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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Manisha Palla,  
  
Plaintiff,  
  
v.  
  
L M SPORTS, INC. dba LAKESIDE  
MARINA and dba ACTION  
WATERSPORTS OF TAHOE; L T  
LEASING, INC.; PAUL GARCIA;  
and DOES 1-50, inclusive,  
  
Defendants.

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AND RELATED ACTIONS.

No. 2:16-cv-02865-JAM-EFB

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW**

I. BACKGROUND AND PROCEDURAL HISTORY

Manisha Palla ("Plaintiff") sued Defendants L M Sports, L T Leasing, and Paul Garcia for negligence following an accident on Lake Tahoe that resulted in the amputation of her right leg. L M Sports and L T Leasing (collectively "Defendants") filed a limitation of liability action under 46 U.S.C. §§ 30505 et seq. The Court related the two actions. See Related Case Order, ECF

1 No. 12. Garcia made an initial appearance and participated in  
2 the suit through June 2018. Following the withdrawal of Garcia's  
3 attorney that month, ECF No. 72, Garcia did not make any other  
4 appearances until he showed up to testify during the limitation  
5 action on March 4, 2019. Neither party has attempted to enter a  
6 default against Garcia.

7 Palla invoked the Court's diversity jurisdiction as well as  
8 its admiralty jurisdiction. First Am. Compl. ("FAC") ¶¶ 2-4.  
9 Defendants' limitation action also invoked the court's admiralty  
10 jurisdiction. The Court decided to first hold a bench trial on  
11 Defendants' limitation action and allow Palla a jury trial on the  
12 issue of damages if she made a showing of negligence during the  
13 limitation action. Palla v. L M Sports, No. 2:16-cv-02975-JAM-  
14 EFB, 2019 WL 427300 (E.D. Cal. Feb. 4, 2019).

15 The Court held a ten-day bench trial beginning February 25,  
16 2019. The parties offered in-person and deposition testimony  
17 from the marina owner, marina employees, two first responders,  
18 four experts<sup>1</sup>, and the thirteen (13) people who were on the boat  
19 at the time of the accident, including Palla and Garcia. The  
20 parties did not stipulate to any facts before or during trial.

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21  
22 <sup>1</sup> The Court found that one of Defendants' witnesses, Douglas  
23 Powell, "barely" qualified as a standard-of-care expert and  
24 admitted his testimony with "great concern." Powell's report was  
25 based on three (3) months' experience of working as an expert.  
26 In those three months, Powell allegedly reviewed the policies of  
27 three (3) marinas. At trial, he could not name any of them. He  
28 testified that, based on his expertise, boating passengers need  
not "understand dangers that are likely to lead to catastrophic  
injury," and contradicted otherwise uncontroverted evidence. The  
Court found Powell's testimony to be wholly incredible, and  
therefore disregards it in its entirety.

1 II. FINDINGS OF FACT

2 1. L M Sports is a California corporation that does  
3 business as Lakeside Marina.

4 2. Lakeside Marina is one of four marinas Bob and Tamara  
5 Hasset own and operate on Lake Tahoe.

6 3. The Hassets' other marinas are Timber Cove Marina,  
7 Round Hill Pines Marina, and Camp Richardson.

8 4. At the time of the incident, the Hassets also owned and  
9 operated Meeks Bay Marina.

10 5. In 2016, the Hassets owned 54-57 boats across five (5)  
11 marinas.

12 6. In 2016, the Hassets had 12-15 boats, eight (8)  
13 personal watercrafts, and 18-25 employees at Lakeside Marina.

14 7. The Hassets also own L T Leasing, Inc., a California  
15 corporation they have used to lease boats to their marinas since  
16 1992.

17 8. Robert Hasset is the President of L M Sports and the  
18 Chief Financial Officer of L T Leasing, Inc.

19 9. Tamara Hasset is the President of L T Leasing and the  
20 Chief Financial Officer of L M Sports.

21 10. The Hassets decide which boats will be purchased and  
22 the activities for which they will be used.

23 11. As President of L M sports, Robert Hasset (hereinafter  
24 "Hasset") sets forth the policies and procedures of Lakeside  
25 Marina.

26 12. He hires general managers at each marina to train  
27 employees and supervise operations.

28 13. During the summer of 2016, Dan Meeks was the general

1 manager at Lakeside Marina.

2 14. As part of his general manager duties, Meeks conducted  
3 monthly safety meetings for the Lakeside Marina staff.

4 15. Hasset did not provide Meeks with written descriptions  
5 of his job responsibilities or instruct him to keep written  
6 records on the marina's employees.

7 16. Hasset did not require Meeks to document what was  
8 discussed at the safety meetings he conducted.

9 17. In July 2016, Manisha Palla, Evan Botwin, Nick  
10 Carscadden, Frances Copeland, Paul Garcia, Benoit Gautier, Alvaro  
11 Herranz, Elena Legramanti, Erlinda Lesi, Sean O'Dea, Efe Özyurt,  
12 Regan Roberts, and Christa Wolf ("the Palla group") were in  
13 Dublin, CA as part of an international training rotation with  
14 their employer, System Application Products ("SAP").

15 18. Members of the Palla group came from different SAP  
16 offices around the world, so they did not know each other prior  
17 to the Dublin training.

18 19. Palla worked in the Chicago, Illinois office.

19 20. Garcia worked in the Paris, France office.

20 21. Botwin worked in the Philadelphia, Pennsylvania office.

21 22. Botwin used Lakeside Marina's online reservation system  
22 to reserve a boat and an innertube for Sunday, July 24, 2016.

23 23. Botwin selected the 1997 Four Winns because it had the  
24 highest maximum capacity.

25 24. The Palla group drove to Lakeside Marina in separate  
26 cars—the car with Botwin, Carscadden, O'Dea, Özyurt, and Roberts  
27 arrived at Lakeside Marina first.

28 25. Botwin, Carscadden, O'Dea, Özyurt, and Roberts went

1 into the rental hut to check-in for the reservation.

2 26. On July 24, 2016, Julie Hontos was the only employee  
3 working in the rental hut.

4 27. Hontos did not provide any information about the type  
5 of boat Botwin reserved or what type of propulsion system it had;  
6 nor was she trained to.

7 28. Hontos gave Botwin, Carscadden, O'Dea, Özyurt, and  
8 Roberts a map of the lake, and told them to avoid the shallow  
9 areas.

10 29. Hontos also gave them two forms—one was a rental  
11 agreement that included a release of liability and the other was  
12 a list of rules and regulations.

13 30. Botwin, Carscadden, O'Dea, Özyurt, and Roberts signed  
14 the rental agreement.

15 31. The rules and regulations sheet only had one space for  
16 a signature; Botwin signed it.

17 32. Neither form included specific tubing instructions or  
18 contained specific warnings about the dangers of propeller  
19 strikes.

20 33. Hontos did not tell Botwin that the eight (8) other  
21 people listed on the reservation were required to sign the rules  
22 or the rental agreement.

