

DRAFTING ENFORCEABLE SPORTS AND RECREATION WAIVER AND RELEASE AGREEMENTS

A written release and waiver of liability (an exculpatory agreement) is the most effective defense to a claim of negligence, and can bar a negligence claim altogether when it is drafted effectively. Like any contract, the legal rules of interpretation apply to an exculpatory agreement. California favors enforcement of exculpatory agreements to protect popular and lawful recreational activities but the substance of the agreement must be clear and unequivocal to be binding. The only California cases invalidating recreational exculpatory agreements have done so because of poor drafting techniques which resulted in an unclear and equivocal agreement.

Set forth herein is an overview of current drafting requirements developed in California case law, as well as other techniques for creating an effective and enforceable sports and recreation exculpatory agreement. Set forth in separate articles are (1) a review of the required contractual elements and other useful provisions for sports and recreation waiver and release agreements, and (2) an overview of plaintiffs' defenses to and means of avoiding the application of a sports and recreation exculpatory agreements.

I. Judicial Interpretation Authorities

No release is immune from attack. What follows below are some rules gleaned from a review of case law in California that directly addresses the issue of what constitutes a clear and unequivocal exculpatory agreement in the sports and recreation context.

“Drafters of releases always face the problem of steering between the Scylla of simplicity and the Charybdis of completeness. Apparently no release is immune from attack. If short and to the point, a release will be challenged as failing to mention the particular risk which caused a plaintiff's injury [citations] or as insufficiently comprehensive [citations]. It will be attacked as totally ineffective if a key word is placed in the caption for emphasis but not repeated in the text [citations], or if, despite unambiguous language, the word "negligence" is not used [citations]. If the drafter avoids these shortcomings by adding details and illustrations, the plaintiff invokes the doctrine *expressio unius exclusio alterius est* and characterizes the causative hazard as one not found among those listed in the release, but if the list ends with an inclusive term -- "and all other risks not specifically enumerated" -- it will be argued, under the principle *eiusdem generis*, that the risk encountered is nonetheless not assumed, because its nature is different from those listed. If the drafter strives to be comprehensive, the release is attacked as unduly lengthy [citations] but if he fits it onto a single page, the type size will be criticized as inadequate [citations] If the significance of the release is emphasized by its repetition in two documents, any variation in wording fuels a challenge.”¹

¹ *National and International Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 937-38.

A. Use 8-Point or Larger Typeface. Many courts have expressed concern that smaller typeface, purposefully or otherwise, obscures the intent of the document.² As noted in *Link*, there are numerous California Civil Code sections which regulate typeface size in contract provisions, generally requiring 8 - 10 point type, often in boldface, with headings required in up to 16-point boldface capital letters.³ But the *Link* rule is not absolute and California courts have held releases enforceable although printed in typeface smaller than eight-point.⁴

B. Avoid Convoluted/Lengthy Verbiage. Many courts have expressed concern that the use of jargon, convoluted terminology, and/or lengthy verbiage, purposefully or otherwise, obscures the intent of the document.⁵

C. Releasing Language Should be Conspicuous. “[T]he important operative language should be placed in a position which compels notice and must be distinguished from other sections of the documents.”⁶ But, in another case, the releasing language located on the reverse page of agreement not “inconspicuous” given that both sides of form advise the signer to “read and sign” the agreement, and reverse side of Agreement has four short paragraphs, each emphasizing the “liability limiting” nature of the agreement.⁷

D. Avoid Conflicting Provisions/Multiple Releases. If the significance of the

² *Celli v. Sports Car Club of America, Inc.* (1972) 29 Cal.App.3d 511 (smaller than six-point type); *Link v. National Associate for Stock Car Auto Racing, Inc.* (1984) 158 Cal.App.3d 138, 141 (“the five-and-one-half-point print is so small that one would conclude defendants never intended it to be read).

