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UNITED STATES DISTRICT COURT  
DENVER, COLORADO  
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JEFFREY P. COLWELL, CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

2311 RACING LLC d/b/a 23XI RACING  
and FRONT ROW MOTORSPORTS, INC.,

Movants,

v.

LIBERTY MEDIA CORPORATION,

Respondent.

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MOVANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO COMPEL  
COMPLIANCE WITH SUBPOENA

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Underlying Litigation

*2311 Racing LLC, et al. v. Nat'l Ass'n for Stock Car Auto Racing, LLC, et al.*, No. 3:24-cv-886-  
KDB-SCR in the United States District Court, Western District of North Carolina Charlotte  
Division

**ORAL ARGUMENT REQUESTED**

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Under Rules 37 and 45 of the Federal Rules of Civil Procedure, Plaintiffs 2311 Racing LLC d/b/a 23XI Racing (“23XI”) and Front Row Motorsports, Inc. (“Front Row,” and together with 23XI, “Plaintiffs”) move to compel Liberty Media Corporation (“Liberty Media”), which owns the Formula One Group (“F1”) racing series, to produce relevant and narrowly targeted financial documents and data pursuant to Plaintiffs’ Rule 45 subpoena.

### **INTRODUCTION**

Plaintiffs are two of the premier stock car racing teams (23XI and Front Row) in the United States. They compete in the NASCAR Cup Series, which is the nation’s top stock car racing circuit. On October 2, 2024, Plaintiffs brought an antitrust case, in the Western District of North Carolina, alleging that NASCAR (and its CEO Jim France) have violated Section 2 of the Sherman Act by unlawfully monopolizing the market for premier stock car racing in the United States. Dkt. 107, Am. Compl. ¶¶ 3, 15–17, 137–60.<sup>1</sup> NASCAR has exploited its monopoly power to impose anticompetitive terms on the teams that compete in Cup Series races, including by providing teams with lower shares of revenues (such as TV revenues from NASCAR’s \$7.7 billion media rights deal) than they would receive in a competitive market.

The underlying Litigation is on a fast track toward trial. The district court granted a preliminary injunction against NASCAR after finding, among other things, that Plaintiffs are likely to succeed on their antitrust claim against NASCAR. PI Order, Dkt. 74; Stip. PI, Dkt. 94. The district court then denied NASCAR’s motion to dismiss, Dkt. 104, and set the case on an expedited

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<sup>1</sup> All docket citations refer to the docket in *2311 Racing LLC, et al. v. Nat’l Ass’n for Stock Car Auto Racing, LLC, et al.*, No. 3:24-cv-886-KDB-SCR (W.D.N.C.) (the “underlying Litigation”).

schedule, Dkt. 84—with fact discovery closing on June 30, 2025, and trial beginning on December 1, 2025.

Early on in fact discovery, Plaintiffs served a series of third-party subpoenas under Rule 45, including a subpoena to Liberty Media, the company that wholly owns F1, a premier open-wheel racing series operating in the United States and internationally. Plaintiffs’ subpoena to F1 seeks financial information relevant to proving antitrust injury and calculating the damages incurred by Plaintiffs under the well-accepted “yardstick” measure of estimating damages in an antitrust litigation. Specifically, after narrowing their requests, Plaintiffs seek five categories of information—four of which F1 can provide on a “documents sufficient to show” basis—showing team and league revenues and how those revenues are split between the league and its teams. The fifth request seeks one agreement, the Concorde Agreement, that governs the relationship between F1 and its racing teams. The information sought will enable Plaintiffs to perform a yardstick comparison between other major professional sports leagues (where competition for the teams’ services has not been suppressed) and NASCAR (where exclusionary conduct has been used to unlawfully maintain a monopoly). Despite Plaintiffs’ substantial compromise offer, F1 has refused to produce the requested information.

