S195031

In The Supreme Court Of California

SMRITI NALWA
Plaintiff and Respondent,

v.

CEDAR FAIR, L.P.
Defendant and Petitioner.

PETITION FOR REVIEW FOLLOWING PUBLISHED OPINION OF THE COURT OF APPEAL, SIXTH APPELLATE DISTRICT, CASE NO. H034535

SANTA CLARA COUNTY SUPERIOR COURT, CASE NO. 1-07-CV089189
HONORABLE JAMES P. KLEINBERG

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CALIFORNIA CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANT AND PETITIONER CEDAR FAIR, L.P.

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES:

Pursuant to the California Rules of Court, rule 8.520(f), the California Chamber of Commerce requests permission to file the attached *amicus curiae* brief in support of Petitioner and Defendant Cedar Fair, L.P.

The California Chamber of Commerce ("CalChamber") is a non-profit business association with over 14,000 members, both individual and corporate, representing virtually every economic interest in the state of California. For over 100 years, CalChamber has been the voice of

California business. While CalChamber represents several of the largest corporations in California, seventy-five percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues. CalChamber often advocates before the courts by filing *amicus curiae* briefs in cases involving issues of paramount concern to the business community.

This is one such case. The Court of Appeal's decision in favor of Plaintiff-Respondent would allow California courts to reject the primary assumption of risk doctrine whenever a court determines that a defendant has sufficient resources to make an activity safer. The decision also would allow courts to disregard the doctrine whenever the defendant's activity is subject to a regulatory scheme to enhance safety, even if the defendant violated no regulation.

As counsel for Amicus Curiae, we have reviewed the briefs filed in this action, and we believe that this Court would benefit from additional briefing on the important policy concerns underlying the primary

assumption of risk doctrine and the Court of Appeal's application of it. We respectfully request that this Court permit the filing of the attached brief.

Dated: April 5, 2012.

Respectfully submitted,

SNELL & WILMER L.L.P.
Mary-Christine Sungaila
Jessica E. Yates

By: 
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AMICUS CURIAE BRIEF

INTRODUCTION

This case, fundamentally, is about the legal duties owed by providers of fun and recreational experiences and participants' reasonable expectations about those activities. Here, the plaintiff was a willing, voluntary participant in riding bumper cars at an amusement park. The very purpose of offering bumper cars is to allow participants the fun and exciting experience of bumping into each other, and the driver (who frequently is too young to legally drive an ordinary motor vehicle) can enthusiastically exercise control over the "car" by taking sharp turns, accelerating, and generally ramming into other bumper cars.

Although the activity is generally safe and injuries are unusual, there is no way to prevent the jarring and bumping and still maintain the essence of the activity. And participants' expectations – indeed, their very purpose of riding in bumper cars – is to engage in such bumping. Without the thrill of taking a turn at the wheel, many youngsters would eschew the experience altogether.

First principles under the assumption of risk doctrine dictate that, in such circumstances, a participant assumes risks inherent in the activity. Contrary to the Court of Appeal's opinion, nothing in California law suggests that courts should adopt a purely categorical approach that somehow limits assumption of risk to "sports." California cases also

demonstrate that a sponsor of activities with inherent risks does not have a duty to "minimize" those risks. And California courts have repeatedly rejected the suggestion that there can be no assumption of risk in a regulated activity. This Court should not chart a different course.

The Court of Appeal's majority opinion, which Plaintiff urges this Court to adopt, introduces two policy rationales that are highly problematic for entities that sponsor or operate activities with inherent risks.

First, the decision holds that commercial entities have greater resources and power to enhance the safety of the activities they offer, and thus are held to a higher standard that negates the assumption of risk doctrine. But the cost of safety is not the point. Instead, the point is that these activities often cannot be significantly modified without eliminating the fun and excitement that drives people to participate in the first place. If commercial enterprises offering such activities cannot receive the protection of the primary assumption of risk doctrine, they will likely be forced to close such activities down.

Second, the decision endorses a policy rationale that entities already subject to safety regulations cannot invoke assumption of risk, even if no regulation was violated. Such entities and affected industries may resist any regulations that might otherwise enhance the safety of the activity, since the very existence of such regulations would eliminate assumption of risk.

