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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HUBERT SCHOEPS and CHRISTIANE
SCHOEPS, as heirs and beneficiaries of
SANDRA SCHOEPS, deceased,

No. C 02-4784 JSW

Plaintiffs,

v.

WHITewater ADVENTURES LLC;
MARK GHOLSON,

Defendants.

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT;
GRANTING DEFENDANTS'
REQUEST FOR JUDICIAL
NOTICE; DENYING
DEFENDANTS' OBJECTIONS TO
EVIDENCE**

INTRODUCTION

Plaintiffs Hubert Schoeps and Christiane Schoeps (collectively “the Schoeps”) are the heirs, beneficiaries, and successors-in-interest of Sandra Schoeps (“Sandra”), now deceased. The Schoeps bring the instant action against a whitewater rafting company and its principal, following the death of Sandra during a whitewater rafting trip.

Currently before the Court is the motion for summary judgment filed by Defendants Whitewater Adventures LLC (“Whitewater”) and Mark Gholson (“Gholson”). Defendants have additionally filed a request for judicial notice and objections to evidence in conjunction with their summary judgment motion. After consideration of the papers and relevant case law, and having had the benefit of oral argument, the Court GRANTS Defendants’ motion for summary judgment, GRANTS the request for judicial notice, and DENIES the objections to evidence.¹

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¹ The Court did not rely upon any of the objected evidence in resolving Defendants’ motion for summary judgment; accordingly, Defendants’ objections to evidence are denied.

BACKGROUND

1
2 Sandra Schoeps was a 19 year old German citizen living and working for a family in
3 Sebastopol, California, as an *au pair* through a program known as “*Au pair* in America.” The
4 program was organized and administered by American Institute for Foreign Study, Inc. A part
5 of the program included arrangement of social activities for the participants done by a local
6 Community Counselor, Denyse Caven. Ms. Caven arranged for the group to participate in a
7 whitewater rafting and camping trip. (Declaration of Inga Oltmanns (“Oltmanns Decl.”) ¶ 5.)
8 Ms. Caven contacted Whitewater to reserve rafting equipment and camping space for the 17
9 participants in the trip. (Declaration of Mark Gholson (“Gholson Decl.”) ¶ 4.) Whitewater sent
10 Ms. Caven brochures to distribute to the participants containing information concerning pricing
11 and details of what was included in the trip. (*Id.* ¶ 5.) The brochure described that the trip
12 included a raft, life jacket, camping fees, meals, parking, paddles and shuttle services. (*Id.*) In
13 addition the brochure stated “All water sports involve inherent risk, so you hereby assume the
14 risk,” and “We require all trip participants to sign a liability release and waiver before
15 embarking on your trip.” (*Id.*)

16 On the day of the trip, the participants traveled to Camp Haswell, where they met with
17 about 300 other participants. (*Id.* ¶ 7.) The group parked their cars and stowed their gear to
18 prepare for transport in buses provided by Whitewater to Buck Island, where their trip would
19 begin. (*Id.*) Each potential rafter was handed a waiver and assumption of the risk form to read
20 and sign. (*Id.* ¶ 8.) Whitewater’s employees instructed the participants that the waivers were to
21 be signed and collected before the participants were allowed on the bus. (*Id.*) Sandra was given
22 a waiver, filled out her identification information and signed it. (Gholson Decl. Exh. B.) The
23 waiver signed by Sandra was given to a Whitewater bus driver before she got on the bus.
24 Sandra, along with the other participants, was transported via bus to Buck Island.

25 When the participants arrived at Buck Island, they were given a safety orientation by
26 Gholson. (Declaration of Gerald C. Sterns (“Sterns Decl.”) Exh. 5: Mark Gholson Depo. at 32.)
27 The orientation lasted approximately 30 minutes and covered selection and fitting of life jackets
28 and instructions on what to do if anyone fell out of the boat. (*Id.*) If anyone fell out of the boat

1 Gholson instructed them to point their feet downstream and float. (*Id.* at 40-42.) He also
2 instructed the rafters to swim away from brush, bushes, sticks and twigs. (*Id.*) After the
3 orientation the participants selected their rafts and rafting partners. (Oltmanns Decl. ¶ 13.)
4 Sandra and Inga Oltmanns ended up selecting a two person “banana” boat. (*Id.*) The
5 participants then set off rafting down the river. (*Id.*) Shortly after they started down the river
6 Ms. Oltmanns and Sandra lost control of their raft and Sandra fell out and was lost from sight.
7 (*Id.* ¶ 14.)

