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

NASCAR'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

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Plaintiffs' Complaint is a misguided attempt to dress up private business frustrations in antitrust garb. Plaintiffs bring claims barred by the statute of limitations and laches; they fail to plead any reduction in competition, meaning they do not have the required antitrust injury to establish antitrust standing; and they aim to renegotiate contractual terms rather than address genuine anticompetitive behavior. Plaintiffs' claims should be dismissed.

I. INTRODUCTION

Stripped of its bluster, Plaintiffs' Complaint reflects nothing more than dissatisfaction with business negotiations that didn't go their way. Plaintiffs admit they do not want to dismantle NASCAR's Charter system; indeed, their counsel concedes they "like the [C]harters. The [C]harters are important to the teams." Doc. 41 ("Transcript"), 15:13-14. Plaintiffs also confess they do not challenge as anticompetitive the Charters' broadcast revenue split, as it is undeniably fair and advantageous to them. Transcript 49:1-6. Instead, after two years of Charter negotiations, Plaintiffs—assuming they do not disavow what they represented to the Court when seeking a preliminary injunction—now aim to use this Court and the antitrust laws as a tool to renegotiate just two terms from NASCAR's now-expired final Charter offer: "the release, [and] the provision that says there are covenants not to compete. Period." Transcript 49:3-6. Notably, however, Plaintiffs never contested the release-of-claims provision during two years of Charter negotiations, and the noncompete clause is standard for the sports industry. The Charter's mutual-exclusivity provisions benefit teams by granting them exclusive rights to participate in all races, while safeguarding NASCAR's investments by ensuring that teams race with NASCAR, thereby helping generate the media revenues Plaintiffs desire by guaranteeing that media partners, sponsors, and fans know where to find their favorite stock-car drivers and teams. The inability to secure every

single desired contractual term in an arm's length negotiation is common in business, and cannot form the foundation of a legitimate antitrust claim.

Plaintiffs' antitrust claims crumble at the pleadings stage because their Complaint cannot meet several basic pleading requirements. *First*, their claims are barred by the statute of limitations and laches because they concern conduct that occurred more than four years ago. *Second*, Plaintiffs lack antitrust standing for the only claims that even arguably fall within the statute of limitations—their challenges to the 2025 Charter's release and noncompete provisions—as a "[f]ailure to secure preferred contractual terms is not an *antitrust* injury." *Host Int'l, Inc. v. MarketPlace*, 32 F.4th 242, 250 (3d Cir. 2022) (emphasis added). *Third*, Plaintiffs' proposed market definition is fatally flawed as it analyzes the market *post-investment* rather than *pre-investment*. *Finally*, Plaintiffs have not demonstrated any exclusionary conduct by NASCAR, as it did not refuse to deal with Plaintiffs, and Plaintiffs do not plead facts plausibly demonstrating either of the two challenged Charter provisions reduces competition.

II. BACKGROUND

A. NASCAR's Decades Of Investments

NASCAR was founded in 1948. ¶43.[1] Since then, NASCAR has invested in racetracks, developed a racing series that attracts millions of fans, and created valuable opportunities for teams, broadcasters, and sponsors. ¶¶67-68, 72.

B. Teams Urge Creation Of The Charter System

In 2014, teams banded together to form the Race Team Alliance ("RTA") with the goal of collectively negotiating with NASCAR. ¶71. In 2016, following extensive negotiations where the teams joined together to collectively negotiate instead of allowing the competitive marketplace to

[1] Citations to "¶" are to Plaintiffs' Complaint (Doc. 1) unless otherwise noted.

decide their value, NASCAR introduced the Charter system at the RTA's behest. ¶¶7, 71-72. The 2016 Charter included mutual promises: NASCAR offered a limited number of Charters and guaranteed Charter members entry into each race along with certain payments, while Charter teams agreed not to race for other stock-car racing leagues during the Charter's term (the "Protection of Goodwill" provision). ¶¶8, 70-76. Teams without a Charter could still race as "open teams," as all teams did before 2016, and are not subject to the "Protection of Goodwill" provision. The 2016 Charter, which expires on December 31, 2024, contains reciprocal releases of claims, as do the agreements for open teams through 2024. ¶¶8, 113.