Accordingly, the California Chamber of Commerce urges this Court to reverse the Court of Appeal, and reaffirm the reach of the primary assumption of risk doctrine to activities beyond sports.

LEGAL DISCUSSION

I.

THE PRIMARY ASSUMPTION OF RISK DOCTRINE IS NOT LIMITED TO CERTAIN "CATEGORIES" OF ACTIVITIES AND FULLY APPLIES TO THIS CASE

The Court of Appeal ruled that the primary assumption of risk doctrine did not apply to this case because the accident occurred in an amusement park, and "amusement park rides are not the type of sport or activity susceptible to the primary assumption of risk analysis." (Typed Opn. at p. 12.) This overly-simplistic categorical approach ignores this Court's prescription that, in deciding whether a defendant owes a plaintiff a legal duty to protect from the particular risk of harm that caused the injury, a court should evaluate "the nature of the activity and the parties' relationship to the activity." (*Knight v. Jewett* (1992) 3 Cal.4th 296 at pp. 314-315 (*Knight*).) In other words, a case-specific analysis is required to decide whether primary assumption of risk applies. Under *Knight* and its progeny, bumper car driving readily falls within primary assumption of risk.

Knight involved an informal, recreational game of touch football. Plaintiff had played touch football before, and knew that she might get

bruised or bumped. (*Knight, supra*, 3 Cal.4th at p. 302.) Even though plaintiff had told defendant "not to play so rough," he stepped on her hand, injuring it. (*Id.* at p. 300.) Ultimately, *Knight* upheld summary judgment in favor of the defendant, concluding that in sports there may be "conditions or conduct that otherwise might be viewed as dangerous" that "often are an integral part of the sport itself." (*Id.* at p. 315.) Accordingly, "[a]lthough defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself, it is well established that defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport." (*Id.* at pp. 315-16.)

Knight's companion case, *Ford v. Gouin* (1992) 3 Cal. 4th 339, involved a plaintiff who was injured while waterskiing and who sued the defendant boat driver. *Ford* treated waterskiing as a sport, but rejected any distinction between "competitive" sports such as touch football and "cooperative" sports such as waterskiing, holding that the rationale of decisions involving the former was "equally applicable" to an active sport engaged in on a noncompetitive basis. (*Id.* at p. 345.) *Ford* echoed *Knight* in remarking that in water skiing, "the ski boat driver operates the boat in a manner that is consistent with, and enhances, the excitement and challenge of the active conduct of the sport." (*Id.*) "Imposition of legal liability on a ski boat driver for ordinary negligence in making too sharp a turn, for

example, or in pulling the skier too rapidly or too slowly, likely would have the same kind of undesirable chilling effect on the driver's conduct that the courts in other cases feared would inhibit ordinary conduct in various sports." (*Id.*)

Thus, in *Ford*, this Court made clear that the "sports" label was not limited to competitive sports. Subsequent cases have shown that the primary assumption of risk doctrine applies to a variety of activities. (See, e.g., *Beninati v. Black Rock City, LLC* (2009) 175 Cal.App.4th 650 [attendee of Burning Man Festival injured while walking among flames]; *McGarry v. Sax* (2008) 158 Cal.App.4th 983 [spectator at skateboard performance injured when he tried to catch prize thrown into crowd]; *Rostai v. Neste Enterprises* (2006) 138 Cal.App.4th 326 [individual suffered heart attack during first workout with fitness trainer]; *Distefano v. Forester* (2001) 85 Cal.App.4th 1249 [plaintiff injured in off-road collision between motorcyclist and dune buggy]; *Record v. Reason* (1999) 73 Cal.App.4th 472 [person fell out of inner-tube while being towed by motor boat]; *Ferrari v. Grand Canyon Dories* (1995) 32 Cal.App.4th 248 [plaintiff sitting in back of an oar-rigged raft taking pictures injured when she struck her head on metal frame of raft].)[1]

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[1] California is not unique in applying the primary assumption of risk doctrine to a wide variety of contexts. See generally Alexander J. Drago, "*Assumption of Risk: An Age-Old Defense Still Viable in Sports and Recreation Cases*" (2002) 12 Fordham Intell. Prop., Media & Ent. L.J. 583.

