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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DOMINIC FONTALVO, a minor,
by and through his Guardian ad
litem, NORMA FONTALVO,
individually and as successor in
interest to Alexis Fontalvo, deceased
Plaintiff,

vs.

SIKORSKY AIRCRAFT
CORPORATION; SIKORSKY
SUPPORT SERVICES, INC.;
UNITED TECHNOLOGIES
CORPORATION; G.E. AVIATION
SYSTEMS, LLC; DUPONT
AEROSPACE CO.; DUPONT DE
NEMOURS AND COMPANY LLC;
E.I. DUPONT DE NEMOURS AND
COMPANY; PKL SERVICES INC.
; and DOES 1 through 100,

Defendants.

Civil Action No. 13-cv-0331-GPC-KSC

**ORDER GRANTING DEFENDANT
GE AVIATION'S MOTION TO
DISMISS**

[DKT. NO. 13]

1 On April 24, 2013, Defendant GE Aviation Systems LLC (“Defendant”) or
2 “GE”) filed a motion to dismiss Plaintiff Dominic Fontalvo, a minor, by and
3 through his guardian ad litem, Norma Fontalvo, (“Plaintiff” or “Fontalvo”)
4 complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. No. 13, “MTD”). On July
5 25, 2013, Plaintiff filed a response. (Dkt. No. 33, “Pl. Resp.”). On August 5,
6 2013, Defendant filed a reply. (Dkt. No. 36, “Def. Reply.”) The Court finds the
7 matter suitable for resolution without oral argument pursuant to Local Civil Rule
8 7.1(d)(1). Based on the briefing, supporting documentation and applicable law,
9 the Court **GRANTS** Defendant GE’s motion to dismiss.

10 **I. BACKGROUND**

11 This action arises from the death of United States Marine Corps Staff
12 Sergeant Alexis Fontalvo that occurred during a helicopter accident on March 17,
13 2011 at the Marine Corps Air Station Miramar. (Dkt. No. 1, Ex. A, “Compl.”)
14 According to the Judge Advocate General’s investigation of the accident, the
15 accident occurred when a faulty wiring harness of a CH-53E helicopter caused the
16 landing gear to unexpectedly retract while Sgt. Fontalvo was beneath the aircraft.
17 (Pl. Mtn. at 1, Ex. A, “JAGMAN Final Report.”) Sgt. Fontalvo was killed by the
18 weight of the helicopter. (Id.) The JAGMAN Final Report states the wiring in the
19 landing gear control panel was in disrepair, and caused the landing gear to
20 unexpectedly retract on top of Sgt. Fontalvo. (Id.) The Final Report further found
21 that the overall design of the wiring harness exacerbated the danger posed by the
22 exposed wires. (Id.)

23 Plaintiff Dominic Fontalvo (“Plaintiff”), the minor son and sole heir of
24 Alexis Fontalvo, filed the instant action on January 25, 2013 in the Superior Court
25 of San Diego by through his guardian ad litem, Norma Fontalvo. (Compl. ¶¶ 3-4.)
26 Plaintiff brings the action as the decedent’s successor in interest pursuant to Cal.
27

1 Code Civ. P. § 377.11. (Compl. ¶ 38.) Plaintiff alleges strict and negligent
2 product liability, negligence and breach of warranty against Defendants as the
3 designers and manufacturers of the CH-53E helicopter. (Compl. pp. 2-8.)

4 **II. LEGAL STANDARD**

5 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests
6 the sufficiency of a complaint. Navarro v. Block, 250 F.3d 729, 732 (9th Cir.
7 2001). To survive a motion to dismiss, the plaintiff must allege “enough facts to
8 state a claim to relief that is plausible on its face.” Bell Atlantic Corporation v.
9 Twombly, 550 U.S. 544 (2007). A claim has facial plausibility, “when the
10 plaintiff pleads factual content that allows the court to draw the reasonable
11 inference that the defendant is liable for the misconduct alleged.” Ashcroft v.
12 Iqbal, 556 U.S. 662, 678 (2009). “[F]or a complaint to survive a motion to
13 dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that
14 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.”
15 Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir.2009).

16 In reviewing a motion to dismiss under Rule 12(b)(6), the court must
17 assume the truth of all factual allegations and must construe all inferences from
18 them in the light most favorable to the nonmoving party. Thompson v. Davis, 295
19 F.3d 890, 895 (9th Cir. 2002). Legal conclusions, however, need not be taken as
20 true merely because they are cast in the form of factual allegations. Ileto v. Glock,
21 Inc., 349 F.3d 1191, 1200 (9th Cir. 2003). In practice, “a complaint . . . must
22 contain either direct or inferential allegations respecting all the material elements
23 necessary to sustain recovery under some viable legal theory.” Twombly, 550
24 U.S. at 562.

25 Although they may provide the framework of a complaint, legal
26 conclusions are not accepted as true and “[t]hreadbare recitals of elements of a
27 cause of action, supported by mere conclusory statements, do not suffice.” Iqbal,

1 556 U.S. at 678; see also Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136,
2 1139 (9th Cir.2003). Furthermore, Courts will not assume that plaintiffs “can
3 prove facts which [they have] not alleged, or that the defendants have violated ...
4 laws in ways that have not been alleged.” Associated General Contractors of
5 California, Inc. v. California State Council of Carpenters, 459 U.S. 519, 526
6 (1983). As the Supreme Court has explained:

7 While a complaint attacked by a Rule 12(b)(6) motion to
8 dismiss does not need detailed factual allegations, a
9 plaintiff's obligation to provide the ‘grounds’ of his
10 ‘entitlement to relief’ requires more than labels and
11 conclusions, and a formulaic recitation of the elements of
12 a cause of action will not do. Factual allegations must be
13 enough to raise a right to relief above the speculative
14 level, on the assumption that all the allegations in the
15 complaint are true (even if doubtful in fact).

14 Twombly, 550 U.S. at 555. Thus, to avoid a Rule 12(b)(6) dismissal, “a
15 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
16 to relief that is plausible on its face.’” Iqbal, 556 U.S. at 677.

18 **III. DISCUSSION**

19 Defendant GE Aviation argues Plaintiff’s Complaint should be dismissed
20 because it fails to allege: (1) what component(s) was allegedly “unsafe” or
21 “defective”; (2) how any such component was unsafe or defective; (3) why GE or
22 any other defendant is responsible for any such component; or (4) the basic
23 manner in which plaintiff’s decedent’s death occurred. (MTD at 4.) Plaintiff
24 responds that the complaint alleges facts with sufficient particularity to survive the
25 motion to dismiss. (Pl. Resp. at 4.) In the alternative, Plaintiff asks the Court to
26 grant leave to amend the complaint. (Pl. Resp. at 5-6.) The Court addresses each
27 cause of action in turn.

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1. Strict Products Liability

The first cause of action is a strict products liability claim based on a defective manufacture theory. Plaintiff alleges that the defendants “did design did design, manufacture, assemble, install, inspect, repair, maintain, endorse, draft, test, franchise, supply, sell, lease, distribute and place into the stream of commerce the subject CH-53E Super Stallion helicopter, including the attendant hardware and appurtenances and component parts and other items and equipment attendant thereto, and including but not limited to, the landing gear systems and wiring, the landing gear assembly and the attendant hardware and appurtenances and component parts and other items and equipment attendant thereto.” (Compl. at ¶ 10.) Plaintiff alleges at the time the products left the defendants hands, “said products were defective and unsafe in manufacture and design and lacked proper warnings.” (Compl. at ¶ 12.) Plaintiff alleges that while Staff Sargeant Fontalvo was using the allegedly defective products, he was fatally injured as a result of the “defective and unsafe condition of said products and the component parts and equipment thereof.” (Compl. at ¶ 15.)

Defendant argues the allegations merely state the elements of a claim for strict liability, and do not allege any facts that identify which components out of the thousands on the subject helicopter were defective, how the parts were defective, or why GE is responsible for any such defective component in particular. (MTD at 8.) Plaintiff responds that it has sufficiently plead facts that each of the defendants contributed to the design and manufacture of the Super Stallion that Sg. Fontalvo used, and as a result was fatally injured. (Pl. Resp. at 4.) Plaintiff also argues Defendants are well aware of the component parts at issue.

(Id.)
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1 “A manufacturer is strictly liable in tort when an article he places on the
2 market, knowing that it is to be used without inspection for defects, proves to have
3 a defect that causes injury to a human being.” Greenman v. Yuba Power Prods.,
4 Inc., 59 Cal.2d 57, 62 (1963). California recognizes three theories of product
5 liability: design defect, manufacturing defect, and failure to warn. Yalter v.
6 Endocare, 2004 WL 5237598 at *3 (C.D.Cal. Nov.8, 2004) (citing Brown v. San
7 Francisco, 44 Cal.3d 1049 (1988)). Under the manufacturing defect theory,
8 generally a manufacturing or production defect is readily identifiable because a
9 defective product is one that differs from the manufacturer's intended result or
10 from other ostensibly identical units of the same product line. Lucas v. City of
11 Visalia, 726 F.Supp.2d 1149, 1154 (E.D.Cal.2010) (internal citations omitted).
12 The manufacturing defect theory posits that a suitable design is in place, but that
13 the manufacturing process has in some way deviated from that design. Id. at 1155.
14 In order to state a claim for manufacturing defect, the allegations may not simply
15 track the general elements of strict products liability without pertinent factual
16 allegations. Id.

17 If Plaintiff intends to allege a manufacturing defect, it must state with some
18 particularity how the defendants’ product either deviated from GE’s intended
19 result or design or how the product deviated from other identical products. See
20 Lucas, 726 F. Supp. 2d at 1155 (“For a strict products liability claim, plaintiff
21 “must identify/ explain how the [product] either deviated from [defendant's]
22 intended result/design or how the [product] deviated from other seemingly
23 identical [product] models.”) Plaintiff’s complaint fails to sufficiently state what
24 particular component or product was allegedly defective, much less allege how
25 those components deviated from an intended result. Plaintiff simply alleges that
26 GE and other defendants manufactured a defective product, the product was used
27

1 by Sgt. Fontalvo, and Sgt. Fontalvo suffered fatal injuries as a result. At a
2 minimum, the complaint must sufficiently allege the underlying facts to give fair
3 notice and enable GE and other defendants to defend themselves effectively. Starr
4 v. Baca, 652 F.3d 1201, 1216 (9th Cir. 2011).

5 Plaintiff asserts that GE is well aware of the component parts at issue here.
6 (Pl. Resp. at 3.) However, the complaint alleges a wide array of parts are in
7 question, “including the attendant hardware and appurtenances and component
8 parts and other items and equipment attendant thereto, and including but not
9 limited to, the landing gear systems and wiring, the landing gear assembly and
10 attendant hardware and appurtenances and component parts and other items and
11 equipment attendant thereto.” (Comp. at ¶ 10.) The U.S. military’s investigative
12 report, produced by Defendant Sikorsky on the previous motion before the Court,
13 narrows the issue to a specific wiring component in the landing gear. (See Dkt.
14 No. 19.) However, those specific allegations are not cited in Plaintiff’s complaint.
15 Upon close review of the complaint, the Court concludes dismissal of the first
16 cause of action is appropriate because Plaintiff does not include factual allegations
17 that identify what aspect of the subject component design and manufacture made
18 it defective. Since it is not clear that amendment would be futile, the court will
19 dismiss the complaint with leave to amend.

20 **2. Negligent Products Liability and Negligence**

21 Plaintiff’s second cause of action is for negligent products liability and third
22 cause of action is negligence. Plaintiff alleges Defendants “[N]egligently,
23 carelessly, recklessly, and with gross negligence designed, manufactured,
24 assembled, installed, inspected, maintained, endorsed, drafted, tested, franchised,
25 supplied, sold, leased, distributed and placed into the stream of commerce, and
26 negligently failed to warn relative to the said products and the component parts
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1 and equipment thereof, and otherwise so negligently conducted themselves, so as
2 to directly and legally cause the accident and injuries and damages to plaintiffs as
3 described herein.” (Compl. at ¶ 23.)

