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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;
LT LEASING, INC.; PAUL
GARCIA; and DOES 1 through
50, inclusive,

Defendants.

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

**ORDER DENYING SEAN O'DEA AND
EVAN BOTWIN'S JOINT MOTION FOR
RECONSIDERATION**

IN THE MATTER OF THE
COMPLAINT OF LT LEASING,
INC.; L M SPORTS, INC. dba
LAKESIDE MARINA and dba
ACTION WATERSPORTS OF LAKE
TAHOE and dba ACTION
WATERSPORTS AT LAKE TAHOE and
dba ACTION WATERSPORTS;
TAMARA HASSETT, individually;
and ROBERT HASSETT,
individually,

Plaintiffs-in-Limitation,

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

1 Third-Party Plaintiffs,
2 v.
3 EVAN BOTWIN, REGAN ROBERTS,
4 SEAN O'DEA, EFE ÖZYURT, and
5 NICHOLAS CARSCADDEN,
6 Cross-Defendants.

7 AND RELATED THIRD-PARTY
8 ACTION.

9 On June 18, 2019, Sean O'Dea filed a motion for
10 reconsideration. Mot. for Reconsideration ("Mot."), ECF No. 292.
11 O'Dea requests, for the second time, that the Court reconsider
12 its ruling on his and L M Sports, et al.'s cross-motions for
13 summary judgment. Id. See also Minutes for 9/19/2018 Motion
14 Hearing, ECF No. 133; Order Granting L M Sports's Mot. for Summ.
15 J., ECF No. 142; O'Dea's Motion for Reconsideration, ECF No. 153.
16 Botwin joins in O'Dea's motion. Joinder by Evan Botwin, ECF No.
17 295. L M Sports, et al. oppose the motion. Opp'n, ECF No. 298.¹

18 For the reasons discussed below, the Court denies O'Dea and
19 Botwin's joint motion for reconsideration.

20
21 I. FACTUAL BACKGROUND

22 In July 2016, Manisha Palla went to Lake Tahoe with O'Dea,
23 Botwin, and ten other co-workers (collectively, "the Palla
24 group"). Mot. at 2. The group rented a boat from L M Sports
25 (d.b.a "Lakeside Marina"). Id. The marina required renters to

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for July 16, 2019.

1 sign a rental agreement before taking any equipment out on the
2 lake. Id. at 3-5. The agreement included an indemnity clause
3 and an exculpatory clause. Id. at 3. Only five members of the
4 Palla group signed this agreement: O'Dea, Botwin, Nicholas
5 Carscadden, Regan Roberts, and Efe Özyurt. Id. at 2.

6 While out on the lake, Palla suffered severe injuries
7 following a propeller-strike accident. Palla sued L M Sports,
8 L T Leasing, and the boat's driver, Paul Garcia. Compl., ECF No.
9 1. In turn, L M Sports and L T Leasing ("L M Sports, et al.")
10 sued the five signatories of the rental agreement for
11 indemnification. Third Party Compl., ECF No. 17. Özyurt
12 defaulted and Roberts entered a settlement agreement. Clerk's
13 Entry of Default, ECF No. 51; Stipulation and Order Dismissing
14 Regan Roberts, ECF No. 86. O'Dea and Botwin filed cross-motions
15 for summary judgment. Mot. for Summ. J., ECF No. 52; Cross-Mots.
16 for Summ. J., ECF Nos. 68, 100. The Court granted L M Sports et
17 al.'s motion for summary judgment; it denied Botwin's and O'Dea's
18 cross-motions. Minutes for 9/19/2018 Motion Hearing; Order
19 Granting L M Sports's Mot. for Summ. J.

20 21 II. OPINION

22 A. Legal Standard

23 Under Rule 54(b) of the Federal Rules of Civil Procedure, a
24 court may revise a prior order "at any time before the entry of
25 a judgment adjudicating all the claims and all the parties'
26 rights and liabilities." Fed. R. Civ. Proc. 54(b). But "absent
27 highly unusual circumstances," a court should only reconsider a
28 prior decision when: (1) a party presents the court with newly-

1 discovered evidence; (2) the court committed clear error or the
2 initial decision was manifestly unjust; or (3) there is an
3 intervening change in controlling law. Hansen v. Schubert, 459
4 F. Supp. 2d 973, 998 (E.D. Cal. 2006) (citing Sch. Dist. No. 1J,
5 Multnomah County, Oregon v. ACAndS, Inc., 5 F.3d 1255, 1263 (9th
6 Cir. 1993)). Parties "may not use [] motion[s] for
7 reconsideration to relitigate old matters or raise arguments
8 [they] could have asserted earlier in the litigation." McMahon
9 v. JPMorgan Chase Bank, NA, No. 2:16-cv-1459-JAM-KJN, 2017 WL
10 3641780 at *1 (E.D. Cal. 2017).