³ *Civil Code sections 1630* [eight- to ten-point: parking lots]; 1677 [eight-point bold red or ten-point bold: liquidated damages provision in realty purchase contract]; 1803.1 and 1803.2 [eight- to fourteen-point: retail installment sales]; 1812.85 [ten-point bold: health studio services]; 1812.205 and 1812.209 [ten- to sixteen-point bold: seller assisted marketing plan]; 1812.302 and 1812.303 [ten-point bold: membership camping]; 1812.402 [ten-point: disability insurance]; 1861.8 [ten-point bold: innkeepers]; 1916.5 and 1916.7 [ten-point bold: loan of money]; 2924c [twelve- to fourteen-point bold: mortgage default notice]; 2982.5 and 2983.2 [eight- to ten-point bold: automobile sales finance]; 2985.8, 2986.2 and 2986.4 [six- to ten-point bold: vehicle leasing act]; 3052.5 [ten-point bold: service dealer lien].

⁴ *Bennett v. United States Cycling Federation* (1987) 193 Cal.App.3d 1485, 1489; *Okura v. United States Cycling Federation* (1986) 186 Cal.App.3d 1462, 1468-69; *McAtee v. Newhall Land & Farming Co.* (1985) 169 Cal.App.3d 1031, 1033.)

⁵ *Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd.* (1983) 147 Cal.App.3d 309, 319-20 (147 word sentence; “over half the length of the Gettysburg Address”); *Link v. National Associate for Stock Car Auto Racing, Inc.* (1984) 158 Cal.App.3d 138, 141 (193 word sentence; “the lengthy fine print seems calculated to conceal and not to warn the unwary”).

⁶ *Link v. National Association for Stock Car Auto Racing, Inc.* (1984) 158 Cal.App.3d 138, 142.

⁷ *Westlye v. Look Sports, Inc.* (1993) 17 Cal.App.4th 1715, 1732.

release is emphasized by its repetition in two documents, any variation in wording fuels a challenge.⁸

E. Expressly Release/Waive “Negligence.” Although California courts have validated releases/waivers that do not expressly specify release from “negligence”,⁹ it is safe practice to include a specific release from “negligence”.¹⁰

F. Avoid Legalese. Although certain legal terms such as “negligence” and “release” must inevitably be included for the sake of clarity, try to avoid unnecessary legal jargon as it causes, or creates the appearance of, confusion.¹¹

G. Prominently display the word “release.” Release invalidated in part because the word “release” (or its synonyms) only found in one location, in the title of the document.¹²

II. General Principles of Exculpatory Contract Interpretation

A. Court determines clarity of provision

The determination of whether a written contract provision is clear and unambiguous is a question of law for the court, absent legitimate conflicting parol evidence.¹³

⁸ *Powers v. Superior Court* (1987) 196 Cal.App.3d 318, 32; *Link v. National Association for Stock Car Auto Racing, Inc.* (1984) 158 Cal.App.3d 138, 143 (“use of two release agreements framed in different language created an ambiguous, confusing situation which must be resolved against the defendants.”) *But cf.*, *Westlye v. Look Sports, Inc.* (1993) 17 Cal.App.4th 1715, 1731-32 (provisions not found to conflict); *Powers v. Superior Court (Hoffman)* (1987) 196 Cal.App.3d 318 (differing language of two separate writings found not to conflict).

⁹ *Saenz v. Whitewater Voyages, Inc.* (1990) 226 Cal.App.3d 758

¹⁰ *Celli v. Sports Car Club of America, Inc.* (1972) 29 Cal.App.3d 511, 519 (pit pass did not provide for release of defendant from its own negligence); *Madison v. Superior Court* (1988) 203 Cal.App.3d 589, 597 (release included waiver of defendant’s “negligence” rendering it clear and unequivocal even if “assumption of risk” language not used) but cf. *Scroggs v. Coast Community College District* (1987) 193 Cal.App.3d 1399, 1404 (release not clear and unequivocal since it did not include language indicating decedent intended to assume all risk of the activity or a waiver of defendant’s negligence). See also, *Heil Valley Ranch, Inc. v. Simkin* (1989) 784 P.2d 781 (release does not have to use the word ‘negligence’ in order to be effective); *Hine v. Dayton Speedway Corp.* (1969) 20 OhioApp.2d 185, 252 N.E.2d 648 and *Swartzentruber v. Wee-K Corp.* (1997) Ohio App.4th, 1997 W.L. 28537 (need not use the word “negligence” when release encompasses all causes of action and released defendants from liability for all injuries); *Zimmer v. Mitchell & Ness* (1978) 385 A.2d 437 (PA).

