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

[PUBLIC VERSION]

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION

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A month ago, the Court denied Plaintiffs' first Motion, characterizing their claimed harm as "speculative" and "possible," but not "immediate" or "irreparable." Doc. 42 at 5. After seeking and then dismissing an expedited appeal, Plaintiffs now claim "changed circumstances" to try to overcome this ruling. Yet, even with their manufactured evidence, Plaintiffs still fall far short of a clear showing of irreparable harm. Their new submissions underscore that any claimed harm remains speculative, self-inflicted, and redressable with monetary damages. Moreover, Plaintiffs improperly ask the Court to bind them to provisions they claim are unlawful. And Plaintiffs still cannot satisfy the other *Winter* factors; their requested preliminary injunction aims to upend—not preserve—the status quo, and Plaintiffs cannot show a likelihood of success.

I. INTRODUCTION

During Plaintiffs' first try, Plaintiffs argued they were irreparably harmed because, "if we do not have a charter," then (1) "our drivers are free to leave, including [Reddick]," (2) "our sponsors are free to abandon us," and (3) "we might not have a spot in the Daytona 500." Doc. 41 at 48:4-14. This Court rightly rejected those arguments. As the Court explained, (and as Plaintiffs acknowledged), Plaintiffs can race as open teams next year, with the opportunity to compete in every single NASCAR Cup Series race. Doc. 42 at 6.

Since that Order, nothing has changed. Plaintiffs recycle the arguments the Court already rejected. For instance, they suggest that drivers *might* leave absent a Charter. Doc. 52-1 ¶8. The first bullet in Plaintiffs' Motion makes this abundantly clear: "Reddick *can* leave." Doc. 52 at 1. But a mere "possibility" of harm is precisely what this Court properly rejected in its previous Order. Doc. 42 at 5. Further, the fact that some—but not all—of Plaintiffs' drivers *could* leave is entirely self-inflicted, stemming from driver contracts that Plaintiffs negotiated, Plaintiffs'

decision not to sign Charters despite being aware of those exit provisions, and Plaintiffs' dramatic rhetoric at the hearing and to the press.

Plaintiffs' sponsor-related arguments are even flimsier. Their motion inaccurately asserts that [redacted]" but the actual emails [redacted]" Docs. 52-8, 52-17 ([redacted]). Plaintiffs cannot manufacture a crisis by filing a lawsuit and then demanding relief from its consequences—that is just as inequitable as it is self-inflicted. And to the extent sponsor concerns are driven by the fact that Plaintiffs *could* fail to qualify for a race, such concerns are, as this Court already held, speculative. Doc. 42 at 6. Plaintiffs are "almost certain" to qualify for the Daytona 500—and every other Cup Series race—as open teams in 2025. Probst Decl. ("Probst") ¶25. Indeed, the team Plaintiffs cite as the last to run a full open season *qualified for every single Cup Series race*. Buterman Decl. ("Buterman") ¶19.

Additionally, Plaintiffs committed to spend [redacted] dollars to acquire new Charters from Stewart-Haas Racing ("SHR") and moved forward with those proposed transactions *fully aware* the SHR Charters contained not only a release but also the "Goodwill" provision Plaintiffs contend is unlawful. Antitrust litigation is not an appropriate tool to rewrite contractual terms between NASCAR and a third party. Nor is a party's desire for preferred contractual terms the proper use of a preliminary injunction.[1] Ultimately, Plaintiffs' desire to *acquire* Charters underscores the hypocrisy of this lawsuit, including Plaintiffs' frivolous contention that Charters are anticompetitive.

[1] The 2016 Charter makes clear that establishing a new Charter requires "mutual agreement of the parties." Doc. 51-17 §2.3.

Ultimately, even if Plaintiffs' speculative, self-inflicted, financial harm was somehow irreparable, Plaintiffs' motion should still be denied. Plaintiffs seek a mandatory injunction—a disfavored form of relief "warranted only in the most extraordinary circumstances." *Brantmeier v. Nat'l Collegiate Athletic Ass'n*, 2024 WL 4433307, *1 (M.D.N.C. Oct. 7, 2024). No extraordinary circumstances exist here: Plaintiffs had their chances to sign Charters but refused to take them, and were well aware that they would need to accept the Charter terms to which SHR agreed. Plaintiffs cannot now "simply exclaim 'monopoly' to rewrite agreements giving [themselves] unilateral benefit." *Epic Games, Inc. v. Apple Inc.*, 493 F. Supp. 3d 817, 847 (N.D. Cal. 2020).

