

BAJA HA-HA XXIII — 2016

'OWNER/SKIPPER WAIVER'

Name of Boat _____ Owner _____

Skipper (if different) _____

Assumption of Risks, Waiver, Release & Indemnity Agreement

This document is a contract.

For valuable consideration, including the acceptance of my entry and my participation in the 2016 Baja Ha-Ha Rally (the "Rally"), scheduled for Oct. 30- Nov. 12, 2016, the undersigned Owner and/or Skipper agrees as follows:

1. Representations and Warranties. I represent, warrant and agree:
 - a. That I will comply with all rules, regulations, and instructions for the Rally, as set forth in the Rally Notice published by Baja Ha-Ha, LLC.
 - b. That my yacht is fully found, that she is thoroughly seaworthy in hull, rig, sails, and gear, that she will be properly outfitted and equipped and will be competently manned by an experienced crew capable of properly handling my yacht under adverse circumstances, and that all safety equipment is properly maintained and stowed, and each member of the crew knows where it is kept and how it is to be used.
 - c. That the safety of my yacht and her crew is my sole responsibility, and that it is my sole and exclusive responsibility to decide whether to start or to continue to participate in the Rally.
 - d. That, in connection with the Rally, I and/or my crew may voluntarily participate in certain "Related Activities," including but not limited to sailing, boating, waterskiing, use of dinghies, use of personal watercraft, swimming, and social gatherings and parties. I also understand that persons attending the Related Activities may consume alcohol, which may influence their conduct.
 - e. That I am physically fit and know of no medical or health reason that I or any member of my crew should not participate in the Rally or any of the Related Activities.
 - f. That I will obtain from each member of my crew, on forms provided by Baja Ha-Ha, LLC, and will file with the Rally Committee, prior to the start of the Rally, a written waiver by each crew member.
2. Assumption of Risks. I understand that participation in the Rally carries with it certain inherent risks that cannot be eliminated regardless of the care taken to avoid injuries. The specific injuries that may result from my participation include: (a) minor injuries such as scratches, bruises and sprains; (b) major injuries such as loss of sight, joint or back injuries, heart attacks and concussions; or (c) catastrophic injuries including paralysis and death. I know, understand and appreciate that these and other risks are inherent in my participation in the Rally and the Related Activities. I assert that my participation is voluntary and that I am knowingly assuming all such risks
3. Waiver, Release, Discharge and Covenant Not to Sue. I, for myself, my heirs, personal representatives and assigns, do hereby release, waive, discharge and covenant not to sue Baja Ha-Ha, LLC, its officers, directors, employees, sponsors, members, committee members, volunteers, advisors and agents (hereafter,

"Affiliated Parties") for any liability for any and all claims resulting in personal injury, accidents, illnesses (including death) and property loss arising from participation in the Rally or any Related Activity, whether or not caused by the active or passive negligence of Baja Ha-Ha, LLC or any of the Affiliated Parties.

4. Indemnification and Hold Harmless. I agree to indemnify and hold Baja Ha-Ha, LLC and the Affiliated Parties harmless from any and all claims, actions, suits, procedures, costs, expenses, damages and liabilities, including attorneys' fees, brought as a result of my involvement in the Rally or any of the Related Activities, and to reimburse them for any such expenses incurred.

In the event that I fail to provide the waiver from any crew member as required by 1(f), I further agree to indemnify and hold Baja Ha-Ha, LLC and the Affiliated Parties harmless from any and all claims, actions, suits, procedures, costs, expenses, damages and liabilities, including attorneys' fees, brought as a result of my crew member's involvement in the Rally or any of the Related Activities, and to reimburse them for any such expenses incurred.
5. Severability. I agree that this Assumption of Risks, Waiver, Release and Indemnity Agreement is intended to be as broad and inclusive as is permitted by the laws of the State of California and that, if any portion is held invalid, it is agreed that the balance shall nevertheless continue in full force and legal effect.
6. Information and Publicity. I hereby grant permission to Baja Ha-Ha, LLC and its sponsors, committees, advisors, employees, volunteers and agents to transmit or release to the public any and all communications from or to my yacht during the Rally relating to the progress of the yacht and the welfare of her crew, whether the communications are with the public, private or with the government stations. I also hereby grant permission to Baja Ha-Ha, LLC and its affiliates to use any photograph or video footage of me or my yacht while involved in the Rally or any of the Related Activities for any purpose they might deem appropriate, including distribution in sailing publications and other media outlets.
7. Governing Law, Courts. I hereby agree that this Agreement, and its interpretation and enforcement, shall be governed by the laws of the State of California. I agree that any action regarding the enforcement or interpretation of this Agreement must be brought in the courts of the County of Marin, California.
8. Acknowledgment of Understanding. I have read this Assumption of Risks, Waiver, Release and Indemnity Agreement, fully understand its terms, and understand that I am giving up substantial rights, including my right to sue. I understand that I may consult with an attorney before signing this agreement. I acknowledge that I am signing this agreement freely and voluntarily, and intend by my signature to completely and unconditionally release all liability to the greatest extent allowed by law.

✓ Date _____ By _____ (Signature) _____ (Print Name) owner

✓ **Owner/skipper must sign here**

By _____ (Signature) _____ (Print Name) skipper, (if different)

If entrant is under the age of 18, this must be signed by a parent or legal guardian.

