

# Superior Court of California

## County of Orange



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STATE BAR NO. 57911  
**ATTORNEYS FOR PLAINTIFFS**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ORANGE**

Judge James J. Di Cesare

CHARLES MILLER, a minor, by and  
through his Guardian Ad Litem,  
TIMOTHY MILLER; and, TIMOTHY  
MILLER,

Plaintiffs,

v.

CEDAR FAIR, LP dba CEDAR FAIR  
ENTERTAINMENT COMPANY;  
CEDAR FAIR MANAGEMENT, INC.;  
KNOTT'S BERRY FARM, A  
CALIFORNIA GP; MAGNUM  
MANAGEMENT CORPORATION;  
KNOTT'S BERRY FARM, LLC; DOE 1,  
DOE 2, DOE 3, DOE 4, DOE 5, DOE 6  
and DOES 7 through 50,

Defendants.

CASE NO. 30-2017-00940558-CU-PO-CJC

**COMPLAINT FOR DAMAGES FOR  
PERSONAL INJURIES**

THE LAW OFFICES OF BARRY NOVACK

Dated: August 28, 2017

By:



\_\_\_\_\_  
BARRY NOVACK  
Attorneys for Plaintiffs

1 **PLAINTIFF, CHARLES MILLER, A MINOR, BY AND THROUGH HIS GUARDIAN AD**  
2 **LITEM, TIMOTHY MILLER, ALLEGES FIRST CAUSE OF ACTION AGAINST**  
3 **DEFENDANTS CEDAR FAIR, LP dba CEDAR FAIR ENTERTAINMENT COMPANY;**  
4 **CEDAR FAIR MANAGEMENT, INC.; KNOTT'S BERRY FARM, A CALIFORNIA GP,**  
5 **MAGNUM MANAGEMENT CORPORATION; KNOTT'S BERRY FARM, LLC; AND**  
6 **DOES 1 - 30 FOR PREMISES LIABILITY:**

7 1

8 The full extent of the facts linking the fictitiously designated Defendants with this cause of action  
9 is unknown to the Plaintiff, or the true names or capacities, whether individual, plural, corporate,  
10 partnership, associate, or otherwise, of Defendants DOES 1 through 50 is unknown to Plaintiff.  
11 Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff is informed, believes, and  
12 alleges, that each of the Defendants designated herein as a DOE is negligently, wantonly, recklessly,  
13 tortiously, and unlawfully responsible in some manner for the events and happenings herein referred  
14 to and negligently, wantonly, recklessly, tortiously, and unlawfully proximately caused injury and  
15 damages to Plaintiff, as herein alleged, and/or if this is a wrongful death case that some of said  
16 DOES may be an heir a law presently unknown to Plaintiff, who has not joined as a party plaintiff.  
17 Plaintiff will hereafter ask leave of Court to amend this Complaint to show said Defendants' true  
18 names and capacities after the same have been ascertained.

19 2

20 At all times herein mentioned each Defendant was the actual or ostensible agent of each and all of  
21 the other Defendants and was acting within the course and scope of said agency.

22 3

23 At the time and place of events hereinafter mentioned, the Defendants, and each of them, were  
24 engaged in a joint venture and common enterprise and acting within the scope of and in pursuance  
25 of the joint venture and common enterprise.

26 4

27 Defendant CEDAR FAIR MANAGEMENT, INC., MAGNUM MANAGEMENT CORPORATION,  
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1 and DOES 1 through 10 are corporations currently doing business in California.

2 5

3 Defendant CEDAR FAIR, LP doing business as CEDAR FAIR ENTERTAINMENT COMPANY,  
4 KNOTT'S BERRY FARM, and DOES 11 through 20 are California limited liability companies that  
5 have their principal place of business and reside in Orange County, California.

6 6

7 Defendant KNOTT'S BERRY FARM, LLC and DOES 21 through 30 are California limited  
8 liability companies that have their principal place of business in Orange County, California.

9 7

10 The events giving rise to this cause of action occurred on or about May 2, 2016, on the Timber  
11 Mountain Log Ride at Knott's Berry Farm in Buena Park, CA.