23 34. Neither of the two forms Hontos gave Botwin said that  
24 everyone on the reservation had to sign them.

25 35. Prior to July 24, 2016, Lakeside Marina did not provide  
26 its rental hut staff a written protocol for how to get renters to  
27 sign the rental contract.

28 36. When Botwin, Carscadden, O'Dea, Özyurt, and Roberts

1 were inside, the other eight (8) members of the group arrived.

2 37. The new arrivals congregated around the picnic tables  
3 outside the rental hut until the other five (5) came outside.

4 38. Nobody at Lakeside Marina instructed the group that  
5 they were all supposed to go inside the rental hut.

6 39. Lakeside Marina did not have any signs that instructed  
7 all members of a reservation to go inside to sign forms.

8 40. Soon after Botwin, Carscadden, O'Dea, Özyurt, and  
9 Roberts came back outside, Mathan Foss met the Palla group near  
10 the picnic tables and led them toward the dock.

11 41. Foss was the dockhand in charge of boarding the Palla  
12 group onto the boat.

13 42. Dan Meeks hired and trained Foss to work as a dockhand  
14 for the Summer 2014 boating season.

15 43. All of Lakeside Marina's dockhand training was done  
16 orally, without aid of any written documents.

17 44. Foss's training included shadowing other dockhands;  
18 being shadowed by Lakeside supervisors as he carried out dockhand  
19 responsibilities; and learning how to launch boats and check for  
20 invasive species.

21 45. At the end of his training, Foss had to take a  
22 computerized test on how to properly check for invasive species  
23 before launching boats.

24 46. Foss did not, however, take any written tests on how to  
25 properly give safety instructions to renters; nor was he ever  
26 given any written instructions on how to properly give safety  
27 instructions.

28 47. As the dockhand assigned to the Palla group on July 24,

1 2016, Foss gave instructions on how to operate the rental boat to  
2 the boat operators, Garcia and Botwin. The instructions were  
3 known as the "spiel."

4 48. Foss also drove the rental boat out of the marina for  
5 the Palla group.

6 49. Per Hasset's instructions, Meeks trained Foss that  
7 dockhands only needed to provide boating information to the  
8 operator(s) of the rental boat.

9 50. Meeks trained Foss to identify the operator(s) and ask  
10 whether the operator(s) had any boating experience.

11 51. Meeks trained Foss to show the operator(s) the boat,  
12 pointing out the propellers, fire extinguisher, ski flag, oar,  
13 life jackets, throw cushion/flotation device, kill cord,  
14 throttle, blower, steering wheel, and the marina's phone number  
15 (located on the back of the rental contract).

16 52. Meeks trained Foss to tell the operator(s) how to pick  
17 up tubers: circle the boat around so that the tuber is on the  
18 driver's side, shut the boat off, and let the tuber swim to the  
19 boat, using the ladder to board.

20 53. Meeks trained Foss to instruct the operator(s) how to  
21 click the lever at the bottom of the throttle to move it forward,  
22 backward, and into neutral.

23 54. Meeks trained Foss to explain to the operator(s) that  
24 they would be financially responsible for any damage caused to  
25 the propeller.

26 55. Meeks did not train Foss to discuss the dangers of  
27 propeller strikes with the operator(s).

28 56. Meeks did not train Foss to show the operator(s) the

1 proximity of the propellers to the boarding ladder.

2 57. Meeks did not train Foss to ensure the operator(s)  
3 relayed the safety instructions to the boat passengers.

4 58. Meeks did not train Foss to ask tubing passengers  
5 whether they had any experience tubing.

6 59. Meeks did not train Foss to give any safety  
7 instructions to customers who would be tubing.

8 60. Meeks trained Foss to drive the rented boat out of the  
9 marina for rental groups so the operator(s) did not damage any of  
10 the boats in the marina.

11 61. Foss completed his first period of employment with  
12 Lakeside Marina at the end of the Summer 2014 boating season.

13 62. Meeks re-hired Foss to work as a dockhand for Lakeside  
14 Marina two summers later.

15 63. Foss did not receive new training when he came back to  
16 work for Lakeside in 2016.

17 64. On July 24, 2016, Foss identified the operators of the  
18 Palla group's rental boat: Botwin and Garcia.

19 65. Botwin and Garcia joined Foss on the dock, while the  
20 other members of the group lined up single-file along a narrow  
21 dock ramp.

22 66. Botwin told Foss he did not have any experience driving  
23 boats.

24 67. Garcia told Foss he'd driven boats before and that his  
25 family owned a boat in France.

26 68. Foss maintained Botwin and Garcia's attention, but he  
27 did not know whether any of the passengers on the ramp were  
28 listening.



1           69. Foss never spoke to the Palla group as a whole.

2           70. None of Foss's supervisors were watching him as he gave  
3 his spiel to the Palla group.

4           71. Foss showed Garcia and Botwin the propellers, fire  
5 extinguisher, ski flag, oar, life jackets, throw  
6 cushion/flotation device, kill cord, throttle, blower, steering  
7 wheel, and the marina's phone number.

8           72. Foss told Garcia and Botwin that centering the throttle  
9 put the boat in neutral, turning the key turned the boat off, and  
10 that the operators must turn the boat off when people are  
11 boarding.

12           73. Foss showed Botwin and Garcia the boat's propellers,  
13 but only for the purpose of informing them that they would be  
14 responsible for any additional damage.

15           74. Foss did not specifically address any of the passengers  
16 during the spiel. He did not point out the location of the  
17 propellers to the passengers. He did not pull out the ladder,  
18 point out the proximity of the ladder to the propellers, or  
19 provide any of the passengers with tubing-specific safety  
20 instructions (i.e., how to safely get in and out of the boat).

21           75. After Foss gave his spiel, the Palla group boarded  
22 their rental boat—a 1997 Four Winns ("the Four Winns").

23           76. The Hassets purchased the Four Winns in 2006.

24           77. The Four Winns was an inboard/outboard boat ("I/O  
25 boat") with counter-rotating propellers, and the only boat at  
26 Lakeside large enough to fit a party of 13 people.

27           78. The Four Winns had a fold-in ladder on the back under a  
28 small door.

1           79. Once unfolded, the ladder sat 17 inches away from the  
2 propellers.

3           80. The propellers moved closer to and further from the  
4 ladder depending on how the steering wheel was turned.

5           81. Hasset and Meeks knew how close the ladder was to the  
6 boat's counter-rotating propellers, and that L M Sports rented  
7 this boat out for towing sports.

8           82. The Palla group did not bring any alcohol or drugs onto  
9 the boat.

10          83. After Foss drove the Palla group out onto the lake, he  
11 got onto a skiff, and went back to the marina.

12          84. The water on the lake was cold and choppy.

13          85. Botwin and Garcia both drove the boat for a while  
14 without pulling any tubers.

15          86. None of the passengers felt uncomfortable with the way  
16 Botwin and Garcia were driving the boat.

17          87. Garcia was the only person who drove the rental boat  
18 once the group started tubing.

