



- Request No. 3: All Documents discussing the competitive purpose or effect of NASCAR’s acquisition of the Automobile Racing Club of America Menards Series, which was the only other stock car racing circuit with national broadcast coverage.
- Request No. 4: All Documents discussing the purpose or effect of the provisions in the 2016 and 2025 Charter Agreements prohibiting chartered teams from competing in non-NASCAR racing events.
- Request No. 5: All Documents discussing the purpose or effect of the restrictions placed on teams only allowing for the use of Next Gen parts in NASCAR events.
- Request No. 6: All Documents discussing the purpose or effect, or the scope of, the mandatory release of claims provision contained in Section 10.3 of the 2025 Charter Agreement.
- Request No. 7: All Documents discussing NASCAR’s decision to negotiate the 2025<sup>®</sup> Charter Agreement directly with individual teams, and not with the Team Negotiating Committee chosen by the teams as their representative.
- Request No. 8: All Documents discussing NASCAR’s decision to impose a September 6, 2024 deadline for teams to sign the 2025 Charter Agreement or risk losing their charters.

(Doc. No. 22-1, pp. 5–6.) In terms of scope, Plaintiffs seek responsive documents from a timeframe of over eight years (from January 1, 2016, through the time of trial) and from six NASCAR executives: Defendant James France, Steve Phelps, Steve O’Donnell, Lesa France Kennedy, Ben Kennedy, and Scott Prime. (Doc. No. 22-1, p. 4.)

## II. STANDARD OF REVIEW

Parties typically may not engage in discovery until after conferring as required by Federal Rule of Civil Procedure 26(f). Fed. R. Civ. P. 26(d)(1); see also LCvR 16.1(f) (“Court-enforceable discovery does not commence until issues have joined and a Scheduling Order has been entered . . . .”); LCvR 26.1 (stating that “official Court-enforceable discovery does not commence until issuance of the Scheduling Order”). However, the Court may permit early discovery in some instances. Fed. R. Civ. P. 26(d)(1) (permitting early discovery “when authorized by these rules, by

stipulation, or by court order”); LCvR 16.1(f) (“A party seeking early Court-enforceable discovery may file a motion for leave to take early discovery stating the reasons therefor.”).

Courts in the Fourth Circuit apply a reasonableness or good cause standard to determine whether early or expedited discovery is appropriate. Clean Juice Franchising, LLC v. Charleston Juicing, LLC, No. 3:23-CV-00894-RJC-SCR, 2024 WL 1363927, at \*2 (W.D.N.C. Mar. 29, 2024). Relevant factors courts consider under that standard include:

[T]he procedural posture of the case, whether the discovery requested is narrowly tailored, whether the party seeking the information would be irreparably harmed by waiting until after the parties conduct their Rule 26(f) conference, and whether the information sought would be unavailable or subject to destruction in the absence of expedited production.

Id. (quoting Merz N. Am., Inc. v. Viveve Med. Inc., No. 2:17-cv-15-BR, 2017 WL 11613694, at \*2 (E.D.N.C. May 5, 2017)).

### III. ANALYSIS

#### A. Procedural Posture

Expedited discovery may be appropriate when a party seeks a preliminary injunction.<sup>1</sup> See, e.g., Teamworks Innovations, Inc. v. Starbucks Corp., No. 1:19-CV-1240, 2020 WL 406360, at \*2 (M.D.N.C. Jan. 24, 2020). A motion for expedited discovery typically must be “reasonably timed” so that the moving party can incorporate the discovery responses into its briefing for the court’s consideration. Id. at \*3. In particular, “courts in the Fourth Circuit have allowed parties to engage in expedited discovery in preparation for a *hearing* on preliminary injunction.” Dimension Data N. Am., Inc. v. NetStar-1, Inc., 226 F.R.D. 528, 532 (E.D.N.C. 2005) (denying plaintiff’s motion for expedited discovery, which it intended to use in support of its anticipated motion for

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<sup>1</sup> The advisory committee’s comment to Rule 26 “recognize[s] that it may be appropriate to allow expedited discovery when a party seeks preliminary injunctive relief.” Chryso, Inc. v. Innovative Concrete Sols. of the Carolinas, LLC, No. 5:15-CV-115-BR, 2015 WL 12600175, at \*3 (E.D.N.C. June 30, 2015) (citing Fed. R. Civ. P. 26(d) Advisory Committee Comment (1993 Amendment)).

preliminary injunction); see also Merz, 2017 WL 11613694, at \*2 (“Because no hearing [on plaintiff’s pending motion for a temporary restraining order] is currently scheduled, this factor weighs only slightly in favor of permitting expedited discovery.”); Chryso, Inc. v. Innovative Concrete Sols. of the Carolinas, LLC, No. 5:15-CV-115-BR, 2015 WL 12600175, at \*3 (E.D.N.C. June 30, 2015) (“[W]hile the procedural posture of this case generally weighs in favor of granting Chryso’s Motion, it does so only slightly because of the uncertainty surrounding a potential preliminary injunction hearing”).