C. 2025 Charter Negotiations Spanned Over Two Years

At the teams' request, NASCAR began negotiations over the 2025 Charter with teams early; the teams again negotiated jointly through an entity called the Teams Negotiating Committee. ¶16. During those negotiations, NASCAR made significant concessions, including substantially increasing Charter teams' share of the media revenue, increasing minimum payments received by each team racing, and offering a longer Charter term and renewal safeguards (i.e., a financial floor on subsequent media agreements). Doc. 21-5.[2] Ultimately, the 2025 Charter's term matches NASCAR's new broadcast agreements: seven years, with a possible extension. ¶68. Notably, throughout these negotiations, no team—including Plaintiffs—ever voiced any concerns to NASCAR about the release. ¶106; *see* Transcript 42:21-22 ("[NASCAR's counsel] is right. We did not even raise [the release] in the negotiations."). Thirteen teams (representing 32 Charters) ultimately signed the 2025 Charter; Plaintiffs were the only two teams who declined the offer. ¶23.

[2] Plaintiffs' Complaint heavily relies on the 2016 and 2025 Charters, available at Docs. 21-4 and 21-5, thereby incorporating them by reference. *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004).

D. Plaintiffs

23XI Racing is a well-financed racing team that purchased its first Charter from another team in 2020 and a second in 2021. ¶¶29, 33. Front Row Motorsports has owned or leased one or more Charters since 2016. ¶38. Both Plaintiffs also agreed to purchase one 2025 Charter apiece from Stewart-Haas Racing—23XI in May 2024 and Front Row in August 2024. ¶¶35, 41. Plaintiffs purchased these Charters fully aware that they contained a release provision, which needed to be accepted for any requested transfer to be considered. ¶105.

III. ARGUMENT

Plaintiffs attempt to plead two Sherman Act claims: a Section 2 claim for monopolization and a Section 1 claim for unreasonable restraint of trade. Both fail for a host of reasons.

A. Most Of Plaintiffs' Claims Are Time-Barred

Plaintiffs' allegations targeting (1) the 2018 acquisition of Automobile Racing Club of America (¶12); (2) the 2019 acquisition of International Speedway Corporation ("ISC") (¶14); (3) the 2019 adoption of Next Gen car requirements (¶13); (4) NASCAR's exclusivity arrangements with racetracks, with the only specific factual allegation predating October 2020 (¶¶88-89); and (5) the 2016 Charter provisions (¶¶70-77) are all barred by the four-year statute of limitations for antitrust claims, as well as laches.

In antitrust cases, strict enforcement of the statutes of limitations is critical. Areeda & Hovenkamp, *Antitrust Law* ¶320a (2020). As the Fourth Circuit explained in affirming the dismissal of an untimely antitrust claim, "[t]here is a place for finality in the law. Defendants are prejudiced when 'memories fade, documents are lost, and witnesses become unavailable.'" *GO Computer, Inc. v. Microsoft Corp.*, 508 F.3d 170, 180 (4th Cir. 2007). Here, Plaintiffs (and other racing teams) were plainly aware of the conduct outlined above prior to October 2020, and could have "file[d] suit and obtain[ed] relief" then. *Wallace v. Kato*, 549 U.S. 384, 388 (2007).

Whatever the reason, Plaintiffs' lack of diligence in pursuing these claims means they are time-barred.