The Court should compel F1 to produce the requested documents. The requested financial documents are squarely relevant to the underlying Litigation. In antitrust cases, plaintiffs commonly look to the revenues and profitability of firms in comparable industries to evaluate what their revenues would have been “but for” the unlawful conduct. Plaintiffs’ experts intend to use this well-accepted methodology here. Financial data from the other major sports leagues (and with F1 the most popular other major racing sport) will provide a benchmark for Plaintiffs’ damages

expert to evaluate the revenues and terms NASCAR teams would have received but for NASCAR's unlawful monopolization.

By contrast, F1 has no valid basis for its refusal to produce the requested information. F1 has argued the requests are unduly burdensome, but Plaintiffs have made a compromise offer that substantially narrows their requests; Plaintiffs only seek discrete categories of financial information on a "documents sufficient to show" basis and one agreement; and do not demand any custodial email searches of any F1 executives or employees. The requests are thus not unduly burdensome, but are instead tailored and proportional, particularly given that the underlying Litigation is a complex antitrust case of national importance. Moreover, F1's claim that the requested information is commercially sensitive provides no basis for withholding relevant evidence. Confidentiality concerns can be addressed by marking sensitive documents highly confidential under the court-ordered Protective Order in the underlying Litigation, which will ensure the documents are only seen by counsel, experts, and the court.

The Court should compel F1 to produce the requested documents and data.

### **BACKGROUND**

1. In the underlying Litigation, Plaintiffs allege that NASCAR has unlawfully monopolized the market for premier stock car racing through an interrelated series of exclusionary acts. NASCAR, among other things, requires teams to enter into non-compete provisions to participate in Cup Series races, Dkt. 107, Am. Compl. ¶¶ 78, 96–8; requires teams to sign a release of claims, which NASCAR argues waives teams' right to challenge NASCAR's monopoly under federal antitrust law, *id.* ¶ 115; acquired its closest competitor, *id.* ¶ 12; and has used acquisitions

and exclusive deals to lock up the racetracks that are most capable of hosting premier stock car races, *id.* ¶¶ 12, 14, 84–91.

NASCAR’s monopolization of premier stock car racing has caused NASCAR teams substantial financial damage. NASCAR’s exclusionary conduct has allowed it to impose below-market financial terms on its racing teams. *Id.* ¶¶ 2–6, 112, 159. Although teams like 23XI and Front Row make the investments, employ the drivers, and engage in the races that attract fans, broadcasters, and sponsors, NASCAR reaps almost all the economic benefits, including the vast majority of revenues from NASCAR’s lucrative TV and media rights deals. *Id.* ¶ 2. Plaintiffs will show at trial that, in a competitive market free from NASCAR’s unlawful conduct, Plaintiffs and other NASCAR teams would have received a far greater share of league revenue and better financial terms.

2. On February 19, 2025—shortly after fact discovery began in the underlying Litigation—Plaintiffs issued a Rule 45 subpoena to Liberty Media, the owner of F1, which is one of the most popular sports leagues in the United States. Unlike most professional sports leagues, NASCAR has long been unilaterally controlled by the France family. Dkt. 107, Am. Compl. ¶ 3. In contrast, the racing teams in F1 are not subject to a monopolistic league owner and the market for their services has not been infected with the anticompetitive conduct alleged in this case. *Id.* ¶ 77.

The subpoena included eight requests for the production of documents, seeking information about F1’s league revenues, team valuations and requesting production of the Concorde Agreement. The Rule 45 subpoena is attached to this motion as Exhibit 1. In response

to the subpoena, F1 issued boilerplate objections and refused to produce a single document. F1's Responses & Objections are attached as Exhibit 2.

After F1's blanket refusal to produce documents, Plaintiffs met and conferred with F1's counsel and narrowed their requests to five discrete categories of information—which seek information on a documents-sufficient-to-show basis (or by declaration for two of the requests) for the first four requests, along with the production of a single agreement, the Concorde Agreement. *See* Ex. 3, Mar. 12, 2025, Email from J. Parsigian to Counsel for F1.