II. BACKGROUND

A. The Court Denied Plaintiffs' First Motion

On November 8, the Court denied Plaintiffs' first motion, holding that Plaintiffs did not present "present, immediate, urgent irreparable harm, but rather only speculative, possible harm." Doc. 42 at 5. Because the Court found that Plaintiffs had not established irreparable harm, it did not need to address NASCAR's other arguments.

B. Plaintiffs Can Compete As Open Teams

Plaintiffs can compete in every 2025 Cup Series race as open teams without signing a new release. Doc. 52-5. Plaintiffs publicly represented that they would do so, and their latest declarations do not suggest otherwise. Docs. 30-7, 30-8. Indeed, they continue to invest in preparation for next season. Probst ¶16; Buterman ¶¶10, 12.

C. Plaintiffs Created Their Claimed "New Circumstances"

Drivers. On September 18, Wallace signed a multiyear contract extension with 23XI—even though 23XI had not signed a Charter for 2025. Buterman ¶20. Five days later, Plaintiffs announced that they would race as open teams without a Charter, (Doc. 20-3 ¶47), which they

repeated in the following weeks. Buterman ¶10. But then, during the first injunction hearing, Plaintiffs' counsel questioned their ability to survive as open teams, claiming drivers "are free to leave" "if we do not have charters." Doc. 41 at 9:14-18, 48:4-7. Plaintiffs' sought an expedited appeal using similarly dramatic language, claiming Plaintiffs might need to "forego competing." Doc. 3 in No. 23-2134 (4th Cir.).

Thereafter, [redacted] sent remarkably similar emails—suggesting a coordinated effort behind the scenes—asking [redacted]. Docs. 52-16, 52-17. Then, more than two months after 23XI publicly announced that it would not sign the 2025 Charters, [redacted]. Doc. 52-6. [redacted] made clear that he "[redacted]." *Id.*

Sponsor – [redacted] On November 15, [redacted] Doc. 52-8. [redacted] requested any insight on "[redacted]." *Id.* On November 20, [redacted]. On November 23, [redacted] Doc. 52-17. [redacted]" *Id.*

Sponsor – [redacted] On November 19, [redacted]

[redacted]. Three days later, [redacted]" Doc. 52-9. [redacted]. *Id.* [redacted] runs through [redacted]. Doc. 52-1 ¶5.

Charter Acquisitions. FRM and 23XI signed agreements with SHR to purchase Charters. Docs. 52-10, 52-11. The purchase agreements required [redacted]. Docs. 52-13, 52-14. [redacted] Buterman ¶¶11, 13.[2] FRM's co-owner says [redacted]. Doc. 52-1 ¶10.

III. LEGAL STANDARD

Plaintiffs must "clearly establish" each of the *Winter* factors: (1) irreparable harm; (2) likelihood of success on the merits; (3) public interest; and (4) favorable balance of the equities. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As this Court already recognized, "[a] preliminary injunction is an extraordinary remedy intended to protect the status quo." Doc. 42 at 3-4. Mandatory preliminary injunctions, which alter the status quo, are "disfavored in any circumstance," and require plaintiffs to establish an "indisputably clear" right to relief. *Knight v. PHH Mortgage*, 2021 U.S. Dist. LEXIS 116785, *2-3 n.1 (W.D.N.C. June 22, 2021).

[2] Any dispute between NASCAR regarding transfer of signed SHR Charters would need to be arbitrated.

Here, Plaintiffs seek to force NASCAR to enter into a contract with Plaintiffs—and on different terms than those contained in the offered Charters. They also seek to amend the terms of another team's previously-signed Charters so that Plaintiffs can obtain an assignment, but on their preferred terms. This would upend, not preserve, "the last uncontested status between the parties which preceded the controversy," *League of Women Voters of N.C. v. N.C.*, 769 F.3d 224, 236 (4th Cir. 2014), which was Plaintiffs' rejection of Charters (which are no longer available to them) and signed SHR Charters.

IV. ARGUMENT

A. Plaintiffs' "New Circumstances" Do Not Show Irreparable Harm

Plaintiffs fail to demonstrate "present, immediate, urgent irreparable harm." Doc. 42 at 5. Their new evidence presents only vague "possibilities": drivers "can" leave, sponsors "may" withdraw, and Plaintiffs' businesses "might" be harmed. *See, e.g.*, Doc. 52 at 1, 2, 7; Doc. 52-1 ¶8; Doc. 52-2 ¶¶7-8. Such speculation comes nowhere close to meeting the *Winter* standard, which requires a "clear likelihood," not just a "possibility," of irreparable harm. Doc. 42 at 5.

Plaintiffs attempt to obscure this by arguing in their *motion* that [redacted]" Doc. 51 at 7. But these assertions of counsel are nowhere to be found in the actual *evidence*. *N. Carolina Democratic Party v. Berger*, 2018 WL 7982918, *3 n.3 (M.D.N.C. Feb. 7, 2018) ("[S]tatements in a brief are not evidence."). The actual evidence makes clear that any "changed circumstances" stem entirely from drivers and sponsors becoming aware of Plaintiffs' (1) decision to reject Charters, (2) lawsuit seeking an injunction based solely on a release they now admit they never contested during negotiations, and (3) attack of NASCAR in the press in ways troubling to sponsors. These self-inflicted injuries cannot qualify as irreparable harm. *Di Biase v. SPX Corp.*,

872 F.3d 224, 235 (4th Cir. 2017). Ultimately, all of Plaintiffs' claimed harms are made-up, speculative, self-inflicted and/or redressable via monetary damages.

1. No Driver Has Indicated His Intent To Actually Leave

Plaintiffs first assert (at 6) that, absent an injunction, they [redacted]." Yet, the "evidence" Plaintiffs cite—contracts with [redacted] of seven drivers, and seemingly prepared-for-litigation emails—does not remotely support this. Docs. 52-7, 52-20, 52-21.

For instance, [redacted]. Doc. 52-15; *see also* Doc. 52-16 ([redacted]). Meanwhile, [redacted] simply stated that he "[redacted]" without ever saying [redacted] Doc. 52-6 at 2. And Plaintiffs' suggestion that Reddick might leave 23XI contradicts his numerous reaffirmations post-lawsuit that he "stand[s] behind [23XI]" because he "made the choice to come to 23XI and that has not changed." Buterman ¶¶5, 6; *see also id.* ¶9.

Plaintiffs also reference agreements with [redacted] which supposedly allow them to leave if Plaintiffs don't secure Charters. Docs. 52-7, 52-21. But, as with Reddick, Plaintiffs do not assert that any of these drivers *actually* plans to leave. Doc. 52-1 ¶8. Indeed, Plaintiffs do not offer a single statement from [redacted]. And, even if they had, it would not matter—as Plaintiffs are sophisticated parties who *chose* to enter agreements granting some drivers this exit path even though their agreements with multiple other drivers do not include it. *Id*.

Moreover, Plaintiffs are the ones who chose not to sign Charters when NASCAR offered them, despite being aware of Plaintiffs' claimed contractual obligations. Doc. 52-2 ¶3; Buterman

¶10. So any supposed harm is self-inflicted, based both on Plaintiffs' decision to include those provisions in certain driver agreements, *plus* Plaintiffs' decision to reject offered Charters. *Di Biase*, 872 F.3d at 235.

On top of all that, Plaintiffs have not argued, let alone established, that losing one or more current drivers is the type of injury that would not be compensable with money damages. *See Murrow Furniture Galleries, Inc. v. Thomasville Furniture Indus.*, 889 F.2d 524, 526-27 (4th Cir. 1989). Nor could they. No matter what, Plaintiffs will be able to race in the 2025 Cup Series season. Buterman ¶¶3, 10; Doc. 52-5. The cases Plaintiffs cite (at 6) do not support their position; they either pre-date *Winter* or involved facts far afield of these. *See, e.g.*, *Nassau v. Hampson*, 355 F. Supp. 733, 736 (D. Minn. 1972) (pre-dates *Winter*, and player was indisputably leaving team); *Navient Sols. v. United States*, 141 Fed. Cl. 181, 184 (2018) (one line of dicta that losing personnel "*and going out of business* may" constitute irreparable harm); *E. Tennessee Nat. Gas Co. v. Sage*, 361 F.3d 808, 829 (4th Cir. 2004) (pre-dates *Winter*, and involved the hindrance of "economic development efforts in several Virginia counties").

2. Any Sponsorship Losses Are Speculative, Self-Inflicted, And Compensable

Plaintiffs' motion also claims (at 6) that they face irreparable harm because they [redacted]. Not true.