12 8

13 THIS PROPERTY refers to Knott's Berry Farm theme park where this incident occurred and,  
14 particularly, the Timber Mountain Log Ride located at the park.

15 9

16 At all times herein mentioned Defendants, and each of them, were the OWNERS and OPERATORS  
17 of THIS PROPERTY.

18 10

19 At all times herein mentioned Defendants, and each of them, were the LESSORS of THIS  
20 PROPERTY.

21 11

22 At all times herein mentioned Defendants, and each of them, were the MANAGERS and  
23 MAINTAINERS of THIS PROPERTY.

24 12

25 At all times herein mentioned the persons acting as MANAGERS and MAINTAINERS of THIS  
26 PROPERTY where this incident occurred were doing so with the knowledge, permission and  
27 consent of all Defendants.

28 3

At all times herein mentioned the persons acting as MANAGERS, MAINTAINERS and LESSORS of THIS PROPERTY were the agent, servant and employee of and acting within the course and scope of said agency and employed by all Defendants.

At all times herein mentioned, Plaintiff, Charles Miller, was a 5 year-old customer, business invitee and patron of Defendants' theme park and was a passenger on the Timber Mountain Log Ride operated by the Defendants. He was sitting on his father, Plaintiff Timothy Miller's lap at the rear of a log when the ride suddenly decelerated after coming down the final drop. Plaintiff and his father with inertia flew forward and Plaintiff's head was sandwiched between his father and the back of the seat causing Plaintiff to suffer an orbital blowout fracture resulting in vision problems and requiring surgery to try and improve his vision.

At said time and place Defendants, and each of them, proximately caused damages to said Plaintiff by negligently, wantonly, recklessly, tortiously, and unlawfully:

- A. Entrusting, permitting, managing, maintaining, servicing, repairing, inspecting, testing, controlling and operating THIS PROPERTY; and,
- B. Designing, constructing and owning THIS PROPERTY; and
- C. Instructing others regarding THIS PROPERTY and its use, maintenance, care and operation; and
- D. Failing to warn, instruct, advise, protect and guard users regarding THIS PROPERTY; and
- E. Conducting themselves with reference to THIS PROPERTY and to Plaintiff Charles Miller,

so as to cause THIS PROPERTY to be in a dangerous, defective, hazardous, and unsafe condition and a concealed trap and to proximately cause injury to Plaintiff, including an orbital blowout fracture, as a result of his riding on the Timber Mountain Log Ride at Knott's Berry Farm.

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At all times herein mentioned Defendants, and each of them, operated the Timber Mountain Log Ride located on the premises of Defendants' amusement park. The ride was provided by Defendants for the transport, use and enjoyment of their guests and patrons.

17

At all times herein mentioned, Defendants owed Plaintiff the duty of utmost care and diligence.

18

At said time and place, Defendants proximately caused injury to said Plaintiff by breaching the highest duty of care they owed toward Plaintiff, so as to cause Plaintiff to suffer injuries and damages.

19

At all times herein mentioned Defendants, and each of them, as operators of an amusement ride vehicle provided for the transport, use and enjoyment of their paying customers, business invitees and patrons, were required to provide a vehicle safe and fit for transportation and are not excused for default in this regard by any degree of care.

20

At all times herein mentioned, Defendants were strictly liable to Plaintiff for any damages, losses and harm proximately resulting from their failure to provide a safe and fit vehicle.

21

At said time and place, Defendants proximately caused injury to Plaintiff by failing to provide a safe and fit vehicle, so as to cause Plaintiff to suffer injuries and damages.

22

As a proximate result thereof this Plaintiff sustained permanent bodily injuries including an orbital fracture that required surgery to try and correct the double vision that was caused by the injury, and has had and in the future will have pain, suffering, worry and anxiety, all to Plaintiff's general damages in an amount within the jurisdiction of the Court, and according to proof.

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As a proximate result thereof this Plaintiff incurred and in the future will incur medical and related expenses all to Plaintiff's damage in such amount as will be proven at trial.

24

As a proximate result thereof this Plaintiff in the future will lose the ability to do Plaintiff's usual work, and will have lost earning capacity all to Plaintiff's damage in such amount as will be proven at trial.

