



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

5 Third-Party Plaintiffs,

6 v.

7 EVAN BOTWIN, REGAN ROBERTS,  
8 SEAN O'DEA, EFE ÖZYURT, and  
NICHOLAS CARSCADDEN,

9 Cross-Defendants.

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10 AND RELATED THIRD-PARTY  
11 ACTION.

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13 Following the Court's October 18, 2018 Order, granting  
14 Third-Party Plaintiffs' Motion for Summary Judgment on their  
15 express contractual indemnity and declaratory relief claims, Evan  
16 Botwin and Sean O'Dea filed Motions for Reconsideration. Order,  
17 ECF No. 142; Mots., ECF Nos. 151, 153. Third Party Plaintiffs  
18 opposed these Motions. ECF Nos. 158, 159.<sup>1</sup>

19 A Rule 59(e) Motion for Reconsideration "should not be  
20 granted, absent highly unusual circumstances, unless the district  
21 court is presented with newly discovered evidence, committed  
22 clear error, or if there is an intervening change in the  
23 controlling law." Kona Enters., Inc. v. Estate of Bishop, 229  
24 F.3d 877, 890 (9th Cir. 2000). Eastern District of California  
25 Local Rule 230(j) also requires a motion for reconsideration to

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26 <sup>1</sup> Third Party Defendant Nicholas Carscadden did not move the  
27 Court for or join in these Motions for Reconsideration. These  
28 Motions were determined to be suitable for decision without oral  
argument. E.D. Cal. L.R. 230(g).

1 identify, among other things, "what new or different facts or  
2 circumstances are claimed to exist which did not exist or were  
3 not shown upon prior motion, or what other grounds exist for the  
4 motion."

5 First, O'Dea and Botwin both fail to identify any legal or  
6 factual issues that were not, and could not have been, raised in  
7 the earlier briefings. Their Motions herein simply argue the  
8 Court got it wrong. This is an insufficient reason for this  
9 Court to reverse its decision. Second, the Court did not commit  
10 clear error in finding that an indemnity clause could validly  
11 purport to cover gross negligence, and that Third-Party  
12 Plaintiffs' indemnity clause, in fact, covered gross negligence.  
13 While this is arguably a unique and closely debatable legal  
14 issue, the Court's decision is legally supported. Again, O'Dea  
15 and Botwin's disagreement with the Court's conclusion is not  
16 grounds for granting this Motion. Finally, this Court finds that  
17 there has not been an intervening change in controlling law that  
18 warrants reconsideration. At the time of this Court's decision,  
19 the California Supreme Court had not ruled on the issue of  
20 whether a contracting party could indemnify itself for gross  
21 negligence. It still has not.

22 Botwin's and O'Dea's Motions for Reconsideration are,  
23 therefore, DENIED.

24 IT IS SO ORDERED.

25 Dated: December 6, 2018

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE