



**Civil No. 15-2625 (GAG)**

1 opposing party to admit, deny, or qualify the moving party’s facts, the opposing party may submit  
2 additional facts in a different section, provided that they are “supported by a record citation . . . .”  
3 Id. Section (e) provides that the Court “may disregard any statement of fact not supported by a  
4 specific citation to record material” and notes that the Court has “no independent duty to search or  
5 consider any part of the record not specifically referenced in the parties’ separate statement of  
6 facts.” L. Cv. R. 56(e).

7 If a party improperly controverts the facts, Local Rule 56 allows the Court to treat the  
8 opposing party’s facts as admitted; the First Circuit has consistently held that litigants ignore Local  
9 Rule 56 “at their peril.” Caban Hernandez v. Philip Morris USA, Inc., 486 F. 3d 1, 7 (1st Cir.  
10 2007). This rule serves the enormously important purpose of “focusing a district court’s attention  
11 on what is—and what is not—genuinely controverted.” Calvi v. Knox County, 470 F.3d 422, 427  
12 (1st Cir. 2006).

13 A. Plaintiffs’ Opposing Statement of Material Facts

14 In their opposing statement of material facts, Plaintiffs include thirteen paragraphs denying  
15 and qualifying some, but certainly not all, of Defendant’s seventy-eight paragraphs of undisputed  
16 material facts. (Docket Nos. 95 at 1-18 ¶¶ 1-78; 99 at 1-3 ¶¶ 1-13). Although the paragraphs in  
17 Plaintiffs’ statement of uncontested material facts (“PSUMF”) are numbered 1-13, each paragraph  
18 references a different numbered paragraph in Defendant’s statement of uncontested material facts  
19 (“DSUMF”). See e.g., Docket No. 99 at 1 ¶ 1. While it would have been better form to number  
20 each paragraph in relation to the paragraphs in DSUMF (in other words, paragraph one of PSUMF  
21 should reference paragraph one of DSUMF, rather than paragraph one of PSUMF referencing  
22 paragraph eight of DSUMF), Plaintiffs have at least managed to include a reference to the relevant  
23 paragraphs of DSUMF, and thus the Court will consider those thirteen paragraphs in PSUMF.

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1 What Plaintiffs have not done, however, is properly admit, deny, or qualify the remaining  
2 paragraphs in DSUMF (specifically paragraphs 1-7, 9-15, 17-20, 22-24, 28-31, 33-37, 41-46, 48-  
3 49, 51-74, 76, and 78). See Docket No. 99 at 1-3 ¶¶ 1-13. Because Plaintiffs failed to address any  
4 of those paragraphs, much less properly admit, deny, or qualify them, they are deemed admitted  
5 for the purposes of Defendant’s motion for summary judgment. Caban Hernandez, 486 F. 3d at 7.

6 In addition, the first six paragraphs of Plaintiffs’ additional statement of undisputed facts  
7 are not supported by proper citations. See Docket No. 99 at 3-4 ¶¶ 1-6. Rather than citing to the  
8 record, Plaintiffs improperly cite to websites not included in the record material. See L. Cv. R.  
9 56(c) (“The opposing statement may contain in a separate section additional facts, set forth in  
10 separate numbered paragraphs *and supported by a record citation . . .*” (emphasis added)). As  
11 such, the Court disregards these paragraphs. Plaintiffs argue that Defendant has similarly referred  
12 to a website link in its submissions (Docket No. 107 at 5); the difference is that Defendant’s  
13 references to the website are not presented as record citation in their statement of uncontested facts.  
14 Had Defendant attempted to support its DSUMF with citations the website, the Court would be  
15 compelled to disregard them as well. As it stands, however, all facts asserted in DSUMF are  
16 supported by citations to the record.<sup>2</sup>

17 B. Defendant’s Reply to Plaintiffs’ Opposing Statement of Material Facts

18 In Defendant’s reply to PSUMF, they replied, not only to Plaintiffs’ separate section of  
19 additional facts, but also to Plaintiffs’ responses to Defendant’s original statement of uncontested  
20 material facts. (Docket No. 104).

21 Local Rule 56 section (d) governs this matter. “A party replying to the opposition to a  
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23 <sup>2</sup> The Court notes that if Plaintiffs had included said web pages as part of the record and cited to them  
24 it would not be necessary to disregard paragraphs 1-6 of Plaintiffs’ additional statement of material uncontested  
facts. Adherence to the local rules is of paramount importance and failure to do so will continue to result in  
similar outcomes.

1 motion for summary judgment shall submit with its reply a separate, short, and concise statement  
2 of material facts *which shall be limited to any additional facts submitted by the opposing party.*”

3 L. Civ. R. 56(d) (emphasis added). The statement “shall admit, deny or qualify those additional  
4 facts . . . .” Id. The plain language of the rule indicates that the reply is only to be made with respect  
5 to the additional facts submitted by Plaintiffs. Defendant must limit its reply to the additional facts  
6 submitted by the opposing party. Id. If Defendant was able to deny or qualify Plaintiffs’ denials  
7 and qualifications, the process would turn into a feedback loop. As such, the Court disregards  
8 paragraphs 1-78 at pages 1-23 of Defendant’s reply statement of material facts at Docket No. 104.

9 **II. Relevant Factual Background**

10 PSUMF and DSUMF, viewed in the light most favorable to the nonmovants, reveal the  
11 following relevant undisputed material facts:

12 On July 11, 2014, Plaintiff Luis John Hernández Denizac was driving his 2012 Kia Forte  
13 northbound on Road No. 1, from Caguas to San Juan. DSUMF ¶¶ 2-3. At approximately 2:20 a.m.  
14 he lost control of the vehicle, which swerved off the road and over a grass median. Id. ¶ 4. The  
15 vehicle then crossed a two lane marginal service road, hit a cement pedestal, and side-swiped a  
16 fence on the driver’s side. Id. It came to a stop after the front left portion of the vehicle came into  
17 contact with a garbage dumpster. Id. Luis John does not have any recollection of the time  
18 immediately before, during, or after the accident, and there were no witnesses to the crash. Id. ¶¶  
19 13, 15.

20 Police arrived on the scene within approximately five minutes, by which point Luis John  
21 had already been removed from the vehicle and was receiving treatment in an ambulance. Id. ¶¶  
22 19-20. Plaintiffs allege that Luis John sustained a severe brain contusion as a result of the non-  
23 deployment of the vehicle’s side curtain airbag. Id. ¶ 5. They further contend that if the airbag had  
24

1 deployed, Luis John would not have suffered the “extensive, debilitating, and permanent life-  
2 changing injuries that he did.” Id. ¶ 29. The airbag’s non-deployment is a result, Plaintiffs aver, of  
3 Kia’s defective manufacturing process and improper installation. Id. ¶ 30.

4       Upon commencement of this lawsuit, Plaintiffs retained Engineer Otto R. González Blanco  
5 (“Eng. González”) as their only liability expert. Id. ¶ 35. A structural and hydraulics engineer, Eng.  
6 González spent 95% of his time over the last eight years reconstructing accidents. Id. ¶ 37. Eng.  
7 González has previously testified about accident reconstruction and has been recognized by the  
8 court as an expert in the same. PSMUF at 6 ¶ 27; Docket No. 104 at 29 ¶ 27. He does not, however,  
9 have any formal education in automotive design, engineering, or electronics, or in electrical or  
10 mechanical engineering. DSMUF ¶ 41. He is not an expert with respect to anything related to  
11 automotive manufacturing or design or airbag systems. Id. ¶¶ 42, 66. Eng. González does not have  
12 any medical education, nor has he taken courses in trauma or injury causation. Id. ¶ 43. He did not  
13 know the parameters for the circumstances when an airbag in a 2012 Kia Forte must deploy. Id. ¶  
14 45. He was unaware of the specifications for any portion of Kia’s airbag system. Id. ¶ 46. He did  
15 not inspect the vehicle’s airbag, nor did he perform any tests on it. Id. ¶ 65. He never deployed an  
16 airbag in a 2012 Kia Forte. Id. ¶ 74. Eng. González indicated that he would not provide expert  
17 testimony about the non-deployment of the airbag or whether the airbag was defective. Id. ¶ 64.

