UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

NASCAR Event Management, LLC, Counter-Plaintiff, v. 2311 Racing LLC d/b/a 23XI Racing, Front Row Motorsports, Inc., and Curtis Polk, Counter-Defendants.	Civil Action No. 3:24-cv-886-KDB-SCR **ORAL ARGUMENT REQUESTED**

COUNTER-DEFENDANT FRONT ROW MOTORSPORTS, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS AND MOTION TO STRIKE

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INTRODUCTION

Front Row Motorsports, Inc. ("Front Row") fully joins in all of the arguments presented in the Memorandum in Support of the Motion to Dismiss filed by 2311 Racing LLC d/b/a 23XI Racing and its co-owner Curtis Polk. That motion demonstrates why NASCAR's counterclaim fails to allege a violation of Section 1 of the Sherman Act against any of the Counterclaim-Defendants and NASCAR's request to eliminate the long-held right of guaranteed entry for chartered teams should be stricken. With respect to Front Row, the complaint must be dismissed for the further reason that NASCAR does not allege any specific conduct by Front Row or its owner or employees to support a claim that it participated in the alleged conspiracy. Rather, the only specific, non-conclusory factual allegations about Front Row in the counterclaim are that Front Row participated in the Race Team Alliance ("RTA")—a decade-old trade group of race team owners whose conduct NASCAR has never before challenged.

But mere participation in a trade organization does not violate Section 1 and is not sufficient to show that Front Row participated in any alleged conspiracy purportedly organized by the RTA or Mr. Polk. Indeed, the counterclaim concedes that Front Row was not a member of the Teams Negotiating Committee ("TNC"), which engaged in the voluntary joint negotiations with NASCAR over the 2025 charter renewal that NASCAR now claims constituted a Section 1 conspiracy. And there are no other specific allegations in the counterclaim to plausibly claim that Front Row was a participant in the alleged conspiracy. Front Row's motion to dismiss can thus be granted on this ground alone.

NASCAR'S LACK OF ANY NON-CONCLUSORY CONSPIRACY ALLEGATIONS AGAINST FRONT ROW[1]

In its counterclaim, NASCAR makes the wholly conclusory allegation that "23XI and [Front Row], led by 23XI's owner and sports agent Curtis Polk . . . willfully violated the antitrust laws by orchestrating anticompetitive collective conduct in connection with the terms of the 2025 Charter Agreements." Dkt. 111 ("Counterclaim Compl.") ¶ 6. It also makes a number of other wholly conclusory allegations about Front Row participating in various aspects of the alleged conspiracy with all other RTA members. *See, e.g., id*. ¶¶ 49-52, 55, 60-61, 67, 72-73, 75, 87.

However, there are no specific, non-conclusory factual allegations about Front Row or its owners or employees to support these contentions. The counterclaim's only specific allegations against Front Row are that it participated in the RTA. *See id*. ¶¶ 8, 41, 46, 49-50. Front Row and its owner are not alleged to have been members of the TNC that conducted the joint negotiations with NASCAR for the 2025 charter renewal. *See id*. ¶¶ 50-51, 54. And, despite the conclusory allegations of a "conspiracy" to "demand . . . preferred terms," *id*. ¶ 86, it is admitted that Front Row did not obtain any preferred terms from NASCAR, and that it refused to agree to the terms of the 2025 Charter Agreement which NASCAR offered. *See id*. ¶¶ 4-5.

STANDARD OF REVIEW

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the sufficiency of a complaint by assessing whether the allegations plausibly support a claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). A complaint must contain more than mere labels or conclusory statements; "[f]actual allegations must be enough to raise a right to relief above the

[1] To the extent they are not addressed here, Front Row incorporates by reference NASCAR's Factual Allegations outlined in the concurrently filed Memorandum in Support of 2311 Racing LLC d/b/a 23XI Racing and Curtis Polk's Motion to Dismiss and Motion to Strike.

speculative level." *Id.* at 555. "[B]are assertions devoid of further factual enhancement fail to constitute well-pled facts for Rule 12(b)(6) purposes." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009).

ARGUMENT

I. The Counterclaim Fails to Set Forth any Allegations Against Front Row to Plausibly Support a Claim That It Participated in a Conspiracy in Violation of Section 1

Front Row joins in and incorporates by reference the arguments presented in the concurrently filed Memorandum in Support of the Motion to Dismiss filed by 23XI Racing and Curtis Polk. Front Row, however, has another compelling ground for dismissal: the complete absence of any specific factual allegations to support the wholly conclusory assertion that it participated in the alleged conspiracy. The counterclaim merely alleges that Front Row was a member of the RTA—which does not state a conspiracy claim in violation of Section 1.

