

**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.

Case No. 3:24-cv-00886-KDB

**JOINT CERTIFICATION AND
REPORT OF F.R.C.P. 26(f)
CONFERENCE AND PROPOSED
CASE MANAGEMENT PLAN**

In accordance with the Local Rules of the Western District of North Carolina (“Local Rules”), and pursuant to Rule 16 and Rule 26(f), of the Federal Rules of Civil Procedure, the Parties submit the following proposed discovery plan for this action.

1. Certification of Conference. Pursuant to Federal Rule of Civil Procedure 26(a)(1), a meeting was held on December 9, 2024, between:

Jeanifer Parsigian, Michael Toomey, and Benjamin S. Gordon of Winston & Strawn, LLP, representing Plaintiffs, and Christopher Brown, Anna Rathbun, and Serena Candelaria of Latham & Watkins LLP and Tricia Magee of Shumaker representing Defendants.

2. Pre-Discovery Disclosures.

The information required by Federal Rule of Civil Procedure 26(a)(1) will be exchanged by January 10, 2025.

3. Brief Statement of the Nature and Complexity of the Case.

Plaintiffs allege that Defendants acquired and exert monopsony power and restrain trade in the input market for premier stock car racing teams in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2. Defendants deny any Sherman Act violations and that Plaintiffs have any valid claims. The allegations raise issues of market definition, market power, antitrust injury, and abuse of market power; resolution of these issues will require significant fact, expert, and third-party discovery.

4. Case Schedule

The Parties propose the following case deadlines:

Event	Plaintiffs' Proposed Deadline	Defendants' Proposed Deadline
Initial Disclosures	1/10/2025	1/10/2025
Motion to Amend Pleadings Deadline	2/18/2025	7/17/2025
Completion of Fact Discovery	7/18/2025	10/17/2025
Plaintiffs' Expert Reports Due	8/8/2025	11/7/2025
Defendants' Expert Reports Due	9/19/2025	12/19/2025
Plaintiffs' Rebuttal Expert Reports Due	10/17/2025	1/9/2026
Completion of Expert Discovery	10/31/2025	1/30/2026
Dispositive Motions Deadline	11/26/2025	2/27/2026
Opposition to Any Dispositive Motion	1/9/2026	3/20/26
Reply in Support of Any Dispositive Motion	1/30/2026	4/8/2026

Plaintiffs Position: The parties had been negotiating a case schedule before the case was transferred to the Court from Judge Whitney. Plaintiffs' current proposal adopts the fact discovery close from Defendants first proposal and slightly longer

expert discovery deadlines than Defendants' first proposal did. Plaintiffs' proposed schedule completes fact and expert discovery in approximately ten months, which is already longer than the Court's default timeframe of approximately eight months from the time of the Court's Pretrial Order. Defendants' proposed schedule, which contemplates more than one year of discovery, imposes unwarranted delay and serves only to prolong the ongoing antitrust violations.

Defendants' Position: The parties had been negotiating a case schedule before the case was transferred to this Court. Pursuant to Judge Whitney's order, this case had been scheduled for "Fast Track," which would have had a significantly shortened discovery period. Both parties agreed that more time was required to complete the necessary discovery in this case, and both parties proposed deadlines beyond Judge Whitney's "Complex Track." Defendants understood based on Judge Whitney's standing orders and precedent, that discovery could not be extended much beyond these Complex track deadlines. Following the transfer of this case, Defendants believed that this Court's standing orders would allow the parties to seek a more reasonable schedule to complete discovery, albeit one that is far faster than in other antitrust cases including ones in which Mr. Kessler's firm represents the plaintiffs. Defendants therefore propose a schedule that extends Plaintiffs' full proposal by just over two months. This proposal reflects a schedule that is even shorter than schedules that frequently occur in antitrust cases, including between counsel that represent both parties in this litigation. For example, in *NASL v. United States Soccer Federation, Inc.*, No. 17-cv-5495-MKB-ST (E.D.N.Y.), discovery lasted well over 20 months before being even further extended because of COVID. See, e.g., No. 17-cv-5495-MKB-ST, Doc. No. 79, June 28, 2018 Oral Order (discovery period of 10 months ending Apr. 30, 2019); *id.* Doc. No. 162, Apr. 29, 2019 Oral Order (extending discovery by 7 months to Nov. 22, 2019); *id.* Doc. No. 165, June 26, 2019 Oral Order (extending discovery 2 months to Jan. 17, 2020); *Id.* Doc. No. 208, Feb. 10, 2020 Oral Order (extending discovery 3 months to May 4, 2020); *id.* Doc. No. 210, Apr. 9, 2020 Oral Order (extending discovery 2 months to June 30, 2020); see generally *id.* (Complaint filed Sept. 19, 2017 and summary judgment replies filed Apr. 12, 2021). As can be seen in the proposed discovery limits, Plaintiffs plan to engage in expansive discovery, including from third parties. Plaintiffs' proposed discovery schedule would impose unnecessary burden on the parties and third parties, especially because discovery will be ongoing during NASCAR's season, as well as because lead counsel for both Plaintiffs and Defendants will be trying the same multi-week federal court case in January (*NASL v. United States Soccer Federation, Inc.* No. 17-cv-5495-MKB-ST (E.D.N.Y.)) and potentially another federal case (*Shields v. FINA*, No. 18-cv-7393-JSC (N.D. Cal.)).