25

As a proximate result thereof Plaintiff has lost the use of and interest on the money owed to Plaintiff as permitted by law:

- A. On the general damages.
- B. On the medical expenses incurred to judgment.
- C. On the loss of earnings to judgment.
- D. On property damaged and destroyed.

26

Before filing this lawsuit, Timothy Miller was appointed by the Orange County Superior Court and now is the Guardian Ad Litem for Charles Miller, a minor.

27

Defendants and each of them knew, or should have known, that the log being used in the Timber Mountain Log Ride was dangerous and defective in that it had no passenger restraint system and had inadequate foot or leg bracing in the logs to prevent riders, including parents who were holding onto their children, from sliding forward and striking the interior components of the log when the log decelerated after the final drop. Defendants also knew or should have known that the water level at the end of the drop was not being properly maintained, causing the logs to decelerate in a dangerous manner. Defendants were aware of numerous incidents involving injuries to guests, especially small children, who were thrown into the log's interior components, mostly during post-final drop deceleration. Many of these incidents were reported to the State of California, Division of

1 Occupational Safety and Health, Permanent Amusement Ride Unit (DOSH). These include, in  
2 addition to plaintiff's injury the following:

- 3
- 4 1. Child bumping front teeth on safety pad, October 26, 2000
- 5 2. Adult hitting head on the guest in front, November 12, 2000
- 6 3. Five year old held by mother has teeth knocked out, February 19, 2001
- 7 4. Seven year old hits face on front of log injuring tooth, October 4, 2012
- 8 5. Six year old strikes nose on ride interior, September 9, 2013
- 9 6. Three year old strikes head causing right eye corner laceration, October 13, 2013
- 10 7. Adult holding three year old child strikes chest on log interior, June 9, 2014
- 11 8. Adult holding eight year old child slides forward causing child's head to strike the  
12 inside of the log, June 26, 2014
- 13 9. Four year old strikes face on ride interior, July 22, 2014
- 14 10. Adult holding six year-old child slides forward causing child's face to strike seat  
15 back causing blowout fracture, July 27, 2014 (Laborte Incident).
- 16

17 As a result of an investigation DOSH conducted on February 21, 2001, Defendants were notified that  
18 unsafe conditions existed on the log ride in that no feet or leg braces were installed in the logs and  
19 the front padding of the logs was not consistent from one to another due to their thickness and  
20 mounting locations. These safety defects were discussed by DOSH personnel with the following  
21 Knott's Berry Farm employees: Mark Schuller, Vice President, Mark Haywood, Manager Ride  
22 Maintenance, Tony Alfano, Ride Maintenance Supervisor, Rafi Kaprillan, Operations Manager,  
23 Kevin Norris, Operations Manager, Brad Nesland, Director of Ride Maintenance, and Chuck  
24 Mostellar, Ride Maintenance Technician. On or about May 15, 2001, Knott's Berry Farm notified  
25 DOSH that they completed the requested corrections. Nonetheless, the injuries to guests continued  
26 without any further effort by the Defendants to prevent these injuries.

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2 Further, Defendants, and each of them were aware that the water sensing system for the Timber  
3 Mountain Log Ride was not properly monitoring the water level on the ride, especially at the bottom  
4 of the last drop, where there was improper water for proper braking, which increased the  
5 deceleration experienced by the guests in the log and contributed to their being injured by being  
6 thrown against the log's interior components. DOSH had notified Defendants on numerous  
7 occasions about the sensor issue but defendant nonetheless did not adequately correct this safety  
8 hazard, contributing to guest injuries, including Plaintiff. In fact, from approximately May 31, 2013  
9 to January 31, 2015, Defendants were operating the Timber Mountain Log Ride out of compliance  
10 of safety related procedure issued by DOSH on December 21, 2012, which stated: "The  
11 Owner/Operator of the ride known as Timber Mountain Log Ride shall enhance outside run out  
12 water level monitoring procedures to ensure proper water level is maintained." Further, authorized  
13 persons employed by Defendants who were responsible for the operation of the ride were not aware  
14 of the proper function of the low water level sensor and siren that were designed to alert the operator  
15 of the attraction that the water level was at an unsafe level to provide appropriate braking of the ride  
16 logs. These unsafe practices coupled with the fact that hourly checks of the low water level  
17 monitoring procedures were not being conducted, and the fact that the low level water level sensor  
18 was sitting at the bottom of the settling tube in the flume, thereby defeating the proper function of  
19 this safety related device, made the Timber Mountain Log Ride an unsafe ride.