19          88. At least three members of the Palla group went tubing  
20 before Palla.

21          89. Neither Copeland nor Gautier saw the propeller when re-  
22 boarding the boat after they went tubing; O'Dea did.

23          90. Neither Copeland, Gautier, nor O'Dea communicated that  
24 they had any problems getting back onto the boat after they went  
25 tubing.

26          91. Palla was last person to go tubing.

27          92. After Palla fell off the tube, Garcia circled the boat  
28 around to pick her up.

1           93. Palla swam toward the back of the boat where the group  
2 encouraged her to take another turn.

3           94. Palla got back on the tube and took another turn.

4           95. Palla fell off the tube again.

5           96. After Garcia circled around to pick up Palla, he  
6 attempted to put the boat in neutral.

7           97. Before Garcia "clicked" the throttle into the neutral  
8 position, the preponderance of the evidence suggests that he  
9 inadvertently pulled it through neutral and into reverse.

10          98. Palla swam toward the back of the boat where a member  
11 of the group lowered the ladder

12          99. As Palla reached toward the boarding ladder, she was  
13 pulled down by the chop of the water.

14          100. Palla's legs were then swept into the still-spinning  
15 propeller blades.

16          101. Palla freed her left leg, but her right leg became  
17 wedged in between the two propeller blades.

18          102. Upon hearing Palla's screams, Garcia and Herranz went  
19 to the back of the boat.

20          103. Garcia leaned over the back to hold Palla out of the  
21 water, while Herranz held onto Garcia's legs.

22          104. Other members of the group jumped into the water to  
23 help Palla, while Copeland and Botwin called 9-1-1 and Lakeside  
24 Marina.

25          105. Lt. Leslie Lovell, a sheriff and member of El Dorado  
26 County's summer boat patrol, was one of the first responders.

27          106. Deputy Aaron Crawford, who worked for the Douglas  
28 County Sheriff's Department, also arrived shortly after the

1 accident.

2 107. Lt. Lovell and Deputy Crawford eventually freed Palla's  
3 leg from the propeller blades.

4 108. Marine One transferred Palla to Timber Cove, where she  
5 was airlifted to a nearby hospital.

6 109. Due to the injuries Palla sustained, doctors had to  
7 amputate her right leg above the knee.

8 110. After Palla was air-lifted from Timber Cove, Lt.  
9 Lovells conducted an inspection of the rental boat.

10 111. Lt. Lovells did not find any problems with the boat's  
11 operation.

12 112. Lt. Lovells concluded that, based on the damage he  
13 found on trailing edge of the propeller blades, the boat was in  
14 idle reverse at the time of the accident. The Court agrees with  
15 this conclusion.

### 16 III. OPINION

#### 17 A. Legal Standard

18 The Limitation of Liability Act ("LOLA") provides  
19 shipowners with an opportunity to cap the amount of damages owed  
20 to a claimant or group of claimants. See 46 U.S.C. § 30505 et  
21 seq. After the shipowner files a limitation of liability  
22 petition, the limitation action proceeds in two phases. First,  
23 the injured party must show "what acts of negligence or  
24 conditions of unseaworthiness caused the accident." In re  
25 Hechinger, 802 F.2d 202, 207 (9th Cir. 1989). If the claimant  
26 fails to make a showing of negligence or unseaworthiness, the  
27 vessel owner is wholly exonerated—"if no liability exists there  
28

1 is nothing to limit.” Id. (quoting Northern Fishing Trading  
2 Co., Inc. v. Grabowski, 1973 A.M.C. 1283, 1290 (9th Cir. 1973)).

3 But if the claimant makes a valid showing of negligence or  
4 unseaworthiness, the action proceeds to the second phase. At  
5 this stage, the burden shifts, requiring the shipowner to prove  
6 that “the act or condition [causing the accident] was outside  
7 its privity or knowledge.” In re BOWFIN M/V, 339 F.3d 1137,  
8 1137 (9th Cir. 2003). If a vessel owner makes this showing, his  
9 liability is limited to the value of the vessel and its cargo.  
10 Newton v. Shipman, 718 F.2d 959, 961 (9th Cir. 1983).

## 11 B. Analysis

### 12 1. Choice of Law

13 Defendants’ limitation action arises out of the Court’s  
14 admiralty jurisdiction and is governed by federal admiralty law.  
15 Churchill v. F/V Fjord, 5 F.3d 374, 376 (9th Cir. 1993). A  
16 court may use state law to supplement federal admiralty law, but  
17 only when the state’s law “will not work material prejudice to  
18 the characteristic features of the general maritime law, nor  
19 interfere with the proper harmony and uniformity of that law.”  
20 Id. at 207 (quoting Western Fuel Co. v. Garcia, 257 U.S. 233,  
21 242 (1921)).

### 22 2. Negligence

23 Palla proved by a preponderance of the evidence that L M  
24 Sports was negligent. A negligence claim under admiralty law  
25 has the same elements as a common law negligence claim: duty,  
26 breach, causation, and damages. Morris v. Princess Cruises,  
27 Inc., 236 F.3d 1061, 1070 (9th Cir. 2001). The Court finds that  
28 Defendant L M Sports negligently maintained a policy of allowing

1 its customers to go tubing without warning prospective tubers  
2 about propeller strikes. The Court finds that Palla did not,  
3 however, prove that Defendant L T Leasing was negligent.

4 a. The Oregon Rule, The Pennsylvania Rule, and  
5 Res Ipsa Loquitur

6 As a preliminary matter, Defendants argued that The Oregon  
7 Rule, The Pennsylvania Rule, and the doctrine of res ipsa  
8 loquitur each preclude a finding of negligence against  
9 Defendants. The Court rejects this argument. As discussed  
10 below, each of these doctrines are ill-fitted for the facts of  
11 this case. Furthermore, these doctrines—even when applicable—  
12 merely create a presumption that the vessel operator was a cause  
13 of the accident; not the sole cause. See Crowley Marine  
14 Services Inc. v. Maritrans Inc., 2006 A.M.C. 1246, 1254 (9th  
15 Cir. 2006) (“Our analysis of the applicability of the COLREGS  
16 does not, of course, determine the ultimate allocation of  
17 liability in this case.”); Caravel/Woodwind Charters, Inc. v.  
18 Tahoe Keys Marina, LLC, 438 F.Supp. 1174, 1182 (E.D. Cal. 2006)  
19 (“[E]ven if [the vessel operator’s] negligence is established,  
20 the question of comparative negligence remains.”). Defendants  
21 cannot use The Oregon rule, The Pennsylvania rule, or res ipsa  
22 loquitur to absolve themselves of liability.

