

1 WILLIAM VERICK, SBN 140972
2 KLAMATH ENVIRONMENTAL LAW CENTER
3 FREDRIC EVENSON, SBN 198059
4 1126 -16th Street, Suite 204
5 Arcata, CA 95521
6 Telephone: (707) 268-8900
7 Facsimile: (707) 268-8901
8 E-mail: wverick@igc.org

9
10 DAVID WILLIAMS, SBN 144479
11 BRIAN ACREE, SBN 202505
12 1990 N. California Blvd., 8th Fl.
13 Walnut Creek, CA 94596
14 Telephone: (510) 847 2356
15 E-mail: dhwill7@gmail.com

16 Attorneys for Plaintiff
17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION

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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
22 UNLIMITED JURISDICTION

23 MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION,

25 Plaintiff,

26 v.

27 MAGIC MOUNTAIN, LLC, et al.,

28 Defendant.

Case No. BC595795

CONSENT JUDGMENT

1 **1.0 INTRODUCTION**

2 1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel” or “MEJF”)
3 acting on behalf of itself and the public interest, previously filed a complaint (“Complaint”) in this
4 action for civil penalties and injunctive relief in Los Angeles Superior Court, against Defendant
5 MAGIC MOUNTAIN, LLC (“Defendant” or “Magic Mountain”) The Complaint alleges, among
6 other things, that Defendant operates the Cyclone 500 Raceway go kart track (“Cyclone 500”) at
7 Magic Mountain’s Valencia, California amusement park. Mateel has alleged that exhaust from the
8 Cyclone 500 go karts exposes Magic Mountain’s patrons to engine exhaust (condensates/extracts),
9 carbon monoxide, benzene, toluene, benzo(a)pyrene, formaldehyde, acetaldehyde, 1,3-butadiene,
10 benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(j)fluoranthene, chrysene, and
11 indeno [1,2,3-cd] pyrene (collectively hereinafter “listed chemicals”) in violation of provisions of the
12 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,
13 et seq. (“Proposition 65”). In particular, Mateel alleges that Defendant knowingly and intentionally
14 exposed Magic Mountain patrons to listed chemicals by operating Cyclone 500 while knowing that
15 exhaust from the go karts contained listed chemicals and that Magic Mountain intended its patrons to
16 be in places where Magic Mountain knew they would breathe exhaust gasses from the Cyclone 500
17 go karts. The above referenced “listed chemicals”, including carbon monoxide, are chemicals
18 known to the State of California to cause cancer and birth defects or other reproductive harm.

19 1.2 On July 1, 2015, and pursuant to Health & Safety Code section 25249.7(d), Mateel
20 sent a Notice of Violation letter concerning the allegations set forth in Paragraph 1.1 to Defendant,
21 the California Attorney General, and the District Attorney for Los Angeles County. On July 2, 2015
22 Mateel sent a Proposition 65 Notice of Violation to Park Management Corp., dba Six Flags
23 Discovery Kingdom (“Discovery Kingdom”), to the Attorney General and to the District Attorney
24 for Solano County, making the same allegations about Thunder Road Speedway (“Thunder Road”),
25 the go kart track Discovery Kingdom operates in Vallejo, California, as Mateel made in the
26 Complaint against Magic Mountain, and as are described in paragraph 1.1 above.

27 1.3 On September 24, 2015, more than 60 days since Mateel sent its July 1, 2015 Notice
28 Letters, and without an authorized public prosecutor having filed a Proposition 65 enforcement

1 action against Magic Mountain for the claims alleged therein, Mateel filed a Complaint in which
2 Magic Mountain was a Defendant. In the Complaint, Mateel alleges that Magic Mountain violated
3 Cal. Health & Safety Code Section 25249.6 by knowingly and intentionally exposing people to the
4 above-referenced listed chemicals, without first providing a clear and reasonable warning to such
5 individuals. It has currently been more than 60 days since Mateel sent its July 2, 2015 Notice of
6 Violation to Discovery Kingdom and no authorized public prosecutor has filed a Proposition 65
7 enforcement action against Discovery Kingdom for the claims alleged in Mateel's July 2, 2015
8 Notice of Violation. Mateel and Magic Mountain intend that Mateel's claims against Magic Park
9 Management Corp., dba Six Flags Discovery Kingdom be resolved in this Consent Judgment and
10 both therefore stipulate that the Complaint in this action be deemed amended to add Park
11 Management Corp., dba Six Flags Discovery Kingdom as a defendant. Magic Mountain and
12 Discovery Kingdom will hereinafter be referred to as "Settling Defendants." Mateel and Settling
13 Defendants collectively referred to herein as the "parties".

