**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF NORTH CAROLINA**
**CHARLOTTE DIVISION**

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| 2311 RACING LLC d/b/a 23XI RACING, and FRONT ROW MOTORSPORTS, INC.,<br><br>Plaintiffs,<br><br>v.<br><br>NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, LLC, NASCAR HOLDINGS, LLC, NASCAR EVENT MANAGEMENT, LLC, and JAMES FRANCE,<br><br>Defendants. | No. 3:24-cv-886-KDB-SCR<br><br>[redacted] |
| NASCAR EVENT MANAGEMENT, LLC,<br><br>Counter-Plaintiff,<br><br>v.<br><br>2311 RACING LLC d/b/a 23XI RACING, FRONT ROW MOTORSPORTS, INC., and CURTIS POLK,<br><br>Counter-Defendants. | |

**DECLARATION OF STEVE PHELPS IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Steve Phelps, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. Since March, 2025, I have been the Commissioner of the National Association for Stock Car Auto Racing (NASCAR). In that role, I oversee all aspects of NASCAR, including competition, marketing, media rights and administration. In my current role, I am particularly focused on NASCAR's strategic growth and international expansion.

2. From September 2018 to March 2025, I was the President of NASCAR. In that role, I also oversaw all operations for NASCAR's sanctioning body, racetrack facilities, and IMSA.

3. On October 23, 2024, I submitted a sworn declaration in this litigation. The statements in my October 23, 2024, declaration remain true and accurate, and I re-affirm them today.

## I. THE GOODWILL PROVISIONS IN THE 2016 AND 2025 CHARTERS

4. The 2016 Charter and the 2025 Charter both contain Goodwill Provisions (in Section 6.6 of each Charter), which Plaintiffs challenge in their lawsuit.

5. These Goodwill Provisions were important to NASCAR because they protect NASCAR's investment in the sport, protect its confidential information, prevent consumer confusion and protect media partner investments, and ensure the Teams' reasonable best efforts to race competitively.

6. The Goodwill Provisions in each Charter apply "at all times during the Term" of the Charters. This means that the Goodwill Provision expires at the end of the seven-year Charter Term, or after the Term Extension if the 2025 Charter is extended.

7. The Goodwill Provisions only apply to certain Control Persons and Team Owners. When a Team Owner or Control Person validly transfers a Charter to a new Team Owner, the seller's obligations under the Goodwill Provision under that Charter terminate.

8. The Goodwill Provisions extend with a "tail" of 12 months after termination **only** if (i) the Team Owner defaults or (ii) the Charter is forfeited during the Term of the Charter. If the Charter naturally expires and is not renewed at the end of its Term (as in the case of the four Charters that Plaintiffs held), or is validly transferred through a sale, then the Goodwill Provision terminates at the expiration of the Charter with no tail or upon sale.

9. Plaintiffs' four 2016 Charters expired at midnight on December 31, 2024. Plaintiffs did not default on or forfeit their 2016 Charters. Plaintiffs have not been issued or assigned any 2025 Charters. This means that Plaintiffs currently are not bound by any Goodwill Provisions.

10. Charter holders are allowed, under the Goodwill Provisions in the 2016 and 2025 Charters, to participate in numerous other motorsports. For example, in the 2025 Charter, there is an express carve out that allows Teams to race in the CARS Tour, which is a premier late-model stock-car touring racing series co-owned by former NASCAR drivers Dale Earnhardt Jr., Jeff Burton, and Justin Marks and NASCAR broadcast analyst Kevin Harvick.

11. In addition to the long list of exceptions, which include every major known racing organization and sanctioning body in North America, the Goodwill Provisions in the 2016 and 2025 Charters also allow Team Owners to seek NASCAR's approval to race in other series.

12. Plaintiffs have never asked NASCAR, NEM, or any of their respective affiliates for approval to race in any other stock car racing series or any other racing series.

13. NASCAR has never withheld approval from any Charter holder (including direct and indirect Team Owners, as defined by the 2016 and 2025 Charters) to race in any other stock car series or any other racing series.

## II. PLAINTIFFS WILL QUALIFY AND BE ABLE TO COMPETE IN ALL REMAINING 2025 CUP SERIES RACES AS OPEN TEAMS IF THEY CHOOSE

14. Plaintiffs rejected NASCAR's 2025 Charter offers because they did not agree to material terms in the 2025 Charter Agreement and refused to sign the standard NASCAR Joinder Agreement required as a condition precedent for the assignment of the Stewart-Haas Racing Charters to Plaintiffs. Plaintiffs currently do not hold any 2025 Charters.