23 By its own terms, The Oregon rule does not apply. The  
24 Oregon Rule creates a presumption that the operator of a vessel  
25 is at fault when the vessel collides with a stationary object.  
26 The Oregon, 158 U.S. 186, 192-93 (1895). This presumption flows  
27 from “the common-sense observation that moving vessels do not  
28 usually [a]llide with stationary objects unless the vessel is

1 mishandled in some way.” City of Chi. v. M/V Morgan, 375 F.3d  
2 563, 572 (7th Cir. 2004) (quoting Wardell v. Nat’l Transp.  
3 Safety Bd., 884 F.2d 510, 512 (9th Cir. 1989)). Defendants do  
4 not cite to any cases that have classified human beings as  
5 “stationary objects.” Such a classification defies logic and is  
6 inconsistent with the rationale underlying the presumption.

7 Likewise, The Pennsylvania Rule does not apply to the facts  
8 of this case. Under The Pennsylvania Rule, when “a ship at the  
9 time of a collision is in actual violation of a statutory rule  
10 intended to prevent collisions” the operator of the infringing  
11 vessel is presumed to be a contributing, if not the sole, cause.  
12 The Pennsylvania, 86 U.S. 125, 136 (1873), overruled on other  
13 grounds by United States v. Reliable Transfer Co., 431 U.S. 397,  
14 411 (1975). The presumption may only be rebutted where the  
15 vessel operator “shows by clear and convincing evidence that the  
16 violation could not reasonably be held to have been a proximate  
17 cause of the injury.” MacDonald v. Kahikolu, Ltd., 2009 A.M.C.  
18 2113, 2118 (9th Cir. 2009) (citing Trinidad Corp. v. S.S. Keiyoh  
19 Maru, 845 F.2d 818, 845 (9th Cir. 1988)). The Pennsylvania Rule  
20 applies to violations of the Inland Rules of Navigation. See  
21 Caravel/Woodwind Charters, 438 F. Supp. 2d at 1182.

22 The Ninth Circuit has not defined the precise scope of The  
23 Pennsylvania Rule. MacDonald, 2009 A.M.C. at 2118. (“[I]t is  
24 not clear that The Pennsylvania Rule applies to cases that do  
25 not involve a collision or other “navigational accident.”) It  
26 has extended The Pennsylvania Rule to cover “navigational  
27 accidents” as well as collisions. Id. But it has not joined  
28 the ranks of other federal circuit courts that have pushed the

1 doctrine beyond these two categories. See id. at 2120-21  
2 (collecting cases). Contrary to Defendants' argument, this  
3 accident was not the result of a collision or "navigational  
4 accident" in the ordinary sense of either term. This Court  
5 declines to expand the scope of The Pennsylvania Rule where the  
6 Ninth Circuit has not yet done so.

7 Finally, the Court finds that the doctrine of res ipsa  
8 loquitur does not apply. Res ipsa loquitur "is a form of  
9 circumstantial evidence that permits an inference of negligence  
10 to be drawn from a set of proven facts." Ashland v. Ling-Temco-  
11 Vought, Inc., 711 F.2d 1431, 1437 (9th Cir. 1983). This  
12 doctrine is available in admiralty. Id. (citing Wilson v.  
13 United States, 645 F.2d 728 (9th Cir. 1981).

14 To invoke res ipsa loquitur, a party must show: (1) an  
15 injury-producing event of a kind that ordinarily does not occur  
16 in the absence of someone's negligence; (2) the event was caused  
17 by an agency or instrumentality within the exclusive control of  
18 the defendant; and (3) the event was not due to any voluntary  
19 action or contribution on the part of the plaintiff. Id. As  
20 the elements suggest, res ipsa loquitur is traditionally used by  
21 plaintiffs to create an inference of negligence where direct  
22 evidence is lacking. Defendants here have not cited to any  
23 cases where a party used res ipsa loquitur to defend itself  
24 against a claim of negligence or shift liability to a co-  
25 defendant. Nor is the Court aware of such authority.  
26 Accordingly, the Court finds that res ipsa loquitur does not  
27 apply.

28 ///



1                   b.    Duty of Care and Breach

2           Defendant L M Sports breached the duty of care it owed to  
3 Palla by failing to provide safety instructions to her (and  
4 other prospective tubers) before allowing them to take the  
5 rental boat out onto Lake Tahoe. It is well-established that  
6 federal admiralty law imposes upon a shipowner "the duty of  
7 exercising reasonable care under the circumstances." Kermarec  
8 v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959).  
9 This duty is owed to seamen and all others aboard a boat "for  
10 purposes not inimical to [the vessel owner's] legitimate  
11 interests." Id.; Ghotra by Ghotra v. Bandila Shipping, Inc.,  
12 113 F.3d 1050, 1060 (9th Cir. 1997).

13           The contours of this standard of care, "although not  
14 precisely defin[ed]," are "fashioned by the federal courts, by  
15 Congressional enactments, and[] by international conventions and  
16 treaties." Prince v. Thomas, 25 F. Supp. 2d 1045, 1047 (N.D.  
17 Cal. 1997). It is also informed by the Coast Guard's Inland  
18 Rules of Navigation; local custom and practice; and a general  
19 understanding of prudent maritime conduct. Id. "Reasonable  
20 care" in admiralty is neither more nor less stringent than the  
21 reasonableness standard for a common law negligence claim.  
22 Weyerhaeuser Co. v. Atropos Island, 777 F.2d 1344, 1348 (9th  
23 Cir. 1985).

24           The Court first finds that neither L M Sports nor L T  
25 Leasing breached a duty of care by simply making the Four Winns  
26 available to Lakeside Marina customers for tubing. Palla argued  
27 that Defendants were negligent for failing to provide the Palla  
28 group a vessel fit for its intended purpose. Palla did not,

1 however, prove by a preponderance of the evidence that the Four  
2 Winns manufacturer did not intend for the boat to be used for  
3 towing sports. Nor did Palla present any evidence that the Four  
4 Winns was subject to recall.

5 Plaintiff's expert, William Kitzes, provided testimony that  
6 the warning labels on the rental boat were inconsistent with the  
7 2016 American National Standard Institute ("ANSI"), American  
8 Boating & Yacht Council ("ABYC"), and National Association of  
9 State Law Administrators ("NASBLA") standards for warning  
10 labels. But he did not testify that the warnings had been  
11 recalled or that Four Winns had advised its customers that the  
12 labels were inadequate. Nor did he conduct a study of other  
13 marinas in Lake Tahoe to determine whether ANSI, ABYC, or NASBLA  
14 compliance is standard practice.

15 The Court recognizes that the design of the 1997 Four Winns  
16 made use of the boat's ladder dangerous. But leasing companies  
17 and marinas are not responsible for a boat's design. Absent a  
18 showing that the Four Winns was not intended for towing sports,  
19 or that either the boat or its warning labels were subject to  
20 recall at the time of the accident, the Court does not find  
21 Defendants breached a duty of care by making the Four Winns  
22 available to its customers for towing sports.

