

**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

JAMES FRANCE'S
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

TABLE OF CONTENTS

| | Page |
|---|-------------|
| I. INTRODUCTION | 1 |
| II. BACKGROUND | 2 |
| A. Mr. France’s Role As CEO Of NASCAR | 2 |
| B. 2025 Charter Negotiations | 2 |
| C. Plaintiffs’ Claims Against Mr. France Are The Same As Against NASCAR | 3 |
| III. LEGAL STANDARD..... | 3 |
| IV. ARGUMENT | 3 |
| A. Plaintiffs’ Claims Against Mr. France Fail For The Same Reasons They Fail Against NASCAR..... | 3 |
| B. Plaintiffs Further Fail To Allege That Mr. France Knowingly And Actively Engaged In The Alleged Anticompetitive Conduct, Dooming Their Claims..... | 4 |
| V. CONCLUSION..... | 6 |

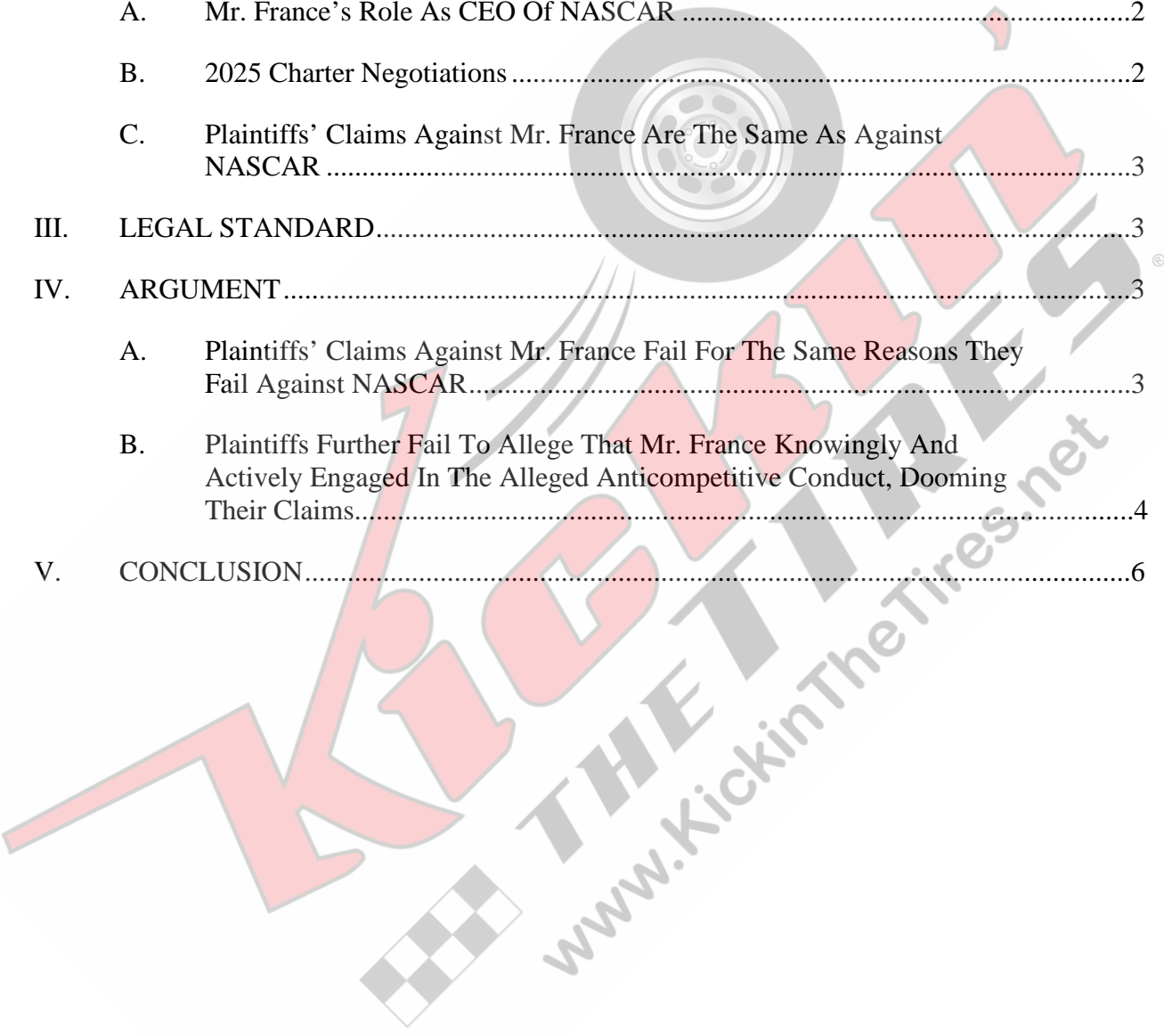


TABLE OF AUTHORITIES

Page(s)

CASES

| | |
|---|----------------|
| <i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)..... | 3 |
| <i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)..... | 3 |
| <i>Brown v. Donco Enterprises, Inc.</i> , 783 F.2d 644 (6th Cir. 1986) | 4 |
| <i>Buschi v. Kirven</i> , 775 F.2d 1240 (4th Cir.1985) | 4 [®] |
| <i>Chandler v. Phoenix Servs.</i> , 419 F. Supp. 3d 972 (N.D. Tex. 2019) | 4, 5 |
| <i>Churchill Downs Inc. v. Thoroughbred Horsemen’s Group, LLC</i> , 605 F. Supp. 2d 870 (W.D. Ky. 2009)..... | 4, 5 |
| <i>Copperweld Corp. v. Independence Tube Corp.</i> , 467 U.S. 752 (1984)..... | 3 |
| <i>Greer v. Gen. Dynamics Info. Tech., Inc.</i> , 808 F. App’x 191 (4th Cir. 2020) | 3 |
| <i>In re Mexican Gov’t Bonds Antitrust Litig.</i> , 412 F. Supp. 3d 380 (S.D.N.Y. 2019)..... | 5 |
| <i>Painter’s Mill Grille, LLC v. Brown</i> , 716 F.3d 342 (4th Cir. 2013) | 4 |
| <i>SD3, LLC v. Black & Decker (U.S.) Inc.</i> , 801 F.3d 412 (4th Cir. 2015)..... | 5 |

BOTTOM LINE UP FRONT

Plaintiffs improperly seek to drag NASCAR's CEO, Mr. James ("Jim") France, into a legal battle motivated by Plaintiffs' inability to secure *all* their preferred contractual terms from NASCAR during the negotiations over the 2025 Charter. Plaintiffs' antitrust claims against Mr. France are just as baseless as their claims against NASCAR