18       Eng. González testified that it was his opinion that if the airbag system didn’t work, it was  
19 because it had a defect. Id. ¶ 67. He could not identify a specific component of the system that  
20 might have been defective, nor could he say which part of the airbag system did not work because  
21 he was not an expert in the construction or design of airbag systems. Id. Eng. González opined that  
22 the airbags should have deployed in the car, and because they did not, something was wrong. Id. ¶  
23 68. He did not know whether there was a defect, but he “believe[d] there must have been a defect”  
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1 because the airbags “should have deployed.” Id. It was his opinion, based on his review of the  
2 medical records, that Plaintiff Luis John’s cerebral contusion was caused by a lateral impact with  
3 the side of the car. Id. ¶ 69.

4 Two of Defendant’s experts, Dr. Gennarelli and Eng. Rucoba, opined that given Luis  
5 John’s height, the area where he hit his head was above the area that would have been covered by  
6 the airbag, had it deployed. PSUMF at 7 ¶¶ 36-37; Docket No. 104 at 31-32 ¶ 36-37. Specifically,  
7 Dr. Gennarelli stated that the area where Luis John’s head struck the vehicle was “above that  
8 covered by a side curtain airbag if one were to have deployed in his crash.” Eng. Rucoba stated  
9 that “[b]ased on his seated height, it’s my opinion that [Luis John]’s head would strike the hard  
10 structural components above the area of deployment for the side curtain airbag. Therefore, even if  
11 the side curtain airbag had deployed his injuries would not have been mitigated.” Id.

### 12 III. Standard of Review

13 Summary judgment is appropriate when “the pleadings, depositions, answers to  
14 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
15 genuine issue as to any material fact and that the moving party is entitled to a judgment as a  
16 matter of law.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see FED. R. CIV. P. 56(a).  
17 “An issue is genuine if it may reasonably be resolved in favor of either party at trial . . . and  
18 material if it possess[es] the capacity to sway the outcome of the litigation under the applicable  
19 law.” Iverson v. City of Boston, 452 F.3d 94, 98 (1st Cir. 2006) (alteration in original) (internal  
20 citations and quotations omitted).

21 The moving party bears the initial burden of demonstrating the lack of evidence to  
22 support the non-moving party’s case. Celotex, 477 U.S. at 325. “The burden then shifts to the  
23 nonmovant to establish the existence of at least one fact issue which is both genuine and  
24

1 material.” Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994). The  
2 nonmovant may establish a fact is genuinely in dispute by citing particular evidence in the record  
3 or showing that either the materials cited by the movant “do not establish the absence or presence  
4 of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the  
5 fact.” FED. R. CIV. P. 56(c)(1)(B). If the Court finds that a genuine issue of material fact remains,  
6 the resolution of which could affect the outcome of the case, then the Court must deny summary  
7 judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

8         When considering a motion for summary judgment, the Court must view the evidence in  
9 the light most favorable to the nonmoving party and give that party the benefit of any and all  
10 reasonable inferences. Id. at 255. Moreover, at the summary judgment stage, the Court does not  
11 make credibility determinations or weigh the evidence. Id. Summary judgment may be  
12 appropriate, however, if the nonmoving party’s case rests merely upon “conclusory allegations,  
13 improbable inferences, and unsupported speculation.” Forestier Fradera v. Municipality of  
14 Mayaguez, 440 F.3d 17, 21 (1st Cir. 2006) (quoting Benoit v. Tech. Mfg. Corp., 331 F.3d 166,  
15 173 (1st Cir. 2003)).

#### 16         **IV. Discussion**

17         Under Puerto Rico law,<sup>3</sup> to succeed on a defective design product liability claim, Plaintiffs  
18 must be able to show that: “(1) [Defendant’s] equipment has a defect, in any of its modalities; (2)  
19 the defect existed when the product left [Defendant’s] control; (3) [Defendant] is in the business  
20 of selling this type of product; (4) the defect was the adequate cause of [Plaintiffs’ injuries]; and  
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22         <sup>3</sup> The parties are diverse and the amount in controversy exceeds \$75,000; thus the Court has diversity  
23 jurisdiction over the case. See 28 U.S.C. § 1332(a). State substantive law supplies the rules of decision for a  
24 federal court sitting in diversity jurisdiction, meaning Puerto Rico law applies here. Salvati v. Am. Ins. Co., 855  
F.3d 40, 44 (1st Cir. 2017) (citing Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188  
(1938)).

