

1 WILLIAM VERICK, SBN 140972
Klamath Environmental Law Center
2 FREDRIC EVENSON, SBN 198059
424 First Street
3 Eureka, CA 95501
Telephone: (707) 268-8900
4 Facsimile: (707) 268-8901
E-Mail wverick@igc.org; ecorights@earthlink.net

5 DAVID WILLIAMS, SBN 144479
6 BRIAN ACREE, SBN 202505
1990 North California Blvd., 8th Floor
7 Walnut Creek, CA 94596
Telephone: (510) 847-2356
8 E-Mail: dhwill7@gmail.com; brianacree@earthlink.net

9 Attorneys for Plaintiff,
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
(Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

15 Plaintiff,

16 v.

18 CEDAR FAIR MANAGEMENT, INC.,

19 Defendant.

CASE NO.

115CV28565

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

By Fax

TOXIC TORT/ENVIRONMENTAL

20 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

21 INTRODUCTION

22 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
23 failure of defendant CEDAR FAIR MANAGEMENT, INC. (hereinafter "Cedar Fair" or
24 "Defendant"), to give clear and reasonable warnings to patrons who visit the California Great
25 America attractions, Thunder Raceway and Barney Oldfield Speedway that standing or sitting in
26 close proximity to Thunder Raceway and Barney Oldfield Speedway causes exposure to engine
27 exhaust and its toxic components, including carbon monoxide (hereinafter "engine exhaust").
28

ENDORSED
FILED

2015 SEP 15 2:16

David H. Yamamoto, Clerk of the Superior Court
County of Santa Clara, California

By: _____
Candy Clark

1 Engine exhaust is known to cause cancer, birth defects and other reproductive harm. The go karts
2 that patrons drive at Thunder Raceway and Barney Oldfield Speedway emit engine exhaust and
3 components of that exhaust, including carbon monoxide, are concentrated in the air at Thunder
4 Raceway and Barney Oldfield Speedway at levels that require warnings pursuant to Health &
5 Safety Code section 25249.6. When people drive go karts at Thunder Raceway and Barney
6 Oldfield Speedway , when they stand in line at Thunder Raceway and Barney Oldfield Speedway
7 and when they observe and photograph drivers at Thunder Raceway and Barney Oldfield
8 Speedway, they breathe engine exhaust and its components, including carbon monoxide, at levels
9 that require Proposition 65 warnings.

10 2. Cedar Fair operates “California Great America” an amusement park located in
11 Santa Clara, California. Thunder Raceway and Barney Oldfield Speedway is a go kart track at
12 California Great America where Cedar Fair patrons can drive go karts around a track. The go
13 karts at Thunder Raceway and Barney Oldfield Speedway utilize gasoline-powered engines that
14 emit engine exhaust. This exhaust contains the following components: engine exhaust
15 (condensates/extracts), carbon monoxide, benzene, toluene, benzo(a)pyrene, formaldehyde,
16 acetaldehyde, 1,3-butadiene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene,
17 benzo(j)fluoranthene, chrysene, and indeno [1,2,3-cd] pyrene. These chemicals are all known to
18 cause cancer, birth defects or other reproductive harm. Cedar Fair intends that residents of
19 California go to Thunder Raceway and Barney Oldfield Speedway, stand in line at Thunder
20 Raceway and Barney Oldfield Speedway, drive go karts at Thunder Raceway and Barney
21 Oldfield Speedway, and watch and film people who are driving go karts at Thunder Raceway and
22 Barney Oldfield Speedway. Cedar Fair knows that when people go to Thunder Raceway and
23 Barney Oldfield Speedway, they inhale air. Cedar Fair knows that when people inhale air at
24 Thunder Raceway and Barney Oldfield Speedway they inhale, and are thus exposed to, engine
25 exhaust and its components, including carbon monoxide and the other above-referenced
26 components of engine exhaust. Cedar Fair did not and does not provide clear and reasonable
27 warnings that the air in close proximity to Thunder Raceway and Barney Oldfield Speedway
28 causes exposure to chemicals known to cause cancer, birth defects or other reproductive harm.

1 District Attorney of Santa Clara County and to Cedar Fair. Attached to the Notice of Violation
2 letter sent to Cedar Fair was a summary of Proposition 65 that was prepared by California's
3 Office of Environmental Health Hazard Assessment. In addition, each Notice of Violation letter
4 plaintiff sent was accompanied by a Certificate of Service attesting to the service of the Notice of
5 Violation letter on each entity that received it. Pursuant to California Health & Safety Code
6 Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis for the
7 action was also sent with each Notice of Violation letter. Factual information sufficient to
8 establish the basis of the Certificate of Merit was enclosed with the Notice of Violation letters
9 Mateel sent to the Attorney General.