8 Whitewater employee Dylan K. Bowman (“Bowman”) was present at Buck Island to
9 assist the boaters by making sure that their boats were properly inflated, that each person had a
10 paddle, that there was a lunch bag in each boat, and that everyone was wearing a floatation
11 device. (Sterns Decl. Exh. 11: Dylan K. Bowman Depo. at 45.) Bowman also was operating
12 the “sweep boat” which left about a half hour after all of the other boaters left. (*Id.* at 45-46, 50-
13 52.) During his first trip down the river Bowman came across three people standing on the bank
14 of the river. (*Id.* at 61-63.) They reported that Sandra had fallen out of the boat upstream and
15 was missing. (Sterns Decl. Exh. 6: Judy Wells Depo. at 71; Oltmanns Decl. ¶¶ 15-16.) The
16 Whitewater staff reported to Gholson that Sandra Schoeps was missing and a search was made
17 for her in the other boats and various camps. (Sterns Decl. Exh. 5: Gholson Depo. at 80.)

18 At this point Gholson told Bowman to go back to Buck Island and float down the river
19 to search for Sandra. (Sterns Decl. Exh. 11: Bowman Depo. at 67.) Bowman and another
20 Whitewater employee returned to Buck Island and decided to walk down the bank of the river to
21 look for Sandra. (*Id.* at 67-68.) Approximately 100 yards from the put in point, they observed
22 something just below the water-level where tree branches entered into the water. (*Id.* at 67, 78.)
23 The branches were attached to a tree hanging over the water. (*Id.*) Sandra’s body was found
24 entangled in the branches of the tree just below the water-level. (*Id.*) Her body was recovered
25 the next day by rescue personnel. (Sterns Decl. Exh. 13: Dale Johnson Depo. at 6, 16-19.)

26 The Schoeps, as heirs, beneficiaries, and successors-in-interest of Sandra, filed a
27 complaint for wrongful death, breach of contract, and intentional misrepresentation against
28 Whitewater and Gholson. The Schoeps’ complaint names Gholson in both his capacity as a

1 manager of Whitewater and in his individual capacity. Defendants move for summary judgment
2 on the grounds that Plaintiffs' claims for wrongful death and breach of contract are barred by the
3 doctrine of primary assumption of the risk and express assumption of the risk. In addition,
4 Defendants move for summary judgment on Plaintiffs' claims of intentional misrepresentation
5 and all of the claims made against Gholson in his individual capacity based on lack of evidence
6 and/or failure to state a claim.

7 DISCUSSION

8 A. Summary Judgment Standard

9 Summary judgment is proper when the "pleadings, depositions, answers to
10 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
11 genuine issue as to any material fact and that the moving party is entitled to judgment as a
12 matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is sufficient evidence
13 for a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*,
14 477 U.S. 242, 248-49 (1986). A fact is "material" if the fact may affect the outcome of the case.
15 *Id.* at 248. "In considering a motion for summary judgment, the court may not weigh the
16 evidence or make credibility determinations, and is required to draw all inferences in a light
17 most favorable to the non-moving party." *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir.
18 1997). A principal purpose of the summary judgment procedure is to identify and dispose of
19 factually unsupported claims. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323-24 (1986). The
20 party moving for summary judgment bears the initial burden of identifying those portions of the
21 pleadings, discovery, and affidavits which demonstrate the absence of a genuine issue of
22 material fact. *Id.* at 323. Where the moving party will have the burden of proof on an issue at
23 trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for
24 the moving party. *Id.* Once the moving party meets this initial burden, the non-moving party
25 must go beyond the pleadings and by its own evidence "set forth specific facts showing that
26 there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The non-moving party must "identify
27 with reasonable particularity the evidence that precludes summary judgment." *Keenan v. Allan*,
28 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251

1 (7th Cir. 1995)) (stating that it is not a district court’s task to “scour the record in search of a
2 genuine issue of triable fact”). If the non-moving party fails to make this showing, the moving
3 party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

4 **B. Plaintiffs’ Wrongful Death Cause of Action is Barred By Primary**
5 **Assumption of the Risk**

6 Defendants Whitewater and Gholson contend that Sandra assumed the risks inherent in
7 engaging in whitewater rafting and thus Plaintiffs’ claims are barred by the doctrine of primary
8 assumption of the risk. In California, the doctrine of primary assumption of the risk operates as
9 a complete bar to recovery by eliminating any duty the defendant owes the plaintiff to protect
10 the plaintiff from a particular risk of harm. *Knight v. Jewett*, 3 Cal. 4th 296, 308-215 (Cal.
11 1992). The doctrine of primary assumption of the risk applies when people voluntarily engage
12 in activities that have an inherent risk associated with them. *Id.* at 308. In order not to chill
13 participation in these activities, primary assumption of the risk eliminates the duty owed to
14 participants when inherent risks are encountered. *Id.* at 318.