Plaintiffs' superficial reliance on the "continuing violations" doctrine (¶¶81, 149) does nothing to change this. First, that doctrine is a creature of "conspiracy" law—but Plaintiffs are not primarily advancing a conspiracy claim. *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 338 (1971); *Z Techs. Corp. v. Lubrizol Corp.*, 753 F.3d 594, 599 (6th Cir. 2014). Second, and regardless, mere performance of a contract "during the limitations period is not sufficient to restart the period." *Varner v. Peterson Farms*, 371 F.3d 1011, 1020 (8th Cir. 2004); *In re Mission Health Antitrust Litig.*, 2024 WL 759308, *7 (W.D.N.C. Feb. 21, 2024). This means that Plaintiffs' complaints about the 2016 Charter terms and the 2019 adoption of Next Gen car requirements (as allowed by the 2016 Charter) are all time-barred. Third, the law is unequivocal that the limitations period for acquisitions starts when the acquisition is completed, and the continuing-violations doctrine simply does not apply to completed "merger[s] or acquisition[s]." *Z Techs.*, 753 F.3d at 598-604; *Midwestern Mach. Co. v. Nw. Airlines, Inc.*, 392 F.3d 265, 269-72 (8th Cir. 2004) (applying the continuing-violations doctrine to mergers "makes no sense"). Finally, Plaintiffs did not sign the 2025 Charter and therefore cannot be harmed by its terms. *Infra* at 6-7. Regardless, even if the 2025 Charter terms *were* actionable by Plaintiffs, the Fourth Circuit has made clear that a plaintiff cannot "use an independent, new predicate act as a bootstrap to recover for injuries caused by earlier predicate acts that took place outside the limitations period." *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, 114 F.4th 280, 292 (4th Cir. 2024). Plaintiffs' recovery, in other words, is "limited to the damages caused by" acts occurring *within* the statute of limitations, regardless of whether those acts were part of a purported long-running "scheme." *Id.* All of Plaintiffs' allegations concerning conduct prior to October 2020 thus are not actionable.

On top of that, laches—which bars untimely requests for injunctive relief—applies when "*any part* of the claimed wrongful conduct occurred beyond the limitations period." *PBM Prod., LLC v. Mead Johnson & Co.*, 639 F.3d 111, 122 (4th Cir. 2011) (emphasis added); *Mountaineer Motors of Lenoir v. Carvana*, 2023 WL 6931787, *10 (W.D.N.C. Oct. 19, 2023). In this case, Plaintiffs have been aware of at least "part" of the claimed wrongful conduct since the acquisitions occurred, meaning their requests for injunctive relief are barred in their entirety.[3]

B. Plaintiffs Have Not Pled Facts Showing They Suffered An Antitrust Injury

The only anticompetitive conduct that Plaintiffs attempt to allege within the limitations period is NASCAR entering into 2025 Charters with 13 other teams. But Plaintiffs have not established their own "antitrust standing" to pursue these claims, *Novell, Inc. v. Microsoft Corp.*, 505 F.3d 302, 310 (4th Cir. 2007), which requires (1) plausible allegations of an "injury caused by damage to the competitive process," *Thompson Everett, Inc. v. Nat'l Cable Advert.*, 57 F.3d 1317, 1325 (4th Cir. 1995), and (2) that Plaintiffs be the "efficient enforcers" of their claims, *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 535-45 (1983).

Plaintiffs challenge as anticompetitive only two terms from the 2025 Charter: the release and non-compete provisions. However, neither provision impacts Plaintiffs in any way, as Plaintiffs did not sign the 2025 Charters. And because Plaintiffs are not bound by either of these challenged provisions, they suffer no concrete injury from these terms' inclusion in the 2025 Charter. Plaintiffs' dramatic rhetoric about not being able to "participat[e] in any other racing

[3] Plaintiffs' claims also are barred by a release-of-claims provision they willingly and repeatedly accepted, which is fully enforceable. *Madison Square Garden v. Nat'l Hockey League*, 2008 WL 4547518, *6-7 (S.D.N.Y. Oct. 10, 2008). While Plaintiffs' preliminary-injunction motion hinges on their assertion that this release bars their antitrust claims, their Complaint paradoxically contends the scope of the release is ambiguous. ¶113. Any such ambiguity is best resolved on a motion for summary judgment if some claim survives dismissal, where parole evidence can be considered.

competition," ¶¶1, 21, 24, 153, therefore misses the mark entirely; since they did not sign Charters, Plaintiffs are free to race in any racing league that they desire—or start their own competing league.

To the extent Plaintiffs are arguing that they were injured from their inability to secure better terms from NASCAR, "[f]ailure to secure preferred contractual terms is not an *antitrust* injury," and "a breakdown in contract negotiations is outside the Sherman Act's scope." *Host*, 32 F.4th at 250 (emphasis added); *CBC Cos., Inc. v. Equifax*, 561 F.3d 569, 573 (6th Cir. 2009) ("even where a business carries a significant portion of the market share, antitrust law is not a negotiating tool for a plaintiff seeking better contract terms"). As in *Host*, the fact that Plaintiffs "did not like [NASCAR's] terms and, weighing [their] options, declined the offer" does not establish an "antitrust injury" because "competition has not been suppressed"—Plaintiffs are neither "excluded from any market" nor forced to agree to unlawful terms. 32 F.4th at 250 (an "objectionable term in a commercial agreement" does not give rise to "antitrust injury"). In reality, Plaintiffs' refusal to accept NASCAR's offer just highlights the presence of competition.

