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EL DORADO CO. SUPERIOR CT.

FILED JUL 25 2011
BY Deputy

Assigned to
Judge Warren C. Stracener
For all purposes

6 Attorneys for Plaintiff,
7 BRIAN J. LESSLEY

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF EL DORADO**

10 BRIAN J. LESSLEY,

11 Plaintiff,

12 v.

13 RUSSELL MOTORSPORTS, INC., a
14 California Corporation; EL DORADO
15 COUNTY FAIRGROUNDS, a Local Public
16 Entity; COUNTY OF EL DORADO, A Local
17 Public Entity; and DOES 1 through 20,

18 Defendants.

Case No.: **PC 20170332**

COMPLAINT FOR DAMAGES

Demand for Jury Trial

[Unlimited Civil Case]

BY FAX

19 Plaintiff BRIAN J. LESSLEY ("Plaintiff"), an individual, alleges causes of action
20 against Defendants RUSSELL MOTORSPORTS, INC., a corporation; EL DORADO
21 COUNTY FAIRGROUNDS; a local public entity; COUNTY OF EL DORADO, a local public
22 entity; and DOES 1 through 20 ("Defendants") as follows:

23 **PRELIMINARY STATEMENT**

24 1. Plaintiff is informed and believes and thereon alleges that, at all times relevant
25 herein, Defendant RUSSELL MOTORSPORTS, INC. is a California corporation doing
26 business in California.

27 2. Plaintiff is informed and believes and thereon alleges that, at all times relevant
28 herein, Defendant EL DORADO COUNTY FAIRGROUNDS is a government entity, operating

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1 as such in and under the laws of the State of California, with its principal place of business
2 located in the Country of El Dorado.

3 3. Plaintiff is informed and believes and thereon alleges that, at all times relevant
4 herein, Defendant COUNTY OF EL DORADO is a government entity, operating as such in and
5 under the laws of the State of California, with its principal place of business located in the
6 Country of El Dorado.

7 4. Plaintiff BRIAN J. LESSLEY is an individual who, at all relevant times, lived
8 and resided in El Dorado County.

9 5. Plaintiff is unaware of the true names and capacities of the Defendants sued
10 herein as DOES 1 through 20, and therefore sues these Defendants by such fictitious names.
11 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.
12 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
13 defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's
14 injuries as herein alleged were proximately caused by the negligence of these Defendants.

15 6. Plaintiff is informed and believes and thereon alleges that at all times herein
16 mentioned, each of the Defendants was the agent and employee of each of the remaining
17 Defendants and was at all times acting within the purpose and scope of such agency and
18 employment.

19 7. Prior to filing this Complaint, on or about January 31, 2017, Plaintiff presented a
20 claim to Defendants EL DORADO COUNTY FAIRGROUNDS and COUNTY OF EL
21 DORADO pursuant to the provisions of Government Code § 911.2. Plaintiff never received a
22 response accepting or rejecting the claim. Plaintiff now files this Complaint pursuant to
23 Government Code § 945.6 and within the statutory time period.

24 **JURISDICTION & VENUE**

25 8. The jurisdiction of the Court over this action is based upon Code of Civil
26 Procedure § 410.10. Venue is proper in El Dorado County Superior Court because the incident
27 and subject dangerous condition is in El Dorado County.

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1 was suddenly struck by a lemon-sized rock which was thrown from the track by a race vehicle
2 and struck him in his left knee. This lemon-sized rock was thrown over the insufficient cyclone
3 fence which failed to protect spectators, including Mr. Lessley, among others. After being
4 struck by the lemon-sized rock Mr. Lessley experienced excruciating pain and sought out a
5 track employee to assist him.

6 14. Upon finding a track employee, an ambulance was called and Mr. Lessley was
7 transported to Marshall Medical Center for emergency medical treatment where his treating
8 nurses laughed and made note that 'it's another injury from the race track', again demonstrating
9 that spectator injuries at the track were a common occurrence.

10 15. Upon being transported to Marshall Medical Center, Mr. Lessley received
11 emergency medical treatment to his left knee and reported complaints of pain and severe
12 swelling. Mr. Lessley required knee surgery on November 7, 2016 due to 'incapacitating left
13 knee pain and failed non-operative treatment.' Mr. Lessley will continue to require ongoing
14 treatment as a direct result of being struck on his left knee by this lemon-sized rock.

15 16. Defendants COUNTY OF EL DORADO, EL DORADO COUNTY
16 FAIRGROUNDS, and RUSSELL MOTORSPORTS, INC. all had a duty to provide barricades
17 and/or fencing for the protection of spectators from automobiles and projectiles that might
18 leave the track. Defendants violated the principles of negligence by failing to provide a safe
19 premises, including adequate fencing and/or protective barriers to prevent this type of injury.
20 Defendants provided an insufficient cyclone fence which did not protect the entirety of the
21 bleacher area.

