

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CIVIL DIVISION

Case No.

KENNETH G. GEMMELL, Personal
Representative of the Estate of MARIE A.
GEMMELL, deceased,
KENNETH G. GEMMELL, Personal
Representative of the Estate of COLE D.
GEMMELL, deceased, and
KENNETH G. GEMMELL, Personal
Representative of the Estate of DEVIN M.
GEMMELL a/k/a DEVON M. GEMMELL,
deceased,

Plaintiffs,

vs.

ALICIA PALADIN, as Personal Representative of
the Estate of MICHAEL JOSEPH ROSENBERG,
deceased, a Florida Estate; SAGE AVIATION
LLC, a Florida Limited Liability Company;
HEALTH DECISIONS, INC., a North Carolina
Corporation; HEALTH DECISIONS CLINICAL
SYSTEMS LLC, a North Carolina Limited
Liability Company; KEN ROSENBERG, as
Trustee of the MICHAEL J. ROSENBERG
TRUST, a Florida Trust; EMBRAER, S.A., a
foreign corporation; EMBRAER AIRCRAFT
HOLDING INC., a Delaware Corporation;
EMBRAER SERVICES, INC., a Delaware
Corporation; EMBRAER AIRCRAFT
CUSTOMER SERVICES, INC., a Florida
Corporation; EMBRAER EXECUTIVE JET
SERVICES, LLC, a Delaware Limited Liability
Company; EMBRAER EXECUTIVE
AIRCRAFT, INC., a Delaware Corporation; and
EMBRAER ENGINEERING & TECHNOLOGY
CENTER USA, INC., a Delaware Corporation,

Defendants.

COMPLAINT

Preliminary Statement

1. This is an action brought by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL a/k/a DEVON M. GEMMELL (hereinafter referred to as “DEVIN M. GEMMELL”), deceased, for all wrongful death and survival damages resulting from the deaths of his wife, MARIE A. GEMMELL, and two of the couple’s children, COLE D. GEMMELL, and DEVIN M. GEMMELL, as ground victims of an airplane crash, as a direct and proximate result of the negligent acts and/or omissions of the Defendants ALICIA PALADIN, as Personal Representative of the Estate of MICHAEL JOSEPH ROSENBERG, deceased (responsible for the conduct of decedent MICHAEL JOSEPH ROSENBERG), SAGE AVIATION LLC, HEALTH DECISIONS, INC., HEALTH DECISIONS CLINICAL SYSTEMS LLC, KEN ROSENBERG, as Trustee of the MICHAEL J. ROSENBERG TRUST, EMBRAER, S.A., EMBRAER AIRCRAFT HOLDING INC., EMBRAER SERVICES, INC., EMBRAER AIRCRAFT CUSTOMER SERVICES, INC., EMBRAER EXECUTIVE JET SERVICES, LLC, EMBRAER EXECUTIVE AIRCRAFT, INC., and EMBRAER ENGINEERING & TECHNOLOGY CENTER USA, INC.

2. The decedents MARIE A. GEMMELL, COLE D. GEMMELL, and DEVIN M. GEMMELL were killed while they were in their familial home when suddenly and without warning an aircraft operated by the decedent, MICHAEL J. ROSENBERG, M.D., crashed into their home during its final approach to the Montgomery Municipal County Airpark located in Gaithersburg, Maryland. The decedents survived the impact of the aircraft, and they each lived for approximately 15 agonizing and excruciating minutes after impact unable to escape their home due to the fact that all escape routes were blocked by fire and thick black toxic billowing

smoke. The plaintiff's decedents ultimately succumbed to smoke inhalation and burn injuries. The decedents were all found in a second floor bathroom of their home with the decedent, MARIE A. GEMMELL cradling and shielding her two lifeless children, COLE D. GEMMELL and DEVIN M. GEMMELL, in her arms.