15. Even though they do not hold any 2025 Charters, Plaintiffs are able to race in the Cup Series as "Open" entrants.

16. Unlike Charter holders, Open entrants compete to secure a starting grid position for each Cup Series race. Securing a starting position as an Open entrant is based on performance in a qualifying session that precedes the Cup Series race (i.e., the four fastest Open cars typically earn a place in the Cup Series race). Charter holders, on the other hand, are guaranteed a starting position in every Cup Series race and participate in qualifying to determine starting order for Cup Series races.

17. From February 2016 to December 2024, there were 36 active Charters that were automatically guaranteed a starting position in every Cup Series race.

18. Currently, there are 30 active Charters that are guaranteed a starting position in every Cup Series race.

19. Plaintiffs have been racing as Open entrants since July 20, 2025, beginning with the Cup Series race at Dover Motor Speedway.

20. Plaintiffs had their first Cup Series win of the 2025 Cup Series season at the 2025 NASCAR Cup Series Brickyard 400 held at the Indianapolis Motor Speedway on July 27, 2025. Bubba Wallace, the driver of 23XI's number 23 car, won the race and qualified for the 2025 NASCAR Cup Series playoffs.

21. Plaintiffs' drivers have remained the same since they began racing as Open entries.

22. Plaintiffs have not made any changes to the crew chiefs of their respective teams nor have Plaintiffs made substantial changes to their pit crew rosters since they began racing as Open entries.

23. On July 21, 2025, NASCAR announced the following Cup Series Rule change:

    a. "*Rule 7.9.1.1.C.* –Up to six Open Teams will be eligible for starting grid positions based on the highest ranked Team Owner Points standings."

24. In accordance with Rule 7.9.1.1.C., Plaintiffs' six cars will earn starting positions for all remaining Cup Series races in the 2025 season if Plaintiffs choose to race. This is because each Cup Series race can have up to 40 entries (10 Open entrants in addition to the 30 active Chartered entrants) and Plaintiffs' six Open cars have accumulated sufficient Team Owner Points in the 2025 Cup Series to position them as the top six highest ranked teams among the Open entrants for the remainder of the season. Although there have been multiple other Open entrants in Cup Series races so far this year, based on trends and historical data, none of those other Open entrants could accumulate sufficient Team Owner Points to surpass any of Plaintiffs' six Open cars in Team Owner Points over the remainder of the 2025 season.

25. As Open entrants, Plaintiffs are not required to race the remainder of the 2025 Cup Series season. But, if Plaintiffs choose to race as Open entrants, they will secure a starting position for every remaining Cup Series race this year.

26. There is no Goodwill Provision for Open entrants. So, as Open entrants, Plaintiffs are not subject to Section 6.6 of the 2025 Charters. Plaintiffs are absolutely free to compete against NASCAR while at the same time competing in NASCAR as Open entrants.

## III. NASCAR'S BUSINESS WILL BE IRREPARABLY HARMED IF THE CHARTERS ARE NOT TRANSFERRED PROMPTLY

27. Typically, a team acquiring a NASCAR Charter needs time to prepare to race. During this time, the team will hire employees (driver(s), pit crew, engineers, mechanics, marketing, and administrative staff), enter into a relationship with an OEM, purchase equipment and parts to build its cars, line up sponsors, etc.

28. For teams that already hold a Charter and are acquiring another Charter, this ramp-up process could be completed in as little as a few months. But for teams that are new to the Cup Series, the process of setting up a successful Cup Series entrant would likely take four or more months.

To successfully enter the Cup Series during the 2026 season, a new Charter holder should begin making arrangements by no later than October 1, 2025.

29. The 2026 Cup Series will begin on February 1, 2026 with the Clash at Bowman Gray. The first points race of the 2026 Cup Series season will be held on February 15, 2025 at Daytona International Speedway, which is the largest race of the NASCAR Cup Series season, in terms of race purses available.

30. Waiting to finalize Charter ownership and effectuate transfers until after the December 2025 trial will prevent the parties that are interested in acquiring Charters from doing so because those interested parties will not have time to prepare for the 2026 Cup Series. That, in turn, will hurt NASCAR because it will delay the entry of parties interested in competing in the Cup Series and growing the sport as the Cup Series competes for fans and sponsors against other motorsport properties and other sports and entertainment properties.

31. Multiple interested parties have expressed interest in acquiring Charters for use in the 2026 Cup Series season. I have personally spoken to interested parties who include, among others, [redacted]

32. The opportunities that these new interested parties could bring to the sport are innumerable. Paragraphs 33 through 36 of my report highlight just a few of the ways that new Charter holders could potentially benefit the sport.

33. [redacted]

34. [redacted]

[redacted]

35. [redacted]

36. Unlike the Plaintiffs, many individuals and organizations, including the interested parties referenced above, view the 2025 Charters as a good investment and want to acquire them and work with NASCAR to further grow the Cup Series.

37. In fact, demand for Charters increased between 2022 and September 2024, the period of time that NASCAR and the Teams were negotiating over the Terms of the 2025 Charters.

38. [redacted]

39. Demand for Charters has remained high during the pendency of this litigation as well. For example, on March 3, 2025, Legacy Motor Club and Rick Ware Racing ("RWR") executed a

Charter Purchase Agreement in which Legacy Motor Club agreed to purchase a 2025 Charter from RWR for [redacted].

40. If the fate of the four non-issued Charters and the two Stewart-Haas Charters is not resolved until after the December 2025 trial, it will be impossible for a new team to gear up for the 2026 season. I understand that the trial is not likely to conclude until the second or third week of December 2025. New owners would require more time than that to adequately prepare for the first race of the 2026 season at Bowman Gray on February 1, 2026 or the most significant race of the season—the Daytona 500—scheduled for February 15, 2026.

41. NASCAR is required by the 2025 Charter to handle the transfer of two of the six Charters under specific procedures. Specifically, to reissue the two former Stewart-Haas Racing Charters pursuant to the Charters requires a 30-day bidding process open to qualified existing Charter holders. Doc. 21-5 § 3.4(ii). Beginning that 30-day process after a December trial (in mid-to-late December), would not permit a team to put that Charter to effective use by the February 2026 start of the 2026 Cup Series season.

42. Due to the significant interest in acquiring additional Charters among existing Charter holders, following the bidding process, NASCAR most assuredly will be able to pay 23XI and Front Row the entire amount each paid to acquire the Stewart-Haas Racing Charters. NASCAR would distribute any funds received above the amount that each of 23XI and Front Row paid Stewart-Haas Racing to the current active 2025 Charter holders by increasing the amount of the pool paid to active Charter holders for the 2025 Cup Series season.

43. Finally, NASCAR needs to begin planning for its 2026 season by September. NASCAR needs to know how many active Charters will be racing in the Cup Series in 2026 to make sure that

it allocates funds to competitors accurately per the terms of the 2025 Charters and otherwise complies with its Charter obligations.

## IV. NASCAR PAID PLAINTIFFS AS CHARTERED ENTRANTS DURING THE FIRST TWENTY RACES OF THE 2025 CUP SERIES SEASON

44. During the period that the preliminary injunction order was in effect, through the first 20 points races of the 2025 Cup Season, NASCAR paid 23XI and Front Row $[redacted] in Fixed Owner's Payments and Performance Payments. NASCAR only paid Plaintiffs these funds because the court-ordered injunction required NASCAR to treat Plaintiffs' six cars as if they had Charters even though Plaintiffs had not entered any 2025 Charter Agreements. NASCAR would not have paid Plaintiffs those funds had Plaintiffs raced as Open entrants.

45. In November 2024, NASCAR told 2025 Charter holders that, because Plaintiffs had not accepted their 2025 Charter offers, it anticipated a Charter Shortfall under the terms of the 2025 Charter Agreement during the 2025 Cup Series season. NASCAR also told the 2025 Charter holders that it planned to adjust the race purses and payments to 2025 Charter holders accordingly.

46. After the Court issued the preliminary injunction, NASCAR told the active 2025 Charter holders that race purses would be based on 36 Charter entries.

47. If Plaintiffs return to NASCAR the $[redacted] that NASCAR would not have paid but for the injunction issued by the Court, NASCAR will distribute those funds to the 2025 active Charter holders in the amount of [redacted] per active 2025 Charter.

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct. This Declaration was executed in New York, New York on August 18, 2025.

Steve Phelps