and should be dismissed for the same reason that the claims against NASCAR should be dismissed. They also fail because Plaintiffs have not provided any factual allegations showing Mr. France "actively and knowingly engaged" in the alleged anticompetitive scheme. The absence of such allegations is fatal and the claims against him should accordingly be dismissed.

I. INTRODUCTION

Apparently, Plaintiffs believe that adding NASCAR's CEO as a co-defendant will give them additional leverage in their quest to use the antitrust laws to secure their preferred contractual terms. Even setting aside that Plaintiffs have no valid claim against NASCAR—and thus no valid claim against Mr. France—their decision to drag Mr. France into this lawsuit defies well-settled law and is wholly improper. A CEO's title alone does not suffice for personal liability absent plausible allegations that he "actively and knowingly engaged in a scheme designed to achieve anticompetitive ends"—a standard Plaintiffs do not come close to meeting. Indeed, Plaintiffs offer only a single factual allegation that Mr. France was involved in any of the alleged anticompetitive conduct: that he "and other members of NASCAR's senior leadership started calling teams to tell them NASCAR would extend the signing deadline to midnight . . ." ¶109.¹ But a single allegation of Mr. France making calls along with other employees of NASCAR does not somehow create an antitrust cause of action. If Plaintiffs' conclusory allegations were enough to state a claim against

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

an individual officer, every CEO could be dragged into litigation relating to his or her company's alleged conduct merely by virtue of their position. That has never been the standard.

Plaintiffs' tactic of repeatedly mentioning the "France family" over 30 times in their Complaint is legally meaningless. Group pleading is obviously inappropriate and the law does not hold individuals accountable for the alleged actions of others. There simply are no viable allegations against Mr. France and the baseless claims against him should be dismissed.

