

**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

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

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT JAMES FRANCE'S MOTION TO DISMISS**

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
SUMMARY OF ALLEGATIONS	1
ARGUMENT	2
I. Plaintiffs Have Pled Valid Claims Under The Sherman Act Which Cannot Be Dismissed as a Matter of Law	2
II. France and NASCAR Constitute a Single Enterprise That Have Violated the Sherman Act Together.....	3
III. Plaintiffs Plausibly Allege That France Actively and Knowingly Controlled, Directed and Participated in NASCAR’s Sherman Act Violations	4
IV. Plaintiffs’ Complaint Does Not Include Impermissible Group Pleading.....	6
CONCLUSION.....	7

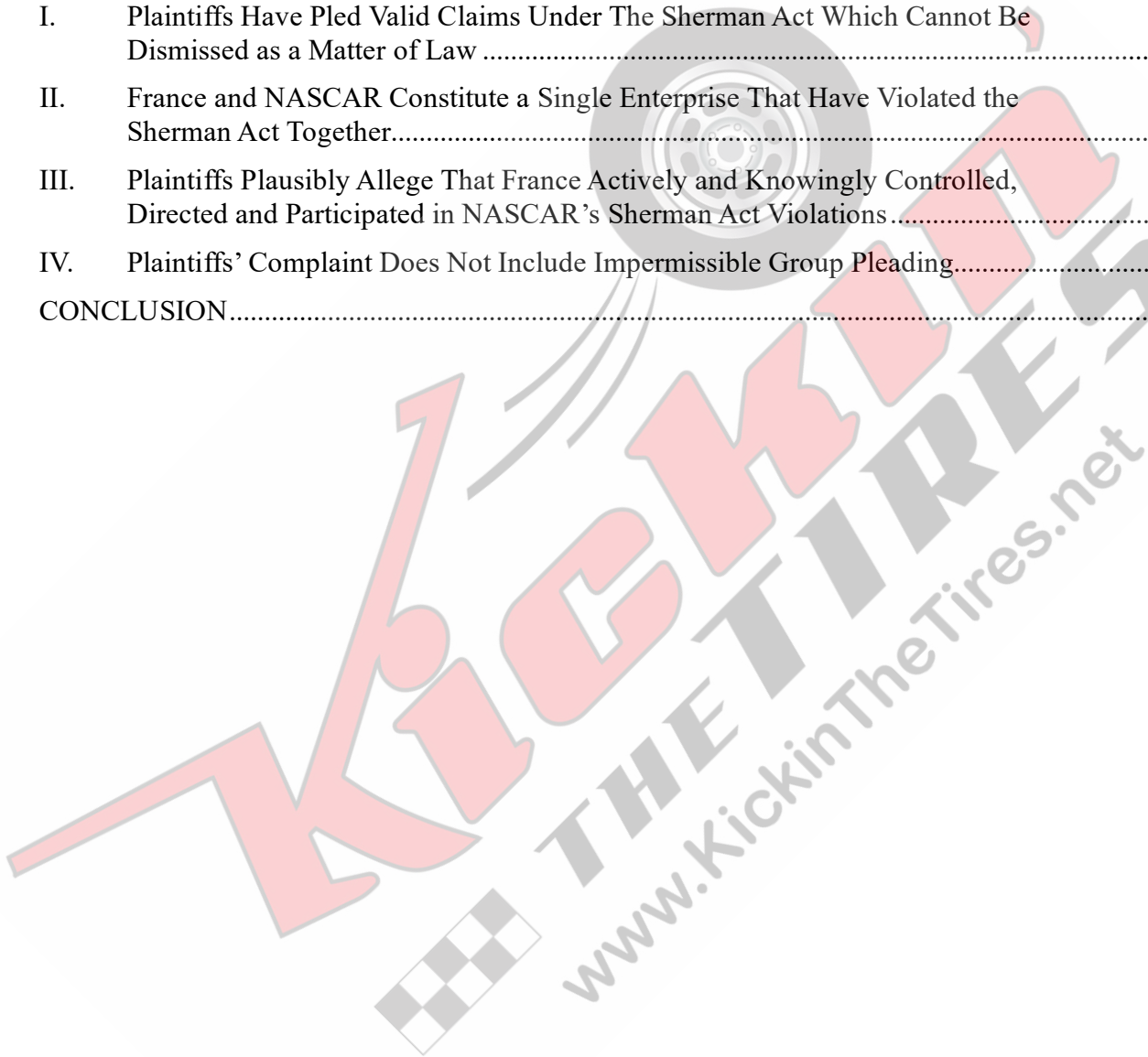


TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Brown v. Donco Enters., Inc.</i> , 783 F.2d 644 (6th Cir. 1986).....	4
<i>Carrado v. Daimler AG</i> , 2018 WL 4565562 (D. Colo. Sept. 24, 2018).....	7
<i>Cohlma v. St. John Med. Ctr.</i> , 693 F.3d 1269 (10th Cir. 2012).....	3
<i>Hightower v. Celestron Acquisition, LLC</i> , 2021 WL 2224148 (N.D. Cal. June 2, 2021).....	6 [®]
<i>Int’l Watchman, Inc. v. The NATO Strap Co.</i> , 2014 WL 1333351 (N.D. Ohio Mar. 28, 2014).....	5
<i>Las Vegas Sun, Inc. v. Adelson</i> , 2020 WL 7029148 (D. Nev. Nov. 30, 2020).....	4
<i>Lenox MacLaren Surgical Corp. v. Medtronic, Inc.</i> , 847 F.3d 1221 (10th Cir. 2017).....	3
<i>In re Mexican Government Bonds Antitrust Litigation</i> , 412 F.Supp.3d 380 (S.D.N.Y. 2019).....	7
<i>Murray v. National Football League</i> , 1996 WL 363911 (E.D. Pa. June 28, 1996).....	5
<i>SD3, LLC v. Black & Decker (U.S.) Inc.</i> , 801 F.3d 412 (4th Cir. 2015).....	7