¹¹ *Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd.* (1983) 147 Cal.App.3d 309, 319-20 (significance of “save harmless and keep indemnified” language could not be readily understood by a lay person).

¹² *Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd.* (1983) 147 Cal.App.3d 309, 319-20.

¹³ *Allabach v. Santa Clara County Fair Association, Inc.* (1996) 46 Cal.App.4th 1007,1013;

B. California's Policy to Enforce Clear Exculpatory Agreements

The rules of contract interpretation require a close reading of the terms and provisions of the contract. However, the courts have recognized the devastating cost of litigation and accordingly stated a policy of enforcement of clearly written exculpatory agreements to foster recreational activities. "In cases arising from hazardous recreational pursuits, to permit released claims to be brought to trial defeats the purpose for which releases are requested and given, regardless of which party ultimately wins the verdict. Defense costs are devastating. Unless courts are willing to dismiss such actions without trial, many popular and lawful recreational activities are destined for extinction."¹⁴ Accordingly, "to be effective, a release need not achieve perfection; only on Draftsman's Olympus is it feasible to combine the elegance of a trust indenture with the brevity of a stop sign."¹⁵

C. General Policy of Strict Construction Against Drafter

The courts do not favor attempts to contract to absolve liability or secure exemption for one's personal negligence, and construes such provisions strictly against the drafter. Accordingly, the drafter must select words and/or terms that clearly and explicitly express that this was the intent of the parties.¹⁶

D. General Policy of Strict Construction of Exculpatory Agreements

An agreement exculpating the drafter from liability for his or her own future negligence must clearly and explicitly express that this is the intent of the parties.¹⁷

III. Conclusion

An exculpatory agreement, such as a waiver or release from liability, is a contract and subject to the rules of contract interpretation. Therefore the language of the contract is critical in determining its validity. The only California cases that have invalidated sports and recreation

Hulsey v. Elsinore Parachute Center (1985) 168 Cal.App.3d 333, 340; *Paralift, Inc. v. Superior Court* (1993) 23 Cal.App.4th 748, 754.

¹⁴ *National and International Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 938.

¹⁵ *National and International Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 938.

¹⁶ *Sproul v. Cuddy* (1955) 131 Cal.App.2d 85, 95.

¹⁷ *Randas v. YMCA of Metropolitan Los Angeles* (1992) 17 Cal.App.4th 158,162; *Saenz v. Whitewater Voyages, Inc.* (1990) 226 Cal.App.3d 758, 226; *Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd.* (1983) 147 Cal.App.3d 309, 314-15, 317-18.

waiver or release agreements in negligence actions have done so on the ground that the waiver and/or release agreement fails to clearly and unequivocally express the parties' intent.

This is a general summary and overview of the current state of the law. Changes occur from time to time in this specialized practice area. Experienced counsel should be consulted with regard to the drafting of an enforceable sports and recreation exculpatory agreement.

An appendix of release and waiver agreements published in California case law is attached hereto. Some of these agreements were found to be enforceable under the specific factual circumstances presented in the case, and some were not. PLEASE NOTE that different courts interpret contracts differently under different factual scenarios and that these agreements should serve as guideposts and references, and not as blueprints.

The required elements for contract formation, and other useful contractual provisions to be included in an exculpatory agreement, are the topic of a separate article. Common defenses raised by a plaintiff and alternate theories of liability against a business that may preclude the application of the defense of express assumption of the risk are covered in a separate article.

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About Howie & Smith, LLP

Howie & Smith, LLP is a full service AV-rated firm providing effective and efficient civil litigation and legal counseling services to clients in a broad range of businesses with an emphasis on sports and recreation commercial enterprises and products.

