedway, and made the NASCAR Playoffs both years as well. In total Front Row has won 4 NASCAR Cup Series races in its existence. Despite our emergence as a winning NASCAR Cup Series team, we have never generated a profit because the one-sided economic terms of the 2016 Charter Agreement do not give teams like Front Row a fair chance to earn a profit on their substantial investment.

8. To run its team with two Cup Series cars, Front Row has approximately 80 employees, including mechanics, drivers, marketing, and technical personnel.

9. In May 2024, Front Row purchased a third charter from Stewart-Haas Racing. At that time, we still had hopes (albeit fading ones) that NASCAR would ultimately agree to fairer terms for the teams, giving them a reasonable chance to earn a profit on their investments. That transaction is currently in escrow and requires approval from NASCAR.

### **THE 2016 CHARTER SYSTEM**

10. In 2016, NASCAR agreed to a system for assuring teams spots in each Cup Series race called the charter system. Under this system, NASCAR has granted 36 charters, and each charter covers one car. Each owner is allowed to have a maximum of four chartered cars and must sign a separate Charter Agreement for each car they run. The Charter Agreement guarantees a car entrance into all 36 Cup Series point races and four exhibition races, as well as a small share of certain pooled revenue, which is almost entirely derived from NASCAR's broadcast agreement revenues. All of the 2016 Charter Agreements, including both of Front Row's existing charters, and the charter Front Row has agreed to purchase from Stewart Haas Racing, expire on December 31, 2024.

11. Until 2014, NASCAR was not willing to seriously consider a form of team franchising, like the charter system, until the race teams began talking about getting together and staging exhibition races on dirt tracks to demonstrate to NASCAR their ability to possibly form a competitive circuit. But even this small dose of potential competition was not a significant competitive threat to NASCAR due to the many actions NASCAR engaged in to create barriers to any competitor succeeding.

12. For example, due to NASCAR's exclusivity provisions in its sanction agreements with racetracks, teams would not have been able to stage races at most of the racetracks capable of staging a premier stock car racing event. A racetrack hosting a premier stock car race needs to

be able to receive tens of thousands of spectators and have the proper track surface and infrastructure for a premier stock car race. Because NASCAR includes an exclusivity provision in its sanction agreements with premier racetracks for the Cup Series, NASCAR is the only stock car racing organization allowed to access these tracks. NASCAR's power to exclude access to top-tier racetracks increased in 2019 after it purchased International Speedway Corporation, which owns approximately half of the racetracks that host Cup Series events.

13. These racetracks cannot be built overnight. The operational experience required is not easy to learn. And the promotional pedigree to host such an event takes industry expertise and knowledge.

14. A premier stock car racing series needs access to a certain number and type of racetracks. At a minimum, a premier stock car racing series, like the Cup Series, would need to run 18 races a year to be viable and the optimal number of races would be more like 28.

15. A premier stock car racing series not only needs access to a certain number of tracks but a variety of racetracks. Ideally, this would include at least 2 superspeedway tracks, 6 intermediate tracks, 12 short tracks, and 8 road courses.

16. These tracks would need to be in various geographic regions throughout the country, specifically the West, Midwest, Southeast, Northeast, and Mid-Atlantic regions of the United States.

17. But NASCAR has effectively blocked access to adequate racetracks for any alternative premier stock car racing series.

18. The terms of the 2016 Charter Agreement were severely one-sided in favor of NASCAR and did not give teams a fair chance to earn a profit. But Front Row and the other racing



teams had no place to compete in premier stock car racing other than NASCAR, so we were forced to accept the final deal that was presented to us.

### **NEXT GEN CAR REQUIREMENTS**

19. In 2022, NASCAR exercised its authority under the 2016 Charter Agreement and NASCAR rules to begin requiring all Cup Series teams to use “Next Gen” cars—a common vehicle designed by NASCAR with parts from single-source competitors that NASCAR hand-selects. Front Row and other Cup Series teams were required to pay for these parts and build the Next Gen cars to compete in all Cup Series races.

20. The Next Gen requirements dictated by NASCAR caused Front Row to incur significant new costs, many of which Front Row had no control over. For instance, under the Next Gen requirements, teams are unable to even make minor repairs to parts that become damaged. Instead, NASCAR dictates that a select few parts can be repaired and can only be done so by the vendor that originally supplied the parts. This often results in Front Row having to unnecessarily purchase new parts, creating tens, even hundreds, of thousands of dollars in extra expenses.

21. NASCAR has decreed that Front Row and other racing teams can only use the Next Gen cars in the NASCAR Cup Series. We are forbidden from using any of the parts purchased through the Next Gen program to make a race car for use outside the Cup Series. NASCAR’s regulations are so stringent that Front Row cannot even take a car out of our shop and run it unless it is during one of NASCAR’s sanctioned testing days, practices, qualifying events, or race days.

22. Before the Next Gen car, Front Row did not have to incur certain labor costs as we did not manufacture our chassis. But given the advanced technology and tighter rules with the Next Gen car, Front Row now spends more in labor with higher-skilled mechanics. Because of the Next Gen car, our hardware costs have skyrocketed. Before 2019, Front Row spent around

██████████ on operational costs per team. Now, we spend around ██████████  
██████████ on operational costs per team.

23. The Next Gen car's requirements also adversely impacted an "open" team's ability to compete in the Cup Series. Since the introduction of the Next Gen car in 2022, the most Cup Series races entered by an "open" team in a season is 9. Without guaranteed race participation from a charter, an "open" team is less able to spend the money required to build a Next Gen car. If an "open" car managed to qualify for a Cup Series race, the purse money would not even cover the expenses required to compete.

### **THE CHARTER RENEWAL NEGOTIATIONS**

24. Front Row participates in the Race Team Alliance ("RTA"), a trade group consisting of chartered Cup Series teams. Through the RTA, race teams sought a fair chance to earn a reasonable return (or in my case, any return) on their investments. We hoped that NASCAR would negotiate in good faith to achieve a fairer charter system which would result in not only a better system for race teams but also a better product for the NASCAR fans. We were sorely disappointed.

25. A group nominated by the RTA, known as the "team negotiating committee" ("TNC"), took the lead in negotiations for the renewal of the expiring Charter Agreements with NASCAR. Because NASCAR knew it was the only competitive alternative available to the teams, it did not budge in its negotiations with the TNC on any of the core changes that the teams were seeking.

26. The TNC would meet for several months in discussions on terms for the next Charter Agreement and would provide feedback to the teams that they felt they had made progress with the NASCAR negotiating team. However, these hopes were repeatedly dashed with

subsequent feedback that NASCAR would not agree to what had been discussed with the TNC as the TNC's proposals were repeatedly rejected by Jim France.

27. After repeatedly refusing to accept the TNC's core proposals, NASCAR determined it was done negotiating with the TNC and instead decided to only meet with teams individually as a way to divide and conquer the teams. It was through these individual team one-on-one meetings that some of the race teams were becoming fractured and concerned about the looming prospect of not having a Charter Agreement in place for 2025. I, along with my team general manager, Jerry Freeze, had discussions with the other teams on the issues, including what the TNC had been trying to achieve in the 2025 Charter Agreement. But NASCAR's bullying made it harder for even the more successful teams to stand up against it as there was no other premier stock car racing circuit for the teams to join other than NASCAR.

28. On April 18th, 2024, Jerry Freeze and I met with Jim France, NASCAR's Chief Operating Officer Steve O'Donnell, and NASCAR's Senior Vice President of Strategy and Innovation Scott Prime. The meeting was completely unproductive. Freeze and I reviewed the four key business points the RTA teams had rallied around, including the proposal for permanent charters that would allow the teams to realize the appreciation value of a permanent asset, like other professional sports teams. O'Donnell informed us that, when it came to issuing a permanent or "evergreen" type of charters, NASCAR was unwilling to budge. France did not speak until permanent charters were broached. He then gave a lengthy discussion on why he felt it was unnecessary for NASCAR to implement permanent charters. France further stated that he was not a fan of the entire charter system.

29. On May 28, 2024, NASCAR distributed another draft of the 2025 Charter Agreement. It was not a material improvement over its prior proposals and did not respond in a

meaningful way to any of the changes that needed to be made to make the Charter Agreements fair to the teams. In fact, when viewed as a whole, the terms NASCAR proposed had gotten worse.

30. On or around August 14, 2024, NASCAR presented another draft of the 2025 Charter Agreement that very closely resembled the May 28th version. Rumors began swirling that one last “take-it-or leave-it” offer was going to come from NASCAR and if the teams didn’t accept it, NASCAR was preparing an alternative plan to go back to a full open system similar to what had existed before 2016.

31. On August 31, 2024, another version of the Charter Agreement was sent, but this draft only made minor changes that did not address the proposals that were being sought to make the charters economically fair to the teams. Teams began to crack under NASCAR’s pressure, as there was no alternative to competing at Cup Series events and teams feared the loss of their charters.

32. On September 6, 2024, I and other teams received what NASCAR declared to be the “final” 2025 Charter Agreement at around 5:00 p.m. NASCAR President Steve Phelps told me that I would receive the Agreement through DocuSign around 6:00 p.m. and would have to sign the 100-plus-page Agreement by midnight. Phelps called Freeze to say that the final DocuSign version would be in my email by 6:00 p.m. When Freeze informed Phelps of our concerns with the limited amount of time to make a decision, Phelps said that he would need to know if Front Row would agree to sign or not have renewal of the charters.

33. NASCAR gave in to our plea for more time to consider our charter renewal and conduct additional due diligence. But NASCAR made it clear that negotiations were closed. They would not budge on any of their oppressive terms. We informed them that we could not agree to

the 2025 Charter Agreement as written. Kessler Decl., Ex. 9, Sept. 17, 2024 Front Row Ltr. to NASCAR.

34. On September 18, 2024, Phelps emailed us, acknowledged receipt of our September 17, 2024 letter, and said they would “proceed accordingly.” Kessler Decl., Ex. 10, Sept. 18, 2024 S. Phelps Email to Front Row.

35. I have learned that all but two teams signed the 2025 Charter Agreement rather than risk losing their charters entirely. But many of these teams have indicated, mostly privately but a few publicly, that they were coerced into doing so.

36. Front Row ultimately decided that it would not sign the one-sided 2025 Agreement dictated by NASCAR. Instead, it would seek to assert its antitrust rights, which Front Row would have to risk losing, under the mandatory release provision, if it signed the 2025 Charter Agreement. We have joined together with 23XI in this lawsuit to fight for competition and a better system for our sport.

**THE IRREPARABLE HARM TO FRONT ROW IF IT CANNOT COMPETE  
WITH A CHARTER**

37. If preliminary relief is not granted, Front Row will not be able to compete in 2025 with a charter without running the risk of releasing its antitrust claims. This means that the only way that Front Row would be able to compete without taking the risk of losing its antitrust rights would be as an “open” team without a charter. But Front Row would suffer significant irreparable harm if its teams were forced to compete as “open” cars.

38. Under the charter system, each chartered car has a guaranteed spot in every Cup Series race for the term of the Charter Agreement. There are currently 36 charters. Each Cup Series race currently allows up to 40 cars to race, so there are four “open” car slots. Teams without a charter can compete as an “open” car and attempt to qualify for one of these four slots in each



race. But competing only for open spots would cause irreparable injury to Front Row for several reasons.

39. An “open” car must successfully qualify for every race in which it seeks to compete. One of the races that virtually always has more than four “open” teams seeking to qualify for the four open slots in the 40-car field is the Daytona 500—the most important, high-profile, and lucrative race on the Cup Series calendar. The Daytona 500 purse accounts for 15% of the total purse for the year, despite being just one of 36 races on the Cup Series points race schedule. Not qualifying for this single race would cause huge and irreparable damage to our brand and goodwill with fans and sponsors.

40. Beyond the risk of being unable to compete in races, the revenue streams available to “open” teams are much more limited, as they do not participate in the distribution of pool money like chartered teams. In fact, revenue is an even greater concern for “open” teams than not qualifying for races. In the 2016 Charter Agreement, there originally were fixed payments to the “open” teams when they competed, but those were eliminated and those funds were reallocated to chartered teams beginning in 2021.

41. Front Row would run a serious risk of losing sponsorships for their cars and prestige among fans if we are forced to run our cars as “open” teams. Since the introduction of the Next Gen car in 2022, no “open” team has attained any significant sponsorship. The last “open” team to run a full season was JTG Daugherty Racing (“JTG”) with their “#37” team in 2021. JTG had previously leased a charter, lost that lease for the 2021 season, but had significant sponsorship already sold with The Kroger Company for that season. JTG is the only example of a fully sponsored “open” team since the introduction of the charter system.

42. Attaining sponsors would be even more difficult if we did not qualify for one or more races. Our sponsors would be wary of the associated risks of sponsoring a car that is not even guaranteed to race. It would be very difficult for us to educate sponsors on what it means to be an “open” team. Sponsors would want to steer clear of investing in a team that may not even qualify for the Daytona 500, NASCAR’s biggest race of the year. Due to the size and visibility of the Daytona 500, more than 40 cars routinely try to qualify for the race, making not qualifying a real possibility. Further, in the event you do not qualify for an event, the usual “give back” to a sponsor is to run another race with them as a sponsor at no charge or give them all or some portion of their sponsorship back. There is next to no chance that competing as an “open” team will put a team in a more competitive position to sell sponsorship. And chartered teams would be sure to use a team’s “open” status as leverage against them if they were negotiating for the same sponsor.

43. Without a charter, Front Row would be almost solely dependent on sponsor funding—which would be very difficult to attain after such a loss in prestige and goodwill.

44. Running as an “open” team also creates a major risk of Front Row losing our elite drivers, skilled crew chiefs, engineers, and pit crew members—and being unable to replace them with adequate alternatives. [REDACTED]

45. And racing without a charter would create the risk of irreparable harm from lost competitive opportunities. If we did not qualify for every Cup Series race, we may not have enough points to qualify for the playoffs. And any competitive opportunity lost would cause us to lose irreparable goodwill with fans and sponsors.

46. Crucially, racing without a charter could threaten our very existence over time. Based on our projections, Front Row estimates that we will lose nearly \$ [REDACTED] of revenue if we operate our “34” and “38” cars as “open” teams, alongside our still-pending third chartered car. As an “open” team, you are only competing for the race purse at an event. Even attempting to enter a race could cost us expenses we could not earn back. In the event you do not qualify for a race, you are still required to pay entry fees, the team licenses, and the full price of your engine lease. You have purchased tires that you can’t reuse anywhere else and you incurred the same travel expenses as if you had raced the event. And if you do not qualify, you do not receive any race revenue.

47. Because of our love for the sport and our determination to maintain the race team we have built, we are determined to race next year even if we have to do so on an “open” basis, but at some point, the losses may become so severe that we simply cannot continue—causing irreparable harm to our business, our employees, and the communities and fans we are associated with.

48. We also run the risk that NASCAR could take action under the 2025 Charter Agreement to eliminate the opportunity entirely for “open” cars to compete. [REDACTED]. [REDACTED]. Kessler Decl., Ex. 2, 2025 Charter Agreement § 3.2. The 2025 Charter Agreement also allows NASCAR to grant charters directly to the France family, potentially allowing NASCAR to fill 40 charter spots quickly. *Id.* § 3.1(d). There are also teams currently competing in the Xfinity Series that are friendly with NASCAR’s leadership. NASCAR could grant Cup Series charters to these teams to fill the 40 spots and eliminate all “open” competition opportunities.

## THERE IS NO SUBSTITUTION FOR THE CUP SERIES

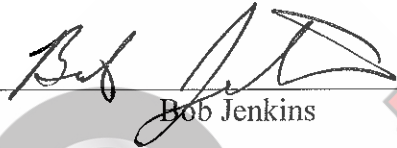
49. As the only premier stock car racing series, there is no substitute for the NASCAR Cup Series. If Front Row cannot compete in the NASCAR Cup Series, it cannot compete—period.

50. While NASCAR runs the Xfinity Series, it is not comparable to the Cup Series. For one, the cars in the Xfinity Series are different from the cars in the Cup Series. The Xfinity Series does not use the Next Gen car. Front Row would have to start from scratch if we wanted to run a car in the Xfinity Series. More importantly, the Xfinity Series is NASCAR's "minor leagues." There is significantly less money available in the Xfinity Series, whether it be through race purses or sponsorships.

51. Other racing circuits, like Formula 1 and the IndyCar Series, are not stock car racing circuits. Simply put, Front Row is not built to compete in either competition. Those competitions require completely different cars, different skill sets from the drivers, and different pit crews. Whereas the premier stock car racing offered in the Cup Series is more about mechanical knowledge, Formula 1 and IndyCar are more engineering driven. They are different sports. There is simply no other circuit in which Front Row can compete as a premier stock car racing team other than with the NASCAR monopoly.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of October 2024 in Morristown, Tennessee.

By:   
Bob Jenkins





**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

2311 RACING LLC d/b/a 23XI RACING,  
and FRONT ROW MOTORSPORTS, INC.,

Plaintiffs,

v.

NATIONAL ASSOCIATION FOR STOCK  
CAR AUTO RACING, LLC and  
JAMES FRANCE,

Defendants.

Civil Action No. 3:24-cv-886

**DECLARATION OF STEVE LAULETTA IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Steve Lauletta, hereby declare pursuant to 28 U.S.C. § 1746:

1. I am President of 2311 Racing LLC d/b/a 23XI Racing ("23XI"). In my role at 23XI, I am responsible for the day-to-day business operations of the company.
2. On September 6, 2024, NASCAR sent 23XI drafts of the 2025 Charter Agreement for each of our two chartered cars and imposed a deadline of "end of day" for 23XI to execute and return the contracts.
3. Later that day, around 5:00 p.m., I received a call from NASCAR President, Steve Phelps. Phelps informed me that NASCAR intended the "end of day" deadline to mean that they expected signed Charter Agreements returned to them before midnight on September 7, 2024.
4. I asked Steve about the sudden imposition of this immediate deadline. His response was basically, today is the day. I then asked what happens after midnight. Steve informed me that, if NASCAR did not have enough teams return signed Charter Agreements by the deadline, NASCAR would eliminate the charter system.



I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of October 2024 in Charlotte, North Carolina.

By: \_\_\_\_\_



Steve Lauletta



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

2311 RACING LLC d/b/a 23XI RACING,  
and FRONT ROW MOTORSPORTS, INC.,

Plaintiffs,

v.

NATIONAL ASSOCIATION FOR STOCK  
CAR AUTO RACING, LLC and  
JAMES FRANCE,

Defendants.

Civil Action No. 3:24-cv-886

PUBLIC REDACTED VERSION

**DECLARATION OF CURTIS POLK IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Curtis Polk, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the co-owner of 2311 Racing LLC d/b/a 23XI Racing ("23XI"), along with Michael Jordan and Denny Hamlin. Due to the anticompetitive actions and monopoly position of NASCAR and Jim France, 23XI is being confronted with the choice of either losing its charters to compete in the NASCAR Cup Series or risk losing its antitrust rights. I urge the Court to grant our request for a preliminary injunction, so that we can continue to compete under the charter system while also pursuing our claims against NASCAR.

2. 23XI is primarily owned by two limited liability companies, which the three of us control: Airspeed 23 LLC, a Delaware limited liability company registered to transact business in North Carolina; and Won One Racing, LLC, a limited liability company organized under the laws of North Carolina.

3. As co-owner of 23XI, I help oversee the day-to-day operations of the entire business.

## 23XI's ENTRY INTO CUP SERIES RACING

4. Michael Jordan, Denny Hamlin, and I co-founded 23XI in 2020 with the sole purpose of competing in the NASCAR Cup Series, the premier level of stock car racing in the United States. Because NASCAR operates the only top-tier stock car racing circuit, it is the only place where teams like 23XI can compete.

5. I have had a longtime business relationship with Michael Jordan, spanning almost 35 years. Our joint interest in owning a NASCAR Cup Series team arose in late 2020. Bubba Wallace, the only current Black full-time NASCAR Cup Series driver, was a free agent following the end of the 2020 Cup Series season. During the 2020 season, Wallace endured a heinous racist incident where a noose had been placed in his garage stall at Talladega Superspeedway. Through this harrowing incident, Michael Jordan and I were impressed by Wallace's courage and tenacity in handling the incident while the media spotlight focused on him in the months that followed.

6. At the end of the 2020 season, Denny Hamlin wanted to create a new race team for Bubba Wallace to drive. Hamlin, himself a leading Cup Series driver, could not be the majority owner of a Cup Series team because of NASCAR rules forbidding drivers from majority ownership of any Cup Series team. So, Hamlin approached Jordan and me about joining forces with him to start a new Cup Series ownership group, with the specific purpose of creating a Cup Series team for Bubba Wallace. Hamlin told us that he felt Wallace was one of NASCAR's most talented young drivers but needed more support and better equipment in order to have more success.

7. I conducted some due diligence on team ownership in the Cup Series. Through that diligence, I learned that NASCAR's monopoly position gave it the power to dictate the economic terms under which stock car racing teams could compete, and that the terms that had been set by

NASCAR in its 2016 Charter Agreements were very one-sided, which forces teams to be very dependent on revenue streams from sponsors.

8. But Michael Jordan and I were motivated to join the sport and stand up in support of Bubba Wallace, so we agreed to join forces with Hamlin to start 23XI despite our serious concerns about the unfair economic structure for NASCAR teams. We knew that the current NASCAR charters would expire at the end of 2024, and our naive hope was that NASCAR would negotiate in good faith to agree upon a fairer economic division with the racing teams at that time.

9. In or around October 2020, 23XI acquired a NASCAR charter for approximately [REDACTED] from a racing team exiting the Cup Series. 23XI then signed Bubba Wallace to a contract to begin racing under 23XI's banner in the 2021 Cup Series in the "23" car. Between Jordan, Hamlin, and me, we invested an additional [REDACTED] (on top of the purchase price for the charter) into 23XI in order to get the team up and running for its first Cup Series season.

10. In the Fall of 2021, we decided to expand our 23XI team, and we purchased a second 2016 Charter for [REDACTED] from another race team that was exiting the Cup Series.

11. Operating two NASCAR charters was a major financial commitment which I shared with Jordan and Hamlin. By the end of 2021, we had collectively invested approximately [REDACTED] into 23XI.

12. This second chartered car began racing in the 2022 Cup Series as the "45" car. The car is currently driven by Tyler Reddick. During the ongoing 2024 Cup Series season, Reddick recently piloted the 45 car to the regular series points championship and is competing in the Cup Series Playoffs.



13. When 23XI began running two Cup Series cars, Michael Jordan and Denny Hamlin invested [REDACTED] in building a state-of-the-art facility to house 23XI's Next Gen cars. The facility, known as "Airspeed," broke ground in February 2023 and opened in January 2024.

14. 23XI entered into an agreement to acquire a third NASCAR charter, on August 7, 2024, for [REDACTED] from Stewart-Haas Racing, LLC. At that time, we still had hopes (albeit fading ones) that NASCAR would ultimately agree to fairer terms for the teams that would give them a reasonable chance to earn a profit on their investments. That transaction is currently in escrow and requires approval from NASCAR. In order to begin running this third car, we will have to invest approximately \$2.5 million in parts and equipment.

15. For the 2024 season, 23XI expects to spend over [REDACTED] on car parts, [REDACTED] on driver compensation, [REDACTED] in compensation to other staff, and [REDACTED] in other competition-related expenses. To run our team with two Cup Series cars, 23XI has approximately 100 full-time employees. In order to run a third Cup Series team, we will need to add between 27 and 32 full-time employees. We are proudly headquartered in North Carolina, Michael Jordan's home state.

#### **THE 2016 CHARTER SYSTEM**

16. In 2016, NASCAR agreed to a system for assuring teams spots in each Cup Series race called the charter system. Under this system, NASCAR has granted 36 charters, and each charter covers one car. Each owner is allowed to have a maximum of four chartered cars and must sign a separate Charter Agreement for each car they run. The Charter Agreement guarantees a car entrance into all 36 Cup Series point races and four exhibition races, as well as a share of certain pooled revenue, which is almost entirely derived from a small share of NASCAR's broadcast agreement revenues. All of the 2016 Charter Agreements, including both of 23XI's existing

charters and the one it has agreed to purchase from Stewart-Haas Racing, expire on December 31, 2024.

### **NEXT GEN CAR REQUIREMENTS**

17. In 2022, NASCAR exercised its authority under the 2016 Charter Agreement and NASCAR rules to begin requiring all Cup Series teams to use “Next Gen” cars—a common vehicle designed by NASCAR with parts from single-source competitors that NASCAR hand-selects. 23XI and other Cup Series teams were required to pay for these parts and build the Next Gen cars to compete in all Cup Series races, incurring approximately \$3 million per year just to purchase the required parts for its cars for an entire Cup Series season.

18. The Next Gen requirements dictated by NASCAR caused 23XI and other racing teams to incur significant costs that they could not control. It also dictated how the teams could operate these cars. For instance, under the Next Gen requirements, teams are unable to make unilateral decisions as to whether they can reuse parts or repair parts that become damaged. Instead, NASCAR inspects all parts and often tells teams they can no longer use parts and have to throw them away.

19. Significantly, NASCAR has decreed that 23XI and other racing teams can only use the Next Gen cars in the NASCAR Cup Series. We are forbidden from using any of the parts purchased through the Next Gen program to make a race car for use outside of the Cup Series. NASCAR’s regulations are so stringent that 23XI cannot even take a Next Gen car out of our shop and run it unless it is during one of NASCAR’s sanctioned testing days, practices, qualifying events, or race days. This requires us to travel to NASCAR-sanctioned testing days and practices and incur substantial costs to do so.

## THE CHARTER RENEWAL NEGOTIATIONS

20. 23XI is a member of the Race Team Alliance (“RTA”), a trade group of chartered Cup Series teams. Beginning in February 2022, I was part of a group nominated by RTA, known as the “team negotiating committee” (“TNC”), that took the lead in negotiations for the renewal of the expiring Charter Agreements with NASCAR. It was our hope that NASCAR would participate in good faith negotiation with the TNC so that a fairer system could be agreed to in which the teams would have a reasonable chance to earn a profit on their investments in stock car racing and have a greater role in controlling their operations. After all, fans of stock car racing come out to see and root for the racing teams and their drivers, not the NASCAR logo.

21. From the outset of negotiations in 2022, NASCAR refused to negotiate in good faith. Instead, it wielded its monopoly power and made it clear that it would be dictating the terms of the 2025 Charter Agreement.

22. The first meeting between NASCAR and the TNC took place on March 23, 2022, and about 13 additional meetings between NASCAR and the TNC took place between March 2022 and January 2024. While the TNC made a number of presentations to NASCAR explaining why the terms of the 2025 Charter Agreement needed to be significantly changed to provide a fairer economic system for the teams, NASCAR adamantly refused to consider all but small changes in response to the TNC’s proposals. Indeed, NASCAR used the negotiations to demand changes in NASCAR’s favor, including the ability to control and profit from team intellectual property rights, and an expanded covenant not to compete (even though the teams are independent contractors).

23. In November 2022, through the RTA, I tried to create support for a potential exhibition race somewhere outside of the United States. The 2016 Charter Agreement’s non-compete provision does not apply outside the country. I believed that a successful exhibition stock

car race outside of NASCAR's circuit would put competitive pressure on NASCAR to offer fairer charter terms since it would demonstrate the willingness of the teams to consider trying to compete outside of NASCAR if a fair charter system could not be agreed upon. Unfortunately, most chartered teams were too afraid of angering NASCAR, and also had concerns about their ability to construct new race cars to compete in such an exhibition, as NASCAR rules prohibited the teams from using their Next Gen cars outside of the Cup Series. The plans for conducting an overseas stock car race outside of NASCAR's control thus never came to fruition.

24. In January 2024, NASCAR and the TNC met for the final two times—on January 16 and January 25. NASCAR continued its refusal to budge on its proposal terms. On February 18, the RTA offered to meet again, but NASCAR declined. From that point forward, NASCAR declared it would only negotiate with the teams one-on-one, in a transparent plan to divide and conquer.

25. On May 10, 2024, 23XI personnel (including me) had a meeting with Jim France and other NASCAR senior leadership to negotiate on behalf of our team. In that meeting, I presented the key business points that 23XI wanted in a charter renewal. France and NASCAR leadership informed us that they still had other teams to meet with, but would present us with a new draft of the 2025 Charter Agreement after those meetings.

26. On May 29, 2024, NASCAR sent 23XI a revised draft of the 2025 Charter Agreement. This draft did not address any of the concerns or core proposals that 23XI presented in the May 10 meeting. Instead, the only changes to business terms addressed minuscule issues that other teams apparently voiced in their meetings with NASCAR.

27. 23XI rejected NASCAR's May 29 draft. On August 14, 2024, NASCAR sent another draft to 23XI. In the intervening time between the May 29 draft and the August 14 draft, 23XI had no conversations with NASCAR about the renewal terms.

28. On August 30, 2024, NASCAR provided yet another draft proposal to 23XI, again with minimal, non-material changes, apparently based on NASCAR conversations with some of the other teams.

29. On September 6, 2024, NASCAR sent 23XI its final, take-it-or-leave-it offer with the demand that 23XI agreed to the terms by the end of the day. NASCAR also told 23XI that if we did not sign by the end of the day, we faced the prospect of not having any charter at all. There were, once again, virtually no material changes from the core terms that NASCAR had been insisting upon throughout the negotiations. Subsequently, I learned that each of the teams had received a similar take-it-or-leave-it offer, and that all but two of the teams—23XI and Front Row Motorsports—capitulated to NASCAR's threats and signed the 2025 Charter Agreement. I learned that Steve Phelps, NASCAR's President, called Steve Lauletta, 23XI's President, and stated that if not enough teams signed the agreement, NASCAR would eliminate the charter system altogether.

30. 23XI would not give in to NASCAR's take-it-or-leave-it demand to sign the 2025 Charter Agreement. We instead sent a letter response to NASCAR stating our intention not to sign and identifying key issues that had not been adequately addressed. Kessler Decl., Ex. 4, Sept. 6, 2024 23XI Ltr. to NASCAR. The parties exchanged letters, with NASCAR extending its self-imposed deadline for 23XI to accept the charter until September 20 but making clear that it would not consider any material changes to the agreement. *Id.*, Ex. 5, Sept. 11, 2024 NASCAR Ltr. to 23XI; *id.*, Ex. 6, Sept. 13, 2024 23XI Ltr. to NASCAR; *id.*, Ex. 7, Sept. 18, 2024 NASCAR Ltr. to 23XI.



31. Instead, 23XI refused to sign and decided that it would assert its antitrust rights to end NASCAR's anticompetitive monopolization of premier stock car racing in the United States. While 23XI wants to keep racing as a chartered team while it asserts its antitrust rights—as its employees and drivers depend upon the team for their livelihoods—it could not sign the 2025 Charter Agreement without risking the loss of its antitrust rights due to the release term contained in Section 10.3 of the 2025 Charter Agreement.

32. 23XI has thus been put in an untenable position by NASCAR's anticompetitive conduct. Either 23XI has to give up the ability to compete under the charter system with its three cars in 2025, or it has to risk losing its antitrust rights to challenge NASCAR's anticompetitive behavior under the release provision of the 2025 Charter Agreement.

#### **THE IRREPARABLE HARM TO 23XI IF IT CANNOT COMPETE WITH A CHARTER**

33. If preliminary relief is not granted, 23XI will not be able to compete in 2025 with a charter without running the risk of releasing its antitrust claims. This means that the only way that 23XI would be able to compete without taking the risk of losing its antitrust rights would be as an “open” team without a charter. But 23XI would suffer significant irreparable harm if its teams were forced to compete as “open” teams.

34. Under the charter system, each chartered car has a guaranteed spot in every Cup Series race for the term of the Charter Agreement. There are currently 36 charters. Each Cup Series race currently allows up to 40 cars to race, so there are four “open” car slots. Teams without a charter can compete as an “open” car and attempt to qualify for one of these four slots in each race. But competing only for “open” spots would cause irreparable injury to 23XI for a variety of reasons.

35. First, 23XI would run the risk of losing goodwill and critical relationships with its key sponsors. Under our sponsorship agreements, each sponsored Cup Series car is required to run in each Cup Series race in order for the team to earn the sponsorship payments. Failure to attempt to qualify or qualify for a race could result in a reduction in the amount of sponsorship dollars received. But even more significantly, if a sponsored race car does not compete in important Cup Series races, we will run the risk of losing our goodwill and relationship with these sponsors entirely.

36. [REDACTED]

37. Third, racing without a charter would create a risk of 23XI losing key employees or potential future employees, who may choose to leave 23XI or choose not to accept employment with 23XI because of 23XI's status as an unchartered team. We have already had someone decline an offer of employment because of the risk created by us not having a charter.

38. [REDACTED]

39. Fifth, racing without a charter would create the risk of irreparable harm from lost competitive opportunities. If we did not qualify for each Cup Series race, we may not have enough

points to qualify for the playoffs. And any competitive opportunity lost would cause us to lose irreparable goodwill with fans and sponsors.

40. One of the races that virtually always has more than four “open” teams seeking to qualify for the four open slots in the 40-car field is the Daytona 500—the most important, high-profile, and lucrative race on the Cup Series calendar. The Daytona 500 purse accounts for 15% of the total purse for the year, despite being just one of 36 races on the Cup Series points race schedule. Not qualifying for this single race would cause huge and irreparable damage to our brand and goodwill with fans and sponsors.

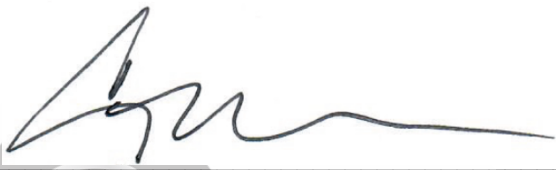
41. Finally, racing without a charter could threaten our very existence over time. Based on our projections, 23XI estimates that it will lose [REDACTED] of revenue if we operate our “23” and “45” cars as “open” teams. While we are determined to race next year even if we have to do so on an “open” basis, at some point, the losses may become so severe that we simply cannot continue—causing irreparable harm to our business, our employees, and the communities and fans we are associated with.

42. We also run the risk that NASCAR could take action under the 2025 Charter Agreement to eliminate the opportunity entirely for “open” cars to compete. [REDACTED]

[REDACTED] Kessler Decl., Ex. 2, 2025 Charter Agreement § 3.2. The 2025 Charter Agreement also allows NASCAR to grant charters directly to the France family, potentially allowing NASCAR to fill 40 charter spots quickly. *Id.* § 3.1(d). There are also teams currently competing in the Xfinity Series that are friendly with NASCAR’s leadership. NASCAR could grant Cup Series charters to these teams in order to fill the 40 spots and eliminate all open competition opportunities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of October 2024 in Potomac, Maryland.

By:   
Curtis Polk



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

2311 RACING LLC d/b/a 23XI RACING, and  
FRONT ROW MOTORSPORTS, INC.,

Plaintiffs,

v.

NATIONAL ASSOCIATION FOR STOCK  
CAR AUTO RACING, LLC and JAMES  
FRANCE

Defendants.

Civil Action No. 3:24-cv-886-FDW-SCR

**DECLARATION OF JEFFREY L. KESSLER  
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Jeffrey L. Kessler, declare as follows:

1. I am a partner at Winston & Strawn LLP, counsel for Plaintiffs 2311 Racing LLC d/b/a 23XI Racing ("23XI") and Front Row Motorsports, Inc. ("Front Row") in this matter. I make this declaration based on my personal knowledge and in support of Plaintiffs' Motion for Preliminary Injunction.

2. I am personally familiar with the facts set forth in this declaration. If called as a witness, I could and would competently testify to the matters stated herein.

3. Attached as Exhibit 1 is a true and correct copy of the NASCAR Cup Series Charter Member Agreement between NASCAR Event Management, Inc. and Front Row Motorsports, Inc., dated February 8, 2016 (the "2016 Charter Agreement").

4. Attached as Exhibit 2 is a true and correct copy of the NASCAR Cup Series Charter Member Agreement offered to 2311 Racing LLC d/b/a 23XI Racing on September 6, 2024 (the "2025 Charter Agreement").



5. Attached as Exhibit 3 is a true and correct copy of excerpts from the NASCAR Rule Book as of October 2, 2024. The full NASCAR Rule Book is 1,279 pages and is available upon request.

6. Attached as Exhibit 4 is a true and correct copy of a letter from Michael Jordan and Denny Hamlin, 23XI owners, to Steve Phelps, NASCAR president, dated September 6, 2024.

7. Attached as Exhibit 5 is a true and correct copy of a letter from Steve Phelps, NASCAR president, to Michael Jordan and Denny Hamlin, 23XI owners, dated September 11, 2024.

8. Attached as Exhibit 6 is a true and correct copy of a letter from Michael Jordan and Denny Hamlin, 23XI owners, to Steve Phelps, NASCAR president, dated September 13, 2024.

9. Attached as Exhibit 7 is a true and correct copy of a letter from Steve Phelps, NASCAR president, to Michael Jordan and Denny Hamlin, 23XI owners, dated September 18, 2024.

10. Attached as Exhibit 8 is a true and correct copy of the Driving and Personal Services Agreement between 2311 Racing LLC d/b/a 23XI Racing, Tyler Reddick Racing, Inc., and Tyler George Reddick, dated July 8, 2022 (the "23XI-Reddick Driver Agreement").

11. Attached as Exhibit 9 is a true and correct copy of a letter from Bob Jenkins, Front Row owner, to Steve Phelps, NASCAR president, dated September 17, 2024.

12. Attached as Exhibit 10 is a true and correct copy of an email from Steve Phelps, NASCAR president, to Bob Jenkins, Front Row owner, dated September 18, 2024.

13. Attached as Exhibit 11 is a true and correct copy of the draft Driver Agreement between Front Row Motorsports, Inc. and Gragson Racing LLC, which has an effective date of dated January 1, 2025 (the "N. Gragson-Front Row Driver Agreement").

I declare under penalty of perjury that the foregoing is true and correct.

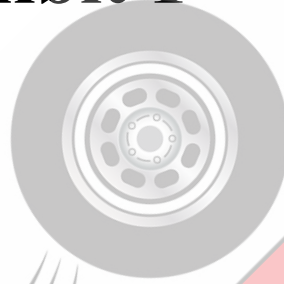
Dated: October 9, 2024

*/s/ Jeffrey L. Kessler*

Jeffrey L. Kessler



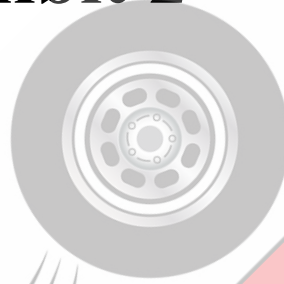
# Exhibit 1



**FILED UNDER SEAL**

**Pursuant to the Text-Only Order granting Dkt. No. 10, Plaintiffs' Motion to Seal, entered on 10/4/2024 at 11:23 AM EDT and filed on 10/4/2024**

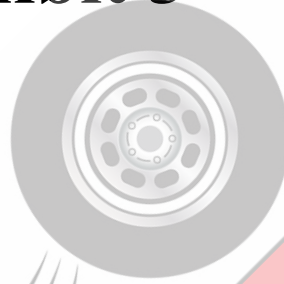
# Exhibit 2



**FILED UNDER SEAL**

**Pursuant to the Text-Only Order granting Dkt. No. 10, Plaintiffs' Motion to Seal, entered on 10/4/2024 at 11:23 AM EDT and filed on 10/4/2024**

# Exhibit 3



**FILED UNDER SEAL**

**Pursuant to the Text-Only Order granting Dkt. No. 10, Plaintiffs' Motion to Seal, entered on 10/4/2024 at 11:23 AM EDT and filed on 10/4/2024**



# Exhibit 4



Mr. Steve Phelps  
President  
NASCAR

Steve,

We are in receipt of your Charter agreements for 23XI dated August 30, 2024. In the accompanying email you put a deadline of Friday, September 6 for the signing of these agreements. You also mentioned in the email our continuing engagement in the discussions regarding the charter agreements. Maybe this occurred with other Charter holders, but respectfully not with us.

We want to address the concerns we have regarding the Charter agreements presented to us. On August 30th, 23XI received what appears to be two standardized contract forms for the 23 and 45 charters, fully prepared and offered by NASCAR. NASCAR, with superior bargaining power and undue influence over all charters, has not provided 23XI with a fair opportunity to negotiate. Furthermore, NASCAR is applying economic duress to 23XI by creating a “damned-if-we-do, damned-if-we-don’t” situation. First, a decision to not sign these new Charters would destroy the existing value of the Charters we purchased, for millions of dollars, and of which NASCAR approved. Conversely, if we sign the tendered Charters as is, we believe we will be signing an inferior contract to the existing Charters thereby depressing the enterprise value to our Charters. These tendered drafts do not adequately protect 23XI’s interests. Consequently, 23XI is faced with a take-it-or-leave-it situation regarding our Charters, despite having invested millions of dollars and thousands of labor hours into them while benefiting the sport of NASCAR since entering the sport.

The existing charters that we operate under provides for “good faith negotiations”. Since February 2024, NASCAR has refused to enter into negotiations with the team negotiating committee (TNC). Since that time NASCAR has made it clear that they wanted to negotiate with each team individually. On May 10th, NASCAR Senior leadership including chairman Jim France, met with 23XI ownership regarding the charter renewal. At that meeting, we discussed the issues that were important to 23XI in order to extend their Charters. Since then we have received two drafts from NASCAR that have not taken into account any of the issues we raised in May. Since then we have not been allowed to negotiate directly with Mr. France or his designee. At the same time, it is our understanding that Mr. France, or his designee, have met with many other teams, multiple times, regarding the charter negotiations and have made some concessions that were requested in those meetings.

As a result, 23XI does not feel it has been afforded an opportunity to negotiate fairly a new charter agreement with NASCAR and it will not sign the current draft by tomorrow.

In the spirit of trying to get a deal completed and move forward in a positive direction to help grow the sport, we would need the following changes (in addition to language and ambiguity clean up) in order to quickly sign a charter.

1. We only want a 7 year agreement tied to the new media rights contracts with the pool payouts presented in the most recent draft.
2. We only want good faith negotiations language for a potential renewal after year 7.
3. We will not agree to any noncompete at the end of the 7 years if we don't renew our charters.
4. We need to have reasonable protection rights regarding unilateral decisions by NASCAR that increase fees and costs to compete in the Cup series by a material dollar amount.
5. We will accept the Driver Incentive Plan as proposed, at the dollar level proposed, and share in its cost off the top of the media rights payouts. We will not share in the cost of any increase to the plan over the 7 years beyond some reasonable annual growth rate (CPI or annual growth in media rights deal).
6. We will not agree to NASCAR paying Drivers any other direct payments during the term.
7. We will not provide Team IP rights to NASCAR unless there is a negotiation that results in a meaningful share of revenue generated by those IP rights.
8. To the extent NASCAR wants to utilize our team IP to promote the sport, we will use best efforts to help make those rights available.

Given that NASCAR failed to engage in good faith negotiations with 23XI, participated in and demonstrated unfair bargaining practices and offered unreasonable and inequitable terms, we cannot be intimidated into signing the current draft especially by tonight. We hope that you will address our concerns and enter into fair and reasonable negotiations that incorporate the above proposed terms into the charter. Our goal is that you will respectfully consider our requests

and incorporate them in a new draft that we can review with our attorneys. It is our sincere desire to continue to be a charter holder and race in the Cup series for the next 7 seasons.

We reserve all of our rights under the existing charter that we are operating under until December 31, 2024.

Sincerely,



Michael Jordan



Denny Hamlin



# Exhibit 5





September 11, 2024

Michael Jordan and Denny Hamlin

23XI Owners

Michael and Denny,

We have reviewed your September 6<sup>th</sup> letter, and we would like to respond to certain points asserted in your correspondence.

You suggest that NASCAR “approved” your investment in the sport. The decision to buy a NASCAR team was a unilateral choice made by you as experienced businessmen. NASCAR was not involved in the negotiations of the terms, conditions, price or ultimate decision to acquire a race team. When 23XI purchased Charter Agreements in 2020 and 2021, NASCAR did not “approve” but only consented to the transfer via the Joinder Agreement.

You also suggest that NASCAR was “not negotiating in good faith” by virtue of the terms NASCAR offered in the renewal Charter Agreement. The Joinder Agreement referenced above requires each assignee to assume “all obligations, liabilities, duties, and responsibilities ...under the Charter Agreement.” Specifically, those obligations included Section 2.3 (Good Faith Renewal Obligations) of the Charter Agreement whereby ... “the final decision whether or not to renew, and the term of any renewal period, shall be subject to mutual agreement of the parties and, for clarity, **either party may propose any changes to this Agreement during such Negotiation Period.**”

One party not agreeing to the other party’s proposed changes is not a failure to negotiate in good faith, it’s the process of negotiation. It appears that, after over two years of protracted negotiations, there has not been a meeting of the minds on certain key points which has led to an impasse. This does not imply that NASCAR has failed to negotiate in good faith, but rather reflects the complexities of the ongoing discussions and the differing positions of the parties involved. However, NASCAR has acted above board throughout this process. Despite your team waiving its exclusive negotiating right after it expired January 29, 2024, NASCAR did not talk or have discussions with third parties around the charters in an effort to close agreements with the current charter owners. Throughout the process NASCAR has made concessions and in return negotiated for things that NASCAR felt were important.

Lastly you suggest that 23XI was not afforded an opportunity to negotiate fairly with NASCAR. NASCAR and the Teams have been negotiating for over two years regarding the terms of this Charter Agreement and we began those conversations earlier than was set forth in the Charter Agreement in an effort to find common ground as early as possible. Many of those meetings directly involved your representative. We received individual comments from many teams and also received general comments from Covington, which purported to represent the interests of all the teams. The negotiations have been lengthy and exhaustive (see high level timeline attached, which is not meant to be exhaustive of every conversation but shows the on-going communication between Teams and NASCAR). We firmly believe that we have come to a document that is fair and balanced based on the interest of all the stakeholders in the industry. The Charter Agreement has been finalized and the negotiations are concluded.

Some of the items in your letter seem to be issues in need of clarification versus being in dispute. We are happy to meet with you to provide clarification. Please let us know by Friday, September 13 if you're interested in meeting.

Good luck on the remainder of your racing season.

Sincerely,



Steve Phelps

### **Charter Negotiation Timeline**

- June 2022 – Initial proposal received from Teams
- Oct. 2, 2022 – First Charter negotiation session in Talladega (NASCAR counter)
- Oct. 2022 – Individual Team meetings at race shops
- Nov. 1, 2022 – Team Owner Council meeting
- January 12, 2023 – Charter negotiation session in Daytona (Team counter)
- January 19, 2023 – Team Owner Council meeting
- February 4, 2023 – Charter negotiation session in Los Angeles (NASCAR counter)
- February 23, 2023 – Charter negotiation session in Charlotte (Team counter)
- March 2, 2023 – First meeting of sub-committee to discuss “all in” and opportunities to collaborate
- March 14, 2023 – Second meeting of sub-committee to discuss “all in”
- March 21, 2023 – Tim sends Team business collaboration points
- March 24, 2023 – Charter negotiation session – Virtual (NASCAR counter)
- March 28, 2023 – Follow up meeting with ancillary rights team scheduled. Teams cancelled and didn't want to work further on this without the larger agreement terms in place.
- April 4, 2023 – Team Owner Council meeting (Teams did not attend)
- May 5, 2023 – Letter to NASCAR Board on permanent Charters
- May 9, 2023 – Letter sent to TNC saying that we were scheduling one-on-one team meetings
- May 11, 2023 - e-mail from Dave Alpern asking us to add the Charter conversation to the June 22 TOC – NASCAR replied that individual meetings would not be concluded by then given Jim in Europe for Garage 56
- May 18, 2023 – Letter from Dave Alpern from the TOC regarding driver ambassador program

- May 19, 2023 – e-mail from Jeff Gordon on desire / feasibility of permanent Charters
- May / June 2023 – Individual Team meetings
- June 22, 2023 – Team Owner Council meeting
- July 7, 2023 – Meeting with 23XI and Jim France and Steve Phelps
- July 25, 2023 – Charter negotiation session – Virtual (NASCAR proposed subgroups to make progress)
- August 30, 2023 – Team Owner Council meeting
- September 19, 2023 – Charter negotiation session – Hendrick Barn
- October 9, 2023 – Charter negotiation session – Charlotte Law firm
- October 25, 2023 – Team Owner Council meeting
- December 22, 2023 – Full Charter draft sent to Owners
- December 29, 2023 – First Charter extension letter sent and agreed to
- January 5, 2024 – RTA / Covington letter to NASCAR
- January 9, 2024 – Letter response back to Covington
- January 16, 2024 – Charter negotiation session – JW Marriott Charlotte
- January 25, 2024 – Charter negotiation session – Charlotte
- January 26, 2024 – 2<sup>nd</sup> Extension letter sent and not agreed to
- January 30, 2024 – Team Owner Council meeting
- February 14, 2024 - Letter sent to each individual Team Owner to clarify position and ask for individual meetings
- February 2024 – Limited number of individual Team meetings
- April 8, 2024 – Letter from Jim France to 32XI offering to meet with the team and asking them to respond by April 11, 2024
- April 12, 2024 – Steve Lauletta emailed letter from Denny Hamlin to Steve Phelps. The letter referred NASCAR back to the TNC to negotiate on their behalf.
- Mid-April 2024 to late May 2024 – Individual Team Meetings
- April 26, 2024 – Steve Newmark sends Pool Allocation proposal to Scott Prime done by 3 team CFO and 3 team execs. Directs Prime to Newmark or Jonathan Marshall if there are questions
- April 29, 2024 – Steve Newmark e-mailed Scott Prime to provide additional color on how they reached the Pool Money proposal. 13 of 15 teams voted to endorse.