14 1.4 Mateel alleges that Settling Defendants are both businesses that employ more than ten
15 people, that Magic Mountain operates Cyclone 500 at its Valencia, California amusement park and
16 that Discovery Kingdom operates Thunder Road at its Vallejo, California amusement park. Exhaust
17 gasses from the Cyclone 500 and Thunder Road go karts contain listed chemicals and patrons that
18 Magic Mountain and Discovery Kingdom intend to be in proximity to Cyclone 500 and Thunder
19 Road inhale listed chemicals emitted from Cyclone 500's and Thunder Road's go karts. Mateel
20 alleges that the exposures to listed chemicals that result from Settling Defendants' operation of
21 Cyclone 500 and Thunder Road are subject to the warning requirement of Health and Safety Code
22 Section 25249.6.

23 1.5 For purposes of settlement and the entry of this Consent Judgment only, the parties
24 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
25 and personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint and the
26 Notices of Violation, that venue is proper in the County of Los Angeles and that this Court has
27 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations
28 contained in the Complaint and of all claims that were or could have been raised by any person or

1 entity based in whole or in part, directly or indirectly, on the facts alleged in, arising from, or related
2 to the Complaint and/or the Notices of Violation.

3 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties
4 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
5 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
6 not constitute an admission with respect to any material allegation of the Complaint, each and every
7 allegation of which Magic Mountain and Discovery Kingdom deny, nor may this Consent Judgment
8 or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on
9 the part of Magic Mountain or Discovery Kingdom. Magic Mountain and Discovery Kingdom both
10 contend that the appropriate Proposition 65 warnings were provided in connection with this matter.

11 1.7 This Consent Judgment shall be effective on entry by the Court, the "Effective Date."

12 **2.0 SETTLEMENT PAYMENTS**

13 2.1 In settlement of all of the claims referred to in this Consent Judgment, Settling
14 Defendants shall pay an aggregate of \$175,000.00 in total monetary relief, inclusive of Paragraph
15 2.2, below. Of the foregoing amount, Settling Defendants shall pay a total of \$25,000.00 in civil
16 penalties. Of the \$25,000 in civil penalties, Settling Defendants shall pay \$18,750 to the Office of
17 Environmental Health Hazard Assessment ("OEHHA") and \$6,250 to the Mateel Environmental
18 Justice Foundation.

19 2.2 The balance of the settlement amount, \$150,000.00, shall be paid by Settling
20 Defendants to the Klamath Environmental Law Center ("KELC") as reimbursement for attorney's
21 fees and costs (inclusive of investigation fees, expert and testing costs) incurred by KELC on behalf
22 of Plaintiff in investigating and prosecuting this matter and in negotiating this Consent Judgment on
23 behalf of itself and in the public interest, relating to both amusement parks identified herein. The
24 payments described in Paragraph 2.1 above and this Paragraph 2.2 shall be delivered within 5 court
25 days after the Effective Date to William Verick, Klamath Environmental Law Center, 1125 – 16th
26 Street, Suite 204, Arcata, CA 95521.

27 2.3 Except as specifically provided in this Consent Judgment, each side shall bear its own
28 costs and attorney's fees.

1 **3.0 ENTRY OF CONSENT JUDGMENT**

2 3.1 The parties hereby request that the Court promptly enter this Consent Judgment
3 which shall constitute a full and final adjudication of all claims asserted or that could have been
4 asserted in Plaintiff's Complaint and/or the Notices of Violation. Upon entry of the Consent
5 Judgment, the parties waive their respective rights to a hearing or trial on the allegations of the
6 Complaint.

