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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,

Plaintiffs,

vs.

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

Defendants.

CASE NO. 13cv0331-GPC-KSC

**ORDER:**

**1) DENYING DEFENDANT E.I. DU  
PONT DE NEMOURS AND  
COMPANY’S MOTION TO  
DISMISS PLAINTIFF’S SIXTH  
CAUSE OF ACTION**

[Dkt. No. 41.]

**2) GRANTING IN PART AND  
DENYING IN PART DEFENDANT  
PKL SERVICES INC.’S MOTION  
TO DISMISS PLAINTIFF’S FIRST  
THROUGH FOURTH AND SIXTH  
CAUSE OF ACTION**

[Dkt. No. 42.]

Presently before the Court are two separate motions to dismiss portions of Plaintiffs Dominic Fontalvo and Norma Fontalvo’s Amended Complaint, filed by Defendants E.I Du Pont De Nemours, (Dkt. No. 41) and PKL Services Inc., (Dkt. No. 42). The Parties have fully briefed both motions. (See Dkt. Nos. 48, 49; Dkt. Nos. 47, 50.) The Court finds the matter suitable for resolution without oral argument pursuant

1 to Local Civil Rule 7.1(d)(1). Based on the allegations in Plaintiffs’ Amended  
2 Complaint, the Parties’ respective briefing, and the applicable law, the Court DENIES  
3 Defendant E.I. Du Pont De Nemours’ motion to dismiss, (Dkt. No. 41), and GRANTS  
4 in part and DENIES in part Defendant PKL Services Inc.’s motion to dismiss, (Dkt.  
5 No. 42).

## 6 **BACKGROUND**

7 This action arises from the March 17, 2011 death of United States Marine  
8 Corps Staff Sergeant Alexis Fontalvo (“Decedent”) in a helicopter accident. (Dkt.  
9 No. 39, Amended Compl. ¶ 16.) Plaintiff Dominic Fontalvo, Decedent’s sole child,  
10 brings this action by and through his grandmother and Guardian ad Litem, Norma  
11 Fontalvo (collectively, “Plaintiffs”). (Id. ¶¶ 3-4.)

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

21 On January 25, 2013, Plaintiffs filed this action in California Superior Court.  
22 (Dkt. No. 1, Ex. A.) On February 11, 2013, Defendants Sikorsky Aircraft  
23 Corporation, Sikorsky Support Services, Inc., and United Technologies Corporation  
24 removed this action to federal court. (Dkt. No. 1.) After this Court denied Plaintiffs’  
25 motion to remand, (Dkt. No. 31), and granted Defendant GE Aviation’s motion to  
26 dismiss Plaintiffs’ Complaint, (Dkt. No. 38), Plaintiffs filed an Amended Complaint  
27 on August 22, 2013. (Dkt. No. 39.) The Amended Complaint is the current  
28 operative complaint, and alleges six separate causes of action: (1) Strict Products

1 Liability under a design defect theory; (2) Strict Products Liability under a  
2 manufacturing defect theory; (3) Negligent Products Liability under a negligent  
3 design theory; (4) Negligent Products Liability under a negligent manufacturing  
4 theory; (5) Negligence; and (6) a Survivor Action pursuant to California Code of  
5 Civil Procedure § 377.11 et seq. (See Dkt. No. 39.)

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

12 Also on September 5, 2013, Defendant PKL Services, Inc. (“PKL”) filed a  
13 separate motion to dismiss the First through Fourth and Sixth causes of action  
14 against PKL as alleged in Plaintiffs’ Amended Complaint. (Dkt. No. 42.) PKL also  
15 joins, and incorporates by reference, Defendant E.I. Du Pont’s motion to dismiss  
16 Plaintiffs’ sixth cause of action. (Dkt. No. 42-1 at 8-9.)

## 17 DISCUSSION

### 18 I. Legal Standard

19 A complaint must contain “a short and plain statement of the claim showing  
20 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). A motion to dismiss  
21 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal  
22 sufficiency of the claims asserted in the complaint. Fed. R. Civ. P. 12(b)(6); Navarro  
23 v. Block, 250 F.3d 729, 731 (9th Cir. 2001). The court must accept all factual  
24 allegations pleaded in the complaint as true, and must construe them and draw all  
25 reasonable inferences from them in favor of the nonmoving party. Cahill v. Liberty  
26 Mutual Ins. Co., 80 F.3d 336, 337–38 (9th Cir. 1996). To avoid a Rule 12(b)(6)  
27 dismissal, a complaint need not contain detailed factual allegations, rather, it must  
28 plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atl.

1 Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has “facial plausibility when  
2 the plaintiff pleads factual content that allows the court to draw the reasonable  
3 inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal,  
4 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556).