Our practice includes trial and appellate advocacy, client counseling, and transactional services. The firm and its lawyers hold active memberships with the American Bar Association Product Liability and Torts and Insurance Practice sections, Association of Defense Counsel, the Defense Research Institute, local bar associations, and the San Mateo Chamber of Commerce.

APPENDIX

Release and Waiver of Liability and Indemnity Agreement

In Consideration of being permitted to enter the YMCA for any purpose, including, but not limited to observation, use of facilities or equipment or participation in any way, the undersigned . . . hereby acknowledges, agrees and represents that he or she has or immediately upon entering will, inspect such premises and facilities. It is further warranted that such entry in the YMCA for observation, participation or use of any facilities or equipment constitutes an acknowledgment that such premises and all facilities and equipment thereon have been inspected and that the undersigned finds and accepts same as being safe and reasonably suited for the purposes of such observation or use.

I[n] Further Consideration of Being Permitted to Enter the YMCA for Any Purpose Including, but Not Limited to Observation, Use of Facilities or Equipment, or Participation in Any Way, the Undersigned Hereby Agrees to the Following:

The Undersigned Hereby Releases, Waives, Discharges and Covenants Not to Sue the YMCA . . . (hereinafter referred to as 'releasees') from all liability to the undersigned . . . for any loss or damage, and any claim or demands therefor on account of injury to the person or property or resulting in death of the undersigned, whether caused by the negligence of the releasees or otherwise, while the undersigned is in, upon, or about the premises or any facilities or equipment therein.

The Undersigned Hereby Agrees to Indemnify and Save and Hold Harmless the releasees and each of them from any loss, liability, damage or cost they may incur due to the presence of the undersigned in, upon or about the YMCA premises or in any way observing or using any facilities or equipment of the YMCA whether caused by the negligence of the releasees or otherwise.

The Undersigned Hereby Assumes Full Responsibility for and Risk of Bodily Injury, Death or Property Damage due to the negligence of releasees or otherwise while in, about or upon the premises of the YMCA and/or while using the premises or any facilities or equipment hereon.

The Undersigned further expressly agrees that the foregoing Release, Waiver and Indemnity Agreement is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

The Undersigned Has Read and Voluntarily Signs the Release and Waiver of Liability and Indemnity Agreement, and further agrees that no oral representations, statements or inducement apart from the foregoing written agreement have been made.

I Have Read This Release

DATE:

Signature of Applicant

Randas v. YMCA of Metropolitan Los Angeles (1993) 17 Cal.App.4th 158, 162-63 (enforceable)
YMCA of Metropolitan Los Angeles v. Superior Court (Clark) (1997) 55 Cal.App.4th 22, 26 n.1
(Enforceable release)

Agreement and Release of Liability

I, _____, have voluntarily enrolled in a ski lesson offered by Snow Summit, Inc. I am aware that my participation in the ski lesson and the Sport of Skiing Involves Numerous Risks of Injury, including, but not limited to, falls, loss of control, collisions with other skiers and natural and man-made objects and I Freely Assume Those Risks.

As lawful consideration for being permitted to enroll in the ski lesson, I Agree to Release From Any Legal Liability and Agree Not to Sue Snow Summit, Inc., their owners, officers, directors, members, agents and employees, for any and all injuries caused by or resulting from any participation in the ski lesson or the sport of skiing whether or not such injury or death was caused by alleged negligence.

I Am Aware That This Contract Is Legally Binding and That I Am Releasing Legal Rights by Signing It.

.. /s/

NAUI WAIVER, RELEASE AND INDEMNITY AGREEMENT

For and in consideration of permitting (1) Ken Salejmanajie to enroll and participate in diving activities and class instruction of skin and/or scuba given by (2) Norman Madison/Westchester YMCA, in the City of Los Angeles, County of Los Angeles, and State of California, beginning on the 29 day of July, 1986, the Undersigned hereby voluntarily releases, discharges, waives and relinquishes any and all actions or causes of action for personal injury, property damage or wrongful death occurring to him/herself arising as a result of engaging or receiving instructions in said activity or any activities incidental thereto wherever or however the same may occur and for whatever period said activities or instructions may continue, and the Undersigned does for him/herself, his/her heirs, executors, administrators and assigns hereby release, waive, discharge and relinquish any action or causes of action, aforesaid, which may hereafter arise for him/herself and for his/her estate, and agrees that under no circumstances will he/she or his/her heirs, executors, administrators and assigns prosecute, present any claim for personal injury, property damage or wrongful death against (2) Norman Madison/Westchester YMCA or any of its officers, agents, servants or employees for any of said causes of action, whether the same arise by the negligence of any of said persons, or otherwise. IT IS THE INTENTION OF (1) BY THIS INSTRUMENT, TO EXEMPT AND RELIEVE (2) Norman Madison/Westchester YMCA FROM LIABILITY FOR PERSONAL INJURY, PROPERTY DAMAGE OR WRONGFUL DEATH CAUSED BY NEGLIGENCE.

The Undersigned, for him/herself, his/her heirs, executors, administrators or assigns agrees that in the event any claim for personal injury, property damage or wrongful death shall be prosecuted against (2) Norman Madison/Westchester YMCA he/she shall indemnify and save harmless the same (2) Norman Madison/Westchester YMCA from any and all claims or causes of action by whomever or wherever made or presented for personal injuries, property damage or wrongful death.

The Undersigned acknowledges that he/she has read the foregoing two paragraphs, has been fully and completely advised of the potential dangers incidental to engaging in the activity and instructing of skin and/or scuba diving, and is fully aware of the legal consequences of signing the within instrument.

WITNESS:

Signature of Student

DATED: 7-29-86

Signature of Parent or Guardian - where applicable

-- THIS FORM IS TO BE RETURNED BY SECOND COURSE MEETING --

Madison v. Superior Court (1988) 203 Cal.App.3d 589, 594, 603 (enforceable release)
VOLUNTARY RELEASE - ASSUMPTION OF RISK AND INDEMNITY AGREEMENT

Track Name Date 1-15-84

Each undersigned person requests and is granted permission (1) to enter the **RESTRICTED AREA**, (2) to participate as driver, crew or assistant in racing events, (3) to compete for money, prizes, recognition or reward, (4) to be covered by participants' hospitalization insurance, if applicable, as limited by the master insurance policy (all collectively herein called "permissive entry").

In consideration of "permissive entry" to the restricted area, which is the area from which admission to the general public is restricted, which includes but is not limited to the pit area, racing surface, infield, adjacent walkways, concessions, and other appurtenances, I (each of the undersigned) for myself, my personal representatives, heirs, next of kin, spouse and assigns, **DO HEREBY:**

1. RELEASE, DISCHARGE AND COVENANT NOT TO SUE the track operators, track owners, land owners, racing association, and each of them, their officers, agents and employees (all hereinafter collectively referred to as "releases from any and all claims and liability arising out of strict liability or ordinary negligence of releases or any other participant which causes the undersigned injury, death, damages or property damage. I hereby covenant to hold releases harmless and indemnify releases for any claim judgment or expense releases may incur arising out of my activities [***10] or presence in the restricted area.

2. UNDERSTAND that my entry into the restricted area and/or participation in racing events contains **DANGER AND RISK OF INJURY OR DEATH**, that conditions of the racing surface change from time to time and may become more hazardous, and that there is **INHERENT DANGER** in racing which I appreciate and voluntarily assume, because I choose so to do. I have observed many races of the type that I seek to participate in, I have inspected the racing surface, access roads, shoulders, equipment, barriers or lack thereof, lighting or lack thereof, and the weather conditions, I further know that other contestants and participants pose a danger to me, nevertheless, I **VOLUNTARILY ELECT TO ACCEPT ALL RISKS** connected with my entry into the restricted area and/or participation in any racing events.

3. ACKNOWLEDGE that I am aware of all track and equipment safety regulations and I have complied with each regulation. If I have failed so to do, I **ASSUME ALL RISK** for myself and assume all liability to others for such failure, and I hereby **RELEASE** releases for any failure in inspecting my vehicle or others. I am not an agent, servant or employee of releases and [***11] no oral representations or inducements have been made to me to sign this agreement. If any portion of this agreement is held invalid, it is agreed that the balance thereof shall continue in full legal force and effect.