4 In a negligent products liability claim, the “manufacturer has a duty to use
5 reasonable care to give warning of the dangerous condition of the product or of
6 facts which make it likely to be dangerous to those whom he should expect to use
7 the product or be endangered by its probable use, if the manufacturer has reason to
8 believe that they will not realize its dangerous condition.” Artiglio v. General
9 Electric Co., 61 Cal.App.4th 830, 835 (1998); Putensen v. Clay Adams, Inc., 12
10 Cal.App.3d 1062, 1076–77 (1970). In other words, “[n]egligence law in a failure-
11 to-warn case requires a plaintiff to prove that a manufacturer or distributor did not
12 warn of a particular risk for reasons which fell below the acceptable standard of
13 care, i.e., what a reasonably prudent manufacturer would have known and warned
14 about.” Carlin v. Superior Court, 13 Cal.4th 1104, 1112 (1996). Under a
15 negligence theory, plaintiff must plead facts would allow the court to draw the
16 reasonable inference that the defendants (1) negligently designed or manufactured
17 the product; (2) Defendants were negligent in designing or manufacturing the
18 product; (3) Plaintiff was harmed; and (4) Defendant’s negligence was a
19 substantial factor in causing Plaintiff’s harm. See Judicial Council of California
20 Civil Jury Instructions § 1220 (2013).

21 Here, Plaintiff fails to plead any facts suggesting how GE or any of the
22 defendants negligently designed or manufactured the product. A bare allegation
23 that defendants were negligent in their design is an insufficient legal conclusion.
24 Plaintiff’s second and third claims are also dismissed with leave to amend.

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3. Breach of Warranty

Plaintiff’s fourth cause of action is for breach of warranty. In the complaint, Plaintiff alleges each Defendant expressly and impliedly warranted and advertised orally and in writing that the subject CH-53E Super Stallion helicopter and its component parts and equipment thereof, its service, maintenance and the repairs performed on it were proper and safe for the product’s intended use and was of a merchantable quality . . . warranted to not have any defects . . . and Sargaent Fontalvo relied upon said warranties.” (Compl. ¶ 32.) “The said warranties and representations were breached because the subject CH-53E Super Stallion helicopter and its component parts and equipment were not fit for the use for which they were intended due to the defects contained herein.” (Compl. ¶ 33.)

To state a claim for breach of warranty, Plaintiff must allege that the (1) Defendant made a statement or promise received by the Plaintiff that the product had the alleged express warranty; (2) The product did not perform as stated; (3) Plaintiff took reasonable steps to notify Defendant that the product was not as represented whether or not Defendant received notice; (4) Plaintiff was harmed; and (5) Failure of the product to be as represented was a substantial factor in causing Plaintiff’s harm. See Judicial Council of California Civil Jury Instructions § 1220 (2013).

Again, Plaintiff’s complaint fails to state any additional facts to support the legal elements of the claim. “[T]hreadbare recitals of elements of a cause of action” does not suffice. Iqbal, 556 U.S. at 678. Although the pleading standard Rule 8 announces does not require “detailed factual allegations,” it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. Twombly, 550 U.S. at 555 (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)). For this reason, the Court dismisses Plaintiff’s fourth cause of action with leave to amend.

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5. “Survivor Action”

Plaintiff’s final cause of action is pursuant to Cal. Civ. Proc. Code § 377.11, 377.20, 377.330 and 377.34. Under California law “a cause of action for or against a person is not lost by reason of the person’s death, but survives subject to the applicable limitations period.” Cal. Civ. Proc. Code § 377.20 (West). “A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest.” Cal. Civ. Proc. Code § 377.30 (West). The law further provides for damages recoverable in that they “are limited to the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement.” Cal. Civ. Proc. Code § 377.34 (West)

Plaintiff’s complaint restates the factual allegations of the previous causes of actions – namely, that Sgt. Fontalvo was fatally injured as a result of the Defendants’ actions. While Plaintiff “brings this survivor action as the successor in interest to the action of Staff Sargeant Alexis Fontalvo, deceased,” pursuant to the aforementioned statutes, Plaintiff does not assert any additional causes of action or surrounding facts. Accordingly, Plaintiff has failed to sufficiently state a claim for a “survivor action.” The Court dismisses the final cause of action with leave to amend.


IV. CONCLUSION

For the reasons stated above, the Court hereby **GRANTS** Defendant GE’s motion to dismiss **WITH LEAVE TO AMEND**. (Dkt. No. 13.)

1 If Plaintiff wishes to file an amended complaint, Plaintiff **SHALL FILE** an
2 amended complaint within twenty days of this order being electronically
3 docketed.

4 The hearing date on this matter for Friday, August 16, 2013 is **VACATED**.
5 **IT IS SO ORDERED.**

6 Dated: August 15, 2013

7 
8 HON. GONZALO P. CURIEL
9 United States District Judge