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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DOMINIC FONTALVO, a minor, by and  
12 through his Guardian Ad Litem,  
13 TASHINA AMADOR, individually and  
14 as successor in interest in Alexis Fontalvo,  
15 deceased, and TANIKA LONG, a minor,  
16 by and through her Guardian ad Litem,  
17 TASHINA AMADOR,

18 Plaintiffs,

19 v.

20 SIKORSKY AIRCRAFT  
21 CORPORATION; SIKORSKY  
22 SUPPORT SERVICES, INC.; UNITED  
23 TECHNOLOGIES CORPORATION;  
24 G.E. AVIATION SYSTEMS, LLC;  
25 DUPONT AEROSPACE CO.; E.I.  
26 DUPONT DE NEMOURS AND  
27 COMPANY; PKL SERVICES INC., and  
28 DOES 1 through 100, Inclusive,

Defendants.

Case No.: 3:13-cv-00331-GPC-KSC

**ORDER GRANTING DEFENDANT  
PKL SERVICES INC.'S MOTION  
FOR SUMMARY JUDGMENT**

[ECF No. 135.]

Before the Court is Defendant PKL Services, Inc.'s ("Defendant's" or "PKL's")  
motion for summary judgment on Plaintiffs Dominic Fontalvo, a minor, by and through

1 his Guardian Ad Litem, Tashina Amador, individually and as successor in interest in  
2 Alexis Fontalvo, deceased, and Tanika Long, a minor, by and through her Guardian Ad  
3 Litem, Tashina Amador’s (collectively, “Plaintiffs”) Second Amended Complaint  
4 (“SAC”). (Dkt. No. 135.)<sup>1</sup> Plaintiffs do not oppose PKL’s motion for summary  
5 judgment. (Dkt. No. 138.) The Court deems PKL’s motion suitable for disposition  
6 without oral argument pursuant to Civil Local Rule 7.1(d)(1). Having reviewed the  
7 motion and the applicable law, and for the reasons set forth below, the Court **GRANTS**  
8 PKL’s motion for summary judgment on Plaintiffs’ SAC.

### 9 **FACTUAL BACKGROUND**

10 This action arises from the March 17, 2011 death of United States Marine Corps  
11 (“USMC”) Staff Sergeant Alexis Fontalvo (“Decedent”) in a helicopter accident. (Dkt.  
12 No. 71, SAC ¶ 17.) Plaintiff Dominic Fontalvo, a minor, and Tanika Long, a minor,  
13 bring this action by and through their mother and Guardian ad Litem, Tashina Amador.  
14 (*Id.* ¶¶ 3–5.)

15 Plaintiffs allege the helicopter accident at issue occurred “when the wire path  
16 leading to the landing gear was subject to an unplanned and uncommanded energization,  
17 which caused the left main landing gear to retract while decedent . . . was beneath the  
18 subject CH-53E Super Stallion helicopter.” (*Id.* ¶ 16.) According to Plaintiffs, the  
19 helicopter crushed Decedent’s arm, immobilizing him as the weight of the helicopter,  
20 which exceeded sixteen tons, “came down on his body.” (*Id.*) Decedent sustained “blunt  
21 force polytrauma and injuries including but not limited to skull fractures, spinal fractures  
22 and separation of [Decedent’s] brain stem from his spinal cord, such massive injuries  
23 being fatal in nature.” (*Id.*)

24 With respect to PKL, Plaintiffs allege PKL

25 failed properly to inspect and maintain the landing gear systems and wiring, wiring  
26 harness, the landing gear assembly and the attendant hardware and appurtenances

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28 <sup>1</sup> Citations to the record are based upon the pagination generated by the CM/ECF system.

1 and component parts and other items and equipment attendant thereto, despite  
2 having assumed the duty and responsibility to inspect and maintain the fleet of  
3 aircraft that included the subject CH-53E Super Stallion helicopter.