As modified, Plaintiffs now request that F1 provides:

1. Documents sufficient to show the revenues (e.g., media, ticket, concession, etc.) that are shared with or among F1 and its teams.
2. A declaration or documents sufficient to show the formula for the split among the teams and F1 for the revenue categories.
3. A declaration or documents sufficient to show the amounts of revenues shared with or retained by F1 and the teams. When the parties conferred for a second time on April 4, 2025, counsel for Liberty Media represented that Liberty Media does not have documents responsive to Request #4 in its custody or control. Plaintiffs' counsel requested that, in the alternative, Liberty Media provide documents sufficient to show actual sales prices of F1 teams since January 1, 2016.
4. Documents sufficient to show the valuations of expansion or current F1 teams.
5. The Concorde Agreement.

The information necessary to respond to Requests #1 and #3 is readily available to F1, as it is likely kept in the ordinary course of business and compiled in order to submit filings required by publicly traded companies; information necessary to respond to Request #2 is likely available in F1's governing documents; including the Concorde Agreement requested in Request #5; and the information necessary to respond to Request #4 can be summarized in a declaration.

During the negotiations preceding this motion, Plaintiffs also agreed to shorten the timeframe for responsive documents to January 1, 2016, to December 31, 2024. Ex. 4, Mar. 21, 2025 Email from J. Parsigian to Counsel for F1. That nine-year timeframe corresponds with the execution of the 2016 agreement between NASCAR and its chartered teams, in which NASCAR exercised its monopoly power to impose the anticompetitive terms that Plaintiffs are challenging in the underlying Litigation. Dkt. 107, Am. Compl. ¶¶ 72–79, 105–118.

On April 4, 2025, at the request of F1’s counsel, Plaintiffs conducted another meet and confer. During that discussion, F1 maintained its blanket refusal to produce any documents and, instead, suggested that Plaintiffs should attempt to use Liberty Media’s 10-K public filings to “reverse engineer” the requested financial data. Liberty Media’s 10-K filings, however, only contain top-line total revenue numbers—they do not provide the revenues or types of revenues that F1 shares with its teams, nor the formula that F1 uses for splitting revenues between F1 and the teams.<sup>2</sup>

### **LEGAL STANDARD**

Federal Rule of Civil Procedure 45 permits a party to serve a subpoena on a non-party to produce documents. *See* Fed. R. Civ. P. 45(a)(1)(D). “If a subpoena recipient serves an objection, then ‘on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production.’” *Equal Emp. Opportunity*

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<sup>2</sup> *See Liberty Media Corp. Form 10-K*, UNITED STATES SEC. & EXCH. COMM’N (Feb. 27, 2025), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001560385/000155837025001830/lmca-20241231x10k.htm>.

*Comm'n v. Glob. Med. Response, Inc.*, 2024 WL 5397527, at \*5 (D. Colo. Oct. 1, 2024) (quoting Fed. R. Civ. P. 45(d)(2)(B)(i)).

“[T]he relevancy standards set forth in Rule 26 define the permissible scope of a Rule 45 subpoena.” *Black v. Boomsourcing, LLC*, 2023 WL 372160, at \*2 (D. Utah Jan. 24, 2023). Under Rule 45, parties therefore may obtain discovery from a third party regarding “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

“The subpoenaing party must first show that its requests are relevant to its claims or defenses, within the meaning of Federal Rule of Civil Procedure 26(b)(1).” *Mylan Inc. v. Analysis Grp., Inc.*, 2018 WL 4063496, at \*2 (D. Kan. Aug. 27, 2018), *objections overruled*, 2018 WL 5043157 (D. Kan. Oct. 17, 2018) (quotation omitted). Once that threshold showing is made, the burden then shifts to the party opposing enforcement of the subpoena to show that “disclosure of the information is protected under Rule 45(d)(3)(A) or (B).” *Id.* (quotation omitted).

### **ARGUMENT**

The Court should order F1 to produce the five categories of documents described in Plaintiffs’ March 12 compromise offer. *See supra* at 6. Those documents are squarely relevant to the claims in the underlying Litigation because they will provide Plaintiffs with a benchmark to assess the impact of NASCAR’s monopolistic conduct and thus the damages to Plaintiffs. By contrast, F1 cannot show the requests—as narrowed through Plaintiffs’ compromise offers—will impose any undue burden.

**A. Plaintiffs' Requests Are Relevant to the Claims in the Underlying Action**

The Rule 26 relevancy standard is a “low threshold,” *Lujan v. Exide Techs.*, 2011 WL 1594952, at \*4 (D. Kan. Apr. 27, 2011), which is satisfied “if there is any possibility that the information sought may be relevant to the claim or defense of any party.” *Gen. Elec. Cap. Corp. v. Lear Corp.*, 215 F.R.D. 637, 640 (D. Kan. 2003) (quotations omitted); *Gordancier v. Montezuma Water Co.*, 2010 WL 1413109, at \*1 (D. Colo. Apr. 2, 2010) (“Relevance under Rule 26 has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is, or may be, in the case.”) (quotations omitted).

Plaintiffs' requests to F1 easily clear the Rule 26 relevancy bar. Plaintiffs' theory is that—but for NASCAR's anticompetitive restrictions—team owners would receive better terms, such as a larger portion of NASCAR's television and media-rights revenues and permanent team status in NASCAR. Financial data from F1 and the Concorde Agreement (and the other major leagues from which Plaintiffs seek identical information) provide a key yardstick for Plaintiffs' experts to assess and compare the terms that NASCAR teams receive against those of teams in comparable professional sports leagues that are unfettered by the anticompetitive restrictions imposed by NASCAR.

In antitrust cases such as this one, plaintiffs commonly prove impact and damages precisely this way—by comparing their revenues to those of firms in a similar market unaffected by the antitrust violation. *See, e.g., In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 521 (S.D.N.Y. 1996) (noting that the “yardstick approach,” which “compares profits earned or prices paid by the plaintiff with the corresponding data for a firm or in a market unaffected by the violation,” is a widely accepted methodology for calculating damages); *Law v. Nat'l Collegiate*

*Athletic Ass'n*, 5 F. Supp. 2d 921, 928 (D. Kan. 1998) (“In economic terms, the amount of damages is the difference between what plaintiff could have made in a hypothetical free economic market and what plaintiff actually made in spite of defendant’s anticompetitive activities.”); *Beltran v. InterExchange, Inc.*, 2018 WL 526907, at \*6 (D. Colo. Jan. 24, 2018), *aff’d*, 2018 WL 1509258 (D. Colo. Mar. 27, 2018) (“The yardstick test consists of a study of the profits of entities or businesses that are closely comparable to the plaintiff’s and who have not engaged in the complained of antitrust behavior.”); *ABA Antitrust Section*, ANTITRUST LAW DEV., § 9C-3-b (9th ed. 2017) (“The ‘yardstick’ approach compares profits earned or prices paid by a plaintiff with the corresponding data for a firm or in a market unaffected by the violation.”).

Because this mode of analysis is a widely accepted methodology for proving damages in antitrust cases, plaintiffs seek financial data from third parties in similar or adjacent industries as a matter of course. Courts regularly compel third parties to produce such financial data under Rule 45. *See, e.g., Direct Purchaser Class Plaintiffs v. Apotex Corp.*, 2017 WL 4230124, at \*3 (S.D. Fla. May 15, 2017) (compelling a third party to turn over sales data, finding it “relevant to determining damages in the Antitrust Litigation . . . the economic experts can use data of this sort to construct a model of what prices would have been charged for [the product] but for [defendant’s] alleged anti-competitive conduct.”); *Waymo LLC v. Uber Tech.*, 2017 WL 2929439, at \*2 (N.D. Cal. July 7, 2010) (granting motion to compel financial documents from third party where they “are relevant to [p]laintiff’s claim of damages”); *Yankee Bank For Fin. & Sav. F.S.B. v. Equitable Bank, N.A.*, 1986 WL 12484, at \*1–2 (W.D.N.Y. Nov. 6, 1986) (similar); *Guy Chem. Co. v. Romaco AG*, 243 F.R.D. 310, 312 (N.D. Ind. 2007) (similar).