5 However, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle  
6 [ment] to relief’ requires more than labels and conclusions, and a formulaic  
7 recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at  
8 555 (quoting Papasan v. Allain, 478 U.S. 265, 286 (1986)) (alteration in original). A  
9 court need not accept “legal conclusions” as true. Iqbal, 556 U.S. at 678. In spite of  
10 the deference the court is bound to pay to the plaintiff’s allegations, it is not proper  
11 for the court to assume that “the [plaintiff] can prove facts that [he or she] has not  
12 alleged or that defendants have violated the . . . laws in ways that have not been  
13 alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of  
14 Carpenters, 459 U.S. 519, 526 (1983). “Where a complaint pleads facts that are  
15 merely consistent with a defendant’s liability, it stops short of the line between  
16 possibility and plausibility of entitlement to relief.” Iqbal, 556 U.S. at 678 (quoting  
17 Twombly, 550 U.S. at 557) (internal quotation marks omitted).

## 18 **II. Analysis**

19 Defendant PKL seeks to dismiss Plaintiffs’ first through fourth causes of  
20 action on the ground that Plaintiffs have not set forth specific facts related to PKL  
21 in relation to those causes of action. (Dkt. No. 42-1 at 4.) In addition, Defendant  
22 PKL, (id. at 8) and Defendant E.I. Du Pont, (Dkt. No. 41), move to dismiss  
23 Plaintiffs’ sixth cause of action on the ground that Plaintiffs’ allegations establish  
24 that Decedent did not suffer damages prior to his death and thus Plaintiffs may not  
25 maintain a survivor action under California Code of Civil Procedure section 377.11.  
26 Defendants Sikorsky Aircraft Corporation, Sikorsky Support Services, Inc., United  
27 Technologies Corporation, and G.E. Aviation Systems, LLC join Defendant E.I. Du  
28 Pont’s motion to dismiss Plaintiffs’ sixth cause of action. (Dkt. Nos. 43, 44.)

1           **A. Allegations against PKL**

2           PKL argues Plaintiffs’ first through fourth causes of action fail to specify how  
3 PKL’s actions or responsibilities pertain to Plaintiffs’ theories of strict or negligent  
4 products liability due to design or manufacturing defects. (Dkt. No. 42-1 at 5.) PKL  
5 argues Plaintiffs’ only allegation related specifically to PKL alleges that PKL was  
6 “responsible solely for after-market **maintaining and inspecting** the helicopter.”  
7 (Id.) (emphasis in original) (citing Amended Compl. ¶ 50). In addition, PKL argues  
8 Plaintiffs’ second through fourth causes of action fail to mention PKL, though the  
9 causes of action specifically identify the other named Defendants. (Id. at 7.)

10           Plaintiffs respond that the Amended Complaint pleads that “each of the  
11 defendants, including PKL, participated in the design, manufacture and distribution  
12 of the defective Super Stallion helicopter (and its components),” and that Plaintiffs’  
13 allegations must be treated as true for the purposes of the present motions to  
14 dismiss. (Dkt. No. 47 at 2-3.)

15           The Court first notes that PKL has failed to offer any authority for its  
16 assertion that Plaintiffs must include “specific allegation[s]”; “specifically identify  
17 PKL’s responsibility regarding the helicopter”; or “identify with particularity”  
18 PKL’s responsibilities. (See Dkt. No. 42-1 at 6-7.) Federal Rule of Civil Procedure  
19 8(a)(2) requires only a “short and plain statement of the claim showing that the  
20 pleader is entitled to relief.” “Specific facts are not necessary; the statement need  
21 only give the defendant fair notice of what the . . . claim is and the grounds upon  
22 which it rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (quoting Twombly, 550  
23 U.S. at 555) (internal quotation marks omitted); cf. Fed. R. Civ. P. 9(b) (requiring  
24 allegations of fraud or mistake to be alleged with particularity).

25           However, the Court agrees that Plaintiffs have failed to meet the requirements  
26 of Rule 8(a) with respect to PKL’s role in the first through fourth causes of action  
27 alleged in Plaintiffs’ Amended Complaint. As PKL notes, Plaintiffs’ Amended  
28 Complaint mentions PKL in two paragraphs of the first through fourth causes of

1 action: (1) to identify the PKL as a corporation that was “in the business of”  
2 conducting a list of activities in California at the relevant times, (Amended Compl.  
3 ¶ 9); and (2) in a list of all Defendants stating that the Defendants “did design,  
4 manufacture, assemble, install, inspect, repair, maintain, endorse, draft, test,  
5 franchise, supply, sell, lease, distribute and place into the stream of commerce the  
6 subject CH-53E Super Stallion helicopter. . .” (Id. ¶ 11.) This undifferentiated  
7 pleading of broad allegations against all defendants fails to give PKL notice of  
8 Plaintiffs’ claims against PKL. See Corazon v. Aurora Loan Servs., LLC, No. 11-  
9 00542 SC, 2011 WL 1740099 at \*4 (N.D. Cal. May 5, 2011) (citing Aaron v.  
10 Aguirre, No. 06-CV-1451, 2007 WL 959083 (S.D. Cal. Mar. 8, 2007)). Although  
11 the Court must take Plaintiffs’ factual allegations as true, see Cahill, 80 F.3d at 337-  
12 38, PKL must have fair notice of Plaintiffs’ claims against it beyond an inclusive  
13 list of sixteen verbs alleged generally against all Defendants.<sup>1</sup> Accordingly, the  
14 Court GRANTS Defendant PKL’s motion to dismiss Plaintiffs’ first through fourth  
15 causes of action as alleged against PKL in Plaintiffs’ Amended Complaint.

