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-KDB-SCR

NASCAR'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

Plaintiffs' rhetoric cannot distract from the fact that their claims stem from their dissatisfaction with the Charter renewal negotiations, and they seek to use litigation to obtain preferred terms, not remedy any genuine anticompetitive behavior. Nearly all their claims are time-barred, and none gives rise to an antitrust injury as the conduct Plaintiffs challenge is procompetitive.

ARGUMENT

I. MOST CLAIMS ARE TIME-BARRED

Plaintiffs do not dispute that their allegations regarding NASCAR's acquisitions of ISC and ARCA are time-barred. Opp. 2, 3. Those allegations cannot serve as a basis for Plaintiffs' claims.

Plaintiffs' assertion (at 2) that NASCAR's enforcement of the 2016 Charter, Next Gen car requirements, and application of exclusivity arrangements with racetracks over the last four years constitute new overt acts lacks merit. The complaint acknowledges that these agreements were established *before* October 2020. ¶¶13, 70-77, 88.[1]

NASCAR's continued implementation of these agreements does not constitute new overt acts restarting the statute of limitations. "[W]hen a complaining party was fully aware of the terms of an agreement" *before* the statute of limitations, "an injury occurs only when the agreement is initially imposed"—not when the defendant later "enforce[s]" that agreement's "requirements." *Varner v. Peterson Farms*, 371 F.3d 1011, 1020 (8th Cir. 2004); *Z Techs. Corp. v. Lubrizol Corp.*, 753 F.3d 594, 604 (6th Cir. 2014) ("implementation of [a] non-compete clause" does not "restart

[1] Despite Plaintiffs' attempts to obfuscate, the Complaint alleges Next Gen was adopted in 2019, as permitted by the 2016 Charter. ¶13.

the statute of limitations"); *US Airways, Inc. v. Sabre Holdings Corp.*, 938 F.3d 43, 68–69 (2d Cir. 2019) (performance of contract not overt acts). An overt act must "be a new and independent act that is not merely a reaffirmation of a previous [one]"—and the continuation of a prior policy simply does not qualify. *CSX Transportation, Inc. v. Norfolk S. Ry. Co.*, 114 F.4th 280, 289 (4th Cir. 2024).

The sole "new and independent act" Plaintiffs allege is the 2025 Charters. Yet, Plaintiffs mistakenly suggest (at 3) that the negotiation and execution of *those* agreements somehow resurrects claims about *other* agreements. An overt act resets the clock only "as to that act." *GO Computer, Inc. v. Microsoft Corp.*, 508 F.3d 170, 174 (4th Cir. 2007); *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, 648 F. Supp. 3d 679, 694 (E.D. Va. 2023), *aff'd*, 114 F.4th 280 (4th Cir. 2024) (citing cases).[2]

II. PLAINTIFFS HAVE NOT ALLEGED ANTITRUST INJURY

Plaintiffs claim they alleged antitrust injuries in three ways: (1) enduring "below competitive market terms of the 2016 Charter" over the past four years; (2) being offered purportedly anticompetitive 2025 Charter terms; and (3) being "forced to compete as open teams." None gives rise to an antitrust injury.

2016 Charter Terms. The 2016 Charter terms—including its revenue split and exclusivity provision—were established *before* the purported anticompetitive acts, including the acquisitions. ¶¶78-115. Any harm Plaintiffs suffered over the last four years from those provisions cannot stem

[2] *In re Mission Health Antitrust Litigation* is not to the contrary. 2024 WL 759308 (W.D.N.C. Feb. 21, 2024). There, all of the antitrust issues stemmed from a single set of contracts between hospitals and insurers, and plaintiffs made clear they could not allege "the specific dates of the contracts … because that information lies in the hands of Defendants." *Id.* at *8.

from "conduct [allegedly] proscribed by the antitrust laws." *Thompson v. Nat'l Cable Advert.*, 57 F.3d 1317, 1325 (4th Cir. 1995).

Plaintiffs' reliance on *Steves & Sons, Inc. v. JELD-WEN, Inc.* is misplaced. 988 F.3d 690 (4th Cir. 2021). There, contractual damages qualified as antitrust injury because the defendant's anticompetitive acquisition *enabled* its breach of contract. *Id.* at 711. Here, Plaintiffs nowhere allege that NASCAR breached the 2016 Charter.

2025 Charter Terms. Unlike the cases Plaintiffs cite (at 6), Plaintiffs *did not sign* the purportedly anticompetitive 2025 Charter and therefore were not subject to its supposedly unlawful provisions when they filed their complaint. Moreover, Plaintiffs do not dispute that they are not attempting to form a competing league, so they cannot be affected by *other* teams signing exclusivity provisions. Mot. 8-9; *Thompson Everett v. Nat'l Cable Advert.*, 850 F. Supp. 470, 476-77 (E.D. Va. 1994) ("[O]nly a plaintiff qualifying as a competitor or consumer … could suffer antitrust injury from an unlawful [exclusivity] arrangement."). All of Plaintiffs' cases (at 13) involved claims by a *competitor* who lost access to players, or *players themselves* subject to exclusivity provisions. None involved teams or investors not directly impacted by the provisions.

Open Team Agreement. Plaintiffs now suggest (at 7) that the *open team agreement* is anticompetitive. But that theory is nowhere to be found in their Complaint. Opp. 11. Indeed, Plaintiffs previously stated that only "the release, [and] the provision that says there are covenants not to compete" harm competition—and these provisions are not in the open team agreements. Mot. 1.

Contract disputes like this are precisely what the antitrust-injury requirement is designed to weed out. *See, e.g., Tops Mkts., Inc. v. Quality Mkts., Inc.*, 142 F.3d 90, 96 (2d Cir. 1998). Just as the plaintiff in *Host International v. MarketPlace* wasn't "excluded from any market nor forced

to purchase [anything] from anyone" after rejecting the defendant's offer, Plaintiffs here aren't being sidelined from NASCAR or forced to sign a noncompete. 32 F.4th 242, 250 (2022).

III. PLAINTIFFS HAVE NOT ALLEGED EXCLUSIONARY ACTS

The bulk of Plaintiffs' allegations (at 11) are time-barred, as discussed above. *Supra* 1-2. Plaintiffs wrongly suggest (at 12) that time-barred allegations can somehow transform timely *pro*competitive acts into exclusionary ones when viewed "holistically." But they fail to cite any case backing this approach, which would effectively nullify the statute of limitations. Their lone case (at 12) simply suggests that in "uncommon" situations involving "a complex or atypical exclusionary campaign," courts may consider *timely* and interrelated allegations collectively when assessing competitive impact. *Duke Energy Carolinas v. NTE Carolinas*, 111 F.4th 337, 354-56 (4th Cir. 2024). It does not support mixing *time-barred* and timely claims to concoct exclusionary acts; to the contrary, the Fourth Circuit emphasized that the conduct had occurred "during the very same time," "simultaneously and to the same effect." *Id.* at 366. Nor does it endorse aggregating conduct that falls within "well-defined categories," like Plaintiffs' refusal-to-deal allegations. *Id.* at 354-55, 362-65 (applying *Aspen Skiing* and *Trinko*). Here, Plaintiffs have not introduced any "complex" or "uncommon" allegations that could bypass established tests.

Noncompete Provision. Plaintiffs ignore NASCAR's argument that they were required to—but did not—plead that the exclusivity provision "foreclose[d] competition in a substantial share of the line of commerce affected." Mot. 12-13. That is fatal. Even the cases Plaintiffs cite (at 13) acknowledge this is a crucial element. *E.I. du Pont v. Kolon*, 637 F.3d 435, 451 (4th Cir. 2011) ("[T]he requirement of a significant degree of foreclosure serves a useful screening function."); *U.S. v. Microsoft*, 253 F.3d 34, 69 (D.C. Cir. 2001) ("in all cases the plaintiff must … prove the degree of foreclosure.").

Plaintiffs' reliance on cases involving exclusivity arrangements between leagues and players—not teams—misses the mark. NASCAR "teams" are investors, not inputs like specific players. Numerous sports cases have upheld similar exclusivity arrangements, underscoring the validity of these provisions. *See USFL v. NFL*, 634 F. Supp. 1155 (S.D.N.Y. 1986); *Parrish v. NFL Players Ass'n*, 534 F. Supp. 2d 1081, 1092 (N.D. Cal. 2007).

Plaintiffs' fixation (on 13) on the purported absence of sports cases involving independent contractors is a red herring. Plaintiffs nowhere explain why the cases NASCAR cited wouldn't be relevant. Mot. 12-13. Because racing teams operate as franchisees, cases upholding exclusive-dealing arrangements between franchisors and franchisees are the most pertinent precedent. *Queen City Pizza, Inc. v. Domino's Pizza*, 124 F.3d 430, 442 (3d Cir. 1997); *Joyce Beverages of N.Y., Inc. v. Royal Crown Cola Co.*, 555 F. Supp. 271, 279 (S.D.N.Y. 1983).

Release. In its preliminary-injunction ruling, this Court concluded that Section 10.3 is likely unlawful to the extent it releases Plaintiffs' antitrust claims. Doc. 74 at 14. But Section 10.3 only releases claims that had accrued before its execution, as Plaintiffs' counsel admitted. Doc. 41 at 13:10-17. And releases similar to Section 10.3 have consistently been upheld in the face of similar antitrust challenges.

Plaintiffs' release argument hinges on the "part and parcel doctrine" that only a handful of district-court cases have ever applied. Mot. 13-15. But even those cases (at 15) only highlight Plaintiffs' failure to satisfy its criteria. In *Total Vision v. Vision Service Plan*, the plaintiffs specifically alleged that the release was "an integral part" of the defendant's market domination plan—a plan executed entirely *through* the agreement containing the release. 717 F. Supp. 3d 922, 933-34 (C.D. Cal. 2024). Meanwhile, *Madison Square Garden v. National Hockey League* affirmed that even releases of "conspiracies alleged to continue post-release" are enforceable.

2008 WL 4547518, *8 (S.D.N.Y. Oct. 10, 2008). The law does not support Plaintiffs' argument that Section 10.3 constitutes an antitrust violation.

CONCLUSION

The Court should dismiss Plaintiffs' claims.

Dated: December 23, 2024

Respectfully submitted,

By: /s/ DRAFT

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WORD COUNT CERTIFICATION

I hereby certify that the foregoing document contains fewer than 1,500 words according to the word count feature in Microsoft Word and is therefore in compliance with the word limitation set forth by this Court's Order, (Doc. No. 55).

This the 23rd day of December, 2024.

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ARTIFICIAL INTELLIGENCE (AI) CERTIFICATION

I hereby certify the following:

1. 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;

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This the 23rd day of December, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NASCAR'S REPLY 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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