23 The Court does, however, find Defendant L M Sports had a  
24 duty to warn the entire Palla group of the dangers of propeller  
25 strikes both in general and when being towed behind the 1997  
26 Four Winns. L M Sports owed a reasonable duty of care under the  
27 circumstances to its renters at Lakeside Marina, including  
28 Palla. By its own terms, this standard of care requires the

1 Court to consider all attendant circumstances when determining  
2 what is reasonable. The circumstances here involved: (1) L M  
3 Sports's awareness that they largely serviced inexperienced  
4 boaters; (2) a large alpine lake; (3) a boat with its boarding  
5 ladder only 17 inches from its propellers; and (4) L M Sport's  
6 decision not to retrofit its boats with propeller safety  
7 devices. Given these circumstances, the Court finds Defendant  
8 L M Sports had a duty to provide safety instructions to all of  
9 its tubing customers. L M Sports breached this duty when it  
10 failed to give safety instructions to the whole Palla group.

11 In 2016, California state law allowed people to operate  
12 recreational boats without a boating license or any type of  
13 boating experience. Consistent with state law, Lakeside Marina  
14 did not require its customers to have a boating license or any  
15 boating experience to rent one of its boats. Both Meeks and  
16 Hasset confirmed this, testifying in court that the decision of  
17 whether to rent someone a boat lied almost entirely within  
18 Meeks's discretion. Although later qualified by Hasset, Meeks  
19 testified that he only turned away potential customers if they  
20 were too intoxicated to operate a boat or be out on the lake.  
21 Meeks explained that a customer without boating experience might  
22 be required to take lessons with a marina employee prior to  
23 operating the boat by herself. But a lack of boating experience  
24 did not disqualify anyone from renting a boat, operating a boat,  
25 or being towed behind a boat under either California law or  
26 Lakeside Marina policy.

27 The dangers of renting out boats without regard to operator  
28 or passenger experience increase when viewed in conjunction with

1 the size and elevation of Lake Tahoe. Lake Tahoe is an alpine  
2 lake. Both Hasset and Lt. Lovells testified that the size and  
3 elevation of Lake Tahoe make it a "unique body of water," giving  
4 rise to circumstances not generally seen on other lakes. The  
5 weather changes quickly, the water can be unsettlingly cold, and  
6 the current can cause the water to have several feet of chop-  
7 enough to move a propeller's blades even when the boat is no  
8 longer under power. The peculiarities of Lake Tahoe raise  
9 unexpected challenges for renters who, based on other  
10 experiences, might expect to be familiar with water sports.  
11 Those peculiarities pose even greater dangers for renters  
12 without any experience at all.

13 But of perhaps paramount importance are the layout of the  
14 1997 Four Winns and L M Sports's decision not to modify it  
15 before renting it out for tow sports. This is not a products  
16 liability case. All the same, a boat's features and a marina's  
17 precautionary measures are both relevant considerations that  
18 inform the scope of L M Sports's duty. The boat L M Sports  
19 rented to the Palla group had two counter-rotating propellers  
20 that were capable of spinning up to a thousand times per second.  
21 The propellers sat below the water line, 17 inches away from the  
22 boarding ladder. Hasset testified that, absent significant  
23 upper body strength, a tuber would be unable to re-board this  
24 particular boat without using the boarding ladder.

25 Defendants' Trial Exhibit C showed that the propellers were  
26 not visible to people standing on the dock. Although O'Dea  
27 credibly testified at his deposition that he could see the  
28 propellers as he re-boarded the Four Winns after tubing,

1 Copeland and Gautier both credibly testified that they did not  
2 see the propellers when re-boarding. At best, the propellers  
3 were only sometimes visible to tubers returning to the boat in  
4 choppy water. Even so, L M Sports did nothing to guard against  
5 the risk invariably posed by having the boat's boarding ladder  
6 so close to the propellers.

7 Plaintiff's expert, Dr. Alison Osinski testified that L M  
8 Sports could have retrofitted the Four Winns with safety  
9 equipment such as a ladder interlock device or a propeller  
10 guard. Although defense expert, Dr. Wendy Sanders, disagreed  
11 with Dr. Osinski about whether the industry required these  
12 devices, she acknowledged that a ladder interlock device would  
13 have prevented this accident so long as the ladder was down and  
14 no one intentionally overrode the system. Defendants chose not  
15 to install this device on the rental boat, as they were entitled  
16 to do. And safety hazards notwithstanding, L M Sports rented  
17 out the 1997 Four Winns out for towing sports.

18 But under these circumstances, reasonable care required L M  
19 Sports to inform all potential tubers of the risks they were  
20 likely to encounter. It is undisputed that Foss did not do this  
21 at any time during the "spiel." As discussed above, the Court  
22 rejects Palla's arguments that maritime law imposed a specific  
23 duty on Defendants to retrofit the rental boat with propeller-  
24 safety devices or modify the boat's warning labels absent a  
25 specific recall or regulatory requirement. The fact that  
26 Defendants could have taken greater strides to ensure their  
27 customers' safety with aftermarket devices does not make it  
28 required by law. Holzhauser v. Golden Gate Bridge Highway &

1 Transportation District ("Holzhauer I"), 899 F.3d 844, 850 (9th  
2 Cir. 2018) ("Even if having radar reflectors is a good practice,  
3 good practice does not create liability absent facts to support  
4 that the practice is an operational standard in the relevant  
5 community of small boat owners."). But it contravenes general  
6 understandings of prudent maritime conduct to rent out a boat  
7 that is uniquely dangerous for a particular purpose without  
8 warning the renters of those dangers—particularly given the  
9 severity of the risks involved and the feasibility of the  
10 remedial measure here. Indeed, Hasset himself testified that he  
11 believed passengers on a boat should be educated about propeller  
12 safety.

13 L M Sports was in the best position to know of the unique  
14 dangers posed by the rental boat when used for towing sports.  
15 L M Sports leased the boat. L M Sports decided where to put the  
16 boat and what it could be used for. L M Sports, unlike their  
17 customers, had occasion to see the rental boat when it was out  
18 of the water, with the ladder unfolded. And yet, it adopted a  
19 policy of not specifically warning prospective tubers about the  
20 dangers of propeller strikes. L M Sports did not require tubers  
21 to sign any type of written form that included tuber-safety  
22 information. It did not place any signs around Lakeside Marina  
23 warning prospective tubers of propeller strikes. And L M Sports  
24 did not train Foss to inform tubers of the risks that propellers  
25 pose generally or of the heightened risk propellers pose on the  
26 1997 Four Winns.

27 On the next-to-last day of trial, Hasset testified for the  
28 first time that Foss was trained to tell a boat's operators that

1 they were tasked with relaying safety instructions from Foss to  
2 the other passengers. The Court gave little if any weight to  
3 this testimony given that Hasset had testified for nearly two  
4 days at the beginning of the trial without ever mentioning this  
5 policy. Neither Meeks nor Foss corroborated Hasset's  
6 testimony, i.e. that dockhands were trained to tell operators to  
7 relay information to other members of the boat. And neither  
8 Botwin nor Garcia testified to hearing such an instruction.  
9 Simply put, the Court did not find Hasset's amended account of  
10 Foss's training to be credible. L M Sports breached its duty of  
11 care by failing to warn its customers of the dangers they were  
12 likely to encounter while tubing.

