

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
25CV016837-590

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

Plaintiff,

v.

RICK WARE RACING, LLC,

Defendant.

**MOTION TO TRANSFER PLAINTIFF'S  
SECOND MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION TO THE  
HONORABLE CLIFTON H. SMITH**

NOW COMES Defendant Rick Ware Racing, LLC (“RWR”), through undersigned counsel, and requests Plaintiff’s Motions for Temporary Restraining Order and Preliminary Injunction filed by Plaintiff on the evening of Friday, July 25, 2025 (the “Second Motion for Preliminary Injunction”), be assigned to The Honorable Clifton H. Smith, Superior Court Judge, or alternatively, if a judge has already been assigned, moves to transfer Plaintiff’s Second Motion for Preliminary Injunction to Judge Smith.

In support of this Motion, RWR shows the Court the following:

1. Plaintiff filed its Verified Complaint on April 1, 2025.
2. RWR was served with the Summons and Verified Complaint on April 3, 2025.
3. On April 30, 2025, Judge Smith heard Plaintiff’s first motion for preliminary injunction, which he denied. In connection with Plaintiff’s first request for injunctive relief, Judge Smith, presiding over a hotly contested hearing, reviewed the Verified Complaint, Plaintiff’s original motion for temporary restraining order and preliminary injunction, affidavits, and other documents provided by the parties. *See Order, RPAC Racing, LLC d/b/a Legacy Motor Club v. Rick Ware Racing, LLC, 25CV016837-590 (May 9, 2025) (“Order on First Prelim. Inj.”)*. As a

result, Judge Smith is thoroughly familiar with this case's facts and circumstances, complexities, parties, and history.

4. RWR responded to the Complaint on July 7, 2025.

5. This past Friday evening, July 25, 2025, Plaintiff served RWR with its Second Motion for Preliminary Injunction, which Plaintiff represented had been filed moments earlier. As of the submission of this Motion, Plaintiff's purported filings have not appeared on the docket as accepted by the Clerk.

6. Plaintiff's Second Motion for Preliminary Injunction is 21-pages long and accompanied by:

- a. A motion to seal;
- b. Sealed and public versions of the Second Motion for Preliminary Injunction
- c. Seven exhibits, including transcript excerpts from the hearing on Plaintiff's first motion before Judge Smith;
- d. A second affidavit from Plaintiff's CEO, Mr. Calvin Wells, III; and
- e. Proposed orders granting the motion to seal, motion for temporary restraining order, and motion for preliminary injunction.

7. Judicial economy and efficiency, as well as the interests of justice, support assigning or transferring Plaintiff's Second Motion for Preliminary Injunction to Judge Smith. "The well-established rule in North Carolina is that no appeal lies from one Superior Court judge to another; and that ordinarily, one judge may not modify, overrule, or change the judgment that another Superior Court judge previously made in the same action." *D & B Marine, LLC v. AIG Prop. Cas. Co.*, 288 N.C. App. 106, 114, 885 S.E.2d 842, 848 (citing *Calloway v. Ford Motor Co.*,

281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972)), *review denied sub nom. D&B Marine, LLC v. AIG Prop. Cas. Co.*, 892 S.E.2d 605 (N.C. 2023).

8. While purportedly based on new facts, Plaintiff's Second Motion is effectively a motion for reconsideration of Judge Smith's order denying Plaintiff's first motion for preliminary injunction and dissolving a previously-entered temporary restraining order. Plaintiff's Second Motion relitigates many of the underlying facts already heard and decided by Judge Smith. Specifically, the Court's Order on Plaintiff's first motion for preliminary injunction denied Plaintiff's requested relief to enjoin the sale of the specific NASCAR charter that Plaintiff now, in its Second Motion, seeks to have enjoined again.

9. Plaintiff's Second Motion for Preliminary Injunction also relies on certain arguments and statements made before Judge Smith, and Judge Smith—having presided over those proceedings—is the best factfinder to assess the credibility of Plaintiff's arguments on these points, as well as the context of such excerpts from or prior evidence presented in proceedings before him.

10. In short, the First Amended Complaint alleges similar if not substantively identical claims, based on many of the same allegations and evidence as the original Verified Complaint, which the Court previously determined were unlikely to succeed on their merits. This is not a situation where “new facts that ‘bear upon the propriety’ of a prior decision have emerged, causing a ‘material change in conditions.’” *State v. Taylor*, 260 N.C. App. 356, 815 S.E.2d 751 (quoting *Calloway*, 281 N.C. at 505, 189 S.E.2d at 490 (1972)), *writ denied, review denied*, 371 N.C. 479, 818 S.E.2d 287 (2018). Plaintiff's original Verified Complaint alleged claims seeking reformation of the parties' contract to include certain terms that Plaintiff contends it meant to incorporate therein, and to force RWR's performance under such rewritten agreement. Judge Smith held that Plaintiff was unlikely to succeed on the merits of these claims. *See Order on First Prelim. Inj.*, at

1 (“The Court . . . finds that the Plaintiff has not established the factual predicates and legal elements necessary for the issuance of a preliminary injunction.”).

11. Accordingly, Plaintiff’s Second Motion for Preliminary Injunction seeks to revisit Judge Smith’s Order, and it is thus Judge Smith who should be the one to determine whether to revise or reverse his own earlier Order.

12. On July 21, 2025, the undersigned sought Plaintiff’s consent to have all proceedings in this matter assigned to Judge Smith pursuant to designation under Rule 2.1 of the General Rules of Practice for the Superior and District Courts. Plaintiff’s counsel responded on July 22 and declined to offer a position on RWR’s designation request at that time.

13. RWR sought Plaintiff’s consent to this specific Motion over the weekend. Given the urgency created by Plaintiff’s Friday evening filing, RWR asked that Plaintiff provide its position on this Motion by 10 am today. As of the filing of this Motion, RWR has not received a response.

14. This Motion is made in good faith and not for the purpose of delay.

WHEREFORE, Defendant Rick Ware Racing, LLC requests the assignment of Plaintiff’s Second Motion for Temporary Restraining Order and Preliminary Injunction to The Honorable Clifton H. Smith or, if a different judge has been assigned to hear Plaintiff’s Second Motion, that Plaintiff’s Second Motion be transferred to Judge Smith, in the interests of justice and judicial economy.

*[Signatures on next page]*

Respectfully submitted, this the 28th day of July, 2025.

**WOMBLE BOND DICKINSON (US) LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 28, 2025, a copy of the foregoing document was served electronically and will be served upon the following via the Court's ECF filing system:

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