II. BACKGROUND

A. Mr. France's Role As CEO Of NASCAR

Plaintiffs allege that Mr. France became the CEO and Chairman of NASCAR on August 6, 2018. ¶49. Plaintiffs further claim that Mr. France and other members of the France family "currently own and control" NASCAR. ¶51. However, Plaintiffs do not allege that Mr. France had any role in NASCAR or involvement in any of the alleged anticompetitive conduct prior to August 2018.

B. 2025 Charter Negotiations

In February 2022, a group of racing team executives contacted "NASCAR senior leadership" about beginning the 2025 Charter negotiations. ¶103. The teams jointly negotiated with NASCAR for a period of well over two years. ¶¶103-09. After those negotiations, Plaintiffs allege that NASCAR sent the teams "the final version of the 2025 Charter Agreement" and "told the teams they had a 6:00 p.m. deadline" on September 6, 2024 "to sign[.]" ¶109. In response to alleged "outrage" from the teams, Plaintiffs claim that "Jim France and other members of NASCAR's senior leadership started calling teams to tell them NASCAR would extend the signing deadline to midnight, but it would eliminate the charter system altogether for 2025 and beyond if a substantial number of teams did not sign by that deadline." *Id.*

C. Plaintiffs' Claims Against Mr. France Are The Same As Against NASCAR

Plaintiffs' attempt to plead two Sherman Act claims against NASCAR and Mr. France, targeting: (1) NASCAR's 2018 acquisition of Automobile Racing Club of America (¶12); (2) NASCAR's 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); (5) the 2016 Charter provisions (¶¶70-77); and (6) NASCAR entering into 2025 Charters with 13 other teams (¶¶103-16).

III. LEGAL STANDARD

A complaint "must contain sufficient factual matter" to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A complaint that lacks sufficient factual allegations or fails to identify a cognizable legal theory cannot survive application of this standard." *Greer v. Gen. Dynamics Info. Tech., Inc.*, 808 F. App'x 191, 193 (4th Cir. 2020). That rule is consistent with the Supreme Court's admonition that "[i]t is no answer to say that a claim just shy of a plausible entitlement to relief can, if groundless, be weeded out early in the discovery process[.]" *Twombly*, 550 U.S. at 559.

IV. ARGUMENT

A. Plaintiffs' Claims Against Mr. France Fail For The Same Reasons They Fail Against NASCAR

Plaintiffs' claims against Mr. France are entirely tied to his role at NASCAR; they do not allege any separate or independent basis of liability.² When a corporate officer's liability is solely

² Plaintiffs allege that the Charter Agreements are part of an unlawful conspiracy entered into by NASCAR. ¶153. There are no allegations that Mr. France conspired with any third party—and Mr. France is incapable of conspiring with NASCAR. *See Copperweld Corp. v. Independence*

based on his position within a company, any claims against that officer must fail if the claims would also fail against the entity. *See Brown v. Donco Enterprises, Inc.*, 783 F.2d 644, 646 (6th Cir. 1986) (rejecting theory of individual officer liability predicated on “corporate actions that violate the antitrust laws”).

Consequently, the claims against Mr. France should be dismissed for the same reasons identified in NACAR’s concurrently filed motion to dismiss.

B. Plaintiffs Further Fail To Allege That Mr. France Knowingly And Actively Engaged In The Alleged Anticompetitive Conduct, Dooming Their Claims

Additionally, even assuming that Plaintiffs had alleged a plausible claim against NASCAR, Plaintiffs’ claims against Mr. France should be dismissed because they nowhere plead that Mr. France “*actively and knowingly* engaged in a scheme designed to achieve anticompetitive ends.” *Donco*, 783 F.2d at 646 (emphasis added); *Churchill Downs Inc. v. Thoroughbred Horsemen’s Group, LLC*, 605 F. Supp. 2d 870, 889 (W.D. Ky. 2009) (same). Plaintiffs fail to satisfy this standard because they do not make “factual allegations of some sort of conscious wrongdoing by [Mr. France] on the corporation’s behalf” and that Mr. France had “some direct role” in the alleged violation. *Chandler v. Phoenix Servs.*, 419 F. Supp. 3d 972, 982 (N.D. Tex. 2019) (citation omitted). Conclusory allegations are insufficient. In *Churchill Downs*, the plaintiffs sought to drag the president and executive director of a defendant into litigation by identifying their roles in the organization and alleging that they “made a conscious commitment to the scheme.” *Churchill Downs*, 605 F. Supp. 2d at 889. The court rejected plaintiffs’ claim because these general and conclusory allegations failed to provide factual support for “the required elements that the agents