This is the exact type of harm that courts routinely find *compensable* through monetary damages because "the loss of [] goodwill is often calculable and compensable, and its mere pleading does not necessitate injunctive relief." *Spacemax Int'l LLC v. Core Health & Fitness*, 2013 WL 5817168, *2 (D.N.J. Oct. 28, 2013); *see Ramsey v. Bimbo Foods Bakeries Distrib.*, 2014

WL 3408585, *9-10 (E.D.N.C. July 10, 2014). Plaintiffs ordinarily must establish a threat to their very "existence" to claim irreparable harm from goodwill losses. *Am. Passage Media Corp. v. Cass Commc'ns*, 750 F.2d 1470, 1473 (9th Cir. 1985). In *Eco Fiber v. Vance*, for instance, this Court found irreparable harm only because the defendant's actions had *already caused* the plaintiff to "la[y] off a majority its employees," showing an "impending threat of Plaintiff's operations not surviving the pendency of th[e] matter." 2024 WL 3092773, *4 (W.D.N.C. June 21, 2024).

Plaintiffs have not established anything similar; indeed, they don't even argue any present prospect of a loss of their businesses during the pendency of this matter. Plaintiffs' attempts (at 6) to translate their potential losses into percentages of expected revenues just confirms this. And Plaintiffs' willingness to spend [redacted] dollars to buy Charters from another team, plus 23XI's decision to run yet another open car during the pendency of this lawsuit, evidence their financial strength. Docs. 52-10, 52-11, 52-12; Probst ¶16. In all events, Plaintiffs' losses are clearly calculable: they have even identified the potential *dollar values*. Doc. 52 at 3, 4, 7.

Plaintiffs' claimed harm is also self-inflicted and speculative. Plaintiffs contend (at 1) that [redacted]" Not true. The actual emails reveal that [redacted] Doc. 52-17. That isn't surprising given [redacted]. A party's decision to initiate a lawsuit and engage in disparaging press statements cannot serve as the basis for claiming entitlement to an injunction, as any resulting consequences are plainly self-inflicted.

With respect to [redacted] Doc. 52-9. Specifically,

[redacted] is concerned [redacted] *Id.* But any concern regarding the Daytona 500 is speculative, as this Court already ruled in its last Order. It remains "impossible to ascertain when," if ever, such a harm will occur—as failing to qualify for a race is dependent on a number of factors and might be months, or years, in the future. Doc. 42 at 7. Nor is it possible to say "with confidence that the harm is more likely than not to occur *at all*." *Id*. Indeed, the evidence shows that Plaintiffs will almost certainly qualify for every Cup Series race, just as the last full-season Open team (JTG) did, including because there will be eight open spots (not four, as in previous years). Probst ¶¶19, 25 (Plaintiffs "almost certain" to qualify for all races, including Daytona). And the fact that 23XI intends to *expand* the number of cars it runs from two to four in 2025 underscores the sky is not really falling. Buterman ¶¶4, 17. Finally, even if Plaintiffs did fail to qualify for races, any loss of sponsorship would be entirely self-inflicted, as Plaintiffs had the chance to sign Charters that would have guaranteed them entry in exchange for commitments to NASCAR such as the Goodwill provision, but rejected the offer. *See supra* at 8.

3. Plaintiffs Cannot Use This Litigation To Alter The Terms Of Charters Signed by SHR

Plaintiffs claim irreparable harm from the "risk" of having to release their claims or forego the opportunity to buy SHR's Charters. But there is nothing wrong with a contract including a release, *see infra* at 14, and a failure to secure preferred contractual terms is not irreparable harm, *Terrier, LLC v. HCAFranchise Corp.*, 2022 WL 4280251, *8 (D. Nev. Sept. 15, 2022). The law is also clear that a party cannot use a preliminary injunction to renegotiate terms. *Epic*, 493 F. Supp. 3d at 847. Moreover, Plaintiffs made the choice to pay [redacted] dollars for signed Charters—fully aware they would need to sign joinder agreements that include a "customary release" and commit to abide by the Charter's terms in order to effectuate the assignment. Buterman ¶12. Indeed, another team agreed to all such terms via a joinder and obtained a SHR

Charter. *Id.* ¶18. Demonstrating that the release provides no basis for an injunction, Front Row now contends they can sign the transfer agreement because the release is unenforceable. *Id.* ¶¶12, 14. But, the fact is that Plaintiffs' refusal to be bound by all provisions of signed Charters does not create irreparable harm.