15 The court in *Knight* explained the distinction drawn between inherent and non-inherent
16 risks. In the sports context, conditions or conduct that might otherwise be viewed as dangerous
17 are often an integral part of the activity itself. Thus, although moguls on a ski run pose a
18 potential risk of harm to skiers that might not otherwise exist if these conditions were removed,
19 they are the challenges and risks that are part of the sport of skiing and the ski resort has no duty
20 to remove them. *Id.* at 315.

21 Whitewater rafting has many inherent risks associated with the sport that are inseparable
22 from the activity itself. For example, it is inherent in whitewater rafting that there will be fast-
23 moving rough water that could cause participants to be ejected from their boat. Drowning after
24 being thrown into the fast-moving rough water is a further risk inherent in the sport. The court
25 in *Ferrari v. Grand Canyon Dories*, 32 Cal. App. 4th 248 (Cal. Ct. App. 1995), recognized
26 these risks inherent in whitewater rafting:

27 Plaintiff acknowledges that white water rafting has certain inherent risks. For
28 example, violent movement of the raft while traversing rapids can cause the raft
to overturn or the occupants to be thrown into the water where they risk striking
rocks or even drowning.

1 *Id.* at 253-54.

2 It was precisely this inherent risk of falling out of the raft and drowning that led to the
3 death of Sandra. Therefore, because Sandra died as a result of an inherent risk in whitewater
4 rafting Defendants owed no duty to her.

5 However, that the doctrine of primary assumption of the risk does not relieve Defendants
6 of all duties with regard to the safety of their facilities or equipment. Operators “do have a duty
7 to use due care not to increase the risks to a participant over and above those inherent in a
8 sport.” *Knight*, 3 Cal. 4th at 315-16. It is this duty to not increase the risks to Sandra over
9 those inherent in whitewater rafting that Plaintiffs allege Defendants breached.

10 Plaintiffs allege that Defendants owed a duty, and breached that duty, because they
11 increased the level of risk over the inherent risks in whitewater rafting in two ways. First,
12 Defendants owed a duty to provide a reasonably safe rafting course, taking into consideration
13 Sandra’s experience with rafting, and failed to do so.

14 The law is clear that Sandra’s subjective knowledge and experience are immaterial when
15 determining whether the Defendants owed her a duty of care. Primary assumption of the risk
16 does not depend on the particular plaintiff’s subjective knowledge, or appreciation of the
17 potential risk, or on plaintiff’s consent. *Knight*, 3 Cal. 4th at 316; *see also Stimson v. Carlson*,
18 11 Cal. App. 4th 1201, 1205 (Cal. Ct. App. 1992). In *Knight*, the court noted that assessing a
19 defendant’s liability based on an individual plaintiff’s knowledge would create “drastic
20 disparities in the manner in which the law would treat defendants who engaged in precisely the
21 same conduct, based on the often unknown, subjective expectations of the particular plaintiff”
22 and that such an approach is inconsistent with principles of fairness underlying a comparative
23 negligence system. *Knight*, 3 Cal. 4th at 312-13. Therefore, Defendants had no duty to
24 determine Sandra’s knowledge of the sport of whitewater rafting and adjust the course
25 accordingly.

26 Second, Plaintiffs assert that Defendants owed a duty to provide adequate instruction and
27 warning of the danger posed by the strainer, and failed to do so. Whitewater did not increase the
28 inherent risk of whitewater rafting by failing to remove submerged objects or the strainer. In

1 *O'Donoghue v. Bear Mountain Ski Resort*, 30 Cal. App. 4th 188, 192-93 (Cal. Ct. App. 1994),
2 the court held that the owner and operator of a ski resort had no duty to protect the plaintiff from
3 risks inherent in the sport of skiing such as rough terrain, trees, rocks, and ravines by removing
4 or modifying the obstacles. Similarly, Whitewater had no duty to modify the river, which it did
5 not own, to remove objects that create inherent risks in whitewater rafting.