22 17. As such, spectators, including Mr. Lessley, were exposed to a dangerous
23 condition because projectiles, such as the lemon-sized rock which struck Mr. Lessley, could
24 easily be 'thrown' over the inadequate fence by race cars travelling on the dirt track. Because
25 Defendants failed to provide adequate barriers and/or fencing, Defendants breached the duty
26 they owed to Mr. Lessley.

27 18. Defendants had actual knowledge that the fencing set up at the time of the
28 incident was insufficient to protect spectators from serious injury, as demonstrated by the fact

1 that Defendants knew that spectators at the track regularly suffered severe injury from rocks
2 and other objects thrown up from the track over the fence. Despite having actual notice,
3 Defendants failed to create adequate fencing and other safety measures to prevent future injury,
4 thereby endangering all spectators and persons nearby the track.

5 19. Plaintiff is informed and believes, and thereon alleges, that these Defendants
6 and/or Defendants' employee(s) and/or agent(s), while in the scope of their employment, and
7 each of them, had failed to remedy said condition, in spurt of having had sufficient notice of
8 said dangerous and defective condition a sufficient amount of time in advance of the occurrence
9 of the subject collision within the meaning of Government Code § 835(b).

10 **FIRST CAUSE OF ACTION – NEGLIGENCE**

11 **(As to Defendant RUSSELL MOTORSPORTS, INC. and DOES 1 through 10)**

12 20. Plaintiff incorporates by reference all of the allegations set forth in the
13 paragraphs above, and each and every part thereof, with the same force and effect as though set
14 out fully herein.

15 21. Plaintiff is informed and believes, and thereon alleges that, at all times herein
16 mentioned, Defendant RUSSELL MOTORSPORTS, INC. and Does 1 through 10, and each of
17 them, maintained, operated, managed, and/or were responsible for the Placerville Speedway,
18 located at 100 Placerville Dr., Placerville, CA 95667 in El Dorado County. Defendant
19 RUSSELL MOTORSPORTS, INC. and Does 1 through 10 had a duty to operate, manage, and
20 maintain the premises in a reasonably safe manner. Defendant RUSSELL MOTORSPORTS,
21 INC. and Does 1 through 10 had a duty to provide barricades and/or fencing for the protection
22 of spectators from automobiles and projectiles that might leave the track.

23 22. In breach of this duty, Defendant RUSSELL MOTORSPORTS, INC. and Does
24 1 through 10 negligently failed to provide adequate fencing to protect the entirety of the
25 bleacher area, despite having repeated notice of regular spectator injuries due to the inadequate
26 fencing.

27 23. As a proximate result of Defendant RUSSELL MOTORSPORTS, INC. and
28 Does 1 through 10's negligence, Mr. Lessley was severely injured by a projectile which the
inadequate fencing failed to block.

1 24. On Saturday, August 13, 2016, at approximately 8:15 p.m., Mr. Lessley, was a
2 spectator at the Placerville Speedway and was watching a dirt track racing event. As Mr.
3 Lessley sat at the top of the bleachers located on the north end of the track, he was suddenly
4 struck by a lemon-sized rock which was thrown from the track by a race vehicle and struck him
5 in his left knee. This lemon-sized rock was thrown over the insufficient cyclone fence which
6 failed to protect spectators, including Mr. Lessley, among others.

7 25. Plaintiff is informed and believes and thereon alleges that said injuries will result
8 in permanent disability for Plaintiff, all to their general damages in a sum in excess of the
9 minimum jurisdictional limits of this Court, and they are entitled to prejudgment interest on that
10 amount when it is determined. Plaintiff sustained injuries requiring to employ, and will be
11 required in the future to employ, physicians, medical care, and services to examine, treat, and
12 care for him and will in the future incur medical and incidental expenses. The exact amount of
13 said expenses are unknown to Plaintiff at this time, and Plaintiff asks for leave to amend his
14 pleading to set forth the exact amount thereof when the same is ascertained, and any and all
15 prejudgment interest from the date of said injuries.

16 26. After being struck by the lemon-sized rock Mr. Lessley suffered severe injury
17 and great mental, physical and emotional pain and suffering, which he continued to suffer from
18 to this day. As a result of the injury, he suffered and continues to suffer severe pain and
19 popping in his left knee, which severely limits his daily activities and enjoyment.

20 27. As a result of Defendant RUSSELL MOTORSPORTS, INC. and Does 1
21 through 10's negligent acts, Plaintiff is entitled to general and special damages in an amount
22 according to proof at trial.

