

**FORMATION OF SPORTS AND RECREATION WAIVER AND RELEASE  
AGREEMENTS IN CALIFORNIA**

A written release and waiver of liability is a contract between the sports and/or recreation facility and its customer, and as such the legal elements required for contract formation must be included. Failure to create a contract will nullify the effect of the release and waiver. Set forth herein is an overview of current authorities regarding the required elements of contract formation as well as a discussion of other useful contract provisions.

**I. Releases Are Contracts That Require Conformity To The Following Legal Rules.**

**A. Name the Parties Released**

A contract should clearly identify the parties to the agreement. Include the client's name in the release, not just a space for the client's signature. Most releases have a signature line but should also include a blank space where the client's name may be printed and blanks for the client to initial key provisions. Also, be sure to name all entities that are being released, including commercial sponsors, advertisers, the principal company along with its officers, principals, directors, shareholders, agents, employees, subcontractors, etc.).<sup>1</sup> Some agreements have a space for a witness to sign.

**B. Customize the Agreement**

Specific language demonstrates agreement by the person signing the agreement. Include a blank space in the agreement not only for the parties' names but also for the date and location of the activity, and any other specific information regarding the activity such as the names of any guides, specifics of a route taken/track used, identification of equipment used, etc.<sup>2</sup> This renders the Agreement less "adhesive". However, do not include blank spaces for this customizing information if it will not be completed.

**C. Establish a Valuable Exchange (Consideration)**

"Consideration" is a required element in contract formation; it is the acknowledgment that each party to the contract gives something of value in exchange for the benefit received under the contract. For the client, it is the cost of the service provided. For the company, it is the client's use of the sports or recreational service provided. The agreement should express this consideration. The requirement is usually met by stating that "In consideration for the [service

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<sup>1</sup> *Allan v. Snow Summit, Inc.* (1996) 51 Cal.App.4th 1358, 1362-63; *Hulsey v. Elsinore Parachute Center* (1985) 168 Cal.App.3d 333, 348.)

<sup>2</sup> *See, e.g., Kurashige v. Indian Dunes, Inc.* (1988) 200 Cal.App.3d 606, 616; *International and National Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 940.

provided], client/participant agrees . . . .”<sup>3</sup>

In arguing the *Allabach* case, *supra*, before the court, we were impressed by the court’s concern for freedom to engage in recreational activity.

#### **D. Scope of Release Should Identify Both the General Risk and Identify the Specific Risk in the Activity**

Use all-inclusive language to describe the scope of the exculpatory agreement but add a clause “including but not limited to” the specific inherent risks of the particular sport/recreational activity. Otherwise, you are leaving it up to the court to define the inherent risks of the sport/activity. This is one way to discover the inherent risks in the litigation process. For example, the same release was found valid in one case and invalid in another due to the judicial interpretations of the scope of the release. In *Okura*, the plaintiff’s injuries resulted from loose debris on a bicycle racecourse, which the court found was a reasonably foreseeable hazard inherent in the sport that was therefore covered by the release agreement.<sup>4</sup> In *Bennett*, the plaintiff’s injuries were caused by a collision with an automobile on the racecourse which was not found to be a reasonably foreseeable hazard (not inherent in the sport) and therefore outside the scope of the release.<sup>5</sup>

In obtaining a summary judgment on behalf of a cycling association, we were successful in arguing the extensive scope of known risks in high-speed cycling.

The scope of the release should be sufficiently broad to cover the odd and unexpected incident as well as anticipated injuries. In *Leon v. Family Fitness Center (#107), Inc.*, a release did not protect a health club from liability for a collapsed sauna bench. The court held that the purpose of the release was to protect the club from liability relating to members’ participation in sports, exercise, or fitness activities.<sup>6</sup> But in contrast in California, *Saenz v. Whitewater*

