

1 LT LEASING, INC.; L M SPORTS,
2 INC. dba LAKESIDE MARINA and
3 dba ACTION WATERSPORTS and
4 dba ACTION WATERSPORTS AT
5 LAKE TAHOE; TAMARA HASSETT,
6 individually, and ROBERT
7 HASSETT, individually

8 Third-Party Plaintiffs,

9 v.

10 EVAN BOTWIN, REGAN ROBERTS,
11 SEAN O'Dea, EFE ÖZYURT, and
12 NICHOLAS CARSCADDEN,

13 Cross-Defendants

14 AND RELATED THIRD-PARTY
15 ACTION.

16 I. INTRODUCTION AND PROCEDURAL BACKGROUND

17 L M Sports and L T Leasing (collectively "L M Sports") are
18 defendants in a negligence suit that was filed by Manisha Palla
19 ("Palla")—a woman who was injured while using boating and tubing
20 equipment leased from L M Sports. ECF No. 1. L M Sports also
21 stand as Third-Party Plaintiffs, seeking indemnification from
22 Evan Botwin, Sean O'Dea, and Nicholas Carscadden ("Third-Party
23 Defendants") based on a rental agreement the Third-Party
24 Defendants signed. ECF No. 17.

25 After Palla filed her negligence suit against L M Sports,
26 and Paul Garcia, ECF No. 1, L M Sports filed a Complaint for
27 Exoneration or Limitation of Liability. See Case No. 2:17-cv-41,
28 ECF No. 1. The Court consolidated these two actions. ECF No.
29 23.

30 L M Sports then filed a third-party complaint against Evan
31 Botwin, Nicholas Carscadden, Sean O'Dea, Efe Özyurt, and Regan

1 Roberts ("Third-Party Defendants"). Case No. 2:16-cv-02865, ECF
2 No. 17. These individuals signed the rental agreement for the
3 boat involved in this incident and were on the boat when the
4 accident occurred. Regan Roberts subsequently entered into a
5 settlement with L M Sports, ECF No. 86, and a default was entered
6 against Efe Özyurt. ECF No. 51.

7 A motion and cross-motions for summary judgment were filed
8 by L M Sports and Third-Party Defendants and a hearing on these
9 motions was held on September 18, 2018. At the hearing, this
10 Court granted Third-Party Defendants' cross-motions for summary
11 judgment on L M Sports' negligence/equitable indemnity claim.
12 The Court also found that the cause of action for contribution
13 was not ripe and denied all parties' motions/cross-motions on
14 this claim. ECF No. 133. The Court denied the Third-Party
15 Defendants' cross-motions for summary judgment on L M Sports'
16 express contractual indemnity claim, finding that none of the
17 Third-Party Defendants had shown they were entitled to judgment
18 as a matter of law. See id. L M Sports' motion for summary
19 judgment on this express contractual indemnity claim was taken
20 under submission and the Court requested the parties to file
21 supplemental briefs addressing the Third-Party Defendants'
22 standing to raise the issue of whether gross negligence
23 invalidates an indemnity clause when Palla had only alleged
24 ordinary negligence against L M Sports. Id. Carscadden and
25 O'Dea were also tasked with explaining why they should be allowed
26 to join Botwin's argument when they failed to raise the issue of
27 gross negligence in their summary judgment opposition briefs.
28 See id.

1 For the following reasons, this Court finds that Third-Party
2 Defendants, as parties to the contract, have standing to
3 challenge the scope and validity of the indemnity agreement.¹
4 But this Court also finds that as a matter of law, public policy
5 does not prohibit L M Sports from enforcing its indemnity clause
6 against Third-Party Defendants in this action even if L M Sports
7 is shown to have acted with gross negligence.

8
9 II. OPINION

10 A. Standing

11 1. Legal Standard

12 The "case or controversy" requirement of Article III
13 mandates that parties appearing before federal courts have
14 standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 574
15 (1992). To have standing, a party must claim an injury in fact
16 that was caused by the accused, and may be redressed by the
17 court. Id. at 560-61.

18 An injury in fact is "an invasion of a legally protected
19 interest which is concrete and particularized, and (b) actual or
20 imminent, not conjectural or hypothetical." Id. at 560
21 (internal citations and quotations omitted). The claimed injury
22 must be more than a generalized grievance. Id. at 575.

23 2. Analysis

24 Third-Party Defendants have standing to raise the issue of

25

¹ The Court finds that O'Dea and Carscadden may retroactively
26 join the gross negligence argument raised in Botwin's summary
27 judgment opposition to avoid inconsistent results among parties
28 similarly situated. Star Ins. Co. v. Iron Horse Tools, Inc., No.
CV 16-48 BLG-SPW-TJC, 2018 WL 3079493 at *4-5 (D. Mont. Feb. 7,
2018)

1 L M Sports' gross negligence. Botwin, now joined by O'Dea and
2 Carscadden, argues that L M Sports is attempting to apply an
3 indemnity clause that is void as a matter of public policy.
4 Botwin Supp. at 1, ECF No. 134. If L M Sports' indemnity clause
5 is found to be enforceable, the Third-Party Defendants may be
6 responsible for paying L M Sports' costs—a clear “wallet
7 injury.” See Hein v. Freedom from Religion Foundation, Inc.,
8 551 U.S. 587, 621 (2007). The attempt to enforce this provision
9 is the cause of Third-Party Defendants' claimed injury, and this
10 Court—if appropriate—has the power to redress it.