4 (*Id.* ¶ 51.) These alleged omissions “permitted the wiring leading from the landing gear  
5 control panel to the landing gear assembly in the subject CH-53E Super Stallion  
6 helicopter to reach a woeful state of disrepair,” which “rendered the wiring susceptible to  
7 unplanned energization.” (*Id.*)

8 PKL has proffered evidence showing that PKL had a limited role with respect to  
9 maintaining the helicopter, contrary to Plaintiffs’ allegations. PKL was obligated only to  
10 complete the Phase A, B, C, and/or D maintenance as prescribed by the RESET Report  
11 provided by the USMC. (Dkt. No. 135-1, Defendant PKL Services, Inc.’s Separate  
12 Statement of Undisputed Material Facts in Support of Motion for Summary Judgment  
13 (“Def.’s SSUF”) ¶ 11.)<sup>2</sup> The RESET Report is comprised of maintenance inspection  
14 cards which provide PKL with specific instructions on what tasks should be performed  
15 under each phase of maintenance. (*Id.*) PKL was not asked to perform any maintenance  
16 activities on the section of defective Kapton wire which allegedly caused Decedent’s  
17 death. (*Id.* ¶¶ 12–13.) Nor did PKL perform any maintenance activities on that section  
18 of Kapton wire. (*Id.*) The Kapton wire which allegedly reached a state of disrepair was  
19 located at the top of the fuselage of the helicopter. (*Id.* ¶ 14.) No aspect of the landing  
20 gear system including the subject Kapton wire was a part of the Phase A, B, C, and/or D  
21 maintenance. (*Id.* ¶¶ 15–18.)

22 At the time of Decedent’s death, there was a fleet-wide plan to replace Kapton  
23 wiring in aircraft similar to the subject helicopter. (*Id.* ¶ 19.) The program, separate and  
24 apart from PKL’s maintenance under the RESET Report, is a three-phased program that  
25 has never been fully funded. (*Id.* ¶ 20.) The “harness of wires” involved in Decedent’s  
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28 <sup>2</sup> References to paragraphs of PKL’s Separate Statement of Undisputed Material Facts (“SSUF”) incorporate PKL’s citations to the record contained therein.

1 death was a part of the third phase of the Kapton wiring replacement program which was  
2 uncompleted on the date of the incident. (*Id.* ¶¶ 21–22.)

### 3 **PROCEDURAL BACKGROUND**

4 On January 25, 2013, Plaintiffs filed this action in California Superior Court. (Dkt.  
5 No. 1, Ex. A.) On February 11, 2013, Defendants Sikorsky Aircraft Corporation,  
6 Sikorsky Support Services, Inc., and United Technologies Corporation removed this  
7 action to federal court. (Dkt. No. 1.) After this Court denied Plaintiffs’ motion to  
8 remand, (Dkt. No. 31), and granted Defendant GE Aviation’s motion to dismiss  
9 Plaintiffs’ Complaint, (Dkt. No. 38), Plaintiffs filed an Amended Complaint on August  
10 22, 2013. (Dkt. No. 39.) The Amended Complaint alleged six separate causes of action:  
11 (1) strict products liability under a design defect theory; (2) strict products liability under  
12 a manufacturing defect theory; (3) negligent products liability under a negligent design  
13 theory; (4) negligent products liability under a negligent manufacturing theory; (5)  
14 negligence; and (6) a survivor action pursuant to California Code of Civil Procedure §  
15 377.11 *et seq.* (*See* Dkt. No. 39.)

16 On September 5, 2013, Defendant E.I. Du Pont De Nemours and Company (“E.I.  
17 Du Pont”) filed a motion to dismiss Plaintiffs’ sixth cause of action pursuant to Federal  
18 Rule of Civil Procedure 12(b)(6). (Dkt. No. 41.) Defendants Sikorsky Aircraft  
19 Corporation, Sikorsky Support Services, Inc., United Technologies Corporation, and G.E.  
20 Aviation Systems, LLC filed two separate notices of joinder to Defendant E.I. Du Pont’s  
21 motion to dismiss. (Dkt. Nos. 43, 44.)

22 Also on September 5, 2013, Defendant PKL Services, Inc. filed a separate motion  
23 to dismiss the first through fourth and sixth causes of action against PKL as alleged in  
24 Plaintiffs’ Amended Complaint. (Dkt. No. 42.) PKL joined and incorporated by  
25 reference Defendant E.I. Du Pont’s motion to dismiss Plaintiffs’ sixth cause of action.  
26 (Dkt. No. 42-1 at 8–9.)

27 On June 20, 2014, the Court denied Defendant E.I. Du Pont’s motion to dismiss  
28 Plaintiffs’ sixth cause of action, granted Defendant PKL’s motion to dismiss Plaintiff’s

1 first through fourth causes of action, and denied Defendant PKL’s motion to dismiss  
2 Plaintiffs’ sixth cause of action. (Dkt. No. 53.)

3 On October 9, 2014, the Court granted Plaintiffs’ unopposed motion for leave to  
4 amend their Amended Complaint. (Dkt. No. 70.) Accordingly, on October 9, 2014,  
5 Plaintiffs filed their SAC against Defendants Sikorsky Aircraft Corporation, Sikorsky  
6 Support Services, Inc., United Technologies Corporation, G.E. Aviation Systems, LLC,  
7 Du Pont Aerospace Co., E.I. Du Pont de Nemours and Company, and PKL Services, Inc.  
8 (Dkt. No. 71, SAC.) In their SAC, Plaintiffs asserted two claims against PKL: (1)  
9 negligence and (2) a survivor action pursuant to California Code of Civil Procedure §  
10 377.11 *et seq.* (*Id.* ¶¶ 48–60.) The survivor action was subsequently dismissed with  
11 prejudice pursuant to the parties’ stipulation. (Dkt. No. 119.) Only Plaintiffs’ negligence  
12 claim remains against PKL. (*See* SAC ¶¶ 48–53.)

13 On March 29, 2017, PKL filed a motion for summary judgment on Plaintiffs’  
14 remaining negligence claim against PKL. (Dkt. No. 135.) On April 21, 2017, Plaintiffs  
15 filed a notice of non-opposition to PKL’s motion for summary judgment. (Dkt. No. 138.)

### 16 LEGAL STANDARD

17 Federal Rule of Civil Procedure 56 empowers the Court to enter summary  
18 judgment on factually unsupported claims or defenses, and thereby “secure the just,  
19 speedy and inexpensive determination of every action.” *Celotex Corp. v. Catrett*, 477  
20 U.S. 317, 325, 327 (1986). Summary judgment is appropriate if the “pleadings,  
21 depositions, answers to interrogatories, and admissions on file, together with the  
22 affidavits, if any, show that there is no genuine issue as to any material fact and that the  
23 moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact is  
24 material when it affects the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477  
25 U.S. 242, 248 (1986).

26 The moving party bears the initial burden of demonstrating the absence of any  
27 genuine issues of material fact. *Celotex*, 477 U.S. at 323. The moving party can satisfy  
28 this burden by demonstrating that the nonmoving party failed to make a showing

1 sufficient to establish an element of his or her claim on which that party will bear the  
2 burden of proof at trial. *Id.* at 322–23. If the moving party fails to bear the initial burden,  
3 summary judgment must be denied and the court need not consider the nonmoving  
4 party’s evidence. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

5       Once the moving party has satisfied this burden, the nonmoving party cannot rest  
6 on the mere allegations or denials of his pleading, but must “go beyond the pleadings and  
7 by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions  
8 on file’ designate ‘specific facts showing that there is a genuine issue for trial.’” *Celotex*,  
9 477 U.S. at 324. If the non-moving party fails to make a sufficient showing of an  
10 element of its case, the moving party is entitled to judgment as a matter of law. *Id.* at  
11 325. “Where the record taken as a whole could not lead a rational trier of fact to find for  
12 the nonmoving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v.*  
13 *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting *First National Bank of Arizona v.*  
14 *Cities Service Co.*, 391 U.S. 253, 289 (1968)). In making this determination, the court  
15 must “view[] the evidence in the light most favorable to the nonmoving party.” *Fontana*  
16 *v. Haskin*, 262 F.3d 871, 876 (9th Cir. 2001). The Court does not engage in credibility  
17 determinations, weighing of evidence, or drawing of legitimate inferences from the facts;  
18 these functions are for the trier of fact. *Anderson*, 477 U.S. at 255.

### 19   **DISCUSSION**

20       The elements of a negligence claim are: (a) a legal duty to use due care; (b) a  
21 breach of such legal duty; and (c) the breach as the proximate or legal cause of the  
22 resulting injury. *Ladd v. Cty. of San Mateo*, 12 Cal. 4th 913, 917 (Cal. 1996). PKL  
23 contends that summary judgment is appropriate because PKL did not owe Decedent a  
24 duty to maintain or inspect the helicopter beyond what was prescribed in the RESET  
25 Report, because Decedent’s injuries were not caused by any act or omission of PKL, and  
26 because PKL is entitled to the government contractor defense. (DKt. No. 135 at 9–11.)

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28       /////

1           **A. Duty of Care**

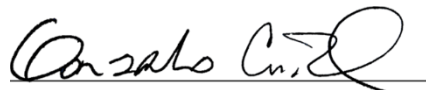
2           The existence of a duty of care is a question of law for the court. *Kentucky Fried*  
 3 *Chicken of Cal., Inc. v. Superior Court*, 14 Cal. 4th 814, 819 (Cal. 1997). Here, Plaintiffs  
 4 allege PKL should have inspected or maintained a portion of the helicopter outside of the  
 5 scope of the areas described in the RESET Report.<sup>3</sup> (SAC ¶ 51; Dkt. No. 153 at 9.) The  
 6 undisputed facts show that PKL was obligated only to complete the Phase A, B, C, and/or  
 7 D maintenance as prescribed by the RESET Report provided by the USMC. (Def.'s  
 8 SSUF ¶ 11.) The maintenance inspection cards in the RESET Report delineated specific  
 9 tasks PKL should perform under each phase of maintenance. (*Id.*) PKL was not asked  
 10 to, and did not perform any maintenance activities on the section of defective Kapton  
 11 wire which allegedly caused Decedent's death. (*Id.* ¶¶ 12–14.) No part of the Phase A,  
 12 B, C, and/or D maintenance involved any aspect of the landing gear system which  
 13 included the allegedly defective Kapton wire. (*Id.* ¶¶ 15–18.) Accordingly, PKL had no  
 14 duty or authority to inspect or perform maintenance on the portion of the helicopter at  
 15 issue in Plaintiffs' SAC. In light of the above, the Court concludes that summary  
 16 judgment is proper on Plaintiffs' negligence claim against PKL.<sup>4</sup>

17    **CONCLUSION**

18           For the foregoing reasons, the Court **GRANTS** Defendant PKL Services, Inc.'s  
 19 motion for summary judgment.

20           **IT IS SO ORDERED.**

21   Dated: May 23, 2017

22      
 23    Hon. Gonzalo P. Curiel  
 24    United States District Judge

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 26   <sup>33</sup> Plaintiffs do not allege that PKL was negligent in performing the maintenance activities prescribed by  
 the RESET Report.

27   <sup>4</sup> Having concluded that PKL did not owe Decedent a duty to inspect or maintain any portion of the  
 28 helicopter other than what was specified in the RESET Report, the Court does not need to address the  
 issue of proximate cause or the government contractor defense.