Other allegations in the Complaint and the sources it incorporates underscore the presence of competition for Plaintiffs' services, too. For instance, Plaintiffs concede the Charters are "worth millions of dollars," ¶105,[4] and NASCAR *increased* the revenues available to teams after the last round of negotiations, *supra* at 3. This behavior is the exact opposite of what one would expect from a monopsonist; if NASCAR truly had market power, it would be *decreasing* its demand for Plaintiffs' services and lowering the amount by which it compensates them. *Campfield v. State Farm Mut. Auto. Ins. Co.*, 532 F.3d 1111, 1118 (10th Cir. 2008)

[4] *See* ¶72 n.18 (RTA chairman boasting Charters are worth "millions").

Plaintiffs also are not efficient enforcers of their claims based on the 2025 Charter's terms. As for the release-of-claims provision, Plaintiffs do not explain how other teams choosing to release their own claims affects the level of competition in any relevant market. And as for the noncompete provisions, Plaintiffs nowhere allege that they are trying to start their own series but are currently foreclosed from doing so because other teams have accepted those provisions. That critical gap undermines their antitrust standing; as courts have repeatedly recognized, the proper plaintiffs "in non-price monopsony cases" are either the competitors who lost access to suppliers or consumers, but not the suppliers themselves (here, teams, Doc. 33-1 at 30 ¶79). *White Mule Co. v. ATC Leasing Co. LLC*, 540 F. Supp. 2d 869, 889-90 (N.D. Ohio 2008) (suppliers' alleged harms from exclusive contract were not antitrust injuries, but the results of defendant's "hard bargaining efforts"); *Thompson Everett, Inc. v. Nat'l Cable Advert., L.P.*, 850 F. Supp. 470, 476-77 (E.D. Va. 1994); *Spinelli v. Nat'l Football League*, 96 F. Supp. 3d 81, 107-10 (S.D.N.Y. 2015).

Plaintiffs do allege, in one conclusory paragraph, that the "owners of the 2016 NASCAR Charter Agreements" were the "most likely racing team owners to form a competing circuit." ¶95. But this does not allege that *Plaintiffs* ever intended to form a competing circuit, such that they would have antitrust standing to pursue these claims. And the careful wording of this paragraph is revealing; Plaintiffs cannot even allege that the 2016 Charter owners were the most likely *people or entities* to start a competing circuit, only that they are the most likely *racing team owners* who might do so. Plaintiffs simply are not the efficient enforcers of this claim.

Plaintiffs also allege, in conclusory terms, that exclusivity arrangements *with racetracks* might have "deterred" unidentified "2016 Charter owners" from "trying to form" a competing circuit. ¶89. But Plaintiffs do not allege that this speculative and conclusory deterrence occurred within the last four years, such that these allegations would fall within the statute of limitations.

Nor could they, given their allegations about the ISC acquisition in 2019. And even if they had, Plaintiffs nowhere allege that *Plaintiffs* were the ones personally deterred from forming a competing circuit, such that *they* would be efficient enforcers of this claim. Moreover, Plaintiffs' conclusory allegation that these exclusivity provisions might have reduced competition is belied by the sources incorporated into the Complaint, which highlight that races are increasingly being held at nontraditional venues, such as public streets, given the "new sense of experimentation in the sport." ¶¶68 n.14, 85 n.20. Ultimately, Plaintiffs' conclusory allegations of harm to competition are far too vague to meet their *Twombly* burden. *Reveal Chat Holdco, LLC v. Facebook, Inc.*, 471 F. Supp. 3d 981, 998 (N.D. Cal. 2020); *Turner v. Virginia Dep't of Med. Assistance Servs.*, 301 F. Supp. 3d 637, 648-49 (E.D. Va. 2018) (both dismissing similar allegations for lack of antitrust standing).