11 L M Sports must prove coverage. Third-Party Defendants
12 denial of coverage as well as the possibility of injury give
13 them standing to contest this indemnity clause. While Palla has
14 not specifically pled a cause of action for gross negligence
15 against L M Sports, the Court finds that the issue of Third-
16 Party Defendants' standing to challenge the indemnity clause is
17 not dependent on Palla's personal injury complaint. As Third-
18 Party Defendants, Botwin, O'Dea and Carscadden had no ability to
19 control Palla's causes of action against L M Sports. Third-Party
20 Defendants have denied L M Sports claim for express contractual
21 indemnity and L M Sports has failed to present a compelling
22 reason for why this Court should deny parties to a contract an
23 opportunity to challenge that contract's reach. Accordingly,
24 the Court finds that Third Party Defendants have standing to
25 challenge the scope of the indemnity contract's coverage.

26 B. Express Contractual Indemnity Claim

27 To defeat L M Sports' motion for summary judgment on the
28 express contractual indemnity claim, Third Party Defendants must

1 either raise a genuine dispute of material fact or demonstrate
2 why L M Sports is not entitled to judgment as a matter of law.
3 See Fed. R. Civ. P. 56(a). Third-Party Defendants maintain that
4 that the question of L M Sports' gross negligence is a triable
5 issue of fact that precludes summary judgment. Botwin Supp. at
6 1. However, even if this Court were to assume that L M Sports'
7 alleged acts constitute ordinary or gross negligence, the Court
8 finds that the indemnity agreement at issue in this case is
9 still enforceable against Third-Party Defendants.

10 Third-Party Defendants do not cite to any authority that
11 holds that an indemnity clause covering a party's gross
12 negligence is void as a matter of public policy. As L M Sports
13 points out, both Royal Insurance Co. v. Southwest Marine, 194 F.
14 3d 1009, 1016 (9th Cir. 1999) and City of Santa Barbara v.
15 Super. Ct., 41 Cal. 4th 747, 751 (2007) were cases in which
16 exculpatory clauses or releases were invalidated for purporting
17 to cover gross negligence. See Opp'n at 2-3. These cases did
18 not involve a true indemnity agreement as in the instant case.

19 Exculpatory clauses serve as a complete release of
20 liability; they keep a claimant from coming to the courts, and
21 being made whole. See City of Santa Barbara, 41 Cal. 45th at
22 762. In contrast, an indemnity clause merely reallocates
23 financial responsibility, i.e. it determines which party to a
24 contract will ultimately bear the risk of injury to a third
25 party. In re Oil Spill, 841 F. Supp.2d. 988, 998 (E.D. La
26 2012). While gross negligence may invalidate contractual
27 releases, indemnity clauses can cover gross negligence for
28 compensatory damages (which are the only damages alleged in the

1 instant case). Id. Although In re Oil Spill is not controlling
2 authority, the case is instructive and no party has cited any
3 binding precedent which holds that indemnity clauses covering
4 gross negligence must be invalidated as a matter of public
5 policy. Like the Court in In re Oil Spill, this Court
6 recognizes that "this issue creates tension between two
7 policies: freedom of contract, which weighs in favor of
8 enforcing the indemnity, and a reluctance to encourage grossly
9 negligent behavior, which weighs against enforcing the
10 indemnity." Id. at 1000. In the instant case, the Court finds
11 L M Sports argument to be more persuasive. Public policy
12 concerns are of less importance here because this indemnity
13 clause does not leave the injured party without recourse, but
14 merely shifts the source of compensation. Third-Party
15 Defendants should not be permitted to escape their contractual
16 liability to indemnify L M Sports for Palla's injuries,
17 regardless of the degree of negligence.

18 Because this Court finds that, as a matter of law, the
19 indemnity clause in this case covers alleged acts of negligence
20 and gross negligence there is no genuine dispute of material
21 fact and the Court must now only determine whether L M Sports is
22 entitled to judgment as a matter of law. See Fed. R. Civ. P.
23 56(a).

24 As discussed during the September 18th motions hearing, the
25 indemnity clause's language is clear and unambiguous. An
26 indemnity clause is only ambiguous if, when viewed in the light
27 of the instrument as a whole, it "is reasonably susceptible of
28 more than one application to material facts." Best Buy Stores,

1 L.P. v. Manteca Lifestyle Center, LLC, 859 F. Supp. 2d 1138, 1147
2 (E.D. Cal. 2012) (quoting Dore v. Arnold Worldwide, Inc., 39 Cal.
3 4th 384, 391 (2006)).

4 At the hearing, this Court explained that it was not
5 persuaded by any of the Third-Party Defendants' alternative
6 interpretations of this contract. That position stands. The
7 unambiguous terms of the contract created a no-fault indemnity
8 clause that covered all signatories to the contract. Botwin,
9 O'Dea, and Carscadden all signed the contract. See Rental
10 Agreement at 1. They are therefore bound by its express terms
11 and the Court finds that L M Sports' motion for summary judgment
12 on the express contractual indemnity claim must be granted.

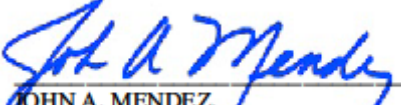
13 The Court also grants L M Sports' motion for summary
14 judgment on the declaratory relief claim to the extent L M
15 Sports seeks to include such relief in the judgment concerning
16 the express contractual indemnity claim.

17
18 III. ORDER

19 For the reasons set forth above, the Court GRANTS L M
20 Sports' motion for summary judgment on the express contractual
21 indemnity and declaratory relief claims.

22 IT IS SO ORDERED.

23 Dated: October 18, 2018

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25 
26 **JOHN A. MENDEZ,**
27 **UNITED STATES DISTRICT JUDGE**
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