B. Plaintiffs' Requested Relief Contradicts Their Complaint

Plaintiffs' motion fails for multiple other reasons. Plaintiffs seek (at 5) a mandatory injunction to allow them to run "under the terms of" the Charter minus the release. This effectively demands that NASCAR enter a now unwanted contractual relationship under terms of Plaintiffs' choosing. Moreover, Plaintiffs overlook that the Charter's terms include a crucial Goodwill provision— [redacted]

Doc. 52-19 §6.6; *see* Doc. 56 at 12-13. Yet, Plaintiffs' Complaint contends the Charter is anticompetitive for "numerous" reasons, Doc. 1 ¶110, including specifically *because of the Goodwill provision*, *id.* ¶¶17, 94-96, 114, 140, 153; Doc. 41 at 49:3-6 (Plaintiffs' counsel identifying Goodwill provision as one Charter term Plaintiffs challenge).

Their request is as improper as it is illogical. As the Fourth Circuit explained in *Omega World Travel v. Trans World Airlines*, the whole purpose of interim equitable relief is "to protect the movant, during the pendency of the action, from being harmed or further harmed in the manner in which the movant contends it was or will be harmed through the illegality alleged in the complaint." 111 F.3d 14, 16 (4th Cir. 1997); *see also Samica Enterprises, LLC v. Mail Boxes*, 2008 WL 11342744, *3 (C.D. Cal. Apr. 10, 2008).

Here, just like in *Omega*, Plaintiffs' Complaint aims to *eliminate* as unlawful key provisions of a contract, while their preliminary injunction motion paradoxically seeks to *bind them* to those provisions. *Lutz v. Case Farms* is not to the contrary; there, the plaintiff sought to

enforce an agreement which had an arbitration clause that the court held violated the Packers and Stockyards Act. 2020 WL 5111217, *4 (W.D.N.C. Aug. 31, 2020) (emphasizing that the requested injunctive relief was "not inconsistent" with the relief requested in complaint). But Plaintiffs' complaint seeks invalidation of the Goodwill provision, which means the requested injunction is inconsistent with the Complaint and squarely foreclosed by *Omega.*

C. Plaintiffs Do Not Have A Likelihood Of Success

Plaintiffs boldly proclaim that NASCAR does not dispute their likelihood of success. Nonsense—as confirmed by the prior opposition and arguments at the November hearing. Defendants' Motion to Dismiss (Doc. 56-1) further explains why Plaintiffs' claims are legally deficient and should be dismissed for a host of reasons. But, even if Plaintiffs' claims were somehow to survive that motion, Plaintiffs still have not shown an "indisputably clear" likelihood of *ultimate* success on the merits. In fact, compensation to teams has grown substantially—the exact opposite of what needs to be true for Plaintiffs' antitrust theory to hold water. Doc. 30 at 14. And Plaintiffs' claims fail for other reasons, too.

Statute Of Limitations/Laches. Most of Plaintiffs' claims are time-barred because they concern conduct that occurred more than four years ago. *CSX Transportation, Inc. v. Norfolk S. Ry. Co.*, 114 F.4th 280, 288-91 (4th Cir. 2024); Doc. 30 at 9-10; Doc. 56-1 at 4-6.

Antitrust Standing. Plaintiffs lack antitrust standing regarding the only issue that is arguably not time-barred because Plaintiffs did not sign the 2025 Charters and their "[f]ailure to secure preferred contractual terms is not an antitrust injury." *Host Int'l, Inc. v. MarketPlace*, 32 F.4th 242, 250 (3d Cir. 2022); Doc. 30 at 15; Doc. 56-1 at 6-9.

Release. Plaintiffs signed multiple agreements releasing pre-2024 conduct. *Madison Square Garden v. NHL,* 2008 WL 4547518, *6-10 (S.D.N.Y. 2008); Doc. 30 at 9.

Market Definition. Plaintiffs' proposed market definition is legally deficient, including because it analyzes the market *post-investment* rather than *pre-investment*. Doc. 30 at 13-14; Doc. 56-1 at 9-10. Under settled law, "[a] plaintiff cannot establish a relevant [] market by claiming to be 'locked in' a market that it entered" with knowledge of risks. *Virginia Vermiculite, Ltd. v. W.R. Grace & Co.-Conn.*, 108 F. Supp. 2d 549, 583 (W.D. Va. 2000).