4. AGREE that this agreement shall apply to any incident, injury, accident or death occurring at the captioned track on the above date, and to any incident, injury, accident or death occurring within a period of one (1) year after the execution of this agreement.

I HAVE READ THIS DOCUMENT. I UNDERSTAND IT IS A RELEASE OF ALL CLAIMS.

I UNDERSTAND I ASSUME ALL RISK INHERENT IN RACING.

I VOLUNTARILY SIGN MY NAME EVIDENCING MY ACCEPTANCE OF THE ABOVE PROVISIONS.

AGREEMENT & RELEASE OF LIABILITY

I, _____, HEREBY ACKNOWLEDGE that I have voluntarily applied to participate in parachuting instruction and training, culminating in a parachute jump at the premises of Elsinore Parachute Center.

I AM AWARE THAT PARACHUTE INSTRUCTION AND JUMPING ARE HAZARDOUS ACTIVITIES, AND I AM VOLUNTARILY PARTICIPATING IN THESE ACTIVITIES WITH KNOWLEDGE OF TH DANGER INVOLVED AND HEREBY AGREE TO ACCEPT ANY AND ALL RISKS OF INJURY OR DEATH. PLEASE INITIAL. _____

AS LAWFUL CONSIDERATION for being permitted by Elsinore Parachute Center or one of its affiliated organizations to participate in these activities and use their facilities, I hereby agree that I, my heirs, distributees, guardians, legal representatives and assigns will not make a claim against, sue, attach the property of, or prosecute Elsinore Parachute Center, Parachutes, Inc., and or one of its affiliated organizations, and Aurora Leasing Company, and Orange Sport Parachuting Center, Inc., and Elsinore Sport Parachuting Center, Inc., and Lakewood Sport Parachuting Center, Inc. For injury or damage resulting from the negligence or other acts, howsoever caused, by any employee, agent or contractor of Elsinore Parachute Center or its affiliates, as a result of my participation in parachuting activities. In addition, I hereby release and discharge Elsinore Parachute Center, Parachutes, Inc., Skydive, Skydive II, and its affiliated organization, and Aurora Leasing Company, and Orange Sport Parachuting Center, Inc., and Elsinore Sport Parachuting Center, Inc., and Lakewood Sport Parachuting Center, Inc. from all actions, claims or demands, I, my heirs, distributees, guardians, legal representatives, or assigns now have or may hereafter have for injury or damage resulting from my participation in parachuting activities.

I HAVE CAREFULLY READ THIS AGREEMENT AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT THIS IS A RELEASE OF LIABILITY AND A CONTRACT BETWEEN MYSELF AND ELSINORE PARACHUTE CENTER AND/OR ITS AFFILIATED ORGANIZATIONS AND SIGN IT ON MY OWN FREE WILL.

DATED:

WITNESS _____

SIGNATURE _____

DATE _____

Hulsey v. Elsinore Parachute Center (1985) 168 Cal.App.3d 333, 348 (enforceable release)

PLEASE READ & SIGN THIS AGREEMENT **IT RELEASES US FROM LIABILITY**

The undersigned accepts for use **as is** the equipment listed on this form and accepts full responsibility for the care of this equipment while it is in his or her possession, and agrees to reimburse the Klein's Ski Shop for any loss or damage other than reasonable wear resulting from use.

It is understood the bindings furnished herewith are bindings designed to reduce the risk or degree of injuries from falling, and that despite the fact that adjustments are according to manufacturers recommendations, it is understood that the bindings will not release under ALL circumstances and are no guarantee for the user's safety.

It is understood how the bindings works. Do not change any binding adjustments, come back to the rental shop for free assistance. The undersigned acknowledges that there is an inherent risk of injury in the sport of skiing, and use of any ski equipment, and expressly assumes the risks for any damages to any persons or property resulting from the use of this equipment.

It is furthermore expressly agreed that the undersigned shall hold the Klein's Ski Shop and/or its employees, the Sugar Bowl Corporation and/or its employees harmless and release them from any and all responsibility or liability for damages and injury to the equipment user or to any person or property whether resulting from the negligence (active or passive/past, present or future) or whether resulting from the selection, inspection or adjustment of this equipment (active or passive/past, present or future) by the Klein's Ski Shop and/or its employees or whether resulting from the use of this equipment by the user.

Signature of person responsible for equipment

Westlye v. Look Sports, Inc. (1993) 17 Cal.App.4th 1715, 1755 (enforceable release)

Release and Waiver of Liability. Assumption of Risk and Indemnity Agreement.

In consideration of being permitted to compete, officiate, observe, work for, or participate in any way in the Event(s) or being permitted to enter for any purpose any Restricted Area (defined as any area requiring special authorization, credentials, or permission to enter or any area to which admission by the general public is restricted or prohibited), Each of the Undersigned, for himself, his personal representative, heirs, and next of kin:

2. Hereby Releases, Waives, Discharges and Covenants Not to Sue [promoters, participants, etc. (releasees)] . . . for Any and All Loss or Damage, and Any Claim or Demands Therefor on Account of Injury . . . Arising out of or Related to the Event(s), Whether Caused by the Negligence of the Releasees or Otherwise.

3. Hereby Agrees to Indemnify and Save and Hold Harmless the Releasees and each of them From Any Loss, Liability, Damage, or Cost they may incur arising out of or related to the Event(s) Whether Caused by the Negligence of the Releasees or Otherwise.

4. Hereby Assumes Full Responsibility for Any Risk of Bodily Injury, Death or Property Damage arising out of or related to the Event(s) whether caused by the Negligence of Releasees or otherwise.

5. Hereby acknowledges that the Activities of the Event(s) are Very Dangerous and involve the risk of serious injury and/or death and/or property damage. Each of the Undersigned also expressly acknowledges that Injuries Received May Be Compounded or Increased by Negligent Rescue Operations or Procedures of the Releasees.

6. Hereby agrees that this Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement extends to all acts of negligence by the Releasees, Including Negligent Rescue Operations and is intended to be as broad and inclusive as is permitted by the laws of the Province or State in which the Event(s) is/are conducted and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I Have Read This Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement, Fully Understand Its Terms, Understand That I Have Given Up Substantial Rights by Signing It, and Have Signed It Freely and Voluntarily Without Any Inducement, Assurance, or Guarantee Being Made to Me and Intend My Signature to Be a Complete and Unconditional Release of All Liability to the Greatest Extent Allowed by Law.

Allabach v. Santa Clara County Fair Association, Inc. (1996) 46 Cal.App.4th 1007, 1014-15 (enforceable release)

Southern California Cycling Federation Standard Athlete's Entry Blank and Release Form

In consideration of the acceptance of my application for entry in the above event, I hereby waive, release and discharge any and all claims for damages for death, personal injury or property damage which I may have, or which may hereafter accrue to me, as a result of my participation in said event. This release is intended to discharge in advance the promoters, the sponsors, the U.S.C.F., the S.C.C.F., the promoting clubs, the officials, and any involved municipalities or other public entities (and their respective agents and employees), from and against any and all liability arising out of or connected in any way with my participation in said event, even though that liability may arise out of negligence or carelessness on the part of the persons or entities mentioned above.

I further understand that serious accidents occasionally occur during bicycle racing; and that participants in bicycle racing occasionally sustain mortal or serious personal injuries; and/or property damage, as a consequence thereof. Knowing the risks of bicycle racing, nevertheless, I hereby agree to assume those risks and to release and hold harmless all of the persons or entities mentioned above who (through negligence or carelessness) might otherwise be liable to me (or my heirs or assigns) for damages.

It is further understood and agreed that this waiver, release and assumption of risk is to be binding on my heirs and assigns.

I agree to accept and abide by the rules and regulations of the United States Cycling Federation.