6 Likewise, Whitewater did not have a duty to warn Sandra of submerged natural objects
7 including the “strainer” because they are inherent risks in the activity of whitewater rafting.
8 Rapids, a necessary component to whitewater rafting, consist of water flowing over submerged
9 objects. In addition, rivers usually have vegetation growing along the sides that become a part
10 of the challenge when engaging in the sport of whitewater rafting. It is precisely these risks,
11 inherent in whitewater rafting, that make the sport appealing to participants. A risk is inherent if
12 it is one that “cannot be completely eliminated without destroying the sport itself.” *Regents of*
13 *Univ. of California v. Superior Court*, 41 Cal. App. 4th 1040, 1045-47 (Cal. Ct. App. 1996).
14 Floating down a river with no submerged objects would not be “whitewater” rafting.

15 In addition, Whitewater had no duty to train Sandra on how to maneuver out of the
16 strainer. The scope of a defendant’s legal duty, “depend[s] on the defendant’s role in, or
17 relationship to the sport.” *Knight*, 3 Cal. 4th at 317. Whitewater’s role was to provide Sandra
18 with transportation, equipment, meals and a place to camp. There is no evidence to suggest that
19 Whitewater had agreed to give complete instruction on how to deal with every situation that
20 may arise on the river. The brochure sent out to Ms. Caven stated that there was no guide
21 service provided with the rental and that this was a self-guided trip. (Gholson Decl. ¶ 6.)

22 Plaintiffs’ claims are barred by the doctrine of primary assumption of the risk because
23 Sandra died as a result of an inherent risk in whitewater rafting. The risks of falling out of the
24 raft and drowning are inherent risks in whitewater rafting because they are inseparable from the
25 activity. In addition, Defendants did not increase the risks to Sandra over those inherent in the
26 sport. Therefore, Defendants owed no duty to Sandra for the particular cause of her death.

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C. Plaintiffs’ Claims are Also Barred by Contract and Express Assumption of the Risk

Sandra expressly assumed the risk of injury when she signed the release and assumption of risk before she boarded the bus. Sandra’s express assumption of the risk is a complete defense to the Schoeps’ wrongful death action. “A wrongful death plaintiff is subject to any defenses which the defendant could assert against the decedent, including the decedent’s express agreement to waive the defendant’s negligence and assume all risks.” *Saenz v. Whitewater Voyages, Inc.*, 226 Cal. App. 3d 758, 763-64 (Cal. Ct. App. 1990). An express assumption of risk operates to relieve the duty owed by the defendant to the plaintiff arising from what the plaintiff is going to do or leave undone. *Id.* at 764. A contract releasing rights will be enforced if it is clear and unambiguous, not unconscionable, and does not violate public policy. *Ferrell v. S. Nev. Off-Road Enthusiasts, Ltd.*, 147 Cal. App. 3d 309, 318 (Cal. Ct. App. 1983); *Graham v. Scissor-Tail, Inc.*, 28 Cal. 3d 807, 820 (Cal. 1981).

1. The Release is Clear and Unambiguous

In order for a release to be enforced and operate as an express assumption of risk, the release must be sufficiently “clear, explicit, and comprehensible in each of its essential details.” *Ferrell*, 147 Cal. App. 3d at 318. However, a release does not need to be perfect, rather, it must, “in plain language express that the releaser is aware of the risks and dangers that can occur on any river trip... including the hazards of personal injury, accident and illness.” *Saenz*, 226 Cal. App. 3d at 765.

The release signed by Sandra in this case contains language that was sufficiently clear and unambiguous to hold Whitewater harmless from any liability and claims arising out of the trip. The form was titled with capital, bolded letters: “**WHITEWATER ADVENTURES RELEASE OF LIABILITY AND ASSUMPTION OF RISK AGREEMENT FOR SELF GUIDED RAFT RENTAL.**” Further, the release contained an introduction and conclusion written in easily-understandable language that explained the exact rights that Sandra was releasing. In addition, the body of the release contained language that explained both the release of liability and the acceptance of risk. The release was divided into distinct sections and was

1 written in 10 point font, sufficiently large to be easily read. *See Conservatorship of Link*, 158
2 Cal. App. 3d 138, 141-42 (Cal. Ct. App. 1984).