To state a claim under Section 1 of the Sherman Act, a plaintiff must allege "a contract, combination, or conspiracy." *N. Carolina State Bd. of Dental Examiners v. FTC*, 717 F.3d 359, 371 (4th Cir. 2013). While a group may "have the capacity to conspire among themselves[,] [that] does not mean . . . that every action taken by the [group] satisfies the contract, combination, or conspiracy requirement of section one." *Oksanen v. Page Mem'l Hosp.*, 945 F.2d 696, 706 (4th Cir. 1991). Membership in a trade association like the RTA cannot, by itself, be the basis for pleading concerted action among the members of such an association. *See Hall v. United Airlines, Inc.*, 296 F. Supp. 2d 652, 664 (E.D.N.C. 2003) ("[M]ere membership in a trade association . . . [is] not, in and of [itself], condemned or even discouraged by the antitrust laws.") (quoting *Moore v. Boating Indus. Assos.*, 819 F.2d 693, 712 (7th Cir. 1987)). "There must instead be some evidence of actual knowledge of, and participation in, an illegal scheme in order to establish a[n antitrust] violation." *Id*. (quoting *Moore*, 819 F.2d at 712); *see also N. Am. Soccer League, LLC v. United*

States Soccer Fed'n, Inc., 883 F.3d 32, 40 (2d Cir. 2018) ("[A] trade association is not by its nature a "'walking conspiracy.'") (quotation omitted).

NASCAR's only non-conclusory allegation concerning Front Row is that it participated in the RTA. *See, e.g.,* Counterclaim Compl. ¶ 49. But this is not sufficient to state a claim that Front Row participated in the alleged conspiracy that the RTA is claimed to have organized with Mr. Polk. *See, e.g., Hobart-Mayfield, Inc. v. Nat'l Operating Comm. on Standards for Ath. Equip.*, 535 F. Supp. 3d 638, 648 (E.D. Mich. 2021) ("[M]ere presence on either a board or at a trade association meeting, without further factual allegations, does not amount to a conspiracy claim."); *LaFlamme v. Societe Air Fr.*, 702 F. Supp. 2d 136, 148 (E.D.N.Y. 2010) (similar); *Yellow Page Sols., Inc. v. Bell Atl. Yellow Pages Co.*, 2001 WL 1468168, at *13 (S.D.N.Y. Nov. 19, 2001) (similar).[2] Indeed, the RTA has existed since 2014, *see* Counterclaim Compl. ¶ 41, and Front Row was a member during the negotiations for the 2016 Charter Agreement, *see id.* ¶ 46 n. 12, but no claim has ever previously been filed by NASCAR suggesting that any member of the RTA was engaged in a conspiracy in violation of Section 1.

The other allegations in the counterclaim against Front Row are all entirely conclusory or improper group pleading that seeks to lump in Front Row with 23XI Racing, Mr. Polk, and "others," while never identifying what—if anything—***Front Row Motorsports itself*** has done to purportedly participate in the alleged conspiracy. *See, e.g., id.* ¶¶ 49, 50-52, 67, 72-73, 75, 87. Front Row is not alleged to have been a member of the TNC, which engaged in the voluntary joint

[2] NASCAR's vague allegation that RTA members "shared information," Counterclaim Compl. ¶ 42, likewise does not state a claim; trade groups cannot exist without sharing information. *See Five Smiths, Inc. v. Nat'l Football League Players Ass'n*, 788 F. Supp. 1042, 1054-55 (D. Minn. 1992) (information-sharing during negotiations insufficient to state a claim under Section 1); *see also In re Citric Acid Litig.*, 191 F.3d 1090, 1098 (9th Cir. 1999) ("trade associations often serve legitimate functions, such as providing information to industry members").

negotiations with NASCAR (before NASCAR opted for individual negotiations that produced the 2025 Charter Agreement). *See, e.g., id*. ¶¶ 50, 53, 62. There are also no allegations that Front Row engaged in any specific conduct related to the allegedly threatened group boycott of NASCAR qualifying races or the alleged efforts to interfere with NASCAR's media rights deal. *See, e.g., id*. ¶¶ 67, 87.

The law is clear that Front Row cannot be subject to an antitrust claim through group pleading that does not make any specific allegations of anticompetitive conduct by Front Row. *See Austin Legal Video, LLC v. Deposition Sols., LLC*, 2024 WL 5184485, at *5 (W.D. Tex. July 19, 2024) ("A plaintiff cannot assemble some collection of defendants and then make vague, non-specific allegations against all of them as a group."); *In re Mexican Gov't Bonds Antitrust Litig.*, 412 F. Supp. 3d 380, 388 (S.D.N.Y. 2019) ("Allegations about the defendants 'as a general collective bloc, or generalized claims of parallel conduct, must . . . be set aside . . . as impermissible group pleading.'") (quotation omitted). Because the counterclaim is bereft of any specific factual allegations to support the claim that Front Row participated in the alleged conspiracy, it must be dismissed against Front Row.

CONCLUSION

For the additional reasons set forth above, the Court should dismiss NASCAR's counterclaim against Front Row.

Dated: March 26, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **COUNTER-DEFENDANT FRONT ROW MOTORSPORTS, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS AND MOTION TO STRIKE** 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:

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