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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALDOFO GAXIOLA,  
  
Plaintiff,  
  
v.  
  
UNITED STATES OF AMERICA and  
DIAMOND ENVIRONMENTAL  
SERVICES, LP,  
  
Defendants.

Case No.: 19-CV-947 TWR (AGS)

**ORDER DENYING DEFENDANT  
AND THIRD-PARTY DEFENDANT  
DIAMOND ENVIRONMENTAL  
SERVICES, LP’S MOTION FOR  
SUMMARY JUDGMENT**

(ECF No. 54)

UNITED STATES OF AMERICA,  
  
Third-Party Plaintiff,  
  
v.  
  
DIAMOND ENVIRONMENTAL  
SERVICES, LP,  
  
Third-Party Defendant.

Presently before the Court is the Motion for Summary Judgment (“MSJ,” ECF No. 54; “Not.,” ECF No. 55) filed by Defendant and Third-Party Defendant Diamond Environmental Services, LP (“Diamond”), as well as the Oppositions filed by Plaintiff Adolfo Gaxiola (“Pl. Opp’n,” ECF No. 60) and Defendant and Third-Party Plaintiff the

1 United States of America (“U.S. Opp’n,” ECF No. 61) and Diamond’s Reply (ECF No.  
2 62). The Court vacated the hearing and took the matter under submission without oral  
3 argument pursuant to Civil Local Rule 7.1(d)(1). (*See* ECF No. 67.) Having carefully  
4 considered the Parties’ arguments, the evidence, and the law, the Court **DENIES**  
5 Diamond’s Motion.

### 6 **PROCEDURAL BACKGROUND**

7 Plaintiff initiated this maritime action against the United States on May 21, 2019,  
8 alleging a single claim for negligence related to injuries Plaintiff sustained when  
9 crewmen of the USS Boxer dropped a trashcan dolly on Plaintiff’s head while he was  
10 standing on the dock beneath them (the “Incident”). (*See generally* ECF No. 1.) The  
11 United States answered Plaintiff’s Complaint on July 25, 2019, asserting as its fourth  
12 affirmative defense that, “[i]f Plaintiff sustained injuries and damages by reason of the  
13 matters alleged in the Complaint, which are denied, then said injuries and damages were  
14 caused in whole or in part by the acts of third parties.” (*See generally* ECF No. 4.)

15 On October 1, 2019, the United States jointly moved for leave to file a third-party  
16 complaint against Diamond, who provided the portable toilets and washstands (the  
17 “Equipment”) that Plaintiff was allegedly using at the time of the Incident. (*See*  
18 *generally* ECF No. 11.) The Honorable Dana M. Sabraw granted the United States’  
19 motion on October 7, 2019, (*see generally* ECF No. 14), following which the United  
20 States filed its operative Third-Party Complaint for negligence against Diamond. (*See*  
21 *generally* ECF No. 15 (“3rd-Party Comp.”).)

22 Following the filing of the United States’ Third-Party Complaint, Plaintiff jointly  
23 moved to amend his Complaint on October 17, 2019, to add Diamond as a Defendant,  
24 (*see generally* ECF No. 17); Judge Sabraw granted Plaintiff’s request on October 18,  
25 2019. (*See generally* ECF No. 18.) On October 22, 2019, Plaintiff filed his operative  
26 First Amended Complaint, adding a second cause of action for negligence against  
27 Diamond. (*See generally* ECF No. 19 (“FAC”).)

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1 equipment plaintiff was using under the USS BOXER gangway.”.) Accordingly,  
2 whether Diamond placed its Equipment in the “fall zone” is a material fact.<sup>1</sup>

3 Although Diamond contends that “[t]here is no genuine issue of material fact as to  
4 whether Diamond staged, placed or positioned the porta-potties and/or handwashing  
5 stations in the approved laydown area” because Diamond delivered the equipment before  
6 the USS Boxer had moored, (*see* MSJ at 15; *see also, e.g.*, MSJ at 2, 7–8, 14, 23),  
7 Plaintiff and the United States dispute this fact. (*See, e.g.*, Pl. Opp’n at 2–4, 6, 14, 21–22;  
8 U.S. Opp’n at 2–3, 6–9, 18, 20.) For example, NASSCO’s corporate designee testified  
9 that Diamond would have been instructed to return and place the Equipment after the ship  
10 had moored, (*see* ECF No. 61-3 (“U.S. Ex. B”) at 3:19–24), and both NASSCO and the  
11 United States deny moving Diamond’s Equipment. (*See id.* at 4:20–5:6 (NASSCO’s  
12 Rule 30(b)(6) designee testifying that it was not “possible” that NASSCO had moved  
13 Diamond’s Equipment); ECF No. 61-15 ¶ 5 (affirming that Navy personnel were not  
14 authorized to move contractor materials, such as Diamond’s Equipment).) Further,  
15 Diamond’s delivery employee, Johnjohn Martinez, testified that he had no “specific  
16 recollection of March 5th, 2018,” the date he delivered Diamond’s Equipment to the pier  
17 where the USS Boxer would be docking later that evening, (*see* ECF No. 54-12 at  
18 20:6–13); consequently, his testimony concerning where he delivered Diamond’s  
19 Equipment on March 5, 2018, was based solely on his general practice, (*see id.* at  
20 23:16–24:7), which conflicted with NASSCO’s testimony. (*See* Ex. B at 3:19–24,  
21 4:20–5:6.) In short, as the United States’ expert, James L. Dolan, succinctly testified,  
22 “nobody seems to know or admit to who placed the particular [E]quipment in the  
23 location.” (*See* ECF No. 63-1 at 25:13–14.)

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26 <sup>1</sup> Pursuant to the undersigned’s Standing Order for Civil Cases, “[t]he parties must meet and confer in  
27 person or by telephone to arrive at a joint statement of undisputed material facts, which must be filed no  
28 later than the reply brief.” Standing Order for Civil Cases III.B.6. The Parties failed to submit a Joint  
Statement here. Accordingly, the Court admonishes the Parties that future failures to abide by the  
undersigned’s Standing Order for Civil Cases may result in the imposition of sanctions. *See, e.g., Kurin,*  
*Inc. v. Magnolia Med. Techs., Inc.*, 473 F. Supp. 3d 1117, 1125 n.1 (S.D. Cal. 2020).

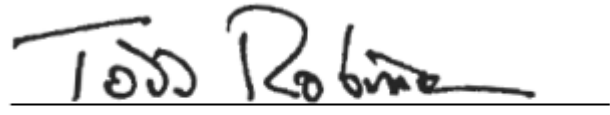
1 The weighing of this disputed evidence and evaluation of the Parties' credibility is  
2 the province of the jury. *See Anderson*, 477 U.S. at 255 ("Credibility determinations, the  
3 weighing of the evidence, and the drawing of legitimate inferences from the facts  
4 are jury functions, not those of a judge."). Accordingly, the Court **DENIES** Diamond's  
5 Motion.

6 **CONCLUSION**

7 In light of the foregoing, the Court **DENIES** Defendant and Third-Party Defendant  
8 Diamond Environmental Services, LP's Motion for Summary Judgment (ECF No. 54).

9 **IT IS SO ORDERED.**

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11 Dated: September 13, 2021

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14 Honorable Todd W. Robinson  
15 United States District Court  
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