3 **2. The Release is Not Unconscionable**

4 Under California law, a contract will not be enforced, even if it is consistent with the
5 reasonable expectation of the parties, if it is unduly oppressive or unconscionable. *Graham*, 28
6 Cal. 3d at 820. Plaintiffs cite specific examples of proposed triable issues of fact that would
7 lead to a finding of unenforceability of the release on grounds that it is oppressive or
8 unconscionable. Specifically, Plaintiffs allege that the release is unenforceable because of:
9 small type, surprise, insufficient time to review, personal problems Sandra was experiencing,
10 Sandra's lack of understanding of English, lack of explanation of the release, that Sandra would
11 be stranded if she didn't sign the release, that she had no opportunity to inspect the river, and
12 that there was no disclosure of specific risks. Taking each of these in turn, the Court finds that
13 the release is not unconscionable.

14 As stated above, the release was in 10 point type, which is sufficient large to be easily
15 read. The release was not a surprise because Ms. Caven testified that she gave Sandra a
16 brochure before they left on the trip. (Sterns Decl. Exh. 3: Denyse Caven Depo. at 54-56.) The
17 brochure said that the participants would be required to sign a release before participating in the
18 activity. (*Id.* at 54-56, 130-32.) The participants also had sufficient time to review the release;
19 30 to 45 minutes passed between handing out the releases and getting on the bus. (*Id.* at 94.)

20 Evidence submitted that Sandra was car sick and menstruating does not show that she
21 could not read and understand the release. Sandra was able to fill out her name, address, and
22 phone number, and sign and date the release. Her act of filling out the form confirms what
23 Plaintiffs concede, that Sandra had a working knowledge of English. If she had questions about
24 the release she could have contacted Ms. Caven or any of the Whitewater employees. Finally
25 Plaintiffs did not present any evidence to support their allegation that Ms. Caven would strand
26 Sandra at Camp Haswell if she did not sign the release.

27 Plaintiffs also claim that Sandra did not have an opportunity to inspect the river before
28 she signed the release. This assertion, however, is not relevant to the validity of the release.

1 The court in *Okura v. United States Cycling Fed.*, 186 Cal. App. 3d. 1462, 1464-1465, 1468-
2 1469 (Cal. Ct. App. 1986), held that the risk of falling when a bicycle hit loose debris while
3 crossing railroad tracks on a race course was the type of risk assumed by the plaintiff when he
4 signed the pre-race release, despite the lack of opportunity to inspect the course.

5 It is also not relevant that Sandra may not have known of the exact risk of getting caught
6 on the branches and drowning. First, the release specifically referred to falling out of the boat,
7 drowning, and contacting trees. (Sterns Decl. Exh. 7.) In addition, the release remains valid
8 despite not enumerating each specific risk a participant may encounter. *Madison v. Superior*
9 *Court*, 203 Cal. App. 3d 589, 601 (Cal. Ct. App. 1988). The court in *Saenz* said:

10 [K]nowledge of a particular risk, e.g., death by drowning, is not necessary where
11 there is an express agreement to assume all risks of a particular situation, whether
12 known or unknown to the releasor. Without question the risk of death by
13 drowning is a risk inherent in white water rafting and apparent to anyone about to
14 embark upon a three-day recreation rafting trip. The release was valid.

15 *Saenz*, 226 Cal. App. 3d at 766 (internal citations omitted).

16 Similarly, it was not necessary that Sandra knew of the risk of encountering the
17 particular tree before she signed the release. It is sufficient that she was aware of the risks
18 detailed in the release of falling out of the boat, contacting trees, and drowning.

19 3. The Release Does Not Violate Public Policy

20 Plaintiffs allege that the release violates public policy in light of a contract that exists
21 between Whitewater and the County of Yolo. Plaintiffs assert that the contract is evidence of
22 Yolo County's public policy. However, the contract is not relevant to this action because, by its
23 terms, the contract only governs activity that occurs in Yolo County and Plaintiff's have
24 provided no evidence to show that the death of Sandra occurred in Yolo County. The evidence
25 submitted by Defendants indicates that the accident took place in Lake County, not Yolo
26 County. Buck Island, the location where the rafting trip started, and the location where Sandra's
27 body was found are both located in Lake County.² There is no evidence that Sandra ever rafted

28 ² Pursuant to Federal Rule of Evidence 201 the Court takes judicial notice that Buck
Island, a geographic location on Cache Creek in California, is located in Lake County, as
shown on the United States Geographical Survey maps attached as Exhibits E and F to the
Declaration of Jeremy Sugerman.