Tube Corp., 467 U.S. 752, 769 (1984) (“[O]fficers or employees of the same firm do not provide the plurality of actors imperative for a § 1 conspiracy.”); *see also Painter’s Mill Grille, LLC v. Brown*, 716 F.3d 342, 353 (4th Cir. 2013) (“[S]uing the agents individually does not destroy the immunity granted under the doctrine.”); *Buschi v. Kirven*, 775 F.2d 1240, 1252 (4th Cir.1985) (same).

be ‘actively and knowingly’ engaged in the scheme.” *Id.* The same is true here as there are no factual allegations that Mr. France actively and knowingly engaged in their alleged anticompetitive scheme.

With respect to the first five acts, *see supra* § 2C, Plaintiffs plead no allegations—plausible or otherwise—about Mr. France’s involvement. Merely being affiliated with or owning an entity is not enough to show “conscious wrongdoing” and create individual antitrust liability. *See, e.g., Chandler*, 419 F. Supp. at 988-89 (allegation that CEO “likely knew or should have known” insufficient for personal liability because it is “not a factual allegation regarding his ‘direct role’”); *Churchill Downs*, 605 F. Supp. 2d at 889 (rejecting president’s and executive director’s personal liability because “mere identification” of role in the organization does not show the individuals “actively and knowingly engaged in the scheme”).

Plaintiffs’ reliance on group pleading regarding “the France family” cannot cure this deficiency. Such group pleading is impermissible under established law. *See SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 422 (4th Cir. 2015) (a complaint must do more than “assemble some collection of defendants and then make vague, non-specific allegations against all of them as a group”); *see also In re Mexican Gov’t Bonds Antitrust Litig.*, 412 F. Supp. 3d 380, 388 (S.D.N.Y. 2019) (“Allegations about the defendants as a general collective bloc, or generalized claims of parallel conduct, must be set aside as impermissible group pleading.”) (cleaned up). Plaintiffs needed to “allege particular facts against a particular defendant”; their failure to do so means their claims against Mr. France “must be dismissed.” *SD3*, 801 F.3d. at 422.

With respect to the sixth act Plaintiffs allege, the terms of the 2025 Charter, the single allegation Plaintiffs offer is woefully insufficient and does not plausibly allege that Mr. France was involved in a scheme designed to achieve anticompetitive ends—much less that he did so

“actively and knowingly.” Plaintiffs merely allege that, on September 6, 2024, Mr. France “and other members of NASCAR’s senior leadership started calling teams to tell them NASCAR would extend the signing deadline to midnight, but it would eliminate the charter system altogether for 2025 and beyond if a substantial number of teams did not sign by the deadline.” ¶109. Reminding teams of a pending deadline says nothing about Mr. France’s alleged participation in a supposed anticompetitive scheme regarding the terms of the 2025 Charters, much less does it establish “conscious wrongdoing” on his part related to the 2025 Charters-at-large. And it certainly does not show that Mr. France played an active and knowing role with respect to either of the two provisions Plaintiffs challenge—the 2025 Charter’s release-of-claims and non-compete provisions. *See* Doc. 52 (Mot. ISO Renewed Prelim. Injunction) at 10 (Plaintiffs “are only contending that very small portions of the more than 100-page charter agreements—the restrictive covenants and release terms—are exclusionary acts . . .”).

Plaintiffs’ failure to plead sufficient facts to state a plausible claim that Mr. France “actively and knowingly” violated the Sherman Act in his role at NASCAR necessitates his dismissal from this case.

V. CONCLUSION

The Court should dismiss Plaintiffs’ claims against James France.