7 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

8 4.1 As to exposures to the listed chemicals referenced in paragraph 1.1 above and in the
9 Notice Letters and Complaint in this action, and which are caused by operation of Cyclone 500
10 and/or Thunder Road, this Consent Judgment provides a full release of liability on behalf of the
11 public interest to Magic Mountain and Discovery Kingdom as well as their past, present and future
12 corporate parents (including Six Flags Entertainment Corp., Six Flags Theme Parks, Inc., Six Flags
13 Operations, Inc.), subsidiaries, affiliates, predecessors, successors, assigns, distributors, wholesalers
14 and retailers, and officers, directors and employees (collectively, "Released Entities"), from all
15 claims for violations of Proposition 65 up through the Effective Date of this Consent Judgment
16 based upon exposure to the above referenced listed chemicals as set forth in Mateel's July 1 and 2,
17 2015, Notice of Violation letters. Compliance with the terms of this Consent Judgment by Magic
18 Mountain and Thunder Road following its entry by the Court shall be deemed to constitute
19 compliance with Proposition 65 as to the listed chemicals referenced in paragraph 1.1 that are
20 generated by operation of Cyclone 500 and Thunder Road, provided, however, that the authority and
21 discretion of the Office of the California Attorney General shall not be restricted in the event it
22 chooses to undertake enforcement actions in the future.

23 4.2 As to alleged listed chemical exposures associated with Cyclone 500 and Thunder
24 Road, Mateel on behalf of itself (but not on behalf of the public interest), and Mateel's privies,
25 agents, attorneys, representatives, successors and assigns, waives all rights to institute or participate
26 in, directly, or indirectly, any form of legal action, and releases all claims as between Mateel and the
27 Released Entities, including, without limitation, all actions, and causes of action, in law or in equity,
28 suits, liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs,

1 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
2 attorney’s fees) of any nature whatsoever, whether known or unknown, fixed or contingent
3 (collectively “claims”), against the Released Entities and their parents, subsidiaries or affiliates,
4 predecessors, officers, directors, shareholders, attorneys, representatives, agents, employees, and all
5 customers, manufacturers, distributors, wholesalers, retailers, or any other person in the course of
6 doing business involving Cyclone 500 or Thunder Road and/or any of their component fixtures or
7 equipment, and the successors and assigns of any of them, who may manufacture, use, maintain,
8 distribute or sell the components, fixtures or equipment used by Settling Defendants at Cyclone 500,
9 and Thunder Road, including, but not limited to, any claims regarding exposure to, and/or failure to
10 warn with respect to, Cyclone 500 and/or Thunder Road. In furtherance of the foregoing, Mateel
11 hereby waives any and all rights and benefits which it now has, or in the future may have respecting
12 Cyclone 500 and Thunder Road, conferred upon it with respect to claims involving Cyclone 500 or
13 Thunder Road by virtue of the provisions of Section 1542 of the California Civil Code, which
14 provides as follows:

15 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
16 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
17 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
18 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
19 SETTLEMENT WITH THE DEBTOR.”

18 4.3 Mateel understands and acknowledges that the significance and consequence of this
19 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages arising
20 out of or resulting from, or related directly or indirectly to, in whole or in part, Cyclone 500 or
21 Thunder Road, including but not limited to any exposure to, or failure to warn with respect to
22 exposure to listed chemicals from Cyclone 500 or Thunder Road, Mateel will not be able to make
23 any claim for those damages against the Released Entities, their parents, subsidiaries or affiliates,
24 predecessors, officers, directors, shareholders, representatives, attorneys, agents, employees, and all
25 customers, manufacturers, distributors, wholesalers, retailers or any other person in the course of
26 doing business involving Cyclone 500 or Thunder Road, and the successors and assigns of any of
27 them, who may construct, operate, use or maintain Cyclone 500, Thunder Road and/or any
28 component, fixture or equipment thereof. Furthermore, Mateel acknowledges that it intends these

1 consequences for any such claims and any other claims which may exist as of the date of this release
2 but which Mateel does not know exist, and which, if known, would materially affect its decision to
3 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of
4 ignorance, oversight, error, negligence, or any other cause.

5 **5.0 ENFORCEMENT OF JUDGMENT**

6 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
7 including on behalf of the Released Entities. The parties may, by noticed motion before the Superior
8 Court of Los Angeles County, giving the notice required by law, enforce the terms and conditions of
9 this Consent Judgment. The parties agree that prior to any such enforcement proceeding, they will
10 notify each other of any perceived violation of this Consent Judgment. The parties further agree to
11 meet and confer in good faith in an effort for 30 days before such notice is given to resolve the
12 alleged violation.