<i>Six W. Retail Acquisition, Inc. v. Sony Theatre Mgmt. Corp.</i> , 2000 WL 264295 (S.D.N.Y. Mar. 9, 2000).....	4, 5
<i>Substantial Invs., Inc. v. D’Angelo Franchising Corp.</i> , 2004 WL 1932749 (D. Mass. Aug. 30, 2004).....	6
<i>Colorado ex rel. Woodard v. Ramsour Bros, Inc.</i> , 1986 WL 7823 (D. Colo. July 9, 1986).....	4
<i>Wordlaw v. Enter. Leasing Co. of Chicago, LLC</i> , 2020 WL 7490414 (N.D. Ill. Dec. 21, 2020).....	6

PRELIMINARY STATEMENT

Plaintiffs' Complaint alleges that, since 2018, James France has used his ownership and control over NASCAR to direct NASCAR's unlawful actions to erect barriers to entry and exclude any competition. It also alleges that he directed NASCAR to use its unlawfully maintained monopsony to impose below market terms on Plaintiffs and other racing teams. At the pleading stage, these allegations must be accepted as true and France's motion to dismiss should be rejected.

SUMMARY OF ALLEGATIONS

NASCAR is a France family business built on a monopsonistic business strategy. *See* Compl. ¶¶ 59–69. Defendant James France (“France” or “Jim France”) has been chairman and CEO of NASCAR since August 2018. *Id.* ¶¶ 48–49, 64. Since assuming control over the stock car racing behemoth, France “has directed, controlled and/or ratified each of NASCAR’s anticompetitive and exclusionary acts to maintain its unlawful monopoly power and unreasonably restrain competition.” *Id.* ¶¶ 59, 64.

France “directed, controlled, and/or ratified” NASCAR’s acquisition of the International Speedway Corporation in 2019, its refusal to permit the acquired tracks to host competing events, and its implementation and enforcement of exclusivity provisions on third-party racetracks that bar them from hosting any other stock car racing event. *Id.* ¶¶ 59, 64, 79–89.