Bennett v. United States Cycling Federation (1987) 193 Cal.App.3d 1485, 1487 (not enforceable)

Okura v. United States Cycling Federation (1986) 186 Cal.App.3d 1462 (enforceable)

"Pit Pass

"Deposit at gate; not good if detached
Release of Liability and Agreement"

Holder "releases, re-mises and forever discharges San Francisco Region, Sports Car Club of America, its officers, governors, members, agents and employees and all participants in the above mentioned event, and any individual, group or association or corporation, if any, sponsoring the event or owning property on which the event is held, and each of them, and the heirs assigns, administrators and executors of each of them of and from any and every claim, demand, action or right of action whatsoever kind or nature, in law or in equity, arising from or by reason of any injury to or death of any person, or any damage to or destruction of property resulting or alleged to result from or arise out of any accident or other occurrence during or in connection with the foregoing event and/or any practice session in connection therewith, and/or any use of the course and/or facilities provided for such event."

Celli v. Sports Car Club of America, Inc. (1972) 29 Cal.App.3d 511, 525 (release not enforced)

Release of Liability

Entrants Are Required to Read and Sign the Following Declaration

In consideration of the acceptance of this entry or of my being permitted to take part in this event, I, for myself, my heirs, executors, administrators, successors and assigns [*sic*] agree to save harmless and keep indemnified SNORE, Ltd., its [*sic*] individual members and their respective agents, officers, officials, servants and representatives, the owner, curators, lessors, agencies, (including, but not limited to Federal, State, County and City), or managers of any lands upon which this event takes place from and against all actions, claims, costs and expenses and demands in respect of death, injury, loss of or damage to my person or property, howsoever caused, arising out of or in connection with my entry or my participation in this event, and notwithstanding that the same may have been contributed, to, occasioned by, or directly caused by the negligence of the said bodies, their agents, officials, servants or representatives. I declare that the drivers possess the standard of competence [*sic*] necessary and are physically fit for an event of the type to which this entry relates and the vehicle entered is suitable and road worthy for the event.

Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd. (1983) 147 Cal.App.3d 309, 312 (not enforceable)

THIS IS A RELEASE OF LIABILITY/REQUEST AND RELEASE OF LIABILITY

Each of the undersigned hereby request permission to enter upon the premises We each have inspected the track premises, know the risks and dangers inherent in entering the premises and participating in, observing the qualifying, and practicing for motor racing events held on race premises, realize that conditions may become more hazardous while each of us are on the premises, that unanticipated and unexpected dangers may arise during said events. We each enter the premises voluntarily and assume every risk for loss, damage or injury

[Each] of the undersigned, for himself, his heirs, next of kin, personal representatives and assigns hereby Releases, Remises and Forever Discharges and Agrees to Save and Hold Harmless and Indemnify Nascar and . . . the Promoters . . . From all Liability Claims, Demands, Causes of Action and Possible Causes of Action Whatsoever, Arising Out of or Related to Any Loss . . . That May Be Sustained by Our Respective . . . Negligence"

Pit Pass (kept by plaintiff)

". . . hereby release Speedway operator, promoter, NASCAR and any other person or persons connected with this race from all liability for personal injury or property damage while preparing, practicing or participating in this race meet. I am not an employee but a contestant and independent contractor competing for prize money under NASCAR rules, regulations, and specifications. I am a duly licensed member of NASCAR, subject to rules and regulations of NASCAR. This permit issued subject to the terms and conditions of 'release' executed by NASCAR members to whom this permit is issued"

Release and Assumption of Risk Agreement

"I am aware that certain risks and dangers may occur on any river trip with Whitewater These risks include, but are not limited to, hazards of and injury to person and property while traveling in rafts on the river, accident or illness in remote places without medical facilities, the forces of nature

". . . I hereby assume all of the above risks and, except in the case of gross negligence, will hold Whitewater . . . harmless from any and all liability, actions, causes of action, debts, claims, and demands of every kind and nature whatsoever which I now have or which may arise out of or in connection with my trip or participation in any activities with Whitewater"

[The agreement further stated it operated as a release and assumption of risk for his heirs.]

Saenz v. Whitewater Voyages, Inc. (1990) 226 Cal.App.3d 758, 763 n.7 (enforceable)