11 B. Analysis

12 In February 2019, the Court held a bench trial on the
13 limitation-of-liability action between Palla and L M Sports, et
14 al. See ECF No. 233. O'Dea and Botwin contend evidence
15 uncovered during the trial warrants reconsideration of the
16 Court's previous ruling on the cross-motions for summary
17 judgment. Mot. at 6. Specifically, they point to Bob Hasset's
18 testimony that (1) L M Sports required all participants to sign a
19 rental agreement before boating; and (2) Julia Hontos, a marina
20 employee, erred in failing to obtain each participant's
21 signature. Mot. at 5-6. O'Dea and Botwin argue, "prior to
22 trial, there was no evidence that the Marina viewed it as their
23 duty to obtain all thirteen signatures to finalize the Contract."
24 Mot. at 7. Indeed, they maintain that they could not have
25 obtained this information at the summary judgment stage because,
26 "through the time of the January 4, 2019 Joint Pre-Trial
27 Statement, the factual issue of whether '[i]t was the Marina
28 Defendants' policy to have all customers [] read and sign the

1 rental agreement' was disputed among the parties." Mot. at 6.

2 L M Sports, et al. opposes O'Dea and Botwin's motion,
3 arguing that the summary judgment briefs and accompanying
4 exhibits referenced the marina's rental-agreement policy multiple
5 times. Opp'n at 3-4. The Court agrees. In support of its
6 statement of undisputed facts, L M Sports, et al. included a
7 transcript of Hasset's deposition by O'Dea's counsel. See Exh. 4
8 at 188:13-25, ECF No. 60-4. In relevant part, it reads:

9 **Q: Did you -- is it your company policy back at the**
10 **time of the accident that everyone was in the boat, in**
11 **other words, all 13 people who were in the boat, were**
12 **to sign the rental contract?**

13 A: Everyone that was going to be in the boat should
14 have signed the rental contract, correct.

15 **Q: And do you have any information as to why that did**
16 **not occur? It looks like there are five out of 13**
17 **people actually signed it.**

18 A: Correct. You know, my understanding is, Julia, um,
19 did not get everyone's signatures. She thought she
20 had everyone that was in the boat was my
21 understanding.

22 Id. In that same set of documents, L M Sports, et al. also
23 included a declaration by Hontos, the employee tasked with
24 distributing and collecting rental agreements on the day of the
25 accident. See Exh. 16 at 2, ECF No. 60-16. It says:

26 [M]y job duties in the office at lakeside Marina
27 included . . . ensuring that all customers involved in
28 a boat rental transaction executed a boat rental
contract As part of my duties, I had been
trained to specifically instruct all boat rental
customers . . . to carefully review both sides of the
rental contract and to then execute the boat rental
contract at the bottom of the first page of the boat
rental contract.

Id.

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1 The information contained in Hasset's deposition and
2 Hontos's declaration is wholly consistent with Hasset's testimony
3 at trial. O'Dea and Botwin's contention that L M Sports's
4 rental-agreement policy remained a factual dispute "through the
5 time of the January 4, 2019 Joint Pre-Trial Statement" does not
6 change the analysis. See Mot. at 6-7. In fact, had O'Dea and
7 Botwin shown this dispute was material at the summary-judgment
8 stage, they would have defeated L M Sports et al.'s motion. See
9 Fed. R. Civ. Proc. 56. Neither party did so.

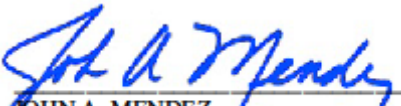
10 O'Dea and Botwin do not identify newly-discovered evidence.
11 Rather, they repurpose previously-available evidence in pursuit
12 of a new litigation strategy. Absent "highly unusual
13 circumstances," Rule 54 does not afford parties that opportunity.
14 Hansen, 459 F. Supp. 2d at 998. The Court does not find such
15 circumstances here.

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17 III. ORDER

18 For the reasons set forth above, the Court DENIES O'Dea and
19 Botwin's joint motion for reconsideration.

20 IT IS SO ORDERED.

21 Dated: August 6, 2019

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23 
24 **JOHN A. MENDEZ,**
25 **UNITED STATES DISTRICT JUDGE**