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<sup>3</sup> *Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd.* (1983) 147 Cal.App.3d 309, 312; *Hulsey v. Elsinore Parachute Center* (1985) 168 Cal.App.3d 333, 348; *Okura v. United States Cycling Federation* (1986) 186 Cal.App.3d 1462; *Bennett v. United States Cycling Federation* (1987) 193 Cal.App.3d 1485, 1487; *Madison v. Superior Court* (1988) 203 Cal.App.3d 589, 594, 603; *Kurashige v. Indian Dunes, Inc.* (1988) 200 Cal.App.3d 606, 616; *International and National Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 940; *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 162-63; *Allabach v. Santa Clara County Fair Association, Inc.* (1996) 46 Cal.App.4th 1007, 1014-15; *Allan v. Snow Summit, Inc.* (1996) 51 Cal.App.4th 1358, 1362-63; *YMCA of Metropolitan Los Angeles v. Superior Court (Clark)* (1997) 55 Cal.App.4th 22, 26 n.1.

<sup>4</sup> *Okura v. United States Cycling Federation* (1986) 186 Cal.App.3d 1462, 1468-69.

<sup>5</sup> *Bennett v. United States Cycling Federation* (1987) 193 Cal.App.3d 1485, 1489.

<sup>6</sup> *Leon v. Family Fitness Center (#107), Inc.* (1998) 61 Cal.App.4th 1227; *Cf. Neumann v. Gloria Marshall Figure Salon* (1986) 149 Ill.App.3d 824 (release specifically mentioned ‘injury while using any equipment’); *Skotak*

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*Voyages, Inc.* holds that a release was enforceable to bar the lawsuit of the parents of the (drowned) decedent although it did not expressly state the risk of death or drowning.<sup>7</sup>

Lastly, always include a release and waiver of “negligence.” In *Celli*, the court found that the release was not effective to “absolve the defendants from the consequences of their own negligence as the express words used did not specifically and clearly declare this result.”<sup>8</sup>

## **II. Terms and Conditions Other Than General Contract Requirements Can Make or Break A Waiver and Release Situation**

### **A. An Indemnification Clause Will Make A Potential Litigant Think Twice Before Challenging a Proper Release**

An indemnification clause will deter a potential plaintiff from “testing” the validity of the Agreement with a lawsuit given that a loss will require him to pay defendant’s litigation costs. An indemnification clause may also protect a defendant against lawsuits brought by third parties arising from plaintiff’s injuries.<sup>9</sup>

### **B. The Release Should Expressly Acknowledge the “Assumption of Risk” in the Activity**

A California court has held that a release need not anticipate the exact accident and injury if there is an express agreement to assume “all risk.”<sup>10</sup> A court may find that a particular risk is not “inherent” in a sports or recreational activity, however, and it is good practice to include an express statement that the risks inherent in the activity are assumed.<sup>11</sup>

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v. *Vic Tanny Int’l* (1994) 203 Mich.App. 616 (negligent training of staff just as foreseeable as slipping and falling).

<sup>7</sup> *Saenz v. Whitewater Voyages, Inc.* (1990) 226 Cal.App.3d 758

<sup>8</sup> *Celli v. Sports Car Club of America, Inc.* (1972) 29 Cal.App.3d 511, 521.

<sup>9</sup> See, e.g., *YMCA of Metropolitan Los Angeles v. Superior Court (Clark)* (1997) 55 Cal.App.4th 22, 26 n.1; *Allabach v. Santa Clara County Fair Association, Inc.* (1996) 46 Cal.App.4th 1007, 1014-15; *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 162-63; *International and National Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 940; *Madison v. Superior Court* (1988) 203 Cal.App.3d 589, 594, 603; *Kurashige v. Indian Dunes, Inc.* (1988) 200 Cal.App.3d 606, 616.

<sup>10</sup> *Coates v. Newhall Land & Farming, Inc.* (1987) 191 Cal.App.3d 1.