13 L M Sports argues that it should be absolved of any duty it  
14 owed Palla for two reasons: (1) Palla assumed the risk of being  
15 injured while tubing, and (2) the dangers posed by the rental  
16 boat's propellers were "open and obvious." The Court rejects  
17 both arguments.

18 During trial, the Court requested briefing on the issue of  
19 the applicability of assumption of risk in this case. See  
20 Plf.'s Trial Brief, ECF No. 256; Defs.' Trial Brief, ECF No.  
21 257. The Court issued an order from the bench on Friday, March  
22 8, 2019 finding that assumption of risk did not apply as a bar  
23 to Palla's recovery here. See Socony-Vacuum Oil Co. v. Smith,  
24 305 U.S. 424, 431 (1939). That ruling stands. In Socony-Vacuum  
25 Oil Co., the Supreme Court plainly stated:

26 Any rule of assumption of risk in admiralty, whatever  
27 its scope, must be applied in conjunction with the  
28 established admiralty doctrine of comparative negligence  
and in harmony with it. Under that doctrine contributory

1 negligence, however gross, is not a bar to recovery but  
2 only mitigates damages.

3 305 U.S. 424, 431 (1939).

4 While true that neither the Supreme Court nor the Ninth  
5 Circuit have squarely addressed the application of assumption of  
6 risk in the recreational sports context, their wholesale  
7 rejection of the defense as a complete bar to suit in other  
8 areas has been uniform and emphatic. See, e.g., Mahnich v.  
9 Southern S.S. Co., 321 U.S. 96, 103 (1944); Jacob v. City of  
10 N.Y., 315 U.S. 752, 755 (1942); Socony-Vacuum Oil Co., 305 U.S.  
11 at 431; Simeonoff v. Hiner, 249 F.3d 883, 888 (9th Cir. 2001);  
12 DuBose v. Matson Nav. Co., 403 F.2d 875, 877 (9th Cir. 1968).  
13 The Northern District of California has also ruled persuasively  
14 on the issue. Manning v. Gordon, 853 F.Supp. 1187, 1188-89  
15 (N.D. Cal. 1994).<sup>2</sup> In line with these decisions, and in  
16 accordance with its previous ruling, the Court again rejects  
17 Defendants' claims of an assumption-of-risk defense.

18 The Court likewise rejects L M Sports's position that they  
19 owed no duty to warn passengers of propeller strikes because the  
20 danger was open and obvious. In support of this position, L M  
21 Sports relies exclusively on non-binding authority, primarily  
22 from other circuits. The Ninth Circuit has only recognized the  
23 open-and-obvious defense in admiralty cases when claims are  
24 brought by ship repairmen, longshoremen, stevedores and vessel  
25 owners. See Howlett v. Birkdale Shipping Co., S.A., 512 U.S.

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26  
27 <sup>2</sup> The Central District of California adopted the Northern  
28 District's reasoning in Mavromati v. Spot, LLC, No. 14-cv-03333-  
SJO, 2016 WL 4820634 at \*9 n.11 (C.D. Cal. Jan. 29, 2016).



1 92, 98-99 (1994) (finding shipowner did not owe stevedores a  
2 duty to warn of open and obvious danger); Ludwig v. Pan Ocean  
3 Shipping Co., Ltd., 941 F.2d 849, 851 (9th Cir. 1991) (finding  
4 shipowner did not owe longshoreman duty to warn of open and  
5 obvious danger); Peters v. Titan Nav. Co., 1989 A.M.C. 1598,  
6 1601-02 (9th Cir. 1988) (finding shipowner did not owe ship  
7 repairmen duty to warn of condition he was hired to fix);  
8 Grace Line, Inc. v. Todd Shipyards Corp., 500 F.2d 361, 365 (9th  
9 Cir. 1974) (finding wharfinger did not owe shipowner duty to  
10 warn of open and obvious danger).

11 The availability of this defense in cases brought by seamen  
12 and vessel owners stems, in part, from the symmetry of expertise  
13 between those who owe the duty and those to whom the duty is  
14 owed. For example, in Ludwig, 941 F.2d at 850, a longshoreman  
15 was injured when he stepped down off a ladder, into a coiled  
16 lashing cable left at the bottom. The longshoreman sued the  
17 owner of the ship he was working on, arguing that the owner  
18 breached his statutory duty to warn him of unsafe conditions on  
19 the boat. Id. at 850-51. The Court found that the cables would  
20 have been open and obvious to any "competent longshoreman"  
21 ascending the ladder; the longshoreman's "momentary  
22 forgetfulness" when descending the ladder "[did] not erase the  
23 notice given by [the cables'] presence." Id. at 851. In doing  
24 so, the Court explicitly distinguished between a longshoreman  
25 and "an average reasonable person." Id. at 852.

26 A longshoreman is an expert who is required to be mindful  
27 of hazards—not forgetful of them. . . . [A] shipowner  
28 may rely on the expertise of longshoremen and leave  
unremedied conditions that would otherwise be considered

1 unreasonably dangerous to less skilled persons. It is  
2 for this reason that the question of whether an average  
3 reasonable person would be excused from forgetting about  
4 a hazard aboard ship is irrelevant when the issue is  
whether a longshoreman should be excused from forgetting  
such a hazard.

5 Id. (internal quotations and citations omitted).

6 The symmetry of expertise that exists between a  
7 longshoreman and a shipowner does not exist between a  
8 recreational rental boat owner and the occasional renter, making  
9 "obviousness" relative. The Court declines to extend the open-  
10 and-obvious defense to this context.

11 Even if admiralty law did recognize an open-and-obvious  
12 defense to negligence claims by recreational boat renters, it  
13 would not apply here. The Court disagrees with L M Sports's  
14 argument that a vague awareness of a boat's propulsion system  
15 made the danger posed by the Four Winns obvious. Hasset  
16 testified that boats can be powered by propellers or jet  
17 propulsion. He also acknowledged that, even among boats with  
18 propellers, there are differences in how far the propellers  
19 extend from the back of the boat.

20 The parties provided several images depicting which parts  
21 of the boat were visible above water. The boat's propellers  
22 were not visible in any of those pictures. The only visible  
23 evidence of the boat's propulsion system were the bubbles it  
24 created when under power. Those bubbles did not place the  
25 passengers on notice that their boat was specifically powered by  
26 propellers. More importantly, they did not provide tubers  
27 specific information about where those counter-rotating  
28 propellers were in relation to where they would be re-boarding

1 the boat. The Court finds that L M Sports had a duty to warn  
2 Palla of propeller strikes because the dangers here were not  
3 open and obvious.

4 Based on all the evidence admitted at trial, the Court  
5 concludes that L M Sports owed Palla a duty of reasonable care  
6 under the circumstances. Given the circumstances present on  
7 July 24, 2016, L M Sports had a duty to warn the Palla group of  
8 dangers they were likely to encounter while tubing. L M Sports  
9 breached this duty when it failed to warn Palla of the dangers  
10 of propeller strikes both generally and on her particular boat.  
11 The Court also concludes L T Leasing did not breach a duty of  
12 care owed to Palla.