- May 1, 2024 - Team Owner Council meeting
- May 10, 2024 – Letter from 3-4 teams with their concept/feedback from the meetings (23XI said they did not support and would be sending their own comment with TNC)
- May 10, 2024 – meeting with Jim France, Steve Phelps, Steve O’Donnell, Ben Kennedy and Scott Prime (NASCAR) and 23XI
- May 13, 2024 – In response to NASCAR’s request in individual team meetings to understand the evergreen request, Steve Newmark sends evergreen language on behalf of the TNC (23XI copied)
- May 17, 2024 – Steve Phelps calls all teams to let them know they will not receive the draft on this day.
- May 28, 2024 – Charter draft sent to Teams with a request to return feedback by June 11.
- June 11, 2024: Email from Steve Lauletta to Steve Phelps acknowledging that 23XI was working with the other teams on a redraft of the May 28, 2024 draft from NASCAR and letting us know their outside counsel wouldn’t have the draft ready to send back until EOD Friday, June 14.
- June 11, 2024: email to teams acknowledging the request from some teams to extend the window to provide feedback to Friday, June 14, so provided that extension to all teams
- June 14, 2024 – email from Steve Lauletta (23XI) letting us know the teams met with the attorneys yesterday and they would need more time to get comments.
- July 10, 2024 – NASCAR receives redline of the Charter draft from Teams
- July 17, 2024 - Team Owner Council meeting
- July 24, 2024 – NASCAR Legal/Latham met with Covington for NASCAR questions on the Team’s redline
- August 14, 2024 – Charter Redline and executable agreement sent out to Teams. E-mail stated goal was to have them executed by September 1.
- August 22, 2024 – Amanda Oliver (NASCAR legal) meets with Jonathan Marshall (RTA) regarding questions asked by the Teams
- August 24, 2024 – Joe Gibbs, representing the teams, met with Jim France
- August 29, 2024 – Brian Herbst and Tim Clark meet with Torrey Galida and Steve Newmark to discuss Ancillary Rights. NASCAR offered to meet with any teams who wanted to discuss and were told these were the representatives.
- August 30, 2024 – Charter Agreement draft and executable PDF sent out to all teams

- September 4, 2024 – Email from Jeff Gordon as co-Chair of the Team Owner Counsel to Steve Phelps and Steve O'Donnell which represented that 15 Teams (including 20 Owners) had a call with Covington and asking NASCAR legal to reach out for a call with Covington
- September 4, 2024 – NASCAR legal reaches out to Covington as directed by the Teams
- September 5, 2024 – NASCAR lawyers met with Covington and Jonathan Marshall/RTA at 10 AM ET
- September 5, 2025 – NASCAR provides redline to Covington with the revisions from the call at 3:15 PM
- September 5, 2024 – NASCAR provides Driver Agreement to Covington at 3:23 PM ET
- September 6, 2024 – NASCAR sends revised redline to Covington 4:08 PM ET with revision of the Extension Term to synch to Traditional Broadcast Deal term length.
- September 6, 2024 – NASCAR sent out email notifying 23XI the Charter Agreement was being sent for signature 4:56 PM ET
- September 6, 2024 – NASCAR receives Covington comments 5:36 PM ET
- September 6, 2024 – Letter from 23XI to Steve Phelps 5:45 PM
- September 6, 2024 – Adobe sign sent to 23XI for Charter 4 (5:46 PM ET) and Charter 30 (5:47 PM ET)



# Exhibit 6



September 13, 2024

Steve Phelps

President, NASCAR

One Daytona Blvd.

Daytona Beach, FL 32114

**Re: 23XI Charter Negotiations**

Dear Steve,

We are writing in response to your letter dated September 11, 2024. It is disappointing that NASCAR refuses to negotiate with 23XI Racing in good faith and continues to present us with a take-it-or-leave-it agreement with untenable and coercive deadlines. Your claim that NASCAR has complied with the Charter's "good faith [renewal] negotiations" requirement is simply incorrect.

While we do not disagree that "[o]ne party not agreeing to the other party's proposed changes is not," in and of itself, "a failure to negotiate in good faith," the use of monopoly power to impose non-negotiable terms on those who depend on you for a competitive opportunity is without question bad faith. The reality is that NASCAR has engaged in pretextual conversations with the teams—including 23XI—without any intention to actually negotiate the substantive terms of the Charter renewal. That is not good-faith negotiation. It is an exercise of coercive power.

You did not negotiate in good faith with the Team Negotiation Committee ("TNC"), despite the TNC's efforts to engage you in productive discussions. And then, you refused to negotiate with the TNC at all, stating you would instead meet with the individual teams. But that has also been a charade—you have refused compromise on any of the core, one-sided terms of the Charter renewal that you have deemed non-negotiable throughout the discussions.

NASCAR's only meeting with 23XI to discuss the Charter renewal was on May 10, 2024. During that meeting, 23XI's ownership laid out the key substantive issues that are necessary to address in order to have a fair renewal. Since that meeting, you have been unwilling to entertain changes that address these issues, choosing instead to present 23XI and the other teams with a

12311 Airspeed Drive, Huntersville, NC 28078

take-it-or-leave-it agreement, under the threat that our Charters will not be renewed if we do not submit to your terms.

Your Letter confirms that nothing has changed. Rather than offer to meet to negotiate in good faith, you have doubled down with a unilateral declaration that the Charter “has been finalized and the negotiations are concluded.” While you offer to provide “clarification,” there is nothing to clarify if our choice is either to accept the one-sided Charter renewal that you have offered or give up our Charter rights. While most teams have yielded to your coercive demands, we are not willing to do the same.

We hope that you will reconsider and indicate a willingness to engage in good-faith negotiations to address our concerns—including those raised in our September 6, 2024 letter—with substantive renewal terms. We are ready to meet with you if you are, in fact, amenable to having such a substantive negotiation. If not, we reserve all rights.

Sincerely,



Michael Jordan



Denny Hamlin

Cc: Jeffrey Kessler

12311 Airspeed Drive, Huntersville, NC 28078

# Exhibit 7



Dear Denny and Michael,

In response to your letter of September 13, as you are very aware, we've been negotiating with you for over two years. Our initial negotiations with the TNC lasted over a year, and subsequent negotiations with individual teams occurring over the past months. Along the way, NASCAR has made several concessions and compromises. These areas include but are not limited to:

- NASCAR agreed to meet well in advance of the timeline outlined in the existing Charter Agreement to begin good faith renewal obligations.
- NASCAR agreed to extend the Term length beyond the current media rights agreement.
- NASCAR agreed to Renewal Right Protections including:
  - o NASCAR gave a matching right to protect team owners against sales to a third party after their exclusive negotiation window for a period of time.
  - o NASCAR agreed that, if we do not go backwards on a Traditional Broadcast Deal then a Team would get no worse than the AAV of the Pool Money on Exhibit B.
- NASCAR created a Team Advisory Committee to solicit additional input from the Teams on major strategic decisions for the industry
- NASCAR absorbed all costs of hosting and maintaining the Team website on NASCAR's platform.
- NASCAR lowered the transfer fee from the initial proposal
- NASCAR waived the debt limits, increased the amount of private equity participation, and worked with Teams around the transfer language
- Most of all, NASCAR agreed to increase the financial position of the Teams, making them the largest beneficiary of the Media Revenues to the financial detriment of other industry stakeholders.

We concluded the negotiations with the TNC because the TNC itself refused to move on the following points:

- Instead of the reasonable Term extension proposed by NASCAR, the TNC insisted on perpetuity.
- Despite the significant financial concessions offered by NASCAR, the TNC insisted on (i) 33% of new revenue and (ii) 45% of Media Revenues.
- Increased governance rights

NASCAR also became concerned that all teams were not being accurately apprised of the negotiations by the TNC, stemming from comments that NASCAR received from team owners. We therefore decided it would be more beneficial to meet individually with each Team Owner to advance negotiations. We feel this approach yielded a more balanced document reflecting the concerns and positions of all the Charter Owners.

Regarding the issues raised in your September 6, 2024 letter:

- With regards to point 1 and 2, these items were negotiated up to the last minute by your lawyers, in which we agreed to allow both the floor and the term to sync up with length of the future media rights deal.
- With regard to point 3, the non-compete clause if you do not renew, was removed in the last draft.
- With regard to point 5, the Driver Ambassador growth rate is the same as the media rights growth rate and we acknowledge that any growth beyond that will be NASCAR's responsibility.



- With regards to point 6, although we are surprised by your resistance to have the driver(s) receive Additional Awards, we have offered the option to have your driver(s) waive the right to receive these additional funds.
- With regard to point 7, we will not use Team IP rights outside of the rights traditionally granted for participation in the Event (e.g., live and re-air rights and licensing Works, etc.). If we would like to use them beyond those rights that are traditionally granted for Event participation then we will work through the New Business process.
- With regard to point 8, any Team participating in the Event has to allow NASCAR the Team IP rights to promote the sport, and its consistent with past and current sporting practices. If there are concerns regarding use of Michael Jordan's name and likeness in promotional materials, then we would be happy to discuss those uses.

We cannot agree to point 4. NASCAR has established the Team Advisory Committee so that Teams can provide input to NASCAR regarding costs and other changes; however, NASCAR needs to have the ability to govern the sport.