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1 (5) [Plaintiff] use[d] the product in a manner that was reasonable and foreseeable by [Defendant].”  
2 Santos-Rodriguez v. Seastar Sols., 858 F.3d 695, 698 (1st Cir. 2017) (citation and internal  
3 quotation omitted).

4 It is important to note that to succeed on a claim, Plaintiffs must be able to establish each  
5 and every element. If they fail to show even one, they cannot succeed on the claim, even if other  
6 elements are vigorously contested. See JOSEPH W. GLANNON, THE GLANNON GUIDE TO CIVIL  
7 PROCEDURE 438-39 (2003) (explaining that for a defendant to succeed on a motion for summary  
8 judgment, there need only be one element of a claim for which there is no genuine dispute as to a  
9 material fact). Here, it is not necessary to consider any element besides that of whether a defect  
10 existed; Plaintiffs have not presented evidence to show a defect in the manufacture or design of  
11 the airbag and thus they cannot succeed on their defective design or manufacture claim.

12 A. Manufacturing Defect Claim

13 To succeed on a manufacturing defect claim, under Puerto Rico law Plaintiffs  
14 must prove four essential elements; viz. (1) the [Kia] air bag had a “manufacturing defect”  
15 of which [Luis John] was unaware, (2) the defect made the air bag system “unsafe,” (3) the  
16 usage to which the air bag was put by [Luis John] was reasonably foreseeable by [Kia],  
and (4) the defect proximately caused injury to [Luis John].

17 Perez-Trujillo v. Volvo Car Corp. (Sweden), 137 F.3d 50, 53 (1st Cir. 1998). In instances like this  
18 case, where a technical analysis must be made regarding airbag deployment or non-deployment,  
19 the First Circuit is clear that expert testimony is required. Quintana-Ruiz v. Hyundai Motor Corp.,  
20 303 F.3d 62, 77 (1st Cir. 2002) (“[W]hen the ultimate issue of design defect calls for a careful  
21 assessment of feasibility, practicality, risk and benefit, the case should not be resolved simply on  
22 the basis of ordinary consumer expectations.” (citation and internal quotation omitted)).

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1 Plaintiffs here contend that a defect in the airbag was responsible for Luis John’s injuries.  
2 Specifically, they state that “[h]ad the airbags deployed, Luis John would not have suffered the  
3 extensive, debilitating, and permanent life-changing injuries he did.” (Docket No. 15 at 10 ¶ 18).  
4 In support of this, Plaintiffs spend a significant amount of energy pointing to alleged flaws in  
5 Defendant’s experts’ analysis of the crash data, but do not themselves present any expert evidence  
6 to show that there was a defect in the design or manufacture of the airbag, other than to  
7 conclude that because the airbag did not deploy, a defect must have existed.

8 Plaintiffs’ only proffered expert witness, Eng. González, is not an expert in the areas  
9 necessary for Plaintiffs to succeed in their claim. Although “[e]xpert witnesses are ‘permitted wide  
10 latitude to offer opinions,’” it is not the case that such latitude is without limit. Prado Alvarez v.  
11 R.J. Reynolds Tobacco Co., 405 F.3d 36, 40 (1st Cir. 2005) (quoting Daubert v. Merrell Dow  
12 Pharm., Inc., 509 U.S. 579, 592 (1993) (citing FED. R. EVID. 701, 702, 703)). Because “[e]xpert  
13 evidence can be both powerful and quite misleading because of the difficulty in evaluating it,”  
14 the expert testifying must have “achieved a meaningful threshold of experience” in the matter  
15 about which she or he is testifying. Id. (alteration in original) (quoting Daubert, 509 U.S. at 595).

16 Defendant contends that while Eng. González has performed many accident  
17 reconstructions, he has only served as an expert witness in two vehicle product liability cases over  
18 the course of his career, neither of which involve airbag performance. DSUMF ¶¶ 38-39.  
19 Defendant further asserts that “Eng. González has never acted as an expert in automotive design,  
20 has never provided testimony in court with respect to defects in automobiles and has not been  
21 recognized by any court as an expert in automotive design or automotive engineering.” Id. ¶ 40.  
22 Although Plaintiffs object to the fact that Defendant does not include information indicating that  
23 Eng. González “is a well-credentialed expert in accident reconstruction,” they do not aver that Eng.  
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1 González has any expertise or experience testifying about automotive airbag design or engineering.  
2 PSUMF at 3 ¶ 9. Additionally, Defendant states that Eng. González is not familiar with the Federal  
3 Motor Vehicle Safety Standards that govern performance of air bag supplemental restraint  
4 systems. DSUMF ¶ 47. In their response to this statement, Plaintiffs explain what the standards  
5 require, but do not contest the fact that Eng. González is not familiar with them. PSUMF at 3 ¶ 10.

6 During Eng. González’s deposition, Defendant’s counsel asked Eng. González, “The way  
7 I understand it is that you are not here to testify about the cause of the airbag non-deployment. Is  
8 that correct?” Eng. González responded “That is correct.” Docket No. 95-3 at 288 ¶¶ 12-16. When  
9 asked “You’re not an expert in airbag electronics or airbag systems, so you can’t tell us what went  
10 wrong, correct?” Eng. González answered “That’s what I’ve testified.” Id. at 291 ¶¶ 22-25. Eng.  
11 González acknowledged he was not an expert in airbag system design, warnings, instructions, or  
12 manufacturing. Id. at 292 ¶¶ 4-14. He explicitly stated “I’ve testified that I’m not an expert in  
13 airbag systems.” Id. at 293 ¶¶ 24-25. Even if he did have the expertise, Eng. González  
14 acknowledged that he had not performed an analysis of the airbag electronics or system. Id. at 291-  
15 92.

16 In sum, Plaintiffs only expert does not have expertise or formal education in the areas of  
17 airbag deployment, automotive engineering, design, or electronics, nor has he been recognized by  
18 any court as an expert in these areas. DSUMF ¶¶ 40-44. Further, Plaintiffs explicitly state that “[i]t  
19 does not take an expert to know that” inflation of the side curtain airbag would have put space  
20 between Luis John’s head and the roof rail of the car. (Docket No. 98 at 13). They argue that the  
21 consumer expectation doctrine is applicable here and aver that a plaintiff may show defective  
22 design without an expert through a demonstration ““that the product failed to perform as safely as  
23 an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.””

1 Id. at 16 (quoting Barker v. Lull Eng'g Co., 20 Cal. 3d 413, 418 (1978). Unfortunately, this is not  
2 the case here.<sup>4</sup>

3 Rather,

4 [P]laintiffs' real argument is that the [airbag] failed, and that this is sufficient evidence of  
5 a design defect. This is precisely the type of showing rejected in Rodríguez-Méndez, where  
6 the plaintiffs' only evidence was that something was wrong—he had metal in his eye. 195  
D.P.R. 769, translation at 23. Here, the plaintiffs' only showing is that something was  
[potentially] wrong—the [airbag may have] failed.

7 Santos-Rodriguez, 858 F.3d at 699. As was the case in Santos-Rodriguez, so it is here: Plaintiffs  
8 have failed to “present evidence that [Defendant’s] design of the [airbag] was defective,” and rely  
9 instead on the fact that the airbag did not deploy to serve as indication that a defect existed in the  
10 design or manufacture. Id. Plaintiffs only expert cannot—and indeed explicitly stated that he would  
11 not—provide information about why the airbag did not deploy other than to say that because it did  
12 not, that was indication of a defect. Without evidence, it is not possible for Plaintiffs to prove a  
13 defect in the design or manufacture of the vehicle; Plaintiffs' claim relies on “conclusory  
14 allegations” and “unsupported speculation.” Forestier Fradera, 440 F.3d at 21 (quoting Benoit,  
15 331 F.3d at 173). There is no genuine issue of material fact with respect to the issue of design or  
16 manufacturing defect; Plaintiffs cannot, based on their proffered evidence, prove that any defect  
17 existed. Thus, summary judgment is appropriate as to the design and manufacturing defect claim.

18 B. Failure to Warn Claim

19 With respect to Plaintiffs' failure to warn claim, Plaintiff must show

20 (1) the manufacturer knew, or should have known of the risk inherent in the product; (2)  
21 there were no warnings or instructions, or those provided were inadequate; (3) the absence  
of warnings made the product inherently dangerous; [and] (4) the absence of adequate  
22 warnings or instructions was the proximate cause of plaintiff's injury.

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23 <sup>4</sup> This is not a situation where “direct eyewitness observation of a product malfunction” renders expert  
24 testimony unnecessary. See Perez-Trujillo, 137 F.3d at 55. Indeed, the only person capable of providing eyewitness  
testimony of what occurred during in the accident is Luis John, who has no recollection of anything that happened  
just before or during the crash. DSUMF ¶¶ 13, 15.

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1 Santos-Rodriguez, 858 F.3d at 697 (alterations in original) (internal quotations and citations  
2 omitted).

3 Plaintiffs here explicitly do not argue that Defendant failed to comply with the federal  
4 laws requiring warnings for the vehicle. (Docket No. 107 at 4). Instead, Plaintiffs aver that “if  
5 Luis John was too tall to be protected by the car’s airbags—as asserted by Kia’s experts Rucoba  
6 and Gennarelli—then he should have been afforded some sort of warning in order to make an  
7 informed decision at the moment of purchase.” Id. In support of this argument, Plaintiffs offer a  
8 statement under penalty of perjury by Luis Carlos Hernandez Gonzalez, Luis John’s father.  
9 (Docket No. 107-1). According to the statement, Luis Carlos bought the car for Luis John who  
10 was 6’2” tall, who was with him at the time of purchase, and who the salesperson knew would  
11 be driving the car. Id. Among other things, Luis Carlos indicated that the safety features of the  
12 car were an important factor in his decision to purchase the car for his son. Id. No one informed  
13 the men that Luis John was too tall to be protected by the side curtain airbags. Id.

14 Two of Defendant’s experts opined that given Luis John’s height, the area where he hit  
15 his head was above the area that would have been covered by the airbag, had it deployed. PSUMF  
16 at 7 ¶¶ 36-37; Docket No. 104 at 31-32 ¶¶ 36-37. Specifically, Dr. Gennarelli stated that the area  
17 where Luis John’s head struck the car was “above that covered by a side curtain airbag if one  
18 were to have deployed in his crash,” and Eng. Rucoba stated “[b]ased on his seated height, it’s  
19 my opinion that [Luis John]’s head would strike the hard structural components above the area  
20 of deployment for the side curtain airbag. Therefore, even if the side curtain airbag had deployed  
21 his injuries would not have been mitigated.” Id.

22 Even considering all of the above in the light most favorable to the nonmovants, Plaintiffs  
23 have failed to adduce evidence that the absence of warnings made the product inherently  
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1 dangerous. As discussed at page 11 of this opinion, a product’s mere failure to function, in and  
2 of itself, is insufficient to prove a design defect. Santos Rodriguez, 858 F.3d at 699. Likewise,  
3 such failure to function is also per se insufficient to prove a product’s inherent dangerousness so  
4 as to require additional warnings. Without an expert that is able to testify about airbag  
5 deployment, system design, warnings, instructions, or manufacturing, Plaintiffs are unable to  
6 present the necessary evidence to produce a genuine issue of material fact as to inherent  
7 dangerousness vis-à-vis Luis John’s height. As such, summary judgment is appropriate.

8 **V. Conclusion**

9 For the reasons stated above, Defendant’s motion for summary judgment at Docket No.  
10 94 is **GRANTED**.

11 **SO ORDERED.**

12 In San Juan, Puerto Rico this 17th day of August, 2018.

13 *s/ Gustavo A. Gelpí*  
14 GUSTAVO A. GELPI  
United States District Judge