13 c. Causation

14 L M Sports's failure to warn Palla of the dangers she was  
15 likely to face while tubing was a proximate cause of her  
16 injuries. As with a claim of common law negligence, plaintiffs  
17 must make a showing of proximate causation to sustain a  
18 negligence claim arising in admiralty. Exxon Co., U.S.A. v.  
19 Sofec, Inc., 517 U.S. 830, 832 (1996). Proximate cause serves  
20 as "a means of cutting off liability for consequences that,  
21 although causally related to the defendant's negligent conduct,  
22 are not so closely connected with this conduct to justify the  
23 imposition of liability." Weyerhaeuser, 777 F.2d at 1351.

24 Admiralty law also recognizes "superseding causes." Exxon,  
25 517 U.S. at 837. A superseding cause severs the causal link  
26 between a careless actor and a subsequent injury when "the  
27 defendant's negligence in fact substantially contributed to the  
28 plaintiff's injury, but the injury was actually brought about by

1 a later cause of independent origin that was not foreseeable.”  
2 Id. (quoting 1 T. Schoenbaum, Admiralty and Maritime Law § 5-3,  
3 pp. 165-166 (2d ed. 1994)).

4 The Court finds that L M Sports’s failure to warn Palla of  
5 the location of the propellers, the dangers associated with  
6 them, and the measures she could have employed to protect  
7 herself from injury due to a propeller strike was a proximate  
8 cause of her injuries. Palla’s uncontested testimony revealed  
9 that she was a cautious individual. Because she had never gone  
10 tubing before, she waited for others to go first to see how it  
11 was done. Palla tried to be cognizant of what was going on  
12 around her when attempting to re-board the Four Winns after  
13 tubing. She testified that, being mindful of how the choppiness  
14 of the water would make it difficult to grab the ladder from the  
15 side, she swam past the ladder, turned around, and approached it  
16 head on. The Court is persuaded by a preponderance of the  
17 evidence that had L M Sports instructed Palla to also be mindful  
18 of the proximity of the boat’s propellers to the boarding  
19 ladder, she would have been.

20 While the Court finds that Garcia was the primary cause of  
21 Palla’s injuries, his actions do completely not cut off L M  
22 Sports’s liability because those actions were foreseeable.  
23 Palla’s legs were struck by the propellers because the rental  
24 boat was in idle reverse shortly before she attempted to board.  
25 The preponderance of the evidence suggests that Garcia  
26 inadvertently pulled the throttle past neutral, briefly putting  
27 the boat into reverse before locking the control into neutral.  
28 At trial and through deposition testimony, witnesses gave

1 seemingly conflicting testimony about the boat's movement when  
2 Garcia was picking up Palla. Garcia testified that he put the  
3 Four Winns in neutral when picking up all tubers, including  
4 Palla, and that he never put the boat in reverse. In line with  
5 this testimony, several members of the Palla group testified  
6 that they remembered the boat being still after Garcia circled  
7 around to pick up Palla. Palla similarly recounted that the  
8 boat was not moving backward as she approached the boat to re-  
9 board. Yet, the damage to Palla's legs clearly suggests that  
10 the propeller blades were moving at some speed. And, as  
11 explained by Lt. Lovell, the damage to the trailing edge of the  
12 propellers indicates that the blades were spinning in reverse  
13 when they struck Palla. The Court's finding that Garcia  
14 accidentally pulled the throttle into reverse before settling it  
15 into neutral best reconciles otherwise conflicting accounts of  
16 credible witnesses.

17       Testimony from the parties' experts also supports the  
18 Court's finding. Dr. Sanders testified that the throttle on the  
19 rental boat "clicked" into each gear if the operator released  
20 the red lever at the bottom of the throttle. If, however, the  
21 operator kept the red lever compressed, he could pull it from  
22 forward into reverse without the throttle clicking into neutral.  
23 Dr. Osinski testified that it is common for novice boaters to  
24 make this mistake because the difference between neutral and  
25 idle reverse can be imperceptible.

26       Garcia bears the vast majority of the responsibility for  
27 Palla's injuries because he did not follow Foss's instructions  
28 to turn off the boat's engine when picking up tubers. In doing

1 so, he breached the duty of ordinary care that he owed to Palla.  
2 Even so, Garcia's mishandling of the Four Winns does not amount  
3 to a superseding cause such that it cuts off Defendants'  
4 liability because his failure to follow instructions was  
5 foreseeable. Meeks testified that a rental boat's operator was  
6 the most dangerous part of the boat, and Hasset testified that  
7 he knew inexperienced and inattentive operators would be driving  
8 his rental boats. More specifically, Meeks testified that, in  
9 2016, he knew an operator might put a boat in neutral, thinking  
10 it was off. Dr. Osinski gave further weight to Meeks's  
11 testimony when she testified that both putting a boat in neutral  
12 instead of turning it off and inadvertently pulling the throttle  
13 past the neutral position were common mistakes that she would  
14 expect rental boat operators to make.

15 Despite the clear risk posed by inattentive and  
16 inexperienced operators, L M Sports did not train Foss to  
17 decrease this risk by giving operators demonstrative training on  
18 how the throttle worked. Nor did L M Sports train Foss to warn  
19 operators of the dangers of shifting the throttle past neutral.  
20 L M Sports did not provide operators with a checklist of these  
21 critical safety instructions to use while out on the lake. And  
22 although Foss instructed Garcia to turn the boat completely off  
23 when picking up tubers, the Court did not find Foss's testimony  
24 that he repeatedly emphasized this instruction, carefully  
25 highlighting the difference between "off" and "neutral," to be  
26 credible. The known predisposition of rental boat operators to  
27 be inattentive and careless—when combined with the barebones  
28 instructions L M Sports provided—made Garcia's failure to follow

1 all of Lakeside's instructions foreseeable. The Court finds  
2 that L M Sports was a proximate cause of Palla's injuries.

3 d. Damages

4 Palla sustained severe injuries on both of her legs as a  
5 result of the propeller strike. The severity of the injuries on  
6 her right leg required the doctors at Renown Medical Center in  
7 Reno, Nevada to amputate it right above the knee. The fact that  
8 Palla sustained damages is undisputed. The amount of damages to  
9 which Palla is entitled will be determined in a subsequent jury  
10 trial.