C. Plaintiffs' Proposed Market Is Legally Deficient

Plaintiffs' proposed market definition is also deficient. Having opted to invest in NASCAR teams and enter into a contractual relationship with NASCAR for Charters, Plaintiffs now assert a buyers-side market confined to the services of "premier stock-car racing teams," defining the market such that NASCAR is the only buyer. ¶124. Plaintiffs further claim to be locked-in to selling to NASCAR due to the contractual and Next Gen car requirements. ¶¶120-21. But all of these claims demonstrate that Plaintiffs are analyzing the market *post-investment*, when they should be looking at it *pre-investment*. The law is clear: "A plaintiff cannot establish a relevant [] market by claiming to be 'locked in' a market that it entered knowing in advance that doing so would entail lock-in costs and other economic risks." *Virginia Vermiculite, Ltd. v. W.R. Grace & Co.-Conn.*, 108 F. Supp. 2d 549, 583 (W.D. Va. 2000). The Sherman Act is not a refuge for businesses looking to escape the consequences of their own market decisions; its purpose is to

"protect *the public* from the failure of the market." *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993).

As Plaintiffs' own sources acknowledge, NASCAR operates under a "franchise" model, with racing teams acting as the franchisees. ¶¶4 n.3, 68 n.14. But courts routinely dismiss Sherman Act claims when, as here, the plaintiffs' market definition excludes "the broader market in which the *franchise* operates," focusing solely on the "*franchisees themselves*"—particularly when the plaintiffs "knew from the moment they" entered the franchise arrangement that they might become "locked in." *Bendfeldt v. Window World, Inc.*, 2017 WL 4274191, *5 (W.D.N.C. Sept. 26, 2017). Plaintiffs here have made no effort to identify and include NASCAR's competitors, who could utilize similar services, in their market definition—which is fatal.

Much like the franchisees in the Third Circuit's seminal decision in *Queen City Pizza v. Domino's Pizza*, Plaintiffs voluntarily chose to enter into business with NASCAR—rather than with Formula 1, IndyCar, or any other sport—with their eyes wide open, fully capable of "assess[ing] the potential costs and economic risks at the time." 124 F.3d 430, 440 (3d Cir. 1997). They cannot now retroactively assert a contrived and artificially narrow market that ignores the extensive array of competing sports. *See id.*[5]

D. Plaintiffs Have Not Alleged Facts Establishing Anticompetitive Conduct

Nor have Plaintiffs alleged exclusionary conduct by NASCAR—conduct "without a legitimate business purpose that makes sense only because it eliminates competition," *In re Adderall XR Antitrust Litig.*, 754 F.3d 128, 133 (2d Cir. 2014) (dismissing Section 2 claim);

[5] Should some claim survive this motion to dismiss, Defendants also will show that Plaintiffs' gerrymandered market definition fails for other reasons, just like the proposed market in *It's My Party, Inc. v. Live Nation, Inc.*, 811 F.3d 676, 683 (4th Cir. 2016). *See Kentucky Speedway, LLC v. Nat'l Ass'n of Stock Car Auto Racing, Inc.*, 588 F.3d 908, 916-21 (6th Cir. 2009) (rejecting similar proposed market definition of "premium-stock-car hosting markets").

Dickson v. Microsoft Corp., 309 F.3d 193, 199 n.1, 206 (4th Cir. 2002) (dismissing Section 1 and 2 claims).

Plaintiffs cannot establish any exclusionary act by NASCAR, as NASCAR "has not refused to deal with Plaintiffs," but instead "proposed terms for a commercial relationship" that Plaintiffs rejected. *Loren Data Corp. v. GS, Inc.*, 501 F. App'x 275, 283 (4th Cir. 2012). As the Fourth Circuit explained in *Loren Data*, "simply because [NASCAR] d[id] not offer [Plaintiffs] the terms and conditions [they] desired does not mean that [NASCAR] [] violated the antitrust laws." *Id.*[6] The Sherman Act does not impose a duty of "good faith and fair dealing" on contract negotiations—a reality that undermines Plaintiffs' attempts to manufacture an antitrust claim from their own failed bargaining efforts. *Queen City Pizza*, 922 F. Supp. 1055 (E.D. Pa. 1996), *aff'd*, 124 F.3d 430, 435 (3d Cir. 1997) (affirming dismissal because claims "implicate principles of contract, and are not the concern of the antitrust laws").