California courts also have applied the primary assumption of risk doctrine even when the injured plaintiff was a mere spectator to an activity. In *Nemarnik v. Los Angeles Kings Hockey Club, L.P.* (2002) 103 Cal.App.4th 631, plaintiff was injured by a hockey puck that flew into the stands. The court concluded that a puck flying through the air was akin to an accidentally thrown baseball bat or foul ball, which has long been deemed to be an "inherent risk of baseball that is assumed by the spectator." (*Id.* at p. 637) (citing *Quinn v. Recreation Park Assn.* (1935) 3 Cal.2d 725 at p. 729).) *Nemarnik* also followed *Neinstein v. Los Angeles Dodgers, Inc.* (1986) 185 Cal.App.3d 176, which rejected a claim from a fan at a Dodgers game who was struck by a foul ball in an unscreened area on the first base side of the stadium. *Neinstein* noted that "[a] person who fears injury always has the option of refraining from attending a baseball game or of sitting in a part of the park which is out of reach of balls traveling with sufficient velocity to cause harm." (*Id.* at p. 182.) In other words, being hit by a foul ball was an inherent risk associated with choosing an unscreened seat close to the field.

California courts have not strictly construed assumption of risk as being limited to particular "categories" of activity such as firefighting, veterinary services, or active sports. (See, e.g., *Priebe v. Nelson* (2006) 39 Cal.4th 1112 [kennel technician bitten by dog under her care]; *Saville v. Sierra College* (2005) 133 Cal.App.4th 857 [student in community college

peace officer class injured in take-down maneuver]; *Hamilton v. Martinelli & Associates* (2003) 110 Cal.App.4th 1012, 1017 [probation officer injured in "unarmed defensive tactics" training course]; *Herrle v. Estate of Marshall* (1996) 45 Cal.App.4th 1761 [nurse's aide at convalescent hospital injured when struck by patient suffering from dementia].)

The California Court of Appeal in this case, however, adopted a very different approach. The court insisted that *Knight* established "categories" of cases to which the primary assumption of risk was limited. (Typed Opn. at pp. 8-10.) But the analytical formula that underlies primary assumption of risk resists such a purely categorical approach. It is not only "the nature of the activity" but also "the parties' relationship to the activity" that helps define the scope of any legal duty and application of primary assumption of risk. (See *Knight*, *supra*, 3 Cal.4th at pp. 314-315.) A purely categorical approach ignores the all-important "relationship" factor.

A purely categorical approach also overlooks distinctions in activities that may, at first blush, seem related but in fact are quite dissimilar. By lumping all amusement park rides together in a single category, the Court of Appeal made no distinction between being a passenger in a ride controlled by the park, such as a roller coaster, and bumper cars. The court compared bumper cars to a passive boat ride around a lake as in *Shannon v. Rhodes* (2001) 92 Cal.App.4th 792, 798, and concluded that both a leisurely boat ride and bumper cars were "too

benign" to qualify for the primary assumption of risk doctrine (Typed Opn. at p. 13).

The reality is that driving a bumper car – which requires the driver to make active choices in how much to accelerate, how much to engage in bumping, and which direction to go – is not comparable to the passive boat ride featured in *Shannon*. These two activities have distinctly different "natures." "There is nothing inherent in the activity of recreational boating that requires the driver to 'throw caution to the wind' in order to enjoy the activity." (*Shannon v. Rhodes*, *supra*, 92 Cal.App.4th at p. 800.) In contrast, the whole purpose of driving a bumper car is to bump cars, and it tends to be more thrilling when the driver accelerates faster or maneuvers the car more sharply.

Indeed, signs posted at the entrance of the ride state that the cars are "independently controlled electric vehicles," "[t]he action of this ride subjects your car to bumping," and "riders may encounter unexpected changes in direction and or/speed [sic] ... . This ride requires rider body control." (Typed Opn. at p. 16 (Duffy, J., dissenting)). The fact that Plaintiff here was a willing passenger in the bumper car rather than a driver makes no difference. It is the inherent risks of the underlying activity that matter.