I, _____ (Printed Name of Parent or Legal Guardian) am the parent or legal guardian of the minor child in this agreement.

I have carefully read this two-page Agreement and Release of Liability and I fully understand its contents and sign it of my own free will.

Date _____ By _____ (Signature of Parent or Legal Guardian)

OWNER/SKIPPER RELEASE OF LIABILITY, PAGE 2

Just So We Understand Each Other — Frequently Asked Questions

The Baja Ha-Ha doesn't want anybody to sign up for the event without knowing what they are getting into, so we're providing the following answers to common questions to make the situation as clear as possible.

Q: Is the Ha-Ha a good event for novice skippers to try their hands at ocean sailing?

A: No. The Ha-Ha is for experienced sailors who would have been willing to sail from San Diego to Cabo San Lucas on their own anyway. The Ha-Ha is definitely not an offshore babysitting or hand-holding service. If at least two of your crew haven't had offshore experience in rough weather and spent several nights at sea and on the hook, it would be irresponsible of you to sign up for the Ha-Ha.

The Ha-Ha is a high-risk activity open only to those gladly willing to risk injury and death in the pursuit of adventure.

Q: Does Vessel Assist or any other offshore rescue service operate between San Diego and Cabo San Lucas? If not, will somebody from the Ha-Ha help me out if I get into trouble?

A: Once you cross the border into Mexico, you must assume that you'll be 100% self-sufficient — even if you lose a rudder or drop a mast — as there are no formal rescue services. And the Ha-Ha specifically does not provide any such services. If it reaches the point where your life is in danger, the U.S. Coast Guard may come to your assistance, but it may take a long time even after they hear of your distress call.

Remember, the Ha-Ha is a high-risk activity open only to those gladly willing to risk injury and death in the pursuit of adventure.

Q: What kind of medical care does the Ha-Ha provide and/or what kind of care is available between San Diego and Cabo San Lucas?

A: The Ha-Ha provides no medical care whatsoever, and there are few, if any, medical facilities between Ensenada and Cabo San Lucas. If you begin to suffer from a medical problem, it's unlikely that you'll be able to get treatment for many hours — if not days. One Ha-Ha participant died of a heart attack in Bahia Santa Maria — despite getting almost immediate care from emergency room personnel who happened to be on an anchored boat nearby.

Remember, the Ha-Ha is a high-risk activity open only to those gladly willing to risk injury and death in the pursuit of adventure.

Q: What kind of assurances can I get that we'll have reasonably good weather?

A: None. While the coast of Mexico is usually relatively benign in late October and early November, the fleet could be hit by an out-of-season hurricane, Santa Anas, Pineapple Expresses, or severe localized weather. Anyone participating in the Ha-Ha must expect to be exposed to the full wrath of the open ocean.

As we've said before, the Ha-Ha is a high-risk activity open only to those gladly willing to risk injury and death in the pursuit of adventure.

Q: If the fleet gets hit by bad weather, where should I seek shelter?

A: Such decisions are the responsibility of the skipper, who should investigate emergency anchorages prior to the start. It's the sole respon-

sibility of each skipper to decide whether to start and continue any or all legs of the event, and if, when, and where to drop out.

Again, the Ha-Ha is a high-risk activity open only to those gladly willing to risk injury and death in the pursuit of adventure.

Q: What kind of inspections does the Ha-Ha conduct to make sure the boats are suitable for the event?

A: None. If your boat fits the size and performance parameters stated in the Rally Notice, it's your responsibility to determine if she was built and has been maintained for open ocean sailing. If you're not qualified to make such a determination, it's your responsibility to hire a qualified marine surveyor to make the evaluation.

Yes, the Ha-Ha is a high-risk activity open only to those gladly willing to risk injury and death in the pursuit of adventure.

Q: What does the Ha-Ha do to make sure that crewmembers end up on safe boats?

A: Nothing. It is the responsibility of each crewmember to decide whether the boat they're planning to sail on and her skipper are suitable for the event. If a crewmember isn't qualified to make that decision, it's solely his/her responsibility to get a trip and crew survey from a qualified marine surveyor.

After all, the Ha-Ha is a high-risk activity open only to those gladly willing to risk injury and death in the pursuit of adventure.

Q: Do participants also run a risk of injury or death while ashore?

A: Absolutely. In general, the safety standards in Mexico are far inferior to those in the United States, so there is a much greater chance of getting injured in any number of ways. Turtle Bay, one of the stops, was also the site of a cruiser murder less than 20 years ago. Alcohol is commonly consumed by locals and members of the fleet, and it's well known that alcohol can lead to all kinds of accidents and violence. For instance, one participant in the first Ha-Ha was injured as a result of falling off a bar stool in Cabo San Lucas. By signing up for the Baja Ha-Ha, you accept responsibility for all these increased dangers to your health and well-being.

The Ha-Ha is a high-risk activity open only to those gladly willing to risk injury and death in the pursuit of adventure.

Q: What is the relationship between Latitude 38 Publishing Company and the Baja Ha-Ha?

A: Latitude 38 founded the Ha-Ha in 1994 and ran the first several Ha-Has, but is no longer legally responsible. By signing up for the Baja Ha-Ha, you agree that Baja Ha-Ha, LLC, is the sole owner and operator of the Baja Ha-Ha. If not, you may not enter.

— Rally Committee

(_____)

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(Owner / Skipper, sign here to indicate you have read this page and agree with its contents)