Plaintiffs have not established an anticompetitive act by NASCAR either. Despite dramatic rhetoric in the Complaint seeking to cast the Charters as unlawful, Plaintiffs have since told the Court that their challenge is limited to two "specific provisions" from NASCAR's 2025 Charter offer: "the release, [and] the provision that says there are covenants not to compete. Period." Transcript 49:3-6; *see id.* 42:18-19 ("[t]he *only term* that itself [is] an exclusionary act" is Section 10.3). But Plaintiffs have not plausibly alleged that either provision deprives any relevant market of competition.

[6] This stands in stark contrast to a case Plaintiffs relied on in their preliminary-injunction briefing—*Duke Energy Carolinas, LLC v. NTE Carolinas II*, 111 F.4th 337 (4th Cir. 2024)—where the defendant terminated an ongoing relationship.

1. Plaintiffs Have Not Demonstrated That The Exclusivity Provisions Are Anticompetitive

Mutual-exclusivity provisions, like those between NASCAR and teams, are a staple in the sports industry that courts have repeatedly recognized make the product more appealing for broadcasters, fans, and sponsors as they encourage investments in athletes and infrastructure. *JBL Enters., Inc. v. Jhirmack Enters., Inc.*, 698 F.2d 1011, 1015 (9th Cir. 1983); *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 395 (7th Cir. 1984) (Posner, J.) (exclusive dealing enables a firm to prevent others "from taking a free ride on his efforts (for example, efforts in the form of national advertising) to promote his brand"). Courts have long recognized that competition to secure exclusive contracts, often called "competition for the contract," produces important procompetitive benefits. *Paddock Publ'ns, Inc. v. Chicago Tribune Co.*, 103 F.3d 42, 45 (7th Cir. 1996) (Easterbrook, J.).

These provisions consistently withstand antitrust challenges, as they "generally pose little threat to competition." *PNY Techs., Inc. v. SanDisk Corp.*, 2014 WL 2987322, *4 (N.D. Cal. July 2, 2014) (dismissing claim). For instance, in *Independent Entertainment Group*, the court rejected antitrust claims that exclusive contracts between the NBA and players that prevented a rival promoter from contracting with NBA players for an offseason pay-per-view basketball event violated the Sherman Act, finding plaintiff's antitrust suit an "attempt to free-ride on the NBA's investment in its star players." *Ind. Entm't Grp. v. Nat'l Basketball Ass'n*, 853 F. Supp. 333, 340 (C.D. Cal. 1994).

Given the significant procompetitive benefits of exclusive dealing arrangements, to state a claim, antitrust plaintiffs must allege, and ultimately prove, that the arrangement's effect is to "foreclose[] competition in a substantial share of the line of commerce affected." *R. J. Reynolds Tobacco Co. v. Philip Morris Inc.*, 199 F. Supp. 2d 362, 387 (M.D.N.C. 2002), *aff'd*, 67 F. App'x

810 (4th Cir. 2003). This is a required element because "[i]f competitors can reach the ultimate consumers of the product by employing existing or potential alternative channels of distribution," then the alleged exclusive dealing does not harm competition. *Allied Orthopedic Appliances Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 997 (9th Cir. 2010).

Here, the Complaint is conspicuously silent as to the percentage of total racing teams tied up by NASCAR's exclusivity agreements. *Hip Hop Bev. Corp. v. Monster Energy Co.*, 733 F. App'x 380, 381 (9th Cir. 2018) (affirming dismissal of claim where plaintiff alleged that four brokers had exclusive agreements with defendant but "did not allege how many total brokers were in the market"); *Dickson*, 309 F.3d at 209, 212 (similar). Plaintiffs nowhere address teams that race in other motorsports, the many racing teams that compete in NASCAR circuits *other* than the Cup Series, or the open teams that compete in the Cup Series—none of which are subject to exclusivity provisions. Nor do Plaintiffs allege any concrete facts showing that there are potential competitors to NASCAR who decided not to enter, expand, or compete as a result of the alleged unlawful restraints, let alone the extent or duration of any such foreclosure. Without these crucial details, Plaintiffs do not come close to justifying the expense and burden of an antitrust claim based on what is widely acknowledged as pro-competitive conduct.