That is just what Plaintiffs seek to do here. The requested information from F1 will help Plaintiffs' experts formulate an opinion on the terms and revenues NASCAR teams would have received but for NASCAR's unlawful monopolization of premier stock car racing. *See* Areeda & Hovenkamp, *ANTITRUST LAW*, ¶ 392a (4th ed. 2024) (“[A]ntitrust damage calculations necessarily require a determination of what would have been in a ‘but for’ world”).

Each of the five categories of information that Plaintiffs seek, as revised in the March 12 compromise offer, *see supra* at 6; Ex. 3, is plainly relevant to damages in the underlying Litigation.

- **Request #1** seeks documents sufficient to show the revenues F1 generates in several key categories (e.g., media rights, ticket and concession sales, etc.) and how those revenues are shared between the league and its teams. This data will show the revenue received by teams in comparable professional sports markets, which are not subject to NASCAR's monopolistic conduct. Plaintiffs' damages expert can then compare that revenue information to the revenues received by NASCAR teams. This revenue information should be readily available to F1 in the documents and reports it prepares for its member racing teams.
- **Request #2** seeks a declaration or documents sufficient to show the formula for how F1 and its teams split revenue in the key categories. This data will show the formula by which revenues are split in comparable professional sports leagues, including F1, that are not subject to NASCAR's exclusionary conduct, which Plaintiffs' damages expert can then compare to the revenue-splitting formula NASCAR has imposed on its racing teams. This information should be readily available to F1 in its governing documents.
- **Request #3** seeks the total amount of revenues shared between F1 and its racing teams pursuant to F1's revenue-sharing formula. Here again, this financial data will provide a critical point of comparison between NASCAR and comparable sports leagues like F1 not subject to NASCAR's exclusionary conduct, which will help Plaintiffs' damages experts to perform a yardstick analysis. The data should be available in F1's yearly revenue reports.
- **Request #4** seeks documents sufficient to show the valuations of expansion or current teams. F1 indicated that it does not have this information. Plaintiffs have instead requested information regarding the purchase price of any F1 team or shares of any F1 team to establish valuations of the teams.

- **Request #5** seeks F1’s Concorde Agreement. The Concorde Agreement is the key agreement between F1 and its teams; the agreement governs how prize funds, television revenues, and other revenue categories are shared between F1 and its teams. Liberty Media’s 10-K describes in broad terms the Concorde Agreement, including that it “establishes rules for the determination of the Prize Fund to be paid to the Teams,” and sets the parameters for how the “share[s] of the Prize Fund” are calculated.<sup>3</sup> The Concorde Agreement will therefore provide key information to enable Plaintiffs’ damages expert to conduct the comparative analysis, between F1 and NASCAR, described above.

Plaintiffs’ five requests to F1 are proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1) (parties may obtain discovery “that is relevant . . . and proportional to the needs of the case.”). Financial data from F1 is not only relevant, it is among the best data available for comparing competitive conditions in the “but for” world, because F1 is a premier professional racing sports league that generates revenue in similar ways (i.e., through TV rights deals, fan attendance, merchandise sales, etc.). Plaintiffs have no other way to obtain comparable and indisputably accurate financial information about F1 except from the league itself. *Gilead Scis., Inc. v. Safe Chain Sols. LLC*, 345 F.R.D. 22, 29–30 (E.D.N.Y. 2024) (“Proportionality goes hand-in-hand with relevance,” so that “the more relevant the information sought is, the less likely a Court would find the subject discovery disproportionate.”) (cleaned up); *see also Phillips v. Boilermaker-Blacksmith Nat’l Pension Tr.*, 2024 WL 3471333, at \*5 (D. Kan. July 19, 2024) (“Because the discovery sought is relevant . . . [respondents] now hold the burden of showing that the discovery sought . . . is disproportionate to the needs of the case.”). Further, the underlying litigation against NASCAR is a complex antitrust case of national importance that is headed to