1 in any part of Yolo County on the trip. Therefore, the evidence presented of the contract
2 between Whitewater and Yolo county is irrelevant to show that the release violated public
3 policy.

4 Defendants have established that Sandra expressly waived her rights and assumed the
5 risk of injury pursuant to the release she signed. The release is enforceable because it contains
6 clear language demonstrating the intent of the parties, it is not unconscionable and does not
7 violate any public policy. Therefore, the express waiver and assumption of the risk also bars
8 any claims against Defendants for the death of Sandra.

9 **D. The Remaining Breach of Contract Cause of Action and Intentional**
10 **Misrepresentation Cause of Action Fail for Lack of Evidence**

11 Plaintiffs contend that Defendants breached the implied covenant of good faith and fair
12 dealing, implied in the rental agreement, by failing to post reviews of hazzards on the river. The
13 implied covenant of good faith and fair dealing “not only imposes upon each contracting party
14 the duty to refrain from doing anything which would render performance of the contract
15 impossible by any act of his own, but also the duty to do everything that the contract
16 presupposes that he will do to accomplish its purpose.” *Harm v. Frasher*, 181 Cal. App. 2d 405,
17 417 (Cal. Ct. App. 1960). While the implied covenant of good faith and fair dealing requires
18 the parties to perform the contract in good faith, it does not add obligations to perform duties not
19 in the contract. Plaintiffs point to no provision of the contract that requires them to warn of
20 hazzards on the river. The contract was for transportation, meals, camping, and rental of
21 equipment only. There were no provisions in the contract requiring the Defendants to ensure
22 that all of the obstacles on the river were marked.

23 Plaintiffs also contend that Defendants “falsely represented to decedent and to the other
24 participants of the tour that Whitewater has an excellent safety record and that every reasonable
25 effort was made to safeguard the participants and their belongings.” (Cmpl. at ¶ 13.) Plaintiffs
26 allege that the brochure given to Ms. Caven contained a representation of safety that Sandra
27 relied upon. However, the representations made in the brochure do not indicate that there is no
28 risk in whitewater rafting. They do state that Whitewater has an excellent safety record, a
statement which Plaintiffs have presented no evidence to show is false. Therefore, even if

1 Plaintiffs could show that Sandra read the representations and relied upon them, they have
2 presented no evidence to show that the representations were false.

3 **E. Plaintiffs’ Claims Against Mark Gholson in His Individual Capacity Fail to**
4 **State a Claim as a Matter of Law**

5 Plaintiffs bring this action against Gholson both as a principal of Whitewater and
6 individually. Plaintiffs assert that because Gholson ran the whole operation himself he should
7 be personally liable. Whitewater is a limited liability company and Gholson is a member and
8 manager of the company. The law is clear that no member or manager of a limited liability
9 company may be held personally liable under contract, tort, or otherwise. Cal. Corp. Code
10 § 17158. Therefore, Plaintiffs’ claims against Gholson in his individual capacity fail to state a
11 claim as a matter of law.

12 **CONCLUSION**

13 The activity of whitewater rafting is an inherently dangerous sport because it involves
14 subjecting the participants to a fast-moving river in an unpredictable natural setting. It is the
15 law of California to allow participants to engage in inherently dangerous sports if they choose to
16 do so. To further this goal, the law has created the doctrine of primary assumption of the risk in
17 order not to chill vigorous participation in inherently dangerous activities. In addition, the law
18 will uphold express agreements between parties governing issues of liability if they are not
19 unconscionable or against public policy.

20 There is no doubt that Sandra’s death was a tragic accident. However, it resulted from
21 engaging in an activity that has the inherent risk of death. Sandra assumed this risk both under
22 the doctrine of primary assumption of the risk and expressly, by means of the release she
23 executed before engaging in the activity. Her assumption of these risks prevents the claims
24 alleged by Plaintiffs from being made against Defendants.

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For the foregoing reasons, Defendants’ motion for summary judgment is GRANTED in its entirety. The Court GRANTS the Defendants’ request for judicial notice, and DENIES the Defendants’ objections to evidence.

IT IS SO ORDERED.

Dated: October 17, 2003

/s/ Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE