

California



Ericksen Arbuthnot Secures Win on Behalf of Health Club and Personal Trainer as Court Grants Summary Judgment Based on Express Liability Waiver



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Ericksen Arbuthnot's Appellate Practice Group has prevailed on summary judgment based on a liability release contained in a health club membership agreement. Ericksen Arbuthnot has won several such cases under similar circumstances, both in the trial court and on appeal. (See, e.g., *Naser v. Lakeridge* (2014) (certified for partial publication) 2014 WL 2922405 [First Appellate District affirmed trial court's order granting summary judgment in favor of defendant health club bases on written liability release]; *Sudol v. Sage-DeLuca Associates* (2012) C071003 [Third Appellate District issued Palma notice indicating its intent to issue a peremptory writ of mandate in the first instance reversing the trial court's order denying defendant's motion for summary judgment brought by health club based on written liability release].)

In this most recent case, the plaintiff gym member allegedly tripped and fell at the defendant health club while doing lunges on a treadmill under the guidance of the defendant personal trainer. While noting that the release was not very "precise" on the critical detail of the entities to be released, the Court was nevertheless satisfied that the release applied to both moving defendants. As the Court observed: "It's not as if there were two fitness centers potentially involved and confusion over which one is at fault or being sued." The Court further rejected plaintiff's contention that the release was unenforceable for its failure to include the word "negligence," while citing *Sanchez v. Bally Total Fitness Corp.* (1998) 68 Cal.App.4th 902, another case in which the Court enforced a release that made no mention of negligence, whether active or passive. As the Court found, "although the release doesn't speak specifically of 'negligence,' it is unambiguous in stating that any use of the equipment 'shall be at the participant's sole risk,' and the facility and trainers 'shall not be liable to member for any claims, demands, injuries, damages, or actions arising due to injury to participant's person or property.'" Thus, the Court reasoned, it is difficult to see what plaintiff would have been releasing if not claims for negligence. Accordingly, the Court granted summary judgment for the defendant health club and its trainer based on the written liability release.

Gregory A. Mase, Esq., Co-Chair of Ericksen Arbuthnot's Appellate Practice Group, and Andrew Chan, Esq., a Member of Ericksen Arbuthnot's Appellate Practice Group, prepared the successful summary judgment motion in this case.