STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 25CV016837-590

RPAC RACING, LLC, d/b/a/ LEGACY MOTOR CLUB,

Plaintiff,

v.

RICK WARE RACING, LLC,

Defendant and Counterclaim Plaintiff.

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER

Plaintiff RPAC Racing, LLC, d/b/a/ Legacy Motor Club ("Legacy") respectfully opposes Defendant Rick Ware Racing, LLC's ("RWR") Motion For Protective Order ("Mot."). Index No. 69.

I. INTRODUCTION

1. RWR's Motion is an attempt to avoid being called to account for its recent actions, which are entirely inconsistent with representations it made to this Court just months ago in a successful attempt to avoid a preliminary injunction. As set forth below, RWR's recently announced sale is directly in conflict with Mr. Ware's sworn statements and counsel's arguments. *Cf. T-WOL Acquisition Co., Inc. v. ECDG S., LLC*, 220 N.C. App. 189, 193, 725 S.E.2d 605, 608 (2012) (upholding trial court's grant of summary judgment based on judicial estoppel arising from "sworn statements" in prior proceedings). A review of the requested documents and a deposition on the two topics at issue are needed so that Legacy can assess what steps are necessary to protect its interests during the pendency of this case.

2. This case concerns which of RWR's two NASCAR Charters is the subject of the parties' purchase agreement: Charter #27 (as Legacy maintains) or Charter #36 (according to RWR). Upon filing this action, Legacy requested a preliminary injunction to prevent RWR from selling or encumbering Charter #27 until the case was resolved.

3. In opposing that request, RWR insisted that it would never sell Charter #27 lest it go out of business. [redacted] At the preliminary injunction hearing, RWR's counsel likewise insisted that it would never sell Charter #27 lest Rick Ware be put "out of business." Preliminary Injunction Hearing Recording ("Rec.") 1:12:26–1:12:32.[1]

4. RWR's counsel represented that Legacy faced no irreparable harm absent an injunction on Charter #27 because Charter #36 is available for Legacy to purchase. RWR's counsel assured this Court that Legacy "will get their Charter"—"all they have to do is wait until 2027," because "Mr. Ware is standing by his consistent statement, all along, to sell Charter number

[1] Excerpts of an unofficial transcript of the preliminary injunction hearing recording are attached as Exhibit A for the Court's convenience.

36." *Id.* 1:52:30–1:53:02. According to RWR, Legacy's assertions of irreparable harm were misplaced because "if they want a Charter, if they want Charter 36 in 2027, that's available." *Id.* 2:17:28–35. Additionally, counsel represented that the injunction would harm RWR, but "the issue isn't selling the charter"—instead, RWR assured the Court that it wanted "***to keep the Charter***" but needed it "as an asset in order to raise money." *Id.* 1:53:40–1:54:07.

5. After hearing these representations, this Court denied the requested injunction.

6. But on June 26, 2025, T.J. Puchyr—who helped broker the deal between Legacy and RWR—announced that he was purchasing RWR and its Charters (the "**Puchyr Deal**").[2] Based on the announcement and public reporting, it appears this purchase may transfer both of RWR's Charters and cause the team to cease to exist—directly contrary to RWR's representations to this Court. Mr. Puchyr then told the Associated Press that neither Legacy nor RWR could perform under the contract, that "there is no charter available from Ware for Legacy for either lease or purchase in 2026," and that he was "confident the second charter currently leased to RFK," ***Charter #36***, "will be returned to their team in 2027, allowing Puchyr to expand the organization."[3]

7. Mr. Puchyr also made personal attacks against Legacy owner and seven-time NASCAR champion and Hall of Famer Jimmie Johnson, claiming that he "d[idn't] think Jimmie has all the facts, doesn't understand the deal we had, and they tried to humiliate Rick publicly." He further taunted that if Mr. Johnson "wants to sit down and talk about it like men, I'd entertain the conversation."[4]

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[2] Jenna Fryer, *T.J. Puchyr agrees to buy Rick Ware Racing with plans to build a 3-car NASCAR team*, THE ASSOCIATED PRESS (Jun. 26, 2025), https://apnews.com/article/nascar-rick-ware-racing-puchyr-ccd9b642548cfa30192befea81b15ad3.

[3] *See id.*

[4] *Id.*

8. The deal Mr. Puchyr announced has potentially case-ending implications. Depending on the precise terms of the deal, Legacy could be left without the ability to purchase either of the Charters that counsel had represented would be available to it just a few weeks ago in defeating the motion for preliminary injunction. Based on the announcement, it appears RWR's Charters will be transferred to an individual who has publicly declared that Legacy will not receive either one. At a minimum, Legacy has the right to obtain information regarding the implications of the Puchyr Deal on its contract with RWR and on this case as a whole.