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<sup>3</sup> *See Liberty Media Corp. Form 10-K*, United States Sec. & Exch. Comm’n (Feb, 27, 2025), at I-9, <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001560385/000155837025001830/lmca-20241231x10k.htm>.

trial in just a few months. The relatively minor burden on F1 in producing tailored, discrete categories of financial data—on a “documents sufficient to show” basis—and the Concorde Agreement is entirely proportional to the needs of the case, especially since F1 has substantial resources (with billions in annual revenues) and the information requested is readily available to F1. *Stanisavljevic v. Standard Fire Ins. Co.*, 2024 WL 2830949, at \*2 (D. Colo. June 4, 2024) (proportionality takes into account “the importance of the discovery to the issues at stake”; the “parties’ relative access” to the information sought; and “the parties’ resources”) (quoting Fed. R. Civ. P. 26(b)(1)).<sup>4</sup>

**B. The Leagues Have No Basis to Quash the Subpoena**

F1 cannot meet its burden, *Mylan Inc.*, 2018 WL 4063496, at \*2, to quash Plaintiffs’ Rule 45 subpoena notwithstanding the plain relevance of the requests. F1 has offered two bases for its refusal to produce the requested financial information: (1) burden and (2) confidentiality. Neither withstands scrutiny.

*No undue burden.* Plaintiffs’ requests (as reflected in the March 12 compromise offer, *see supra* at 6; Ex. 3), are narrowly focused on the key financial information Plaintiffs need to conduct their damages analysis. For all five categories of requested documents, Plaintiffs are not requesting **every** document possessed by F1; rather, Plaintiffs are only asking for “documents sufficient to show,” (even a declaration for two of the categories), and one agreement, on the relevant points.

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<sup>4</sup> *See also Direct Purchaser Class Plaintiffs*, 2017 WL 4230124, at \*3 (compelling a third-party to turn over sales data, finding it relevant and proportional because “the economic experts can use data of this sort to construct a model of what prices would have been charged for [a product] but for [defendant’s] alleged anti-competitive conduct.”); *Roche Diagnostics Corp. v. Priority Healthcare Corp.*, 2019 WL 4686352, at \*5 (N.D. Ala. Feb. 12, 2019) (similar); *Boodram v. Coomes*, 2016 WL 11333789, at \*3 (W.D. Ky. Jan. 28, 2016) (similar).

*IQVIA, Inc. v. Veeva Sys., Inc.*, 2018 WL 4952595, at \*17 (D.N.J. Oct. 12, 2018) (noting that request for “documents sufficient to show” reduces discovery burden). Plaintiffs likewise are not seeking a custodial email search of any F1 or Liberty Media executives or employees. In the context of a complex antitrust case, Plaintiffs’ requests are modest and targeted—they are focused on salary cap and governance documents that are readily available to Liberty Media and F1.

Although F1 has made generalized claims about the burden of complying with Plaintiffs’ requests, it has made no attempt to substantiate those claims. To assert a valid objection on the basis that a document request is overly broad or unduly burdensome, one must do more than “simply intone [the] familiar litany that the [requests] are burdensome, oppressive or overly broad.” *Esquibel as next friend of Trujillo v. Archuleta*, 2006 WL 8444506, at \*5 (D.N.M. Feb. 21, 2006) (quotation omitted). Rather, parties resisting discovery on burden grounds must submit affidavits and evidence documenting the burden and showing how it is unreasonable in light of “the benefits to be secured from the discovery.” *Ehrlich v. Union Pac. R.R. Co.*, 302 F.R.D. 620, 625–26 (D. Kan. 2014); *see, e.g., Oleson v. Kmart Corp.*, 175 F.R.D. 570, 571 (D. Kan. 1997). F1 has made no attempt to do that because it knows this information is largely readily available to it in existing documents.