Dated: December 2, 2024

Respectfully submitted,

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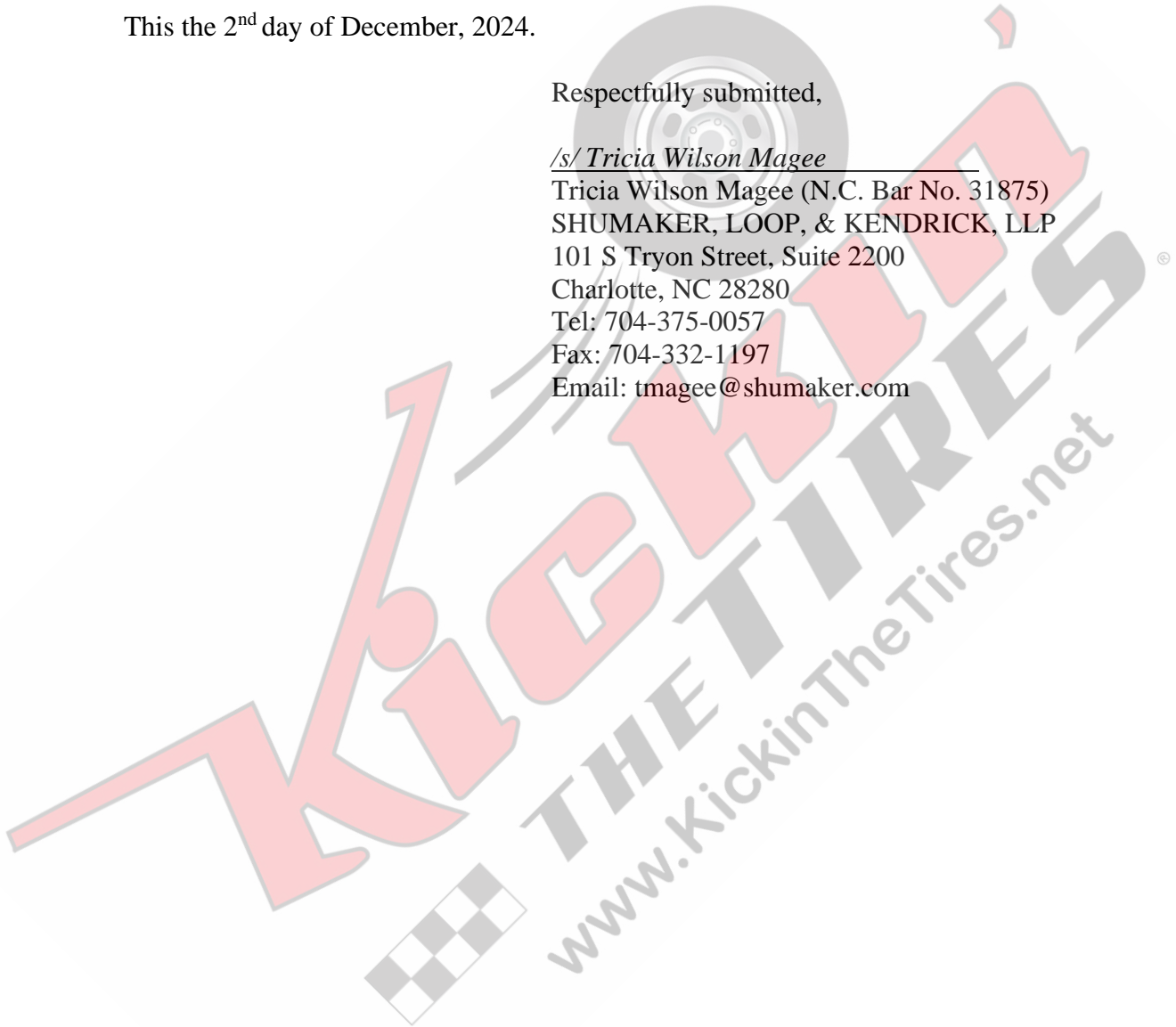
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This the 2nd day of December, 2024.

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This the 2nd day of December, 2024.

/s/ Tricia Wilson Magee

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **JAMES FRANCE’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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