9. Consequently, Legacy seeks an RWR 30(b)(6) witness on two limited topics concerning the announced sale and that RWR promptly turn over documents concerning the publicly-announced deal. Legacy needs this information as soon as possible, as it may necessitate emergency relief lest Mr. Puchyr's deal moot the case entirely.

10. RWR's requested protective order would deny Legacy a limited 30(b)(6) deposition, which is the quickest way to obtain information on the announced sale that threatens to moot this litigation. RWR can point to no legitimate reason why this Court should grant that order: any burden on RWR is modest and substantially outweighed by Legacy's need to obtain information regarding the sale as soon as possible. Although RWR complains that Legacy has requested a piecemeal approach, Legacy's proposed 30(b)(6) deposition would proceed in the same way as such depositions commonly proceed—with witnesses appearing on different days to cover different topics—especially in complex commercial disputes like this one.

11. RWR stated numerous times during the preliminary injunction hearing in this case that it wanted a rapid resolution to this dispute, and that it understood that Legacy wanted one too. *See, e.g.*, Rec. 2:13:35–2:17:14. Yet RWR has delayed at every turn, including by suggesting far-off scheduling deadlines that threaten Legacy's ability to obtain its requested relief. RWR also

stated at the preliminary injunction hearing that it would not encumber either Charter until this dispute was resolved. *Cf. Bioletti v. Bioletti*, 204 N.C. App. 270, 277, 693 S.E.2d 691, 696 (2010) ("Plaintiff was judicially estopped" from taking alternate position based on "undisputed evidentiary materials in the record clearly reflect[ing]" contrary representations to the court). But now RWR reportedly turned around and sold itself—and the rights to the Charters it owns. RWR's assertions cannot be trusted after it has publicly announced a transaction inconsistent with its representations to this Court. Its Motion should be denied.

II. BACKGROUND

12. Legacy currently owns and operates two NASCAR Charters.

13. A NASCAR Charter operates much like a team franchise. Introduced in 2016, these Charters are critical to any NASCAR team seeking to operate in the premium NASCAR Cup Series. With a Charter in hand, a team secures a spot in each Cup Series race, which secures it steady and certain revenue allocations from Cup Series advertising and other sources, enhancing chartered teams' sponsorship and media opportunities in turn. The 36 total Charters are all transferable, and NASCAR teams buy, sell, and lease them. They are scarce resources that do not often change hands.

14. In early 2025, Legacy's CEO, Calvin Wells III, and RWR's owner, Rick Ware, executed a Charter Purchase Agreement to transfer one of RWR's Charters to Legacy (the "**Agreement**").

15. Shortly thereafter, a dispute arose over which of RWR's Charters—Charter #27 or Charter #36—was the subject of the parties' deal. Legacy soon received word that RWR was shopping both of its Charters to other prospective buyers. Based on RWR's implied threats to sell its Charters elsewhere, Legacy filed suit on April 1 to vindicate its contractual rights. On the same

day, it requested a temporary restraining order and preliminary injunction to prevent the sale or encumbrance of Charter #27.

16. RWR agreed to a temporary restraining order, but opposed the preliminary injunction. [redacted] At the April 30, 2025 hearing on the preliminary injunction, RWR's counsel assured the Court that no injunction was necessary because RWR would not—indeed could not—sell Charter #27. Counsel again emphasized its assertion that selling Charter #27 would "put[] Rick Ware out of business." Rec. 1:12:26–1:12:32.

17. RWR's counsel further represented that no irreparable harm would ensue if Legacy did not encumber Charter #27 ***because Charter #36 would be available.*** RWR's counsel assured the Court that Legacy "will get their Charter"—"all they have to do is wait until 2027," because "Mr. Ware is standing by his consistent statement, all along, to sell Charter Number 36." *Id.* 1:52:30–1:53:02. According to RWR, Legacy's pleas of irreparable harm were misplaced because "if they want a Charter, if they want Charter 36 in 2027, that's available." *Id.* 2:17:28–35. And RWR told the court that there *would be harm* upon entry of the injunction, but "the issue isn't selling the charter": RWR stated that it wanted "***to keep the Charter***," but needed it "as an asset in order to raise money." *Id.* 1:53:40–1:54:07.

18. After hearing these representations, this Court denied Legacy's requested injunction.

19. Legacy relied on those representations, and continued to pursue its claims in good faith, believing that at least one or both of the Charters would remain available while the Court determined the parties' rights under the Agreement.

20. On June 26, 2025, Mr. Puchyr, the broker who facilitated the agreement between Legacy and RWR, announced that he had made a deal to acquire RWR along with both of its Charters. Mr. Ware, it appears, will no longer own RWR—contrary to his sworn statements and RWR's filings.

21. In statements to the Associated Press, Mr. Puchyr claimed that, notwithstanding RWR's representations, "there is no charter available from Ware for Legacy for either lease or purchase in 2026."[5] The press report further noted that "Puchyr and Ware are confident the second charter currently leased to RFK will be returned to their team in 2027, allowing Mr. Puchyr to expand the organization" and race three Charters. In other words, Charter #36—which RWR promised in court would be "available" to Legacy in 2027—would belong to Mr. Puchyr instead.

22. If the Puchyr Deal closes, not only will Legacy be denied the Charter to which it is contractually entitled (Charter #27), it will also be denied the Charter that RWR claims it agreed to sell to Legacy and promised would be "available" to Legacy (Charter #36). Legacy's fear that RWR is trying to transfer its Charters absent injunction has apparently been realized.

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[5] *See* Fryer, *supra* n.2.

III. LEGAL STANDARD

23. The North Carolina Rules of Civil Procedure set forth RWR's duty to respond to Legacy's 30(b)(6) notice, and contemplate that RWR may designate multiple persons to testify on different topics. *See* N.C. R. Civ. P. 30(b)(6).

24. Under Rule 26(c), a protective order shall only issue upon "good cause shown … to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense," *Analog Devices, Inc. v. Michalski*, 2006 WL 3287382, at *12 (N.C. Super. Nov. 1, 2006) (quoting N.C. R. Civ. P. 26(c)), that outweighs Legacy's "need for relevant information," *Next Advisor Continued, Inc. v. Lendingtree, Inc.*, 2016 WL 5400309, at *5 (N.C. Super. Sept. 16, 2016).

IV. ARGUMENT

A. The Announced Puchyr Deal Justifies Legacy's Notice And Request.

25. The exigent circumstances justify Legacy's notice of a limited 30(b)(6) deposition and request for documents. Depending on the details of T.J. Puchyr's announced transaction for RWR and its two Charters, Legacy's claim for specific performance may be substantially impaired. Mr. Puchyr has represented that he will be purchasing both of RWR's Charters, which may prevent Legacy from obtaining either Charter from RWR. Indeed, RWR may cease to exist entirely after the close of the deal, leaving Legacy to pursue the transfer of the Charter from whomever holds it at that time.

26. Although Legacy has served requests for production, RWR could close its sale to Mr. Puchyr long before it produces relevant documents. Thus, there is an urgent need for a targeted deposition about the claimed transaction.

27. RWR should not be allowed to dodge its burden of producing a corporate representative to testify when an imminent event threatens to substantially alter the course of litigation. *See, e.g.*, *U.S. v. Taylor*, 166 F.R.D. 367, 367–68 (M.D.N.C. 1996) (party would not be allowed to "continue their preparation" of Rule 30(b)(6) designees "after the depositions by being allowed to dribble in its final positions through Fed. R. Civ. P. 26(e) supplementations and Rule 26(a)(3) disclosures … or else release them in a final deluge at trial"). Doing so would "severely prejudice[]" Legacy and "severely disrupt[]" "the orderly scheduling of a case for discovery and trial." *Id.* at 368.

28. For these reasons, the balancing test set forth in Rule 26(c) weighs in favor of permitting the limited 30(b)(6) deposition of RWR to proceed. Because the imminent sale of RWR to T.J. Puchyr threatens significant prejudice to Legacy, a limited 30(b)(6) deposition on the sale is justified.

B. RWR's Objections Lack Merit.

29. RWR's objection to splitting the 30(b)(6) deposition across multiple sessions and with multiple designees is unavailing. Mot. ¶ 8. This procedure is typical for 30(b)(6) depositions in this Court and across the country. Rule 30(b)(6) itself contemplates multiple designees, requiring the corporation to be deposed to "designate ***one or more*** officers, directors, or managing agents, or other ***persons*** who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify." N.C. R. Civ. P. 30(b)(6) (emphasis added). Nor is Legacy's request "unreasonable, impractical, inefficient, and unduly burdensome." Mot. ¶ 8. In a complex case like this one, where the parties are "engaged in extensive and rigorous discovery," deposing witnesses "for multiple days" is expected. *See, e.g.*, *Byers v. Carpenter*, 1998 WL 34031740, at *6 (N.C. Super. Jan. 30, 1998).

30. Nor is RWR prejudiced by the timing of the requested production or deposition. Mot. ¶¶ 9–10. Legacy's notice seeks testimony on two limited topics and a production of a handful of deal documents. Given that the documents and communications regarding the sale to Mr. Puchyr are presumably in RWR's possession, custody, and control, the timing of the requested production is no barrier. The limited scope of requested documents should not require time-intensive review. Counsel for Legacy even indicated in its cover email that it would be acceptable for RWR to bring the relevant documents to the deposition, if producing them beforehand was not possible. *See* Ex. B. And RWR is only required to "make a conscientious good-faith endeavor" to prepare its witnesses "in order that they can answer fully, completely, unevasively, the questions posed." *Walls v. Ford Motor Co.*, 2021 WL 1723154, at *6 (M.D.N.C. Apr. 30, 2021) (quotations omitted) (citing Fed. R. Civ. P. 30(b)(6)). Seventeen days is ample time for RWR to prepare its designees to that degree for a transaction that apparently has been negotiated in the past few weeks and to produce the necessary documents. And far from acting "unilaterally," refusing to consider counsel's "availability," or otherwise acting in a way that is "not reasonable," Mot. ¶ 9, Legacy agreed to postpone the deposition to July 21 or 22 at RWR's request. *See* Ex. B.

31. RWR complains that its responses to Legacy's first set of requests for production are not due until July 24, 2025. Mot. ¶ 10. But RWR's counsel has indicated that it is willing to hold the deposition the week of July 21, indicating an earlier production and deposition date is feasible. *See* Ex. B. North Carolina courts routinely expedite discovery in exigent circumstances such as these. *See, e.g.*, *Corwin v. British Am. Tobacco PLC*, 2015 WL 222751, at *5 (N.C. Super. Jan. 8, 2015) (courts should consider, *inter alia*, "whether the plaintiff had detailed the areas in which expedited discovery was necessary such that expedited discovery was reasonably timed" and "whether the plaintiff made [an] adequate showing that it would be irreparably harmed by

delaying broad-based discovery" in determining whether to grant tailored expedited discovery) (granting limited expedited discovery); *Loftin v. QA Investments, LLC*, 2018 WL 691199, at *3 (N.C. Super. Feb. 1, 2018) (contemplating "limited expedited discovery"). Here, the announced transaction could substantially alter the case. These "circumstances" easily "justify the urgency with which Legacy purports to act." Mot. ¶ 11. RWR should not be permitted to run out the clock on producing relevant documents and critical testimony while publicly announcing transactions to transfer the Charters at issue.

32. Legacy narrowly tailored its requests to the areas in which expedited discovery is necessary—just two topics and documents related to the announced transaction. RWR contends that, because the Court did not grant Legacy a preliminary injunction, "there are no circumstances that justify the urgency with which Legacy purports to act." *Id.* But RWR ignores its assurances at the preliminary injunction hearing that the present circumstances would not come to pass. RWR cannot promise that it would not sell either Charter to defeat an injunction, and then turn around, sell both Charters, and claim the Court's denial shields it from expedited discovery.

33. RWR's objection that there is no protective order yet in place is irrelevant. *Id.* ¶ 12. Legacy has sent RWR a standard, proposed confidentiality order for review and is willing and able to comply with any reasonable confidentiality requirements RWR may request.

34. RWR's statement that "Legacy's counsel made no effort to confer on a date when either RWR's designated representative or counsel were available," *id.* ¶ 13, is simply wrong. When Legacy noticed the deposition on July 1, Legacy's counsel sought confirmation that the proposed date was acceptable. RWR responded not by asking to meet and confer, but by moving for a protective order six days later. *See* Ex. B. There is no requirement to meet and confer prior to setting a deposition date—parties routinely unilaterally notice a deposition and work together

to set a date afterwards, as Legacy sought to do. Indeed, when RWR's counsel indicated that the week of July 21 would be a better date for the deposition, Legacy agreed to hold the deposition on July 21 or 22. *See id.*

35. Finally, RWR is wrong that Legacy's 30(b)(6) topic concerning communications with NASCAR about the announced transaction is "irrelevant." Mot. ¶ 14. The announced deal is not "unrelated" to the parties' Charter Purchase Agreement, as its terms may make it impossible for RWR to perform under that Agreement, and Mr. Puchyr has indicated that the transaction will leave Legacy without any Charter to purchase. Nor is the topic irrelevant because the transaction was announced "after Legacy initiated this lawsuit and lost its bid for a preliminary injunction." *Id.* The transaction threatens to interfere with Legacy's requested relief, conflicts with the parties' Charter Purchase Agreement, and contradicts RWR's representations to this Court. It is therefore highly relevant to the present dispute.

V. CONCLUSION

36. RWR's Motion for a Protective Order should be denied.

This the 10th day of July, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this day a copy of the foregoing pleading was served this day by filing with the Court's electronic-filing system, which will send electronic notice to all counsel of record, as well as via electronic mail to the following counsel of record:

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This the 10th day of July, 2025.

/s/ Lee M. Whitman

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