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 **PLAINTIFFS' REPLY MEMORANDUM IN FURTHER SUPPORT OF THEIR MOTION FOR EXPEDITED DISCOVERY**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

Defendants' opposition prematurely argues the merits of Plaintiffs' preliminary injunction, misrepresents the discovery that Plaintiffs seek, and, like any monopolistic bully, attacks Plaintiffs for daring to question their authority. But it does not rebut Plaintiffs' showing that they have established good cause for this Court to order limited expedited discovery, especially since Defendants have made no showing that such discovery would be unduly burdensome.

This is a monopsonization case about Defendants' exclusionary conduct and imposition of anticompetitive contract terms on Plaintiffs and other independent contractor racing teams, including a release that Defendants contend forces Plaintiffs to choose between pursuing their antitrust claims or continuing their businesses as premier stock car racing teams. Seeking relief from such anticompetitive terms is the opposite of "extort[ion]," (Opp. 1)—it is precisely the remedy that Congress envisioned when it adopted the injunctive relief provisions of Section 16 of the Clayton Act. It is not a defense to a monopolization claim to argue that Defendants' victims just want a better commercial deal. What their victims want—and are entitled to—are the commercial terms that would be provided to them in a competitive market, free of monopolistic restraints.

When Defendants finally address the requested expedited discovery, they argue that such discovery "is unnecessary for the Court to determine" the preliminary injunction motion because Plaintiffs have indicated that they already have enough evidence to demonstrate the required likelihood of success. *Id.* at 9. Based on this position, if Plaintiffs' expedited discovery request is denied, Defendants must be estopped from arguing the contrary position that Plaintiffs have not presented enough evidence to demonstrate a likelihood of success at the preliminary injunction hearing.

As discussed below, Plaintiffs have satisfied the "good cause" test for the requested expedited discovery. Plaintiffs seek only targeted sets of documents from a limited group of custodians. The time periods for such discovery can be tailored, as most of the requests relate to discrete moments in time. This is precisely the situation in which expedited discovery should be ordered. *See Teamworks Innovations, Inc. v. Starbucks Corp*., 2020 WL 406360, at *2 (M.D.N.C. Jan. 24, 2020).

ARGUMENT

I. PLAINTIFFS' DISCOVERY REQUESTS ARE NARROWLY TAILORED

Plaintiffs' limited discovery requests seek only highly relevant documents. Mot. 6–8. Defendants do not dispute their relevance and offer no meaningful response to the long line of cases holding expedited discovery should be granted when it targets the key issues in a preliminary injunction motion.[1, 2] *See, e.g.*, *Teamworks*, 2020 WL 406360, at *2 (expedited discovery is "***particularly appropriate*** when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings") (internal quotations omitted) (emphasis added).[3]

[1] Although Plaintiffs do not currently know of any risk of destruction of evidence, such a showing is not necessary to establish good cause for expedited discovery. *See, e.g.*, *Bojangles' Int'l, LLC v. CKE Restaurants Holdings, Inc.*, 2017 WL 3065115, at *6–7 (W.D.N.C. July 19, 2017); *Me2 Prods., Inc. v. Does 1-16*, 2016 WL 7017268, at *1–2 (E.D.N.C. Dec. 1, 2016).

[2] This Court's standing protective order adequately addresses Defendants' confidentiality concerns. Opp. 13.

[3] Federal courts regularly grant expedited discovery to provide a more fulsome record for a preliminary injunction motion. *See, e.g.*, *Lab'y Corp. of Am. Holdings v. Cardinal Health Sys., Inc.*, 2010 WL 3945111, at *3 (E.D.N.C. Oct. 6, 2010) (permitting discovery on issues raised in preliminary injunction motion); *SmartSky Networks, LLC v. Wireless Sys. Sols., LLC*, 2020 WL 13043410, at *2 (M.D.N.C. Oct. 13, 2020) (granting expedited discovery because "Court will be better informed as to the propriety and scope of a preliminary injunction"); *Bojangles*, 2017 WL 3065115, at *7 (granting "limited expedited discovery [] in preparation for a hearing on a preliminary injunction.").

Here, with one exception, each discovery request seeks a limited set of documents from six identified custodians relating to specific time periods. The lone exception is Request 1, which seeks NASCAR's sanctioning agreements with racetracks since 2016.[4] But this request is not burdensome as it seeks clearly defined contracts from NASCAR's central files.

The other requests each relate to an individual exclusionary act, which took place at specific moments and only requires review of the files of six custodians. For example, Requests 2 and 3 seek documents "discussing" the "competitive purpose or effect" of NASCAR's purchases of International Speedway Corporation in 2019 and Automobile Racing Club of America in 2018, respectively. Similarly, Requests 4–8 seek targeted documents "discussing" the "competitive purpose or effect" of specific provisions in the 2025 Charter Agreements. Defendants have failed to present any showing that this production would impose an undue burden.

In opposition, Defendants rely solely on cases where the requested discovery was denied because it was not relevant to a preliminary injunction. *Chryso, Inc. v. Innovative Concrete Sols. of the Carolinas, LLC*, 2015 WL 12600175, at *6 (E.D.N.C. June 30, 2015) (*granting* discovery for requests "narrowly tailored to the issues to be decided at … the preliminary injunction hearing"); *United Healthcare Servs., Inc. v. Richards*, 2009 WL 4825184, at *1 (W.D.N.C. Dec. 2, 2009) (no preliminary injunction sought); *Lewis v. Alamance Cnty. Dep't of Soc. Servs.*, 2015 WL 2124211, at *2–3 (M.D.N.C. May 6, 2015) (seeking discovery on financial injury not relevant to preliminary injunction). Here, there is no dispute that each of the exclusionary acts that are the subject of Plaintiffs' discovery requests are relevant to Plaintiffs' monopolization claim.