It appears after 2+ years of negotiations with Teams, both collectively and individually, compromise and concession on both sides up until the last minute, we firmly believe that we have come up with a document that is fair and equitable to the industry. Of the eight points raised in your letter, it appears that 7 of them may have been resolved and we appreciate your acknowledgement that failing to agree on all points is not a failure to negotiate in good faith.

In your September 13 letter, you suggest that NASCAR somehow has "monopoly power" and that 23XI and other Teams "depend on [NASCAR] for a competitive opportunity" and have been presented with a "take-it-or-leave-it offer." We feel – and our attorneys have confirmed - that this contention is misplaced— and similar types of claims have already been rejected by courts.

Michael and Denny, we sincerely hope that you renew your Charter Agreement as we feel that is a valuable asset for your Team(s). NASCAR needs to finalize the Charter and Open team ownership structure ratio for planning purposes for both NASCAR and other industry stakeholders for the 2025 season as this information is required for NASCAR to prepare its documentation (e.g., entry blanks, payout schedules, promotional programming by the industry, etc.). As you may have heard, the other Charter Teams are already in the process of planning with NASCAR regarding how we move forward and grow together in 2025. Therefore, we will need to have an executed Charter Agreement(s) no later than close of business (5 PM ET) on Friday, September 20, 2024. Obviously if you choose not to execute your Charter Agreement(s) then you're welcome to race in the 2025 NASCAR Cup Series as an open team and we will be happy to forward you that documentation. Whether you renew or not, NASCAR looks forward to working with you in 2025 and beyond.

Look forward to hearing from you or if you have any questions, let us know.

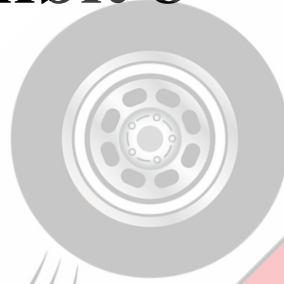
Sincerely,



Steve Phelps

Cc: Chris Yates, Esq., Latham and Watkins  
Frank Saviano, Esq., Latham and Watkins

# Exhibit 8



**FILED UNDER SEAL**

**Pursuant to the Text-Only Order granting Dkt. No. 10, Plaintiffs' Motion to Seal, entered on 10/4/2024 at 11:23 AM EDT and filed on 10/4/2024**

# Exhibit 9





September 17, 2024

Steve –

Thank you for the additional time for our due diligence and to consider the renewal of the Charter for the next term. While we continue to have a strong desire to continue to operate as a NASCAR Chartered team in the next term, we cannot agree to the current Agreement as written.

Our issues with the current Agreement are similar in nature to the most part with those brought up by 23XI Racing. If we sign the Agreement which we feel is a notable downgrade to the current Charter Agreement, we believe we are likely decreasing the value of our Charters for not just the new term, but for the following term as well. The terms proposed are unacceptable and oppressive and we simply cannot accept them.

We would welcome the opportunity to continue to negotiate but you have not indicated any willingness to discuss substantive changes. Given that minimal change came from the previous negotiations by the TNC since the original Charter draft arrived in late December and you have stated that negotiations are closed, I am not sure where we go from here.

Absent a change in your position, we reserve all of our legal rights.

Best regards,

Bob Jenkins

**114 MEADOW HILL CIRCLE MOORESVILLE, NC 28117**

# Exhibit 10







**From:** Phelps, Steve <sphelps@nascar.com>  
**Date:** Wednesday, September 18, 2024 at 10:47 AM  
**To:** Bob Jenkins <bjenk52607@aol.com>  
**Cc:** Jerry Freeze <jfreeze@frontrowmotorsports.com>  
**Subject:** Charter Renewal

Dear Bob,

Thank you for your letter last night. Although we are disappointed, we respect your business decision not to renew your respective Charters for 2025 and we will proceed accordingly.

Best of luck in the remainder of this 2024 racing season.

Sincerely,

Steve Phelps

**From:** [bjenk52607@aol.com](mailto:bjenk52607@aol.com)  
**Date:** September 17, 2024 at 5:58:38 PM EDT  
**To:** "Phelps, Steve" <[sphelps@nascar.com](mailto:sphelps@nascar.com)>  
**Subject:** Charter Renewal

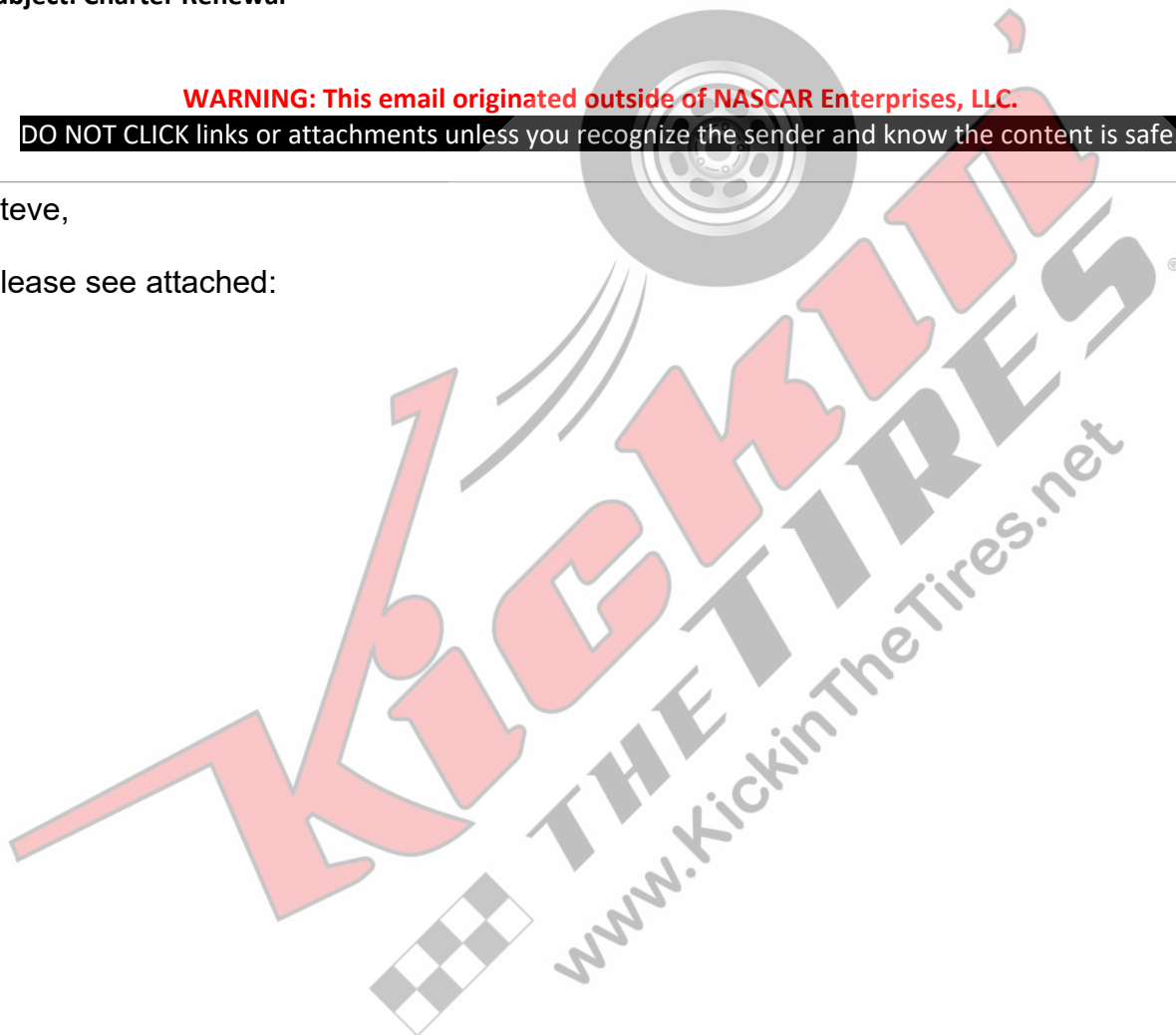
**WARNING: This email originated outside of NASCAR Enterprises, LLC.**

**DO NOT CLICK** links or attachments unless you recognize the sender and know the content is safe.

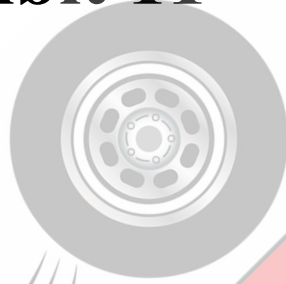
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Steve,

Please see attached:



# Exhibit 11



**FILED UNDER SEAL**

**Pursuant to the Text-Only Order granting Dkt. No. 10, Plaintiffs' Motion to Seal, entered on 10/4/2024 at 11:23 AM EDT and filed on 10/4/2024**