The categorical exclusion of amusement park activities would preclude primary assumption of risk even when a person steps into the

range of an automatic ball-throwing machine, a youngster jumping on a harnessed trampoline sprains an ankle, an adult playing putt-putt golf trips over a rolling ball, someone feeding a goat at a petting zoo gets bitten, or a child jumping in a bouncy castle tumbles onto another child.[2] Nothing in California law suggests that such activities should give rise to liability when a hockey spectator, a baseball fan, a Burning Man attendee, and a woman playing touch football are all subject to the primary assumption of risk doctrine.

II.

A DEFENDANT'S STATUS AS A COMMERCIAL ENTERPRISE DOES NOT PRECLUDE APPLICATION OF THE PRIMARY ASSUMPTION OF RISK DOCTRINE

The Court of Appeal decided that even if a bumper car ride qualified for the primary assumption of risk doctrine, "respondent's position as owner of the park nonetheless would invoke a higher duty of care." (Typed Opn. at pp. 14-15.) The opinion invokes financial profits and an owner's position of "control and authority" in holding that "proprietors are uniquely positioned to eliminate or minimize certain risks, and are best financially capable of absorbing the relatively small cost of doing so." (*Id.* at p. 16.) The court held that it was consistent with *Knight* "to impose reasonable

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[2] Many activities at amusement parks are self-directed and thus have some inherent risk that the park cannot mitigate. But that does not mean that an amusement park might never owe a duty of care as to one of its rides. The result might be wholly different if, for example, a park removed the shock-absorbing bumpers from cars, transforming fun bumping into hard crashes.

duties to minimize risk on defendants who hold their premises open to the public for profit." (*Id.* at p. 17.)

But the cases cited by the court cannot be read so broadly. For example, the Court of Appeal relied on *Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990 for the proposition that an amusement park has additional responsibilities that negate the applicability of primary assumption of risk. (Typed Opn. at p. 16.) *Kahn* concluded that primary assumption of risk did not apply in that case, and held that a swimming coach had additional responsibilities due to the coach's unique position in providing detailed instruction and assessing swimming abilities. Amusement parks typically do not involve any comparable instruction or assessment.

California cases have not disregarded the primary assumption of risk doctrine or imposed a "duty to minimize risks" simply because of a defendant's profit motive, or because a defendant was the sponsor of the activity involved. When courts permit the assertion of primary assumption of risk, the "cost" of minimizing risk is not the concern. Instead, the focus is on whether the suggested risk management tool would impair enjoyment of the activity or otherwise impact fundamental aspects of the activity. Indeed, it is the "inherent" risk associated with that aspect of the activity that lays the foundation for primary assumption of risk in the first instance.

For example, in *Nemarnik v. Los Angeles Kings Hockey Club, L.P.*, *supra*, 103 Cal.App.4th at p. 638, plaintiff contended that defendants could have reduced the risk of her injury if they had required the large number of spectators to sit down, because she then would have had a better view of the rink and could have seen the puck coming in time to avoid impact. The court rejected her theory, holding that "[o]bstructions of view caused by the unpredictable movements of other fans are an inherent and unavoidable part of attending a sporting event," particularly as fans "spontaneously leap to their feet." (*Id.* at pp. 638-39.) *Nemarnik* then reflected on the case involving a fan injured by a foul ball at a Dodgers game, and the chilling effect on the enjoyment by other fans if recovery was permitted:

> Those are the literally millions of persons who attend baseball games all over the country. The quality of a spectator's experience in witnessing a baseball game depends on his or her proximity to the field of play and the clarity of the view, not to mention the price of the ticket. As we see it, to permit plaintiff to recover under the circumstances here would force baseball stadium owners to do one of two things: place all spectator areas behind a protective screen thereby reducing the quality of everyone's view, and since players are often able to reach into the spectator area to catch foul balls, changing the very nature of the game itself; or continue the status quo and increase the price of tickets to cover the cost of compensating injured persons with the attendant result that persons of meager means might be 'priced out' of enjoying the great American pastime. To us, neither alternative is acceptable.

(*Id.* at pp. 640-41 (quoting *Neinstein v. Los Angeles Dodgers, Inc.*, *supra*, 185 Cal.App.3d at pp. 180-81).)