<sup>11</sup> See, e.g., *YMCA of Metropolitan Los Angeles v. Superior Court (Clark)* (1997) 55 Cal.App.4th 22, 26 n.1; *Allabach v. Santa Clara County Fair Association, Inc.* (1996) 46 Cal.App.4th 1007, 1014-15; *Allan v. Snow Summit, Inc.* (1996) 51 Cal.App.4th 1358, 1362-63; *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 162-63; *Westlye v. Look Sports, Inc.* (1993) 17 Cal.App.4th 1715, 1755; *Saenz v. Whitewater Voyages, Inc.* (1990) 226 Cal.App.3d 758, 763 n.7; *International and National Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 940; *Kurashige v. Indian Dunes, Inc.* (1988) 200 Cal.App.3d 606, 616; *Bennett v. United States Cycling Federation* (1987) 193 Cal.App.3d 1485, 1487; *Okura v. United States Cycling*

### **C. Releases Should Determine How Potential Claims Are To Be Resolved; By Mediation or Arbitration or Otherwise**

Even despite a strong exculpatory agreement, a client can still bring a lawsuit in the hope that a company or its insurer will simply pay to avoid the cost of defense through summary judgment. Therefore, an agreement should include language that establishes the venue in which a case may be brought, allows for attorneys' fees for the prevailing party, allows severability for any provision found to be invalid while the remaining provisions remain enforceable, and requires that claims be submitted to alternative dispute resolution such as mediation or binding arbitration.

### **D. The Release Should State That the Agreement Has Been Read and Understood**

Include language indicating that the client has read and understood agreement.<sup>12</sup>

### **III. Releases Must Be Drafted Clearly and Make Definite Statements or They Will NOT Be Effective**

Exculpatory agreements are subject to the rules of contract interpretation, and therefore the language of the agreement is critical in determining its validity. The only California cases that have invalidated sports and recreation waiver or release agreements in negligence actions have done so on the ground that the waiver/release agreement fails to clearly and unequivocally express the parties' intent.<sup>13</sup> For more details, please refer to the article regarding Effective Drafting Methods for Exculpatory Agreements.

### **IV. Conclusion**

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

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*Federation* (1986) 186 Cal.App.3d 1462; *Hulsey v. Elsinore Parachute Center* (1985) 168 Cal.App.3d 333, 348; *Link v. National Association for Stock Car Auto Racing, Inc.* (1984) 158 Cal.App.3d 138, 144 (release unenforceable for other reasons).

<sup>12</sup> *Hulsey v. Elsinore Parachute Center* (1985) 168 Cal.App.3d 333, 348; *Kurashige v. Indian Dunes, Inc.* (1988) 200 Cal.App.3d 606, 616; *Madison v. Superior Court* (1988) 203 Cal.App.3d 589, 594, 603; *International and National Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 940; *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 162-63; *Allabach v. Santa Clara County Fair Association, Inc.* (1996) 46 Cal.App.4th 1007, 1014-15; *YMCA of Metropolitan Los Angeles v. Superior Court (Clark)* (1997) 55 Cal.App.4th 22, 26 n.1.

<sup>13</sup> *Bennett v. United States Cycling Federation* (1987) 193 Cal.App.3d 1485; *Scroggs v. Coast Community College District* (1987) 193 Cal.App.3d 1399; *Link v. National Associate for Stock Car Auto Racing, Inc.* (1984) 158 Cal.App.3d 138; *Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd.* (1983) 147 Cal.App.3d 309; *Celli v. Sports Car Club of America, Inc.* (1972) 29 Cal.App.3d 511.

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with regard to the effective and binding formation of a 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.

Drafting techniques to promote effective interpretation of an exculpatory (waiver and release) agreement are covered in a separate article. Common defenses raised by plaintiffs and alternate theories of liability that may preclude the application of the defense of express assumption of the risk are covered in a separate article.

HOWIE & SMITH, L.L.P.  
28 East Third Avenue, Suite 200  
San Mateo, CA 94401  
(650) 685-9300  
(650) 685-3967

### **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



YMCA of Metropolitan Los Angeles

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/

*Allan v. Snow Summit, Inc.* (1996) 51 Cal.App.4th 1358, 1362-63 (valid/enforceable release)

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.**

*International and National Brotherhood of Street Racers, Inc. v. Superior Court* (1989) 215 Cal.App.3d 934, 940 (enforceable release)

**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.

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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., it's [*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 not withstanding 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 . . . ."

*Link v. National Association for Stock Car Auto Racing, Inc.* (1984) 158 Cal.App.3d 138, 144 (not found to be enforceable)

## 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)