#### 16 **B. Survival Action**

17 In addition to PKL’s challenge to the allegations against PKL, all named  
18 Defendants move to dismiss Plaintiffs’ sixth cause of action, titled “Survivor Action  
19 Pursuant to Code of Civil Procedure section 377.11, et [seq.],” (Amended Compl. at  
20 20), in its entirety. Defendants argue a “survival action” under section 377.11 et seq.  
21 requires a showing that the decedent sustained or incurred loss or damage prior to  
22 death, not including pain, suffering, or disfigurement. (Dkt. No. 42-1 at 9; Dkt. No.  
23 41-1 at 4) (citing Cal. Code Civ. P. § 377.34). According to Defendants, Plaintiffs’  
24 allegations indicate Decedent’s fatal injuries were “immediate and sudden,” such  
25 that Decedent “could not have incurred any ‘loss or damage’ prior to his death.”  
26 (Dkt. No. 41-1 at 5.)

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27  
28 <sup>1</sup>The Court notes, as PKL does, that this is in contrast to Plaintiffs’ allegations  
that PKL negligently failed to properly inspect and maintain landing gear systems as  
alleged in Plaintiffs’ fifth cause of action. (See Amended Compl. ¶ 50.)

1 Plaintiffs respond that Defendants’ motion is based on an inference of  
2 immediate death that does not necessarily follow from Plaintiffs’ pled allegations.  
3 (Dkt. No. 48 at 2.) The Court agrees. According to Defendants, the Court may infer  
4 from Plaintiffs’ allegation that Decedent suffered “blunt force polytrauma, skull  
5 fractures, spinal fractures, brain stem-spinal cord separation and death,” (Amended  
6 Compl. ¶ 25), that Decedent’s death was immediate. (See Dkt. No. 41-1 at 5.)  
7 However, on a motion to dismiss, the Court must draw all reasonable inferences  
8 from these allegations in favor of Plaintiffs, as the nonmoving party. Cahill v.  
9 Liberty Mutual Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). While Plaintiffs  
10 certainly allege Decedent’s injuries were serious and fatal, nowhere in Plaintiffs’  
11 Amended Complaint do Plaintiffs allege Decedent’s death occurred suddenly or  
12 immediately. In fact, as Defendants acknowledge, Plaintiffs allege Decedent  
13 “incurred expenses for medical and related care costs during the period of disability  
14 before he died,” (Amended Compl. ¶ 58), and that after Decedent’s accident,  
15 Decedent “was unable to engage fully in his occupation,” (id. ¶ 59).

16 Accordingly, the Court DENIES Defendants’ motion to dismiss the sixth  
17 cause of action in Plaintiffs’ Amended Complaint.

### 18 **III. Leave to Amend**

19 Finally, the Court must determine whether to grant Plaintiffs leave to amend  
20 the Amended Complaint to cure the deficiencies related to Plaintiffs’ allegations  
21 against Defendant PKL. In fact, a “district court should grant leave to amend even if  
22 no request to amend the pleading was made, unless it determines that the pleading  
23 could not possibly be cured by the allegation of other facts.” Lopez v. Smith, 203  
24 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (quoting Doe v. United States, 58 F.3d  
25 494, 497 (9th Cir. 1995)). Finding Plaintiffs’ pleading defects curable, the Court  
26 grants Plaintiffs leave to amend the Amended Complaint.

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**CONCLUSION AND ORDER**

For the foregoing reasons, the Court hereby:

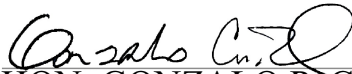
1. **GRANTS** in part and **DENIES** in part Defendant PKL’s motion to dismiss. (Dkt. No. 42.) Plaintiffs’ first through fourth causes of action as alleged against PKL in the Amended Complaint are **DISMISSED WITHOUT PREJUDICE**. In all other respects, the motion is **DENIED**.

2. **DENIES** Defendant E.I. Du Pont’s motion to dismiss the sixth cause of action in Plaintiffs’ Amended Complaint. (Dkt. No. 41.)

Plaintiffs may proceed on their remaining claims in the Amended Complaint. Alternatively, Plaintiff is **GRANTED** thirty (30) days from the date of this Order to file a Second Amended Complaint addressing the deficiencies detailed herein.

**IT IS SO ORDERED.**

DATED: June 20, 2014

  
HON. GONZALO P. CURIEL  
United States District Judge