Similarly, the court in *Ferrari v. Grand Canyon Dories*, *supra*, 32 Cal.App.4th at p. 254, held that defendants – commercial sponsors and operators of a rafting trip – did not have a duty to "minimize" the risks associated with rafting. Plaintiff, who hit her head on the raft's metal frame as she was taking pictures from the back of the boat, had claimed that defendants should have refused to allow her to sit where she did and/or should have used a raft that did not have a metal frame. The court concluded that the metal frames used with oar-rigged rafts were "standard" in the industry, and rejected any suggestion that defendants should have added padding.[3] (*Id.* at pp. 256-57.) Accordingly, even though defendants in such cases may have a duty not to "increase" risks, they do not have a duty to "minimize" risks that "alter[] the nature" of the activity. (See *Knight*, *supra,* 3 Cal.4th at p. 317.)

Focusing on an amusement park's commercial nature creates a false distinction between types of defendants. After all, in *Kahn*, this Court declined to apply the primary assumption of risk doctrine to a defendant high school. Instead, where commercial entities offer sports and activities that otherwise qualify for the primary assumption of risk doctrine, nothing

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[3] The Court of Appeal in this case concluded that whether there were additional steps that could have minimized injury in driving bumper cars was a triable issue of fact. (Typed Opn. at p. 17.) In contrast, the Court of Appeal in *Ferrari, supra*, 32 Cal.App.4th at pp. 256-57, affirmed summary judgment for defendants, effectively concluding the plaintiff's argument that defendants could have done more to minimize her risk of injury did not create a triable issue of fact.

in California law negates the doctrine based on whether the defendant is a commercial, nonprofit, or governmental enterprise.

By singling out amusement park rides and park owners for a "higher duty" of safety, the Court of Appeal admits to hoping to "make them safer." (Typed Opn. at p. 14.) But as the dissent points out, rigorous bumping is an inherent part of driving bumper cars that would have to be eliminated under the Court of Appeal's approach. (*Id.* at p. 17 ("who would want to ride a *tapper car* at an amusement park?").) The Court of Appeal's reasoning would require owners and proprietors operating commercial enterprises to eliminate many activities involving self-direction, because there typically is no way to "minimize risk" of such an activity and still maintain the excitement of it. Instead of making "safer" activities, the decision below will simply drive many summer day classics – bumper cars, putt-putt golf, go-cart racing, and ball-batting – to extinction.

III.

THE PRIMARY ASSUMPTION OF RISK DOCTRINE CAN APPLY TO REGULATED ACTIVITIES

Part of the Court of Appeal's reasoning for precluding primary assumption of risk here was that amusement park rides are regulated to ensure the safety of patrons. (Typed Opn. at p. 10 (citing Cal. Code Regs., Tit. 8, § 3900).) However, the court did not conclude that Cedar Fair, the amusement park here, had violated any code or regulation. The court did

not even conclude that bumper cars fell within the definition of "amusement ride" regulated by 8 Cal. Code Regs. §§ 3900-3920.[4] The court noted that "a statute, ordinance or regulation could, under the proper circumstances, impose a duty of care on defendant that is otherwise precluded under the principles set forth in *Knight*." (*Id.* (citing *Cheong v. Antablin* (1997) 16 Cal.4th 1063, 1071).) Plaintiff urges this Court to go even further and conclude, as a matter of policy, that the very existence of regulations that apply to amusement parks supplants the assumption of risk doctrine. (*See* ABOM at pp. 29-30.) However, California cases have in fact resisted such a rule.

In *Cheong*, *supra*, 16 Cal.4th at p. 1069, plaintiff was injured in a collision with another skier. A local ordinance required skiers to avoid contact with other skiers, and grant a right of way to other skiers when overtaking them. This Court concluded that the ordinance "evince[d] no clear intent to modify common law assumption of risk principles,"

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[4] The California Code of Regulations, Title Eight, Section 3901(a) defines "amusement ride" as "a mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement," but "does not include . . . conveyances which operate directly on the ground or on the surface or pavement directly on the ground or the operation of amusement devices of a permanent nature." Section 3195.9(a), which applies to "permanent amusement rides," further states that "[l]ow speed vehicles designed for controlled collisions, such as bumper cars, do not require emergency stopping controls."

particularly as the same ordinance warned of the inherent risks of skiing. (*Id.* at p. 1070.)