F1’s position that it won’t produce a single document—and that Plaintiffs instead should attempt to parse the requested information from F1’s 10-K public filings—is wholly inadequate. Liberty Media’s 10-K filings only contain top-line total revenue numbers that will not allow Plaintiffs’ damages expert to perform the yardstick analysis. For example, they state F1’s overall revenues, but they do not break down the types of revenues that F1 receives or provide the formula for how revenues are shared with teams. 10-Ks provide none of the information sought in

Plaintiffs' requests, including (1) the revenues that F1 generates in key categories (Request #1); (2) F1's formula for splitting revenues with its teams (Request #2); the total revenues shared between F1 and its teams (Request #3); or information about franchise valuation (Request #4).<sup>5</sup> Moreover, if Plaintiffs attempted to make broad extrapolations from the top-line revenue figures in F1's public filings, NASCAR would surely object and use that as fodder for cross-examination.

**Confidentiality is covered by the Protective Order:** F1's objection that the financial information sought by Plaintiffs is commercially sensitive cannot justify its refusal to withhold relevant documents and data entirely. The district court in the underlying Litigation has entered a Protective Order, Dkt. 85, pursuant to which third parties can produce sensitive documents on a "Highly Confidential – Outside Counsel Only" basis. Courts regularly hold that such a protective order forecloses parties from using confidentiality concerns as the basis for withholding relevant evidence. *E.g. Salt Mobile S.A. v. Liberty Glob. Inc.*, 2021 WL 2375864, at \*5 (D. Colo. June 10, 2021) ("Respondents have failed to demonstrate why a standard protective order would be insufficient to protect their interests in protecting confidential material.")<sup>6</sup>

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<sup>5</sup> See *Liberty Media Corp. Form 10-K*, United States Sec. & Exch. Comm'n (Feb. 27, 2025), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001560385/000155837025001830/lmca-20241231x10k.htm>.

<sup>6</sup> See also *In re Michael Wilson & Partners*, 2007 WL 3268475, at \*3 (D. Colo. Oct. 30, 2007) (noting that to the extent petitioner is a direct competitor of respondent, "a standard protective order would protect this interest by prohibiting the dissemination of information covered by that protective order"); *Municipality of Mariana*, 2024 WL 1434792, at \*10 (D.N.M. Apr. 3, 2024) ("[c]laimant's proposed safeguards" would alleviate any burden in discovery); *High Point SARL v. Sprint Nextel Corp.*, 2011 WL 4008009, at \*3 (D. Kan. Sept. 9, 2011) (finding plaintiff's confidentiality objection unjustified because a protective order was already entered); *Brave L. Firm, LLC v. Truck Accident Laws. Grp., Inc.*, 2019 WL 3740594, at \*3 (D. Kan. Aug. 8, 2019) ("To be sure, judges in this district do protect confidential[ity] . . . by entering protective orders prohibiting their *disclosure* outside of the litigation, but they refuse to accept confidentiality as a basis for completely *withholding* discovery) (emphasis in original).

Here, F1 can produce any material that it considers highly confidential, proprietary, or commercially sensitive under the attorneys-eyes-only designation, and that will ensure the information is not viewed by business competitors or used beyond the underlying litigation. *High Point*, 2011 WL 4008009, at \*3 (“[T]he entry of a protective order limiting the disclosure of confidential information is sufficient to address a party’s confidentiality concerns.”).

**CONCLUSION**

The Court should compel F1 to produce the requested documents and data.

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Respectfully submitted,

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