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1 Wherefore, Plaintiff prays for relief as set forth hereinafter.

2 **SECOND CAUSE OF ACTION – DANGEROUS AND DEFECTIVE CONDITION [**
3 **GOV'T CODE § 835, ET AL.]**

4 **(As to Defendants EL DORADO COUNTY FAIRGROUNDS; COUNTY OF EL**
5 **DORADO; and DOES 11 through 20)**

6 28. Plaintiff incorporates by reference all of the allegations set forth in the
7 paragraphs above, and each and every part thereof, with the same force and effect as though set
8 out fully herein.

9 29. Defendants EL DORADO COUNTY FAIRGROUNDS; COUNTY OF EL
10 DORADO; and DOES 11 through 20, and each of them, owned and/or controlled the
11 Placerville Speedway, located at 100 Placerville Dr., Placerville, CA 95667 in El Dorado
12 County and therefore had a duty to exercise ordinary care to maintain these premises.

13 30. Defendants EL DORADO COUNTY FAIRGROUNDS; COUNTY OF EL
14 DORADO; and DOES 11 through 20, and each of them, were aware that there was a condition
15 of the track and bleachers at Placerville Speedway which created a substantial risk of injury and
16 failed to protect against said risk of injury by failing to repair, remedy, or correct these
17 dangerous conditions, failing to provide safeguards against these dangerous conditions, and
18 failing to warn of these dangerous conditions.

19 31. Defendants EL DORADO COUNTY FAIRGROUNDS; COUNTY OF EL
20 DORADO; and DOES 11 through 20 had prior notice that there had been repeated severe
21 injuries from projectiles from the track which hit spectators on the bleachers due to Defendants'
22 failures to provide adequate fencing. Defendants EL DORADO COUNTY FAIRGROUNDS;
23 COUNTY OF EL DORADO; and DOES 11 through 20 knew or should have known that the
24 condition was dangerous. In addition, the condition has existed for enough time before the
25 incident and it was so obvious that Defendants EL DORADO COUNTY FAIRGROUNDS;
26 COUNTY OF EL DORADO; and DOES 11 through 20 reasonably should have discovered the
27 condition regardless and known that it was dangerous. Defendants EL DORADO COUNTY
28 FAIRGROUNDS; COUNTY OF EL DORADO; and DOES 11 through 20 failure to properly
or adequately perform inspections also resulted in their failure to take action despite having

1 actual and/or constructive notice of these dangerous conditions. As a result, Mr. Lessley was
2 harmed and the dangerous conditions were a substantial factor in causing said harms.

3 32. At the time of the subject incident, the area where the incident occurred was in a
4 dangerous and/or defective condition (pursuant to the definition set forth in Government Code
5 § 835.) due to the lack of adequate fencing to reduce or eliminate the risk of severe injury or
6 death from projectiles from the track as to the entire bleacher area.

7 33: Furthermore, at all times relevant, the premises was constructed, configured,
8 supervised, and/or controlled by these Defendants and/or these Defendants' employee(s) and/or
9 agent(s), while in the scope of their employment.

10 34. Defendants EL DORADO COUNTY FAIRGROUNDS; COUNTY OF EL
11 DORADO; and DOES 11 through 20 were aware, and had actual notice, that their fences were
12 not adequate, including lacking sufficient height, to block foreseeable projectiles coming from
13 the track. Defendants EL DORADO COUNTY FAIRGROUNDS; COUNTY OF EL
14 DORADO; and DOES 11 through 20 were also aware that these inadequate fences caused
15 repeated severe injuries to spectators at the track. Thus, these Defendants knew that adequate
16 fencing was necessary to address a dangerous condition which endangered the spectators of
17 events at the premises and which would not be reasonably apparent to, and would not have
18 been anticipated by, spectators at the premises. By reason of the aforesaid dangerous and
19 defective conditions, Mr. Lessley was not warned and/or aware of the existence of the
20 dangerous condition on the premises due to the lack of adequate fencing.

21 35. Plaintiff is informed and believes, and thereon alleges, that Defendants EL
22 DORADO COUNTY FAIRGROUNDS; COUNTY OF EL DORADO; and DOES 11 through
23 20 and/or their employee(s) and/or agent(s), while in the scope of their employment, and each
24 of them, had failed to remedy said condition, in spurt of having had sufficient notice of said
25 dangerous and defective condition a sufficient amount of time in advance of the occurrence of
26 the subject collision within the meaning of Government Code § 835(b) and, further, failed to
27 warn the public of such condition.


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6. For such other and further relief as the Court deems just and proper.

Dated: July 25, 2017

YORK LAW CORPORATION

By:



WENDY C. YORK
BRIAN D. MCFARLIN
Attorneys for Brian J. Lessley

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