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## **AN OUNCE OF PREVENTION IS WORTH A POUND OF CURES: Releasing Future Claims and New California Civil Code Section 1542**

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In today's litigious society, any business operating in California must have a solid settlement agreement with enforceable general release terms when resolving a claim or lawsuit. Most settlement agreements include a waiver whereby businesses seek a release not only of the subject dispute but also a general release of liability.

However, Civil Code Section 1542 contains waivable language intended to prevent the releasing party ("Releasor") from inadvertently waiving unknown claims merely by signing a general release. Parties usually include a recitation of Civil Code Section 1542 and a waiver of its provisions in a settlement agreement that safeguards that the releasing party consciously released unknown claims that may be later discovered.

The California legislature statutorily amended the general release language provided in Section 1542 to read:

A general release does not extend to claims that the creditor **or releasing party** does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, **would** have materially affected his or her settlement with the debtor **or released party**.

The amended version of Section 1542 adds "releasing party" and "released party" alongside "creditor" and "debtor" and also changes "must have materially affected" to "would have materially affected" regarding the creditor's or releasing party's decision to settle.

To illustrate the changes, the following text shows the amendments:

A general release does not extend to claims ~~which~~ **that** the creditor **or releasing party** does not know or suspect to exist in his or her favor at the time of executing the release, ~~which~~ **and that** if known by him or her, ~~must~~ **would** have materially affected his or her settlement with the debtor **or released party**.

Although Civil Code Section 1542 provides that a release does not include claims Plaintiff did not know or suspect to exist at the time of executing the release, which if known would have materially affected the settlement, the inclusion of a provision expressly quoting and waiving all rights under section 1542 will ordinarily establish the parties' intent that the release covers unknown claims.

In conclusion, always include a provision in the settlement agreement waiving with the text of Civil Code Section 1542 printed in bold indented type. Should you have any questions or need assistance, please contact Mhare Mouradian at [mhare.mouradian@rmkb.com](mailto:mhare.mouradian@rmkb.com).



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