3. Plaintiff KENNETH G. GEMMELL was and is the spouse of the decedent, MARIE A. GEMMELL, and was appointed Personal Representative of his late wife's Estate by the State of Maryland, Register of Wills for Montgomery County, on the 13th day of April, 2015. Plaintiff brings this wrongful death and survival action on his own behalf, and in a representative capacity on behalf of himself and the couple's surviving minor child, A.G., on behalf of plaintiff's decedent's Estate, and on behalf of all potential beneficiaries, survivors, heirs and/or distributees of the decedent, MARIE A. GEMMELL, and on behalf of any other individual entitled to recover under the applicable law.

4. Plaintiff KENNETH G. GEMMELL was and is the father of the decedent, COLE D. GEMMELL, and was appointed Personal Representative of his late son's Estate by the State of Maryland, Register of Wills for Montgomery County, on the 13th day of April, 2015. Plaintiff brings this wrongful death and survival action on his own behalf, and in a representative capacity on behalf of himself and the couple's surviving minor child, A.G., on behalf of plaintiff's decedent's Estate, and on behalf of all potential beneficiaries, survivors, heirs and/or distributees of the decedent, COLE D. GEMMELL, and on behalf of any other individual entitled to recover under the applicable law.

5. Plaintiff KENNETH G. GEMMELL was and is the father of the decedent, DEVIN M. GEMMELL, and was appointed Personal Representative of his late son's Estate by the State of Maryland, Register of Wills for Montgomery County, on the 26th day of May, 2015.

Plaintiff brings this wrongful death and survival action on his own behalf, and in a representative capacity on behalf of himself and the couple's surviving child, A.G., on behalf of plaintiff's decedent's Estate, and on behalf of all potential beneficiaries, survivors, heirs and/or distributees of the decedent, DEVIN M. GEMMELL, and on behalf of any other individual entitled to recover under the applicable law.

6. As a result of the crash, and as detailed herein, plaintiff KENNETH G. GEMMELL brings this action under Florida law and/or any other applicable law and he seeks all available wrongful death and survival damages arising from the deaths of his wife and two children.

Subject Matter Jurisdiction

7. This is an action for damages in excess of \$15,000 exclusive of costs, interest, and attorney's fees and is therefore within the exclusive jurisdictional limits of this Court under Florida Statute section 26.012.

Venue

8. Pursuant to Florida Statute section 47.011, venue lies in this District because at least one of the defendants resides here.

Parties and Personal Jurisdiction Allegations

9. At all times relevant herein, plaintiff KENNETH G. GEMMELL resided with his wife, MARIE A. GEMMELL, and the couple's three children, surviving child A.G., and the decedents COLE D. GEMMELL and DEVIN M. GEMMELL in their familial home located in Gaithersburg, Maryland.

10. At all times relevant herein, defendant ALICIA PALADIN was and is the duly appointed Personal Representative of the Estate of MICHAEL JOSEPH ROSENBERG,

deceased, and upon information and belief, ALICIA PALADIN and MICHAEL JOSEPH ROSENBERG were citizens and residents of the state of Florida.

11. At all times relevant herein, the Estate of MICHAEL JOSEPH ROSENBERG, deceased, is being administered and is pending in the Circuit Court for Volusia County, Florida Probate Division, bearing File Number 2015-10016 PRDL.

12. Because the decedent MICHAEL JOSEPH ROSENBERG was a citizen and resident of the state of Florida and/or because his Estate is being administered in Florida, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

13. At all times relevant herein, and upon information and belief, the defendant ALICIA PALADIN is the widow of the decedent MICHAEL JOSEPH ROSENBERG, and said defendant is liable, and/or is being sued in her representative capacity as Personal Representative of the Estate of MICHAEL JOSEPH ROSENBERG, deceased (collectively referred to as the “defendant ROSENBERG”), for the actions and/or omissions of the decedent MICHAEL JOSEPH ROSENBERG (“decedent ROSENBERG”) which caused, in whole or in part, the airplane crash complained of herein.

14. At all times relevant herein, defendant ALICIA PALADIN, residing at 1805 Wiley Post Trail, Port Orange, Florida, as the Personal Representative of the Estate of decedent Rosenberg, and/or her duly appointed agent is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

15. At all times relevant herein, and upon information and belief, the defendant SAGE AVIATION LLC, (“SAGE AVIATION”) was and is a limited liability company duly organized and existing under the laws of the state of Florida, maintaining a principal place of

business in the state of Florida, and whose member(s) were and are citizens and residents of the state of Florida.

16. At all times relevant herein, defendant SAGE AVIATION was and is the owner and/or operator of a certain aircraft, namely an EMB-500 Phenom 100 series model aircraft, bearing Federal Civil Aviation Registration Number N100EQ (referred to as the “subject aircraft”), and defendant Sage Aviation is liable for, amongst other things, the actions and/or omissions of any authorized or permitted user of the subject aircraft, including, but not limited to, decedent ROSENBERG, as well as on the basis that the subject aircraft is a dangerous instrumentality.

17. Because this defendant SAGE AVIATION conducted substantial and not isolated activity, maintaining its principal place of business in this state, and whose member was a citizen and resident of this state, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

18. At all times relevant herein, CLASP INC., 3001 Tamiami Trail North, Suite 400, Naples, Florida 34103, was and is the registered agent of defendant Sage Aviation, and is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

19. At all times relevant herein, defendant HEALTH DECISIONS, INC. was and is a corporation formed and existing under the laws of the state of North Carolina, maintaining a principal place of business in North Carolina and whose sole shareholder and agent, MICHAEL JOSEPH ROSENBERG, was a citizen and resident of the state of Florida.

20. At all times relevant herein, defendant HEALTH DECISIONS INC. contracted with and/or entered into a joint venture with the decedent ROSENBERG, for whom defendant ROSENBERG is liable, and/or defendant SAGE AVIATION for the use of the subject aircraft

for its business purposes, specifically including the day of the crash complained of herein, and the subject aircraft was at all times being operated by its agent, servant and/or employee, and as such, defendant HEALTH DECISIONS, INC. is liable, either directly, vicariously or otherwise, for the actions and/or omissions of the decedent ROSENBERG and/or defendant SAGE AVIATION.

21. Because this defendant HEALTH DECISIONS INC., by and through its agent and/or by and through its business dealings with the decedent ROSENBERG, for whom defendant ROSENBERG is liable, and/or defendant SAGE AVIATION, entered into a business relationship with said defendants and specifically with respect to the use of the subject aircraft and for the subject flight, and/or because this defendant is the alter ego of the decedent ROSENBERG and/or defendant ROSENBERG who is a citizen and resident of the state of Florida, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

22. At all times relevant herein, defendant ALICIA PALADIN, residing at 1805 Wiley Post Trail, Port Orange, Florida, was and is the registered agent of defendant HEALTH DECISIONS INC., and is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

23. At all times relevant herein, defendant HEALTH DECISIONS CLINICAL SYSTEMS LLC was and is a limited liability company formed and existing under the laws of the state of North Carolina, maintaining a principal place of business in North Carolina and whose member(s) were and are citizens and residents of the state of Florida.

24. At all times relevant herein, defendant HEALTH DECISIONS CLINICAL SYSTEMS LLC contracted with and/or entered into a joint venture with the decedent

ROSENBERG, for whom defendant ROSENBERG is liable, and/or defendant SAGE AVIATION for the use of the subject aircraft for its business purposes, specifically including the day of the crash complained of herein and the subject aircraft was at all times being operated by its agent, servant and/or employee, and as such, defendant HEALTH DECISIONS CLINICAL SYSTEMS LLC is liable, either directly, vicariously or otherwise, for the actions and/or omissions of the decedent ROSENBERG and/or defendant SAGE AVIATION.

25. Because this defendant HEALTH DECISIONS CLINICAL SYSTEMS LLC, by and through its agent and/or by and through its business dealings with the decedent ROSENBERG, for whom the defendant ROSENBERG is liable, and/or defendant SAGE AVIATION, entered into a business relationship with said defendants and specifically with respect to the use of the subject aircraft, and/or because this defendant's member(s) was and is a citizen and resident of the state of Florida, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

26. At all times relevant, and at the time of the crash complained of herein, decedent ROSENBERG, a Florida citizen and resident, residing at 1805 Wiley Post Trail, Port Orange, Florida, was the registered agent of defendant HEALTH DECISIONS CLINICAL SYSTEMS LLC, and as such, his Estate, by and through its Personal Representative, ALICIA PALADIN, residing at 1805 Wiley Post Trail, Port Orange, Florida, is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

27. At all relevant times herein, the defendants HEALTH DECISIONS, INC. and HEALTH DECISIONS CLINICAL SYSTEMS LLC were and are interrelated companies, and/or alter egos and/or joint venturers of the other, and/or of decedent ROSENBERG and/or defendant ROSENBERG, and each individually is and/or collectively were and are responsible

for the actions and/or omissions of the other, and as such, shall be referred to collectively as “defendant HEALTH DECISIONS”.

28. At all times relevant herein, defendant KEN ROSENBERG was and is the duly appointed Trustee of the MICHAEL J. ROSENBERG TRUST dated June 4, 2010 (referred to as the “defendant ROSENBERG TRUST”), and upon information and belief, the defendant ROSENBERG TRUST is the successor in interest to various Rosenberg related entities, including but not limited to the defendant ROSENBERG, defendant SAGE AVIATION and/or defendant HEALTH DECISIONS. As such, and as the successor in interest to said defendants, the defendant ROSENBERG TRUST is liable for the actions and/or omissions of the decedent ROSENBERG, defendant ROSENBERG, defendant SAGE AVIATION and/or defendant HEALTH DECISIONS.

29. Because the decedent ROSENBERG was a citizen and resident of the state of Florida at the time of his death, and/or because his Estate is being administered in Florida, and/or because the defendant ROSENBERG TRUST is the successor in interest to various Rosenberg related entities, including but not limited to the defendant ROSENBERG, defendant SAGE AVIATION and/or defendant HEALTH DECISIONS, this Court has both general and specific jurisdiction over the defendant ROSENBERG TRUST pursuant to section 48.193 of the Florida Statutes.

30. Because the decedent ROSENBERG was a citizen and resident of the state of Florida at the time of the creation of the defendant ROSENBERG TRUST, this Court has jurisdiction over the defendant KEN ROSENBERG pursuant to section 736.0202 of the Florida Statutes.

31. At all times relevant herein, defendant EMBRAER, S.A. was and is a foreign

corporation formed and existing under the laws of the Federative Republic of Brazil (“Brazil”), maintaining a principal place of business in Brazil, and whose United States “home” is located in the state of Florida. Indeed, as support for the fact that the state of Florida is the US “home” of the defendant EMBRAER, S.A., in 2014 its Chief Executive Officer represented to the people and government of Florida that the state of Florida will be and is the “center of gravity” for defendant EMBRAER S.A.’s executive jet product, which specifically includes the subject aircraft. In addition, defendant EMBRAER S.A. has referred to the state of Florida as its “North American headquarters”.

32. At all relevant times herein, defendant EMBRAER S.A. designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, sold and placed into the stream of commerce and specifically within the state of Florida, the subject aircraft, as well as its component parts and systems, including, but not limited to, the subject aircraft’s de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and wrote and/or approved warnings, advice, instructions and guidance for the subject aircraft, including its aircraft flight manual, aircraft operating manual, maintenance manual, maintenance and repair instructions, overhaul manual, service bulletins, inspection schedules and service life schedules, and/or performed maintenance thereon, and/or provided instruction and guidance concerning training and/or instruction with regard to the operation of the subject aircraft, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft’s de-ice systems, and its stall warning and protection system and furnished said warnings, advice, instructions and guidance for the subject aircraft to

users, including co-defendants, within the State of Florida.

33. Because this defendant EMBRAER S.A. has made the state of Florida its home, and/or because defendant EMBRAER S.A. engages in continuous and systematic business conduct within the state of Florida specifically with respect to the subject aircraft, including but not limited to, with respect to the design, manufacture, assembly, monitoring and/or the issuance of instructions, warnings, advice and/or guidance for both the operation and/or maintenance of the subject aircraft and/or because this defendant owns and has complete operational, financial and high and very significant control over various Florida-based subsidiary entities identified as defendants below, and/or because this defendant engaged in substantial and not isolated activity within this state, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

34. At all times relevant herein, defendant EMBRAER S.A. is a publically traded entity and as such, is required to file certain documentation with the U.S. Securities and Exchange Commission ("SEC"). In at least one such filing, defendant EMBRAER S.A. irrevocably and without limitation consented and agreed to the service of "any and all legal process, summons, notices and documents in any suit, action or proceeding against" said defendant, by service by mail of a copy thereof upon its authorized agent, namely, National Registered Agents, Inc., at 875 Avenue of the Americas, Suite 501, New York, New York 10001, provided that a copy of said suit was also mailed to Defendant EMBRAER, S.A. by registered or certified mail, postage prepaid, to defendant EMBRAER S.A. at Av. Brigadeiro Faria Lima, 217012227-901 Sao Jose dos Campos, Sao Paulo, Brazil, Attn: IR Department, and as such, the authorized agent is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

35. Jurisdiction over defendant EMBRAER S.A. is further supported by said defendant's own filings with the SEC, including, but not limited to, various Annual Reports, referred to as SEC Form 20-F, wherein it stated that it is the controlling and principal entity over numerous Florida-based subsidiary corporations identified as defendants below; and that the Florida-based defendants set forth below were included on the balance sheet of defendant EMBRAER S.A.; were deemed to be "not significant subsidiaries" for purposes of separate reporting requirements under SEC rules and regulations; and moreover, defendant EMBRAER S.A. represented to the public and the SEC that it had all power to direct the Florida-based subsidiary defendants identified below with respect to the subsidiary-defendant's financial and operating policies and defendant EMBRAER S.A. had, and has, exclusive control over the subsidiary-defendant's investment funds.

36. At all times relevant herein, and upon information and belief, the defendant EMBRAER AIRCRAFT HOLDING INC. was and is a corporation duly organized and existing under the laws of the state of Delaware, maintaining a principal place of business in the state of Florida.

37. At all times relevant herein, defendant EMBRAER AIRCRAFT HOLDING, INC. was and is a wholly owned subsidiary of the defendant EMBRAER S.A. The defendant EMBRAER S.A. had complete control, power and authority over said defendant's financial and operating policies, and/or was and is the controlling and principal entity over said defendant as set forth above, and either in conjunction with defendant EMBRAER S.A. or on its own, defendant EMBRAER AIRCRAFT HOLDING, INC. designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, sold and placed into the stream of commerce and specifically within the state of Florida, the subject aircraft, as well as its

component parts and systems, including, but not limited to, the subject aircraft's de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and wrote and/or approved warnings, advice, instructions and guidance for the subject aircraft, including its aircraft flight manual, aircraft operating manual, maintenance manual, maintenance and repair instructions, overhaul manual, service bulletins, inspection schedules and service life schedules, and/or performed maintenance thereon, and/or provided instruction, warning and guidance concerning training and/or instruction with regard to the operation of the subject aircraft, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft's de-ice systems, and its stall warning and protection system and furnished said warnings, advice, instructions and guidance for the subject aircraft to users, including co-defendants, within the State of Florida.

38. Because this defendant EMBRAER AIRCRAFT HOLDING, INC. conducted substantial and not isolated activity, and maintains its principal place of business in this state, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

39. At all times relevant herein, Corporate Creations Network, Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410, was and is the registered agent of defendant EMBRAER AIRCRAFT HOLDING, INC., and is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

40. At all times relevant herein, and upon information and belief, the defendant EMBRAER SERVICES, INC. was and is a corporation duly organized and existing under the

laws of the state of Delaware, maintaining a principal place of business in the state of Florida.

41. At all times relevant herein, defendant EMBRAER SERVICES, INC. was and is a wholly owned subsidiary of the defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. The defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. had complete control, power and authority over said defendant's financial and operating policies and/or each was and is the controlling and principal entity over said defendant as set forth above, and either in conjunction with defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. or on its own, defendant EMBRAER SERVICES, INC. designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, sold and placed into the stream of commerce and specifically within the state of Florida, the subject model aircraft, as well as its component parts and systems, including, but not limited to, the subject aircraft's de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and wrote and/or approved warnings, advice, instructions and