France “directed, controlled, and/or ratified” NASCAR’s decision to relegate the Automobile Racing Club of America—the only other notable stock car racing series in the United States, which NASCAR acquired just prior to France’s anointment as CEO—to a feeder series. *Id.* ¶¶ 59, 64, 90–93.

France “directed, controlled, and/or ratified” the Next Gen car restrictions that NASCAR has imposed on teams since 2022, which force teams to spend millions of dollars buying parts

from NASCAR’s hand-picked single source suppliers and then preclude the teams from using these cars in any races not authorized by NASCAR. *Id.* ¶¶ 59, 64, 97–102.

France “directed, controlled, and/or ratified” NASCAR’s imposition of the 2025 Charter Agreement, including its non-compete covenant which precludes the teams from forming or joining any competing racing circuit, and its mandatory release that NASCAR contends shields its monopsony from antitrust challenge by the teams. *Id.* ¶¶ 59, 64, 103–16. Both of these provisions are further exclusionary acts which unlawfully maintain NASCAR’s monopsony. *Id.* ¶¶ 21–23, 113–14, 142, 153.

And Plaintiffs allege that “[u]nder the direction of Jim France, NASCAR’s plan was to use its monopsony power over the teams to impose a new set of anticompetitive terms that would be far less favorable than the teams could obtain if there were a competitive market for their independent contractor services as top-tier stock car racing teams.” *Id.* ¶ 104. That plan was implemented under the control of and with the direct participation of France. *Id.* ¶ 110 (“Jim France and other members of NASCAR’s senior leadership started calling teams to tell them NASCAR ... would eliminate the charter system altogether for 2025 and beyond if a substantial number of teams did not sign by that deadline.”).

ARGUMENT

I. Plaintiffs Have Pled Valid Claims Under The Sherman Act Which Cannot Be Dismissed as a Matter of Law

As demonstrated in Plaintiffs’ concurrently filed Opposition to Defendant NASCAR’s Motion to Dismiss, Plaintiffs have pled more than sufficient facts to support their claims under the Sherman Act against Defendant NASCAR.¹ France, as CEO of NASCAR “since August 6, 2018,

¹ See Dkt. 71.

. . . has directed, controlled and/or ratified each of NASCAR's anticompetitive and exclusionary acts to maintain its unlawful monopoly power and unreasonably restrain competition." *Id.* ¶¶ 49, 64; *see supra* pp. 1–2. Plaintiffs incorporate the arguments from their opposition to NASCAR's motion to dismiss here. These arguments apply with equal force to support the Sherman Act claims against France.

II. France and NASCAR Constitute a Single Enterprise That Have Violated the Sherman Act Together

Defendants' Motion is premised on the assertion that the Complaint alleges a "mere[] [] affiliat[ion]" between France and NASCAR. *See* Mot. at 5. This is not correct. The Complaint alleges facts plausibly showing that France and NASCAR have a complete financial unity of interest so that they should be treated as a single economic entity for the purposes of Sherman Act liability. *See Cohlma v. St. John Med. Ctr.*, 693 F.3d 1269, 1280 (10th Cir. 2012) ("Section 2 can be violated by a single economic unit without requiring any contract, combination, or conspiracy."); *Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 847 F.3d 1221, 1232–35 (10th Cir. 2017) (recognizing that unity of interest dictates "single entity" inquiry, and that "affiliated entities which must be treated as a single enterprise for purposes of § 1 also must be treated as a single enterprise for purposes of § 2"). It is the "collective conduct—i.e., the conduct of the enterprise [i.e., NASCAR and France] . . . that matters," not France's conduct in isolation. *Id.* at 1230.

The financial unity of interest between NASCAR and France is established by the allegations that he is not just the Chairman of NASCAR, but that he also is its owner and that he has directed and controlled the unlawful conduct at issue for the economic benefit of his family. Compl. ¶¶ 1–3, 6–7, 16, 59–67, 69. It is specifically alleged that, since 2018, France has been "direct[ing], control[ing] and/or ratif[ying] each of NASCAR's anticompetitive and exclusionary

acts,” with the objective of “serv[ing] the economic interest of the France family, above all else.” *Id.* ¶¶ 49, 64, 68. The unlawful conduct committed by NASCAR at France’s direction for the financial benefit of his family is thus, for Sherman Act purposes, also attributed to him. *See Las Vegas Sun, Inc. v. Adelson*, 2020 WL 7029148, at *10–11 (D. Nev. Nov. 30, 2020) (denying motion to dismiss individual-defendant from Sherman Act case because single-enterprise theory applied and this theory of Sherman Act liability is “applicable to individuals that own or manage a company”).

III. Plaintiffs Plausibly Allege That France Actively and Knowingly Controlled, Directed and Participated in NASCAR’s Sherman Act Violations

Even if single-enterprise liability under the Sherman Act did not apply to France (it does), the claims against him would still be well-pled because of the allegations that France directed, controlled and participated in NASCAR’s monopolistic scheme. Compl. ¶¶ 16, 19, 49, 55, 64, 66, 104, 109. These allegations are sufficient to show that France “actively and knowingly engaged in a scheme designed to achieve anticompetitive ends.” *See* Mot. at 4 (emphasis omitted) (internal quotation marks omitted) (quoting *Brown v. Donco Enters., Inc.*, 783 F.2d 644, 646 (6th Cir. 1986)).

It is black-letter law that “a corporation’s officers and agents may be held individually liable for corporate actions that violate the antitrust laws if they authorize or participate in the unlawful acts.” *Brown*, 783 F.2d at 646. Accordingly, “major employees [are held] personally liable for the purported antitrust violations because of the influence they exert[] in effectuating [a company’s] corporate policy.” *See Six W. Retail Acquisition, Inc. v. Sony Theatre Mgmt. Corp.*, 2000 WL 264295, at *35 (S.D.N.Y. Mar. 9, 2000); *see also Colorado ex rel. Woodard v. Ramsour Bros, Inc.*, 1986 WL 7823, at *2 (D. Colo. July 9, 1986) (“A corporate officer can be held personally liable for damages arising out of an antitrust violation not only where he directs or

actively participates in these unlawful acts, but also where he has acquiesced to or ratified the actions of other officers or agents of the corporation which violate the antitrust laws.”); *Int’l Watchman, Inc. v. The NATO Strap Co.*, 2014 WL 1333351, at *2 (N.D. Ohio Mar. 28, 2014) (“[I]t is well settled that a corporation’s agents and officers may be held personally liable if they participate in or authorize corporate activities that violate antitrust laws”) (citation and internal quotation marks omitted).

These principles of individual Sherman Act liability for officers who direct and ratify unlawful conduct by their businesses apply with equal force in the context of a sports league. For example, in *Murray v. National Football League*—involving antitrust claims brought against the NFL and its Commissioner (Paul Tagliabue) and President (Neil Austrian)—the court denied the motion to dismiss the NFL Commissioner and President as individual defendants because their “personal participation ... in the adoption, ratification or enforcement of [the challenged] policy on behalf of the League subject[ed] them to individual liability.” 1996 WL 363911, at *23 (E.D. Pa. June 28, 1996).

Plaintiffs not only allege facts showing France’s “influence ... in effectuating [NASCAR’s] corporate policy” (*Six W. Retail Acquisition*, 2000 WL 264295, at *35; see Compl. ¶¶ 49, 55, 64, 66), they allege facts showing that he “personally participat[ed]” in the anticompetitive conduct (*Murray*, 1996 WL 363911, at *35). For example, the Complaint alleges that, since 2018, France has “directed, controlled and/or ratified” each of NASCAR’s exclusionary acts, and that he has used his control to direct NASCAR to carry out his monopolistic scheme for the economic benefit of the France family. See Compl. ¶¶ 16, 19, 43, 49, 55, 64, 66, 104. Plaintiffs also allege that France directly participated in and controlled the 2025 Charter Agreement negotiations, which included the imposition of the exclusionary covenant not to compete on teams, and the mandatory

