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

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

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I. INTRODUCTION

Plaintiffs' Opposition confirms they have not pleaded *factual* allegations supporting any claim against James France. Instead, they seek to drag France into this litigation based on his title and partial ownership of NASCAR. But the law is clear: "Antitrust law doesn't recognize guilt by mere association." *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 423 (4th Cir. 2015). Plaintiffs' conclusory allegation that France "directed, controlled and/or ratified each of NASCAR's . . . acts" does not save their claims. Plaintiffs' failure to allege specific facts is fatal.

II. ARGUMENT

A. Plaintiffs' Conclusory Allegations Do Not Show Active And Knowing Participation

Plaintiffs' "summary of allegations" confirms that the only allegations involving France are (1) boilerplate, conclusory allegations that he "directed, controlled, and/or ratified" certain NASCAR actions; and (2) one vague claim that he called unidentified teams about the 2025 Charters. *See* Opp. 1-2. Neither is sufficient to show that France "actively and knowingly engaged in a scheme designed to achieve anticompetitive ends." Mot. 4.

Plaintiffs' legal conclusion (at 1 (citing ¶¶59, 64)) that France "directed, controlled, and/or ratified each of NASCAR's anticompetitive and exclusionary acts" is far too vague to drag him into this case. Courts routinely refuse to consider such conclusory allegations parroting the legal standard. *SD3*, 801 F.3d at 423 (rejecting as conclusory allegation that parent corporation "dominated" subsidiaries); *Socol v. Albemarle Cnty. Sch. Bd.*, 399 F. Supp. 3d 523, 541 (W.D. Va. 2019) (rejecting as conclusory "plaintiff's bare allegation of ratification"); *U.S. ex rel. Taylor v. Boyko*, 39 F.4th 177, 199 (4th Cir. 2022).

Here, Plaintiffs similarly allege no concrete facts supporting their conclusion. With respect to the (1) 2018 acquisition of Automobile Racing Club of America; (2) 2019 acquisition of

International Speedway Corporation and racetrack exclusivity provisions; and (3) 2019 adoption of Next Gen, Plaintiffs do not allege *any* particular action taken by France. Instead, they repeat their general allegations that the France family "control[s]" NASCAR, ¶59, and that France became the CEO in 2018, ¶64. The rest of their allegations are solely *about NASCAR*. ¶¶90-93 (ARCA acquisition); ¶¶79-89 (ISC acquisition/racetrack exclusivity); ¶¶13, 97-102 (Next Gen). The Complaint provides no factual allegations that France "directed, controlled, and/or ratified" any of these NASCAR actions. That is telling, especially because Plaintiffs seek to hold France liable for the 2018 ARCA acquisition even though it occurred "prior to France's anointment as CEO." Opp. at 1.

Plaintiffs' allegations regarding the 2025 Charter fare no better. Apart from their "all-CEOs-are-liable-for-conduct-at-their-companies" mantra, (at 2 (citing ¶¶59, 64)), Plaintiffs point to two other allegations regarding France. Neither is sufficient to show by any reasonable inference that France "directed, controlled, and/or ratified" the alleged anticompetitive provisions in the 2025 Charter Agreement. The first allegation, that France "directed" NASCAR conduct (¶104), is conclusory, and the Court should not credit it. The second, that "France and other members of NASCAR's senior leadership" called teams regarding the 2025 Charter deadline (¶109), is insufficient to support that claim that France "directed" Plaintiffs' alleged anticompetitive scheme. Further, neither of these allege that France had any knowledge regarding the two provisions that Plaintiffs claim are anticompetitive or that he otherwise ratified the contract (by signing it, for example).

None of these conclusory allegations is sufficient to show France "*actively and knowingly* engaged in a scheme designed to achieve anticompetitive ends." *Brown v. Donco Enters., Inc.*, 783 F.2d 644, 646 (6th Cir. 1986)) (emphasis added); *Churchill Downs Inc. v. Thoroughbred*

Horsemen's Group, LLC, 605 F. Supp. 2d 870, 889 (W.D. Ky. 2009). As in *Chandler v. Phoenix Servs.*, the Complaint does not plead any concrete "factual allegations of some sort of conscious wrongdoing by [France] on the corporation's behalf" and that France had "some direct role" in the alleged violation. 419 F. Supp. 3d 972, 982 (N.D. Tex. 2019). Plaintiffs do not even attempt to distinguish these cases, nor could they.

Plaintiffs instead rely on cases (at 4-6) that pre-date *Bell Atlantic Corp. v. Twombly*, which established the plausibility standard for pleadings, to argue that bare allegations of "direction, control and/or ratification" suffice on their own. 550 U.S. 544 (2007). But ever since *Twombly*, courts have routinely dismissed similar allegations as too conclusory. *See, e.g.*, *Churchill Downs*, 605 F. Supp. 2d at 889 (identification of individual's role and allegation that they "made a conscious commitment to the scheme" insufficient to show that individual "actively and knowingly engaged in the scheme"); *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'"). Plaintiffs' reliance on outdated cases is not persuasive.

Plaintiffs' only cite post-dating *Twombly* (*Hightower v. Celestron Acquisition, LLC*, 2021 WL 2224148 (N.D. Cal. June 2, 2021)) offers no support. In *Hightower*, the plaintiffs provided specific factual allegations explaining *how* the defendant's former CEOs "actively participated in 'inherently wrongful conduct.'" *Id.* at *11-13. The allegations included references to specific emails and letters sent to and from the CEO regarding the alleged conduct, and the CEO's active role in negotiating and structuring the alleged conduct. *Id.* at *11-12. In turn, these specific factual allegations showed the CEOs' direct involvement, knowledge, and approval of the allegedly illegal conduct. *Id.* at *12-13. Plaintiffs get nowhere close to meeting that standard here.

Plaintiffs try to salvage their claims by relying on impermissible group pleading regarding "the France family." Plaintiffs argue (at 6) that their group pleading is fine because they only named one member of the France family as a defendant. But that is not the law. *See SD3*, 801 F.3d at 422 (a complaint must "allege particular facts against a particular defendant" to survive dismissal). The issue is that Plaintiffs have not provided specific factual allegations about France, the named defendant. Plaintiffs' extreme position (at 7) suggests that France is liable for *all* of NASCAR's conduct without alleging anything more—which belies their true argument that executives who only partially own a company are always liable by *ipse dixit*.

B. Plaintiffs' Single Enterprise Theory Does Not Save Their Threadbare Allegations

Plaintiffs present a novel and unsupported theory that an individual executive and partial owner is liable for an employer's conduct so long as they "have a complete financial unity of interest" and engage in "collective conduct." Opp. at 3. This theory is not the law, and neither of the cases Plaintiffs cite (at 3) support it. *Cohlmia v. St. John Med. Ctr.* stands for the uncontroversial proposition that a Section 2 claim does not require an agreement. 693 F.3d 1269, 1280 (10th Cir. 2012). And *Lenox MacLaren Surgical Corp. v. Medtronic, Inc.* discusses in dicta whether entities—not officers—within a corporate family that are already considered a "single entity" under *Copperweld*, could be considered collectively when analyzing an antitrust violation. 847 F.3d 1221, 1232-35 (10th Cir. 2017). No court in the Fourth Circuit has yet addressed the Tenth Circuit's *Lenox* decision.

Even under the Tenth Circuit's test in *Lenox*, Plaintiffs' allegations fall short. *Lenox* held that each entity in a corporate family that "independently participated in the enterprise's scheme" could potentially be held liable as part of the anticompetitive scheme. *Id.* at 1237. At the same time, the Tenth Circuit made clear that liability cannot arise "merely by virtue of [the defendant's]

place in the same corporate family," *id.*, which Plaintiffs here have not plausibly alleged. And the few courts applying *Lenox* have refused to impute the acts of one entity in a corporate family to another based solely on ownership and control—exactly what Plaintiffs attempt here. *Biddle v. Walt Disney Co.*, 2024 WL 3171860, at *10 (N.D. Cal. June 25, 2024) (refusing to impute parent's conduct onto subsidiary despite parent owning 67% and having "full operational control of the entity").

Regardless, *Lenox* does not apply to Plaintiffs' claims. For example, in *Chandler v. Phoenix Services*, the court analyzed whether an affiliated entity should be liable under the "single-entity" theory, 2020 WL 1848047, at *14-15 (N.D. Tex. Apr. 13, 2020), but then proceeded to analyze the potential liability of that entity's CEO under the corporate-officer standard of liability. *Id.* at *15-16.

Plaintiffs identify a single, unreported, out-of-circuit district-court opinion applying *Lenox* to claims against an individual. Opp. at 4 (*citing Las Vegas Sun, Inc. v. Adelson*, 2020 WL 7029148, at *10-11 (D. Nev. Nov. 30, 2020)). They urge this Court be the first in the Fourth Circuit to not only adopt the reasoning of *Lenox*, but to extend it to individuals. Moreover, this Court would have to go even further than *Adelson*, as even the plaintiffs in *Adelson* pleaded active and knowing involvement by the corporate official in spades. *Adelson*, 2020 WL 7029148, at *1-3 (detailing factual allegations regarding individuals). Allowing these claims against France to proceed would be an unprecedented leap. The Court should reject this unfounded request.

III. CONCLUSION

The Court should dismiss Plaintiffs' claims against France.

Dated: December 23, 2024

Respectfully submitted,

By: */s/ Tricia Wilson Magee*

Tricia Wilson Magee (N.C. Bar No. 31875)
SHUMAKER, LOOP, & KENDRICK, LLP
101 S Tryon Street, Suite 2200
Charlotte, NC 28280
Tel: 704-945-2911
Fax: 704-332-1197
tmagee@shumaker.com

Christopher S. Yates*
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 395-8240
Facsimile: (415) 395-8095
chris.yates@lw.com

Lawrence E. Buterman*
LATHAM & WAKINS LLP
1271 Avenue of the Americas
New York, NY 10020
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
lawrence.buterman@lw.com

Anna M. Rathbun*
Christopher J. Brown*
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
anna.rathbun@lw.com
chris.brown@lw.com

* Admitted *pro hac vice*

Counsel for Defendants NASCAR and Jim France

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.

Respectfully submitted,

/s/ Tricia Wilson Magee
Tricia Wilson Magee (N.C. Bar No. 31875)
SHUMAKER, LOOP, & KENDRICK, LLP
101 S Tryon Street, Suite 2200
Charlotte, NC 28280
Tel: 704-375-0057
Fax: 704-332-1197
Email: tmagee@shumaker.com

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;

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 23rd day of December, 2024.

/s/ Tricia Wilson Magee

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **JAMES FRANCE'S REPLY MEMORANDUM 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:

Danielle T. Williams
WINSTON & STRAWN LLP
300 South Tryon Street
16th Floor
Charlotte, NC 28202
dwilliams@winston.com

Jeffrey L. Kessler
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
jkessler@winston.com

Jeanifer Parsigian
Michael Toomey
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111
jparsigian@winston.com
mtoomey@winston.com

Matthew DalSanto
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601
mdalsanto@winston.com

Counsel for Plaintiffs 23XI Racing and Front Row Motorsports Inc.

This the 23rd day of December, 2024.

/s/ Tricia Wilson Magee