5. Discovery Plan.

The parties propose the below discovery limits per side, subject to change by stipulation or on a showing of good cause, as follows:

Event	Plaintiffs' Proposed Limit	Defendants' Proposed Limit
Interrogatories	25	25
Requests for Production	50	50
Requests for Admission	50	50
Depositions, exclusive of expert depositions	125 hours	105 hours

Plaintiffs' Position: Plaintiffs anticipate needing to depose a variety of party and third-party witnesses, and at this early of the litigation believe that they will need 125 hours of total deposition time, excluding expert depositions, to complete this discovery.

Defendants' Position: Defendants believe that their proposal of 105 hours is more than enough to complete the discovery in this case and represents an offer significantly higher than this Court's presumptive limit of 40 hours of deposition time per party. Defendants would be willing to agree to Plaintiffs' increased deposition time limit if the Defendants' proposed schedule is adopted. But Plaintiffs' proposed deposition limit (over 50% more than the presumptive limit in this Court) would impose significant burden on the parties and third parties under their shorter proposed discovery timeline in Plaintiffs' discovery proposal.

6. Other Items.

- (a) Initial Pretrial Conference. The parties request a conference with the Court prior to the entry of a Case Management Order.
- (b) Standing Order Requiring An Initial Settlement Conference. Defendants answered Plaintiffs' complaint prior to the reassignment of this case to Your Honor. The Parties agree to conduct the initial settlement conference mandated by the Court's standing order and to file a Certificate of Settlement Conference within 30 days of the reassignment.

- (c) Trial Estimates. If this case is ultimately tried, trial is expected to take approximately 10 days. This case will be tried with a jury.
- (d) Local Civil Rule 73.1(C) Certification. The Parties have discussed the issue of consent to the jurisdiction of a United States magistrate judge. The Parties do not consent to the jurisdiction of a magistrate judge.

7. Other Matters Regarding Discovery or Case Management.

(a) Electronically Stored Information:

- 1) The Parties have discussed the production of electronically stored information (“ESI”) and anticipate submitting a separate, more fulsome proposed agreed ESI Protocol. The Parties reserve the right to move for an order with regard to the production of ESI in the event that the Parties are not able to agree on a consent ESI Protocol.

(b) Privileged Information:

- 1) In accordance with Rule 26(f)(3)(D), the Parties have discussed certain issues related to claims of privilege. The Parties agree that an inadvertent production of privileged or trial preparation materials (absent a clear written statement of intent to waive such privilege or protection) shall not be deemed a waiver or forfeiture of such privilege or protection provided that the Party making the production or disclosure promptly identifies any such document(s) mistakenly produced after discovery of the inadvertent production. The Parties further agree that, upon request, any such mistakenly produced documents shall be returned. In the event that the use or

further disclosure of any privileged materials develops during this action, the receiving Party must destroy or sequester all copies of said information and may not use or disseminate the information contained therein until such time as the dispute over the claim of privilege is resolved by the Court.

(c) Confidential Information:

- 1) The Parties have discussed certain issues relating to the disclosure of documents and information which may be confidential and/or protected from disclosure by law such that said information may only be produced by order of the Court. The Parties are concurrently filing a mutually agreeable protective order pursuant to Federal Rule of Civil Procedure 26(c).

Dated: December 16, 2024

Respectfully submitted,

By: /s/ Tricia Wilson Magee

Tricia Wilson Magee (N.C. Bar No.
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