10 8. Cedar Fair employs more than nine people.

11 JURISDICTION

12 9. The Court has jurisdiction over this action pursuant to California Health & Safety
13 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
14 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
15 of the Health & Safety Code, which contains the statutes under which this action is brought, does
16 not grant jurisdiction to any other trial court.

17 10. This Court also has jurisdiction over Cedar Fair because its is a businesses that
18 has sufficient minimum contacts in California and within Santa Clara County. Cedar Fair
19 intentionally availed itself of the legal protections offered by California and by Santa Clara
20 County by locating its amusement park in Santa Clara, within the geographical confines of Santa
21 Clara County, California. It is thus consistent with traditional notions of fair play and substantial
22 justice for the Santa Clara County Superior Court to exercise jurisdiction over Cedar Fair.

23 11. Venue is proper in this Court because the location where exposures to engine
24 exhaust and its components, including carbon monoxide, have occurred due to Cedar Fair's
25 operation of go karts at its amusement park is within Santa Clara County. Liability for Plaintiff's
26 causes of action, or some parts thereof, has accordingly arisen in Santa Clara County during the
27 times relevant to this Complaint and Plaintiff seeks civil penalties imposed by statute.

FIRST CAUSE OF ACTION
(Claim for Injunctive Relief)

1
2
3 12. Plaintiff realleges and incorporates by reference into this First Cause of Action, as
4 if specifically set forth herein, paragraphs 1 through 11, inclusive.

5 13. The People of the State of California have declared by referendum under
6 Proposition 65 (California Health & Safety Code § 25249.5 *et seq.*) their right "[t]o be informed
7 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

8 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
9 that businesses that knowingly and intentionally expose any individual to a chemical known to
10 the State of California to cause cancer or birth defects must first provide a clear and reasonable
11 warning to such individual prior to the exposure.

12 15. Since at least three years prior to receiving the Notice of Violation Letter, Cedar
13 Fair has engaged in conduct that violates Health and Safety Code Section 25249.6 *et seq.* This
14 conduct includes knowingly and intentionally exposing to the above mentioned toxic chemicals,
15 those California residents who visit Thunder Raceway and Barney Oldfield Speedway. Cedar
16 Fair has not provided clear and reasonable warnings of the exposure within the meaning of
17 Health & Safety Code Sections 25249.6 and 25249.11.

18 16. At all times relevant to this action, Cedar Fair knew that the exhaust from the
19 Thunder Raceway and Barney Oldfield Speedway go karts was causing exposures to engine
20 exhaust and its components, including carbon monoxide. Cedar Fair intended that residents of
21 California visit Thunder Raceway and Barney Oldfield Speedway and its vicinity and that while
22 there, they inhale air in a manner that would lead to significant exposures to these chemicals.

23 17. By the above described acts, Cedar Fair has violated Cal. Health & Safety Code
24 § 25249.6 and is therefore subject to an injunction ordering it to stop violating Proposition 65, to
25 provide warnings to all present and future park visitors regarding the exposures to engine exhaust
26 and its components, including carbon monoxide, caused by go karts operated at Thunder
27 Raceway and Barney Oldfield Speedway.
28

1 SECOND CAUSE OF ACTION
2 (Claim for Civil Penalties)

3 18. Plaintiff realleges and incorporates by reference into this Second Cause of Action,
4 as if specifically set forth herein, paragraphs 1 through 17, inclusive.

5 19. By the above described acts, Cedar Fair is liable and should be liable pursuant to
6 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual
7 exposed without proper warning to engine exhaust and its components, including carbon
8 monoxide, from Cedar Fair's operation of go karts at Thunder Raceway and Barney Oldfield
9 Speedway.

10 PRAYER FOR RELIEF

11 Wherefore, plaintiff prays for judgment against DEFENDANT, as follows:

12 1. Pursuant to the First Cause of Action, that Cedar Fair be enjoined, restrained, and
13 ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
14 Code;

15 2. Pursuant to the Second Cause of Action, that Cedar Fair be assessed a civil
16 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
17 25249.6 of the California Health & Safety Code, to engine exhaust and its components, including
18 carbon monoxide, as the result of Cedar Fair's operation of go karts at Thunder Raceway and
19 Barney Oldfield Speedway.;

20 3. That, pursuant to Civil Procedure Code § 1021.5, Cedar Fair be ordered to pay to
21 Plaintiff the attorneys fees and costs it incurred in bringing this enforcement action.

22 4. For such other relief as this court deems just and proper.

23 Dated: September 10, 2015

KLAMATH ENVIRONMENTAL LAW CENTER

24
25
26 By 

Fredric Evenson
Attorney for Plaintiff
Mateel Environmental Justice Foundation