13 **6.0 MODIFICATION OF JUDGMENT**

14 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be modified
15 only upon written agreement of the parties and upon entry of a modified Consent Judgment by the
16 Court, or upon motion of any party as provided by law and upon entry of a modified Consent
17 Judgment by the Court. The California Attorney General shall be entitled to at least 15 days' notice
18 of any proposed modification before it is presented to the Court for approval.

19 6.2 Notwithstanding any other term or provision of this Consent Judgment, Magic
20 Mountain may modify the warning message and its method of transmission as specified in Paragraph
21 7 if Magic Mountain or Discovery Kingdom obtains the written consent of the California Attorney
22 General. In the event Magic Mountain or Discovery Kingdom seeks such written consent from the
23 California Attorney General, either Settling Defendant shall provide Mateel with 30 days notice
24 before doing so. Mateel may comment on any request Magic Mountain or Discovery Kingdom
25 makes to the California Attorney General pursuant to this sub-paragraph.

26 **7.0 INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING**

27 7.1 At a minimum, Magic Mountain and Discovery Kingdom shall post and keep posted
28 a sign, no smaller than 8.5” X 11” in a conspicuous place on or next to the ticket booths at which

1 Magic Mountain patrons purchase tickets to ride go karts at Cyclone 500 and at which Discovery
2 Kingdom patrons purchase tickets to ride go karts at Thunder Road. The type font shall be no
3 smaller than 50 point for the word "warning", and 36 size for the remainder, and contain the
4 following content:

5 **"WARNING:**

6 **The areas on and around the go-kart track contain certain chemicals which the**
7 **State of California has determined can cause cancer and birth defects or other**
8 **reproductive harm.**

9 **Proposition 65, California Health & Safety Code Section 25249.6 et seq."**

10 7.2 The word "WARNING" shall be capitalized and in bold.

11 7.3 In the event either Settling Defendant replaces the gasoline powered Cyclone 500 or
12 Thunder Road go karts with electric powered no-emission go karts, then that Settling Defendant
13 may discontinue providing the warnings specified in subparagraph 7.1.

14 7.4 The parties hereto agree that Magic Mountain and Discovery Kingdom have already
15 put in place certain signs, relating to the foregoing, and the content, size and placement of the
16 same, meet the foregoing requirements.

17 **8.0 AUTHORITY TO STIPULATE**

18 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
19 the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
20 party represented and legally bind that party.

21 **9.0 RETENTION OF JURISDICTION**

22 9.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

23 **10.0 ENTIRE AGREEMENT**

24 10.1 This Consent Judgment contains the sole and entire agreement and understanding of
25 the parties with respect to Cyclone 500 and Thunder Road, and any and all prior discussions,
26 negotiations, commitments and understandings to them. No representations, oral or otherwise,
27 express or implied, other than those contained herein regarding Cyclone 500 and Thunder Road have
28 been made by any party. No other agreements not specifically referred to herein, oral or otherwise,

1 shall be deemed to exist or to bind any of the parties with respect to the Cyclone 500 or Thunder
2 Road.

3 **11.0 GOVERNING LAW**

4 11.1 The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California, without reference to any conflicts of law provisions
6 of California law.

7 **12.0 NOTICES**

8 12.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by
11 the other party at the following addresses:

12 **To Mateel:**

13 William Verick, Esq.
14 Klamath Environmental Law Center
1125 – 16th Street, Suite 204
Arcata, CA 95521

15 **To Defendants:**

16 Michael L. Amaro
17 Amaro Baldwin, LLP
180 E. Ocean Blvd., Suite 850
18 Long Beach, CA 90802

19 **13.0 COURT APPROVAL**

20 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
21 effect, and cannot be used in any proceeding for any purpose.

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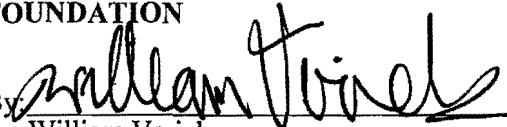
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IT IS SO STIPULATED:


Dated: **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

By: 
William Verick
CEO, Mateel Environmental Justice Foundation,
Klamath Environmental Law Center

Dated: 5/18/16 **MAGIC MOUNTAIN, LLC**

By: 

Dated: 5/18/16 **PARK MANAGEMENT CORP.**

By: 

IT IS ORDERED, ADJUDGED AND DECREED:

DATED: _____
JUDGE OF THE SUPERIOR COURT