release that NASCAR has asserted to try to shield its monopoly from antitrust challenge. *Id.* ¶¶ 16, 19, 104. Plaintiffs further allege that France directed NASCAR to use its monopsony power to impose below competitive market terms upon Plaintiffs and other race car teams which have caused them antitrust injury. *See id.*; *see also id.* ¶¶ 126–29. These allegations, which must be accepted as true, are more than sufficient to survive a motion to dismiss. *See Hightower v. Celestron Acquisition, LLC*, 2021 WL 2224148, at *11–13 (N.D. Cal. June 2, 2021) (denying motion to dismiss CEOs as individual defendants from antitrust case where they were alleged to have either been directly involved in negotiating the agreement at issue and aware of the anticompetitive market division and payments, or involved in advising on the anticompetitive acquisition); *Substantial Invs., Inc. v. D’Angelo Franchising Corp.*, 2004 WL 1932749, at *4 (D. Mass. Aug. 30, 2004) (denying motion to dismiss CEO as individual defendant from antitrust case, finding that a “bare allegation” of CEO’s involvement sufficed where he “signed the [] agreement that appear[ed] to be at the root of the entire case”). The Complaint here alleges that France is similarly at the root of NASCAR’s monopsonistic scheme. *See* Compl. ¶¶ 3, 16, 19, 49, 55, 64, 66, 104, 109.

IV. Plaintiffs’ Complaint Does Not Include Impermissible Group Pleading

The Complaint does not present group-pleading issues because “both defendants [have] sufficient notice of wrongdoing.” *Wordlaw v. Enter. Leasing Co. of Chicago, LLC*, 2020 WL 7490414, at *3 (N.D. Ill. Dec. 21, 2020). Though the Complaint references the “France family” at times, the only member of the France family *named* as a *defendant* is Jim France, and France’s unlawful conduct is separately identified. The Complaint properly contains allegations that France himself directed, controlled and/or ratified specific exclusionary acts engaged in by NASCAR since 2018, when he became the CEO and Chairman of the company. Compl. ¶¶ 16, 19, 49, 55, 64, 66, 104, 109; *see Carrado v. Daimler AG*, 2018 WL 4565562, at *4 (D. Colo. Sept. 24, 2018)

(no group pleading issue where there is “no risk of mistakenly grouping allegations against unrelated entities”).

Further, because, as discussed above (*see supra* pp. 3–4), France and NASCAR have operated as a single economic enterprise, NASCAR’s unlawful conduct under the Sherman Act is attributed to France as a matter of law. There is thus no group-pleading distinction between them.

Defendants’ cases do not support a different conclusion. In *SD3, LLC v. Black & Decker (U.S.) Inc.*, claims were brought against corporate parent companies, but *no factual allegations were made against those parent companies*—only against some of their subsidiaries. 801 F.3d 412, 423 (4th Cir. 2015). And *In re Mexican Government Bonds Antitrust Litigation* concerned allegations of a conspiracy against members of an unnamed entity, but the plaintiff failed to offer “a coherent explanation for each defendant’s participation in the alleged conspiracy.” 412 F.Supp.3d 380, 388–89 (S.D.N.Y. 2019) (alteration, citation and internal quotation marks omitted). Here, by contrast, Plaintiffs have alleged France’s dominant role in controlling, directing and/or ratifying NASCAR’s anticompetitive and exclusionary acts. *See* Compl. ¶¶ 16, 19, 49, 55, 64, 66, 104, 109. These factual allegations state a Sherman Act claim against Jim France that cannot be dismissed at the pleading stage.

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court deny France’s motion to dismiss.

Dated: December 16, 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 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 **2,102** 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' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT JAMES FRANCE'S MOTION TO DISMISS** 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:

Tricia Wilson Magee
SHUMAKER LOOP & KENDRICK, LLP
101 S. Tryon St., Suite 2200
Charlotte, NC 28280
tmagee@shumaker.com

Christopher S. Yates
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
chris.yates@lw.com

Lawrence E. Buterman
LATHAM & WAKINS LLP
1271 Avenue of the Americas
New York, NY 10020
lawrence.buterman@lw.com

Anna M. Rathbun
Christopher J. Brown
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
anna.rathbun@lw.com
chris.brown@lw.com

Counsel for Defendant James France

Jeffrey L. Kessler

Jeffrey L. Kessler