Here, Plaintiffs filed their motion for expedited discovery hours after filing their motion for preliminary injunction, making it properly timed. See Teamworks, 2020 WL 406360, at \*3 (finding that motion for expedited discovery filed seven business days after motion for preliminary injunction was “reasonably timed”). Moreover, although the Court had not set a hearing on Plaintiffs’ motion for preliminary injunction when Plaintiffs filed their motion for expedited discovery, the Court set a hearing on Plaintiffs’ motion for preliminary injunction later that day. Accordingly, this factor weighs in favor of permitting expedited discovery.

**B. Narrowly Tailored**

“When a party is seeking expedited discovery in connection with a request for a preliminary injunction, the discovery requests should be ‘narrowly tailored to focus on information believed to be probative to the preliminary injunction analysis.’” Chryso, 2015 WL 12600175, at \*4 (quoting Dimension Data, 226 F.R.D. at 532)); see also Merz, 2017 WL 11613694, at \*2 (“[I]n order to justify expedited discovery, the proposed discovery requests must be targeted or otherwise tailored to obtaining injunctive relief, and not simply be addressed to the ultimate merits of plaintiff’s claims.”); Clean Juice Franchising, LLC, 2024 WL 1363927, at \*2 (denying proposed

expedited discovery requests in support of a preliminary injunction motion that were “extraordinarily broad and not narrowly tailored”).

Although Plaintiffs assert that their proposed discovery requests are “narrowly tailored” and would pose only a “minimal burden to Defendants,” based on the Court’s review of the parties’ arguments and exhibits, this is not the case. (Doc. No. 22, p. 11.) At least six of Plaintiffs’ eight proposed requests for production pertain to Defendants’ alleged anticompetitive conduct—which goes to the crux of Plaintiffs’ lawsuit.<sup>2</sup> Moreover, the scope of the requests for production is also overly broad. Plaintiffs seek discovery responses spanning eight years based on “a search of Defendant NASCAR’s corporate files and the electronic files of six NASCAR executives.” (Doc. No. 22, p. 9.) Thus, while the proposed discovery requests may help Plaintiffs show a likelihood of success on the merits, they are not sufficiently narrowly tailored and—as discussed in more detail below—Plaintiffs argue the record is sufficient to support their motion for preliminary injunction as it stands.

More critically, though, Plaintiffs seek all of this information within five days of a Court order granting their motion for expedited discovery, (Doc. No. 22, p. 12), a timeframe that would put a significant burden on Defendants.

Accordingly, this factor weighs heavily against granting the motion.

### **C. Irreparable Harm**

Plaintiffs “must establish the existence of irreparable harm if expedited discovery is not permitted.” Merz, 2017 WL 11613694, at \*3.

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<sup>2</sup> Plaintiffs assert that the proposed discovery will help them meet their burden of showing likelihood of success on the merits of their claim under § 2 of the Sherman Act, 15 U.S.C. § 2, as required to obtain a preliminary injunction. This showing necessarily involves a consideration of the merits of Plaintiffs’ § 2 claim and the alleged anticompetitive conduct. Thus, although the proposed discovery requests are relevant to Plaintiffs’ preliminary injunction motion, they veer towards being “addressed to the ultimate merits of [Plaintiffs’] claims” instead. See Merz, 2017 WL 11613694, at \*2.



Plaintiffs seemingly misinterpret this factor. As to this factor, Plaintiffs argue that they can show a likelihood of irreparable harm—presumably in support of their motion for a preliminary injunction—without access to expedited discovery but seek expedited discovery to “create a more fulsome record.” (Doc. No. 22, p. 12.) In doing so, Plaintiffs concede that they do not actually require expedited discovery, at least for the purposes of their motion for a preliminary injunction.

Plaintiffs do not address the potential irreparable harm caused by the risk of loss of evidence if this Court does not permit expedited discovery. Defendants state in their response that they “have implemented a litigation hold that preserves relevant materials, including those requested by Plaintiffs.” (Doc. No. 27, p. 13.) Accordingly, this consideration also weighs against granting Plaintiffs’ motion.

Because Plaintiffs have not shown that they would be irreparably harmed by waiting until after the parties’ conduct their Rule 26(f) conference to obtain the requested discovery, this factor weighs against granting Plaintiffs’ motion.

#### IV. CONCLUSION

Considered together, the factors weigh against permitting expedited discovery.

**IT IS THEREFORE ORDERED** that Plaintiffs’ Motion (Doc. No. 22) is denied.

**IT IS SO ORDERED.**

Signed: October 31, 2024



Frank D. Whitney  
United States District Judge

