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2023 CV 0277

Binette, Roger E

**IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO**

RACHEL HAWES, et al.,	:	CASE NO.: 2023 CV 0277
	:	
Plaintiffs,	:	JUDGE ROGER E. BINETTE
	:	
-vs-	:	<u>ANSWER OF DEFENDANT, CEDAR</u>
	:	<u>FAIR, L.P. TO PLAINTIFFS'</u>
CEDAR FAIR, L.P., et al.,	:	<u>COMPLAINT</u>
	:	
Defendants	:	(Jury Demand Endorsed Hereon)

Now comes the Defendant, Cedar Fair, L.P., by and through counsel, Reminger Co., L.P.A., and for its Answer to Plaintiffs' Complaint, hereby answers as follows:

INTRODUCTION

1. Defendant admits that its principal place of business is in, and regularly conducts business in Erie County. Defendant further admits that Plaintiff, Rachel Hawes, was involved in an incident at Defendant's amusement park on August 15, 2023. Further answering, Defendant denies the remaining allegations "as stated" in Paragraph 1 of Plaintiffs' Complaint.

PARTIES

2. Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 2 of Plaintiffs' Complaint and, therefore, deny same for want of knowledge.

3. Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 3 of Plaintiffs' Complaint and, therefore, deny same for want of knowledge.

4. Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 4 of Plaintiffs' Complaint and, therefore, deny same for want of knowledge.

5. Defendant denies the allegations "as stated" contained in Paragraph 5 of Plaintiffs' Complaint.

6. Defendant denies the allegations "as stated" contained in Paragraph 6 of Plaintiffs' Complaint.

7. Defendant denies the allegations "as stated" contained in Paragraph 7 of Plaintiffs' Complaint.

8. Defendant denies the allegations "as stated" contained in Paragraph 8 of Plaintiffs' Complaint.

9. Defendant denies the allegations "as stated" contained in Paragraph 9 of Plaintiffs' Complaint.

10. Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 10 of Plaintiffs' Complaint and, therefore, deny same for want of knowledge.

JURISDICTION AND VENUE

11. Defendant admits that jurisdiction is proper in Erie County. Further answering, Defendant denies any and all remaining allegations contained in Paragraph 11 of Plaintiffs' Complaint.

12. Defendant admits the allegations contained in Paragraph 12 of Plaintiffs' Complaint.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

13. Defendant admits the allegations contained in Paragraph 13 of Plaintiffs' Complaint.

14. Defendant admits the allegations contained in Paragraph 14 of Plaintiffs' Complaint.

15. Defendant denies the allegations "as stated" contained in Paragraph 15 of Plaintiffs' Complaint.

16. Defendant denies the allegations contained in Paragraph 16 of Plaintiffs' Complaint.

17. Defendant denies the allegations contained in Paragraph 17 of Plaintiffs' Complaint.

18. Defendant denies the allegations contained in Paragraph 18 of Plaintiffs' Complaint.

19. Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 19 of Plaintiffs' Complaint and, therefore, deny same for want of knowledge.

20. Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 20 of Plaintiffs' Complaint and, therefore, deny same for want of knowledge.

21. Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 21 of Plaintiffs' Complaint and, therefore, deny same for want of knowledge.

CAUSES OF ACTION

22. Defendant realleges and reavers each and every admission and denial as set forth in Paragraphs 1 through 21 as if fully rewritten herein.

23. Defendant denies the allegations contained in Paragraph 23 of Plaintiffs' Complaint.

23(a). Defendant denies the allegations contained in Paragraph 23(a) of Plaintiffs' Complaint.

23(b). Defendant denies the allegations contained in Paragraph 23(b) of Plaintiffs' Complaint.

23(c). Defendant denies the allegations contained in Paragraph 23(c) of Plaintiffs' Complaint.

23(d). Defendant denies the allegations contained in Paragraph 23(d) of Plaintiffs' Complaint.

24. Defendant denies the allegations contained in Paragraph 24 of Plaintiffs' Complaint.

25. Defendant denies the allegations contained in Paragraph 25 of Plaintiffs' Complaint.

26. Defendant denies the allegations contained in Paragraph 26 of Plaintiffs' Complaint.

27. Defendant denies the allegations contained in Paragraph 27 of Plaintiffs' Complaint.

28. Defendant denies the allegations contained in Paragraph 28 of Plaintiffs' Complaint.

29. Defendant denies the allegations contained in Paragraph 29 of Plaintiffs' Complaint.

30. Defendant denies the allegations contained in Paragraph 30 of Plaintiffs' Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of Plaintiffs' Complaint.

32. Defendant denies the allegations contained in Paragraph 32 of Plaintiffs' Complaint.

33. Defendants are without direct information and/or knowledge sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 33 of Plaintiffs' Complaint and, therefore, deny same for want of knowledge.

34. Defendant denies the allegations contained in Paragraph 34 of Plaintiffs' Complaint.

35. Defendant denies the allegations "as stated" in Paragraph 35 of Plaintiffs' Complaint.

36. Defendant denies the allegations contained in Paragraph 36 of Plaintiffs' Complaint.

GENERAL DENIAL

Defendant hereby denies any and all allegations not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a claim for which relief can be granted.
2. Plaintiffs' injuries and damages, if any, were caused by the negligent acts of third parties over which this Defendant had no control.

3. Plaintiffs' injuries and damages, if any, were caused by the negligence of the Plaintiff.

4. Plaintiffs have failed to join all necessary and indispensable parties.

5. Plaintiffs' damages, if any, were proximately caused by intervening and superseding acts or omissions of persons or entities other than Cedar Fair, L.P.

6. Plaintiff assumed the risk of any injuries or other damages allegedly suffered by her.

7. Plaintiffs' injuries or damages, if any, were proximately caused by the unforeseeable misuse of the product referred to in Plaintiffs' Complaint.

8. Plaintiffs' damages, if any, may be subject to the limitation of damages as set forth in the Ohio Revised Code.

9. Plaintiffs' claims may be barred by the statute of repose.

10. Plaintiffs' damages, if any, were caused by a modification of the product by third parties.

11. Plaintiffs have failed to mitigate their damages.

12. Plaintiffs' claims are barred by Ohio statutes, including the Ohio products liability statute.

13. Plaintiffs' claims are barred by the applicable statute of limitations and/or statute of repose.

14. Plaintiffs' claims alleging inadequate warnings and/or duties to warn Plaintiff are preempted by federal and/or state laws and regulations.

15. Defendant did not create and was not put on notice of the conditions claimed by Plaintiffs to have proximately caused Plaintiff to become injured.

16. Plaintiffs' claims are barred because Plaintiff voluntarily, primarily, directly, expressly and/or impliedly assumed the risk of injury.

17. Plaintiffs' claims are barred because Defendant acted, at all relevant times, in full compliance with industry standards.

18. Plaintiffs' claims for punitive and/or non-economic damages, if any, are subject to the statutory limits provided for by Ohio law.

19. Plaintiff has failed to state her alleged special damages with specificity as required under Civil Rule 9(G).

20. Plaintiffs' claims are barred or limited because Defendant states that any verdict or judgment obtained by Plaintiffs herein must be reduced by those amounts which already have, or will in the future, with reasonable certainty, indemnify him in whole or in part, for any past or future claimed economic loss, from any collateral source, including but not limited to insurance, workers' compensation and/or employee benefit programs.

21. Defendant states that Plaintiffs' claims are barred or limited pursuant to applicable statutory and common law regarding limitations of awards, caps on recovery, and set-offs.

22. Plaintiffs' claims of breach of warranty are barred by Plaintiffs' failure to attach the alleged contract in violation of Civ.R.10.

23. Defendant respectfully reserves the right to raise additional affirmative defenses as discovery progresses.

WHEREFORE, Defendant prays that the Plaintiffs' Complaint be dismissed with prejudice and that Plaintiffs be ordered to pay all costs and reasonable attorney fees sustained by this Defendant.

Respectfully submitted,

/s/ Justin D. Harris

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Counsel for Defendant
Cedar Fair, L.P.

JURY DEMAND

Defendant hereby demands a trial by jury on all issues triable of right by a jury.

Respectfully submitted,

/s/ Justin D. Harris

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Counsel for Defendant
Cedar Fair, L.P.

CERTIFICATE OF SERVICE

A copy of the foregoing **Answer of Defendant Cedar Fair, L.P. to Plaintiffs' Complaint**

has been forwarded via E- Mail on this 14th day of August, 2023 to the following:

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