20  
21 Defendants, and each of them, had the power to make, or see to it that the Timber Mountain Log  
22 Ride was made safe. However, due to Defendants' callous disregard for public safety, DOSH  
23 warnings were insufficient to cause them to change their unsafe practices. As an example, the  
24 DOSH Amusement Ride Field Report with respect to a January 28, 2015, inspection of Timber  
25 Mountain Log Ride stated:

26 "A review of reported injuries .... showed a trend...associated with the braking of the  
27 passenger carrying devices at the run out of the last drop of the ride."  
28

1 This inspection took place following an injury to a child who suffered a blowout fracture as a result  
2 of the braking at the end of the drop. Nonetheless, the Defendants continued to operate the ride in  
3 an unsafe fashion so that this Plaintiff suffered the very same injury in the same or substantially  
4 similar fashion. Accordingly, punitive damages are not only warranted but appear to be the only way  
5 to get Defendants to change their unsafe practices that have put small children at risk for serious  
6 injury.

7 30

8 On or about May 2, 2016, Defendants, and each of them, knew, should have known and did know  
9 that the Timber Mountain Log Ride was defective and unsafe for its intended purpose.

10 31

11 Defendants, and each of them, due to their careless, reckless, wilful, wanton, gross and indifferent  
12 acts, and failure to act, consciously disregarded the safety of the public, including Plaintiff, causing  
13 his injuries including an orbital blowout fracture that required surgery to try and correct the double  
14 vision that was caused by the injury.

15 32

16 Defendants, and each of them, due to their careless, reckless, wilful, wanton, gross and indifferent  
17 acts, and failure to act, displayed a conscious disregard for the safety of the public, and Plaintiff by  
18 virtue of Defendants' acts/omissions as alleged above and:

- 19 A. Negligent and improper design of the subject attraction;
- 20 B. The failure to adequately evaluate the performance of the subject attraction;
- 21 C. The failure to adequately test the subject attraction and identify and eliminate  
22 dangerous defects in the subject attraction and its components with respect to  
23 foreseeable occurrences that could cause serious injury to users of the attraction;
- 24 D. The failure to make necessary modifications to the design of the subject attraction  
25 after receiving notice that the design of the subject attraction was defective and  
26 unreasonably dangerous;
- 27 E. The distribution of false and misleading information and literature from Defendants,
- 28

1 and each of them, to the public, media, internet and their agents/employees regarding  
2 this attraction that grossly understated and misrepresented the type and risks of the  
3 attraction as well as the range of injuries that can be caused by going on the  
4 attraction, and the defects associated therein; and

5 F. The distribution of false and misleading information pertaining to this attraction and  
6 the safety of this attraction.

7 G. The failure to take into account the continuing complaints of riders that the Timber  
8 Mountain Log Ride was causing them injuries due to lack of passenger restraints and  
9 inadequate foot and leg bracing;

10 H. The failure to properly design the logs for the ride so that guests are not thrown  
11 forward by the deceleration after the final drop;

12 I. The failure to maintain a safe water level after the final drop to prevent excessive  
13 deceleration;

14 H. The failure to take into account that many Timber Mountain Log riders had to be  
15 transported to the local emergency room because of trauma caused by the ride  
16 defects;

17 I. The failure to comply with a DOSH requirement issued on December 21, 2012: "The  
18 Owner/Operator of the ride known as Timber Mountain Log Ride shall enhance  
19 outside run out water level monitoring procedures to ensure proper water level is  
20 maintained";

21 J. The failure to perform hourly checks of the water level monitoring procedures to  
22 ensure safe water level is maintained;

23 K. The failure to train authorized people involved in the operation of the ride concerning  
24 the proper function of the water sensor and siren; and,

25 L. The failure to restore and maintain the outside run out water level sensor at the  
26 proper depth in the settling tube to provide appropriate braking for the logs.

1 Clearly, Defendants prioritized their financial gain over the safety of park patrons by making a  
2 conscious decision to *not* warn the public that there was a risk of serious injury to persons who used  
3 the subject attraction.

4 34

5 Defendants were aware of the probable consequences of their conduct and wilfully and deliberately  
6 failed to avoid these consequences. This conduct was authorized and/or ratified by a host of  
7 Defendants' managing agents:

8 A. Jesse Lujan, is defendants' Safety Manager for Knott's Berry Farm. According to  
9 defendants' discovery responses under oath in *Laborte v. Cedar Fair, LP* Case No.  
10 30-2015-00786923-CU-PO-CJC, Jesus Lujan was their employee who exercised  
11 substantial independent authority and judgment in his corporate decision making so  
12 that his decisions ultimately determined corporate policy (i.e., managing agent) as it  
13 relates to safety of the Timber Mountain Log Ride for the past 15 years, including,  
14 at the time of this incident and the *Laborte* incident. Jesse Lujan met with the DOSH  
15 investigators in January 2015, and was aware of the orbital blowout fracture injury  
16 in *Laborte*, and the cause of the injury, namely, excessive braking at the end of the  
17 last drop due to improper water level. Nonetheless, the safety manager allowed the  
18 ride to continue to operate unsafely, which resulted in this Plaintiff's similar injury  
19 some 14 months later.

20 B. Defendants' Vice President and General Manager of Knott's Berry Farm since  
21 December 2011 is Raffi Kaprelyan, who also is a Vice President of defendant Cedar  
22 Fair, L.P. Mr. Kaprelyan also is another managing agent who knew of and ratified  
23 the unsafe and dangerous practices at the Timber Mountain Log Ride. Mr. Kaprelyan  
24 knew of the prior incidents, including to the *Laborte* child, yet failed to enforce the  
25 requirements of DOSH to maintain proper water level, resulting in this Plaintiff's  
26 injury. Although he met with DOSH in January 2015, he allowed the ride to operate  
27 unsafely.

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C. Matt Ouimet, CEO and President of Cedar Fair, L.P. since January 2011, also knew of the series of injuries that were occurring on the ride, yet allowed the park to continue to operate the Timber Mountain Log Ride in the same unsafe manner as before, in conscious disregard of rider safety. Mr. Ouimet and another senior management of Cedar Fair L.P. dba Cedar Fair Entertainment Company frequently visit Knott's Berry Farm to make sure the park operates profitably. He placed profitability above safety and allowed the ride to remain in use without modification of the logs or changes in operating procedures regarding water levels thereby allowing these serious injuries to children to continue. He authorized and/or ratified this conduct because he knew the log ride was one of the most popular rides in this park.

D. Further, Mr. Ouimet and Mr. Kaprelyan knew of the serious injury to the *Laborte* child and its cause since the *Laborte* case settled for a confidential amount whose magnitude was such that it required the approval of senior management at Cedar Fair, L.P., including CEO and President Matt Ouimet and Vice President Raffi Kaprelyan.

35

The conduct of the Defendants was so vile, base, contemptible, miserable, wretched and loathsome that it would be looked down upon and despised by ordinary decent people.

36

By reason of said conduct, Plaintiff is entitled to punitive damages against Defendants in such amount as will be established at trial.

1 **PLAINTIFF, CHARLES MILLER, A MINOR BY AND THROUGH HIS GUARDIAN AD**  
2 **LITEM, TIMOTHY MILLER, ALLEGES SECOND CAUSE OF ACTION AGAINST**  
3 **DEFENDANTS CEDAR FAIR, LP dba CEDAR FAIR ENTERTAINMENT COMPANY;**  
4 **CEDAR FAIR MANAGEMENT, INC.; KNOTT'S BERRY FARM, A CALIFORNIA GP,**  
5 **MAGNUM MANAGEMENT CORPORATION; KNOTT'S BERRY FARM, LLC; AND**  
6 **DOES 1 - 30 FOR NEGLIGENCE:**

7 37

8 Plaintiff refers to and incorporates by reference paragraphs 1 through 14 and 16 through 36 as if  
9 fully set forth herein.