11 e. Comparative Fault

12 When an accident has multiple causes, a court must allocate  
13 liability among all individuals and entities responsible.  
14 Reliable Transfer Co., 421 U.S. at 411. The doctrine of  
15 comparative fault requires the court to make "an individualized  
16 evaluation of [the] collision . . . [and] to compare the fault  
17 of each party, where fault is defined as blameworthy conduct  
18 which contributes to the proximate cause of the loss or injury."  
19 Crowley, 530 F.3d at 1174 (quoting Pan-Alaska Fisheries, Inc. v.  
20 Marine Constr. & Design Co., 565 F.2d 1129, 1139 (9th Cir.  
21 1977))

22 Based on the evidence admitted at trial and the findings  
23 and conclusions set forth above, the Court finds L M Sports to  
24 be 20% at fault and Garcia to be 80% at fault for Palla's  
25 injuries. L M Sports created an unreasonable additional risk to  
26 Palla when it failed to warn her of the risks of propeller  
27 strikes when re-boarding a boat after tubing. L M Sports  
28 presented a video during trial to illustrate how the Four

1 Winns's propellers spun depending on what gear the boat was in.  
2 The video showed that, even when the boat's engine was off, its  
3 propellers continued to spin so long as the boat was moving  
4 through the water. Therefore, even when a boat operator follows  
5 a Lakeside Marina dockhand's instruction to turn the engine off  
6 when picking up tubers, a tuber is still at risk of getting  
7 struck by a propeller—particularly on the Four Winns. L M  
8 Sports could have alleviated this risk at little to no cost to  
9 the company. It chose not to. While this decision contributed  
10 to Palla's injuries, the Court finds it was not the primary  
11 reason for this tragic accident. The Court's allocation of 20%  
12 fault is consistent with L M Sports's level of blameworthiness.

13 The Court concludes that Garcia is 80% at fault because it  
14 is uncontroverted that his negligent operation of the boat  
15 directly caused Palla's injuries. Garcia made a mistake. He  
16 either misunderstood Foss's instructions, forgot them, or chose  
17 not to follow them. Either way, he breached the duty of  
18 ordinary care that he owed to Palla when he failed to turn the  
19 boat off as she was re-boarding the boat. His failure to  
20 operate the boat correctly was the primary cause of Palla's  
21 injuries. Although Palla could have been struck by the  
22 propeller even if the boat's engine was off, her injuries would  
23 have likely been much less severe given the decreased speed of  
24 the propeller blades. 80% is an appropriate allocation of fault  
25 given Garcia's role in the accident.

26 L T Leasing is 0% at fault for Palla's injuries.

27 Palla is also 0% at fault. Palla was 22 years old at the  
28 time of the accident and had never been towed behind a boat.



1 She had been a passenger on a boat only a handful of times in  
2 her life. L M Sports's failure to warn Palla of the known risk  
3 of propeller strikes prevented her from exercising the level of  
4 care necessary when re-boarding the Four Winns after tubing.  
5 Furthermore, Garcia's representation that he had stopped the  
6 boat deprived Palla of any reason to believe that she should not  
7 have attempted to re-board.

8 3. Privity or Knowledge

9 Because Palla proved by a preponderance of evidence that L M  
10 Sports was negligent, L M Sports bore the burden of proving that  
11 it lacked privity or knowledge of "the act or condition [causing  
12 the accident]." In re BOWFIN M/V, 339 F.3d at 1137. The Court  
13 concludes that L M Sports did not make this showing.

14 L M Sports argues that it lacked knowledge because it could  
15 not have known that Garcia was going to accidentally put the boat  
16 in reverse while Palla was re-boarding the boat. The Court  
17 disagrees with L M Sports's characterization of this analysis.  
18 The focus of the inquiry is not whether L M Sports could have  
19 predicted the exact consequences, but rather, whether L M Sports  
20 knew of the risk its negligence posed. See Holzauer v. Golden  
21 Gate Bridge Highway & Transportation District ("Holzauer II"),  
22 745 Fed. Appx. 265, 269 (9th Cir. 2018). More specifically, this  
23 issue requires the Court to determine whether L M Sports knew  
24 that it was allowing its customers to go tubing without providing  
25 any warnings to the individuals who would be in the water and  
26 most at risk of a propeller strike. The Court finds that it did.

27 A company's failure to formulate and implement a necessary  
28 safety policy may support a finding of knowledge. In Holzauer

1 II, 745 Fed. Appx. At 267-69, a speedboat passenger was killed  
2 when the speedboat and a passenger ferry collided. The captain  
3 of the ferry had been using his cell phone right before the  
4 accident occurred. Id. at 269. The district court found that  
5 the captain's use of a cell phone while operating a ferry was a  
6 negligent condition, and that Defendant Golden Gate Bridge  
7 Highway and Transportation District ("GGB") had constructive  
8 knowledge of that condition. Even though "there was no evidence  
9 that [GGB] was 'on notice' of similar prior incidents," it could  
10 have "discover[ed] with reasonable investigation that ferry  
11 operators used their cellphone[s] while operating the ferry."  
12 Id. Despite this knowledge, GGB did not have a policy against  
13 personal cell phone use. Id. The Ninth Circuit affirmed the  
14 district court, finding the defendants failed to show they lacked  
15 knowledge of a negligent condition. Id.

16 The negligent act at issue here is L M Sports's policy of  
17 training Lakeside Marina dockhands to only provide boating and  
18 safety instructions to rental boat operators. At the time of the  
19 accident, Hasset and Meeks were collectively in charge of  
20 formulating Lakeside Marina's employee training policies. Their  
21 testimony at trial revealed that they knew they were renting  
22 boats out for tubing, without providing tubers any information on  
23 the dangers of tubing generally or on the dangers of tubing  
24 behind the 1997 Four Winns specifically. Hasset and Meeks's  
25 knowledge is imputed to L M Sports. See United States v.  
26 Standard Oil of California, 495 F.2d 911, 917 (9th Cir. 1974)  
27 ("In short, the [privity or knowledge] inquiry must focus on  
28 whether the negligence is that of 'managing officers' or, more

1 properly, 'supervisory employees.'").

2 L M Sports's otherwise clean safety record does not preclude  
3 a finding of knowledge here. See Holzhauser II, 745 Fed. Appx. at  
4 269. Hasset testified that he knew people in the water were most  
5 at risk of propeller strikes and that propeller strikes could be  
6 deadly. Notwithstanding this knowledge, he knowingly maintained  
7 a policy of only providing safety instructions to rental boat  
8 operators. The knowledge prong of the limitation action does not  
9 exist so that a marina owner may gamble on the safety of his  
10 customers, then feign ignorance when that bet goes sour. The  
11 Court finds that L M Sports knew that it was negligently failing  
12 to warn rental boat passengers of the risks they were likely to  
13 face while tubing. The limitation of liability does not apply.

#### 14 IV. CONCLUSIONS OF LAW AS TO LIABILITY

15 For the reasons set forth above, the Court concludes as  
16 follows:

17 1. L T Leasing owed a duty of reasonable care under the  
18 circumstances to Palla.

19 2. L T Leasing did not breach its duty of care to Palla,  
20 i.e. it did not fail to provide a boat that was fit for its  
21 intended purpose.

22 3. L M Sports owed a duty of reasonable care under the  
23 circumstances to Palla.

24 4. L M Sports breached its duty of care by not warning  
25 Palla of the location of the propellers, the dangers of propeller  
26 strikes generally, or the dangers of propeller strikes when towed  
27 behind the 1997 Four Winns, and how to avoid injury.  
28