Exclusionary Conduct. Plaintiffs have not shown any facts demonstrating exclusionary conduct for two reasons. *First*, NASCAR did not refuse to deal with Plaintiffs; rather, NASCAR proposed contractual terms Plaintiffs rejected. That means this case is nothing like *Duke Energy* or *Aspen Skiing*, as confirmed by the Fourth Circuit's opinion in *Loren Data v. GXS, Inc.*, 501 F. App'x 275, 283 (4th Cir. 2012). Doc. 56 at 11. *Second*, Plaintiffs have not shown that either of the two challenged Charter provisions harms competition. Doc. 30 at 10-13; Doc. 56-1 at 11-15. In fact, noncompete provisions are common across sports and *pro*competitive, helping NASCAR compete for broadcast dollars. Plaintiffs' push to obtain SHR Charters also undoes their antitrust narrative, revealing their strategy to *profit from* the very system they simultaneously try to label anticompetitive.

D. The Balance Of Equities And Public Interest Weigh Against An Injunction

Plaintiffs' requested relief would cause real harm to NASCAR and the 32 Charter holders. NASCAR has already announced the prize values for the 2025 Cup Series season and that there will be eight open positions in each race. Buterman ¶27 (Prime ¶¶69-78). NASCAR cannot simply reissue 2025 Charters without affecting others. *Id.* And contrary to Plaintiffs' public-interest claim, fans can still see their teams and drivers compete: *as open teams*. Finally, "there is significant public interest in requiring parties to adhere to their contractual agreements." *Epic*, 493 F. Supp. 3d at 852. Forcing NASCAR into an unwanted contract, on Plaintiffs' preferred terms,

goes against the public interest. *Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1162 (9th Cir. 2011).

E. Plaintiffs' Alternative Request Seeks An Advisory Opinion

Plaintiffs' alternative request (at 12) for an advisory opinion on the enforceability of terms in SHR Charters fails.

First, Plaintiffs seek this request only "[i]f the Court determines that Plaintiffs' request for a preliminary injunction is still premature." Doc. 51-1 at 12. But, failure to satisfy *Winter* means Plaintiffs are not entitled to any relief.

Second, Plaintiffs' alternative request also is improper because it asks the Court to issue an advisory opinion on a contract between NASCAR and a non-party. Whether *SHR's* agreement to the release in the 2025 Charter would release *Plaintiffs'* antitrust claims *if* the SHR Charter were assigned to Plaintiffs is precisely the type of advisory-opinion request that courts routinely refuse to entertain. *See, e.g.*, *Staton v. Fed. Natl. Mortg. Assn.*, 2015 WL 13611834, *5 (D. Md. Jan. 9, 2015).

Third, Plaintiffs' own prior positions directly contradict their newfound legal arguments (at 12) that the "express language" of the release *does not* cover antitrust claims. Buterman ¶12. Plaintiffs previously contended in arguments and briefing that the release *does* cover antitrust claims. *See*, *e.g.*, Doc. 20-1 at 1; Doc. 22 at 1; Doc. 33 at 2. Judicial estoppel precludes them from now arguing the opposite—and this new argument demonstrates that the entire claimed basis for injunctive relief is contrived.

Finally, the release in SHR and NASCAR's agreement is wholly enforceable.[3] Numerous courts conclude that releases like Section 10.3 are enforceable, even when they operate to bar claims predicated on *continuing* pre-release conduct. *Madison Square Garden*, 2008 WL 4547518, *6-7.

V. CONCLUSION

The Court should deny Plaintiffs' latest Motion.

[3] NASCAR's decision to omit a release from the *open team agreement* says nothing about the lawfulness of, or NASCAR's interest in, *the Charter's* release. Upon receiving a specific request regarding the open team agreement, NASCAR determined that the release was unnecessary for its agreements with open teams, which do not involve the long-term contractual commitment and negotiations of the Charters.

Dated: December 9, 2024

Respectfully submitted,

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WORD COUNT CERTIFICATION

I hereby certify that the foregoing document contains fewer than 4,500 words according to the word count feature in Microsoft Word and is therefore in compliance with the word limitation set forth in Judge Whitney's Scheduling Order.

This the 9th day of December, 2024.

Respectfully submitted,

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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;

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 9th day of December, 2024.

/s/ Tricia Wilson Magee

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION** 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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This the 9th day of December, 2024.

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