10 38

11 At the time of this incident, Defendants owned, operated, maintained and controlled a theme park  
12 known as Knott's Berry Farm in Buena Park, CA. Within the theme park Defendants owned,  
13 operated, maintained and controlled a ride known as the Timber Mountain Log Ride. Timber  
14 Mountain Log Ride was designed, developed, repaired, manufactured and distributed by certain of  
15 the Defendants.

16 39

17 Defendants were responsible for the safety of the Timber Mountain Log Ride.

18 40

19 At said time and place, Defendants, and each of them, so negligently and carelessly owned, operated,  
20 maintained, controlled, designed, developed, supervised, trained, repaired and/or manufactured the  
21 attraction so as to proximately cause injury and damage to Plaintiff as a result of his riding on the  
22 Timber Mountain Log Ride.

1 **PLAINTIFF TIMOTHY MILLER ALLEGES THIRD CAUSE OF ACTION AGAINST ALL**  
2 **DEFENDANTS FOR NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS:**

3 41

4 Plaintiff Timothy Miller refers to and incorporates by reference the previous two causes of action  
5 as if fully set forth herein.

6 42

7 At all times herein mentioned Plaintiff Timothy Miller and Plaintiff Charles Miller were and are  
8 father and son.

9 43

10 At all times herein mentioned, Plaintiff Timothy Miller was a customer, business invitee, and patron  
11 of Defendants' theme park, and was a passenger on the Timber Mountain Log Ride operated by  
12 Defendants when his minor son was injured.

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15 This Plaintiff:

- 16 A. Witnessed the accident, injuries and damages to his son, Plaintiff Charles Miller,  
17 while within the zone of danger, and personally involved in this incident.  
18 B. Received serious emotional injuries from this incident and as a result of witnessing  
19 said injuries and damages.

20 45

21 As a proximate result thereof, this Plaintiff suffered and will continue to suffer damages including,  
22 but limited to, shock and serious emotional injury and suffering in such amount as will be proven  
23 at the time of trial.

1 WHEREFORE THE FOLLOWING JUDGMENT AGAINST DEFENDANTS CEDAR FAIR,  
2 LP dba CEDAR FAIR ENTERTAINMENT COMPANY; CEDAR FAIR MANAGEMENT,  
3 INC.; KNOTT'S BERRY FARM, A CALIFORNIA GP, MAGNUM MANAGEMENT  
4 CORPORATION; KNOTT'S BERRY FARM, LLC; AND DOES 1 - 30 IS PRAYED FOR BY  
5 PLAINTIFF, CHARLES MILLER, A MINOR, BY AND THROUGH HIS GUARDIAN AD  
6 LITEM, TIMOTHY MILLER, IN HIS FIRST AND SECOND CAUSES OF ACTION:

- 7 1. Costs of suit;
  - 8 2. Such other and further relief as this Court deems proper;
  - 9 3. General damages in an amount within the jurisdiction of the Superior Court,  
10 and according to proof;
  - 11 4. Medical and related expenses according to proof;
  - 12 5. Loss of earnings and impaired earning capacity according to proof;
  - 13 6. Prejudgment interest according to proof; and,
  - 14 7. Punitive damages as shall be proven at trial.
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1 **WHEREFORE THE FOLLOWING JUDGMENT AGAINST ALL DEFENDANTS AND**  
2 **EACH OF THEM IS PRAYED FOR BY PLAINTIFF, TIMOTHY MILLER, IN HIS THIRD**  
3 **CAUSE OF ACTION:**

- 4 1. Costs of suit;
- 5 2. Such other and further relief as this Court deems proper;
- 6 3. General damages in an amount within the jurisdiction of the Superior Court,  
7 and according to proof;
- 8 4. Prejudgment interest according to proof; and,
- 9 5. Punitive damages as shall be proven at trial.

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