2. Plaintiffs Have Not Demonstrated That The Releases Are Anticompetitive

As for the reciprocal release of claims, Plaintiffs' argument that such provisions are anticompetitive flies in the face of Fourth Circuit precedent, which clearly holds that there is "no prohibition in the [] antitrust laws that prohibits the disclaimer of antitrust claims by a general release." *Virginia Impression Prod. Co. v. SCM Corp.*, 448 F.2d 262, 266 (4th Cir. 1971). If Plaintiffs' theory were correct, parties could *never* settle antitrust disputes, and commercial contracts couldn't include releases of prior conduct. That is not the law in the Fourth Circuit or

elsewhere. *VKK Corp. v. Nat'l Football League*, 244 F.3d 114, 126 (2d Cir. 2001) ("no United States Court of Appeals has ever applied [Plaintiffs'] theory to invalidate a release"); *see Ingram Corp. v. J. Ray McDermott & Co.*, 698 F.2d 1295, 1313-16 (5th Cir. 1983); *G.E.E.N. Corp. v. Southeast Toyota Distributors, Inc.*, 1994 WL 695364, *3-4 (M.D. Fla. Aug. 31, 1994) (applying Florida law). Plaintiffs' theory disregards the Supreme Court's repeated cautions against blithely creating a policy of nonenforcement of contracts via the antitrust laws, given the primary role of state law in contract matters. *Kelly v. Kosuga*, 358 U.S. 516, 518-19 (1959); *see Three Rivers Motors Co. v. Ford Motor Co.*, 522 F.2d 885, 891-92 (3d Cir. 1975) ("Absent a substantial reason for doing so, the law of private contracts should not be burdened with the complication of a separate federal rule for releasing an antitrust cause of action.").

To the extent Plaintiffs are relying on the "rarely discussed and more rarely applied" "part and parcel doctrine," such reliance is unsupportable. *VKK*, 244 F.3d at 125. That doctrine's existence is in "grave doubt"—and applying it here would conflict with Fourth Circuit precedent. *Id.* at 126. Moreover, if it even exists, the doctrine doesn't apply unless "the *release itself* was an integral part of a scheme to violate the antitrust laws," and was the "cause" of the antitrust violations. *Id.* at 125 (emphasis added). Nowhere in Plaintiffs' Complaint do they allege—even in conclusory terms—either of those elements. That is fatal.

Nor could an amendment remedy this deficiency. Plaintiffs' antitrust claims all depend on NASCAR's alleged abuse of market power, which supposedly flowed from its acquisitions and contractual relationships with racetracks, and did not depend on the release. Indeed, Plaintiffs' own allegations demonstrate that the release was not an integral part of the alleged conspiracy. According to the Complaint, well before the 2025 Charter negotiations, the alleged antitrust scheme had already succeeding in eliminating all "possible competition to NASCAR's stock car

monopoly" and "substantially foreclos[ing] any potential new competitor from being formed," forcing Plaintiffs to "yield to whatever terms NASCAR seeks to impose." ¶¶14, 92, 103. Plaintiffs' allegations thus confirm that the release was, at most, an "outgrowth" of the alleged scheme—not its primary cause. Holding otherwise would effectively "render void all releases relating to conspiracies alleged to continue post-release." *VKK*, 244 F.3d at 126.

IV. CONCLUSION

The Court should dismiss Plaintiffs' claims against NASCAR.

Dated: December 2, 2024.

Respectfully submitted,

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WORD COUNT CERTIFICATION

I hereby certify that the foregoing document contains fewer than 4,500 words according to the word count feature in Microsoft Word and is therefore in compliance with the word limitation set forth in Judge Whitney's Scheduling Order.

This the 2nd day of December, 2024.

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I hereby certify the following:

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2. Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or a paralegal working at his/her direction as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

This the 2nd day of December, 2024.

/s/ Tricia Wilson Magee

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NASCAR'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS** was electronically filed using the Court's CM/ECF system, which will automatically send notice of filing to all parties of record as follows:

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