In *Distefano v. Forester, supra,* 85 Cal.App.4th at p. 1272, which involved an off-road head-on collision between a motorcyclist and dune buggy, the Court of Appeal addressed whether Cal. Veh. Code §§ 38305 and 38316, which prohibit reckless driving of off-road vehicles, precluded the application of the primary assumption of risk doctrine. The court concluded that neither code reflected any intention to abrogate the *Knight* primary assumption of risk doctrine, and thus did not impose on off-roading participants a higher or different duty than that established in *Knight*, i.e., "that a participant in a recreational activity breaches a legal duty of care to other participants only if the participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport." (*Id.* at pp. 1273-74.)

In *Herrle*, the case about the nurse's aide attacked by a patient with dementia, plaintiff argued that assumption of risk was not available because "Civil Code section 41 imposes an obligation on mentally incompetent persons to compensate those injured by their tortious acts." (*Herrle v. Estate of Marshall, supra*, 45 Cal.App.4th at p. 1765.) The Court of Appeal concluded that while section 41 may represent sound public policy in the context of a stranger injured by an incompetent, it did not bar the

assumption of risk doctrine where the plaintiff was a caregiver. (*Id.* at pp. 1766-1777.)

Thus, California courts have required express intent in a code or regulation to supplant the common law primary assumption of risk doctrine when there has been a regulatory violation. Given that neither of the courts below even found such a violation in this case, it stands to reason that the mere presence of a regulatory scheme affecting amusement parks cannot automatically ratchet up the duties on a park operating bumper cars.

It also would be poor policy if regulatory schemes could not co-exist with the primary assumption of risk doctrine. Industries that sponsor sports and recreational activities will have every incentive to oppose regulations that otherwise could enhance the safety of participants and spectators if defendants cannot invoke assumption of risk. For example, the federal government regulates skydiving at 14 C.F.R. Part 105, but surely that fact does not eliminate an assertion of assumption of risk. Activities with inherent risks will not be made safer if sponsors are penalized for having accepted or even encouraged safety regulations.

CONCLUSION

The primary assumption of risk doctrine holds an important place both in tort jurisprudence and in everyday life. As human beings, many of us actively seek out fun experiences that inherently involve a certain degree of risk. No one is served by restricting a doctrine that is so critical to the

appropriate allocation of liability. Defendant sponsors or operators of such activities will either need to eliminate them altogether or change the activities in fundamental ways. Moreover, industries involved in such activities will oppose otherwise helpful regulations if the mere acquiescence to being regulated precludes assumption of risk.

Accordingly, the California Chamber of Commerce respectfully requests this Court to reverse the decision of the Court of Appeal and hold that the primary assumption of risk doctrine can apply to activities other than "sports" and that commercial enterprises subject to safety-related regulations may invoke the doctrine.

Dated: April 5, 2012.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The undersigned certifies that pursuant to the word count feature of the word processing program used to prepare this brief, it contains 4,086 words, exclusive of the matters that may be omitted under rule 8.204(c).

Dated: April 5, 2012

Respectfully Submitted,

SNELL & WILMER L.L.P.
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Proof of Service

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On April 5, 2012, I served, in the manner indicated below, the foregoing document described as **Application for Leave to File Amicus Curiae Brief and Amicus Curiae Brief of the California Chamber of Commerce in Support of Defendant and Petitioner Cedar Fair, L.P.** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Please see attached Service List

☒ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)), as indicated on the service list.

☐ BY ELECTRONIC SERVICE: C.R.C., rule 8.212(c)(2)(A)) as indicated on the service list.

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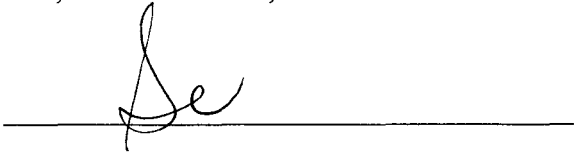
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 5, 2012, at Costa Mesa, California.



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