[4] Contrary to Defendants' argument (Opp. 11, n.10), anticompetitive conduct prior to the limitations period for damages is relevant in a monopolization case. Areeda & Hovenkamp, ANTITRUST LAW ¶ 320c4 ("pre-limitation conduct [can] establish the exclusionary practices portion of a monopolization claim.").

Finally, Defendants' headline-grabbing claim that Plaintiffs seek the discovery of NASCAR financials as a "weapon" has no relevance here. *See* Opp. 1, n.1. As Defendants know, none of Plaintiffs' expedited discovery requests seek financial documents. That Plaintiffs may seek Defendants' financials during merits discovery—where they would be directly relevant to establishing monopoly profits and Plaintiffs' damages—is hardly surprising.

II. PLAINTIFFS' MOTION IS TIMELY

Defendants cannot seriously dispute that Plaintiffs timely filed the expedited discovery motion. It was filed contemporaneously with the preliminary injunction motion. *Teamworks*, 2020 WL 406360, at *3.

Defendants were served with these requests on October 9 and should have been preparing for a potential production during this time. If Defendants cannot produce all of the requested expedited discovery in time to be included in Plaintiffs' reply brief, the Court should at least order them to produce this information by November 1, so that Plaintiffs can use the information at the preliminary injunction hearing. Failing this, Defendants should be estopped from arguing that Plaintiffs have not presented sufficient evidence to demonstrate the required likelihood of success. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) ("[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter … assume a contrary position ….").

III. PLAINTIFFS HAVE SHOWN SUFFICIENT IRREPARABLE HARM TO SUPPORT EXPEDITED DISCOVERY

The irreparable harm requirement for seeking expedited discovery has been satisfied, especially since it is just one factor in the good cause test. In *Teamworks*, for example, the court ordered expedited discovery *because* plaintiffs targeted specific documents highly relevant to support a preliminary injunction. *Teamworks*, 2020 WL 406360, at *3. The *Teamworks* court

reasoned that the limited discovery sought would "better enable the [C]ourt to judge the parties' interests and respective chances for success on the merits." *Id.* at *5. It did not require a showing, as Defendants suggest, that Plaintiffs could not prevail in their motion absent the discovery.

Indeed, in virtually every situation in which a party seeks expedited discovery to support a preliminary injunction, it is also prepared to prove a likelihood of success if such discovery is denied. And Defendants conceded Plaintiffs will be able to do so here (since they argue such discovery is unnecessary for Plaintiffs to proceed with their motion). Courts can find good cause for such expedited discovery even where irreparable harm in the absence of such discovery is not claimed. *See Chryso*, 2015 WL 12600175, at *5 (holding plaintiffs failed to allege irreparable harm without discovery but granting expedited discovery relevant to the preliminary injunction motion).

To the extent Defendants are disputing the irreparable harm that Plaintiffs will suffer if they are forced to compete as "open" teams, (Opp. 2), Plaintiffs will address those arguments in their merits reply brief. *See also* Dkt 21-2, Jenkins Decl. ¶¶ 37–48; Dkt. 21-3, Polk Decl. ¶¶ 33–42.

IV. DEFENDANTS' ALTERNATIVE PROPOSAL IS INADEQUATE

Defendants' "alternative" for expedited discovery, limited to the mandatory releases (Opp. 14), makes up a standard out of thin air—claiming that such discovery must be limited to the relief sought in the injunction. Tellingly, Defendants cite no cases to support this position.

CONCLUSION

Plaintiffs respectfully ask the Court to exercise its discretion to order the requested expedited discovery within five days of granting this Motion, or by no later than November 1.

Dated: October 23, 2024

Respectfully submitted,

WINSTON & STRAWN LLP

By: */s/ Jeffrey L. Kessler*

Jeffrey L. Kessler
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
Tel: (212) 294-6700
Fax: (212) 294-4700
jkessler@winston.com

Danielle T. Williams
WINSTON & STRAWN LLP
300 South Tryon Street
16th Floor
Charlotte, NC 28202
Tel: (704) 350-7700
Fax: (704) 350-7800
dwilliams@winston.com

Jeanifer Parsigian
Michael Toomey
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111
Tel: (415) 591-1000
Fax: (415) 591-1400
jparsigian@winston.com
mtoomey@winston.com

Matthew R. DalSanto
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601
Tel: (312) 558-5600
Fax: (312) 558-5700
mdalsanto@winston.com

Counsel for Plaintiffs 2311 Racing LLC d/b/a 23XI Racing and Front Row Motorsports, Inc.

CERTIFICATE OF COMPLIANCE

This memorandum in support of the 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 memorandum in support of the motion contains a total of 1,498 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.

By: */s/ Jeffrey L. Kessler*

Jeffrey L. Kessler
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
Tel: (212) 294-6700
Fax: (212) 294-4700
jkessler@winston.com

Counsel for Plaintiffs 2311 Racing LLC d/b/a 23XI Racing and Front Row Motorsports, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PLAINTIFFS' REPLY MEMORANDUM IN FURTHER SUPPORT OF THEIR MOTION FOR EXPEDITED DISCOVERY** 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, including:

Tricia Wilson Magee
Shumaker Loop & Kendrick, LLP
101 S. Tryon St., Suite 2200
Charlotte, NC 28280
tmagee@shumaker.com

Counsel for Defendants National Association for Stock Car Auto Racing, LLC and James France

/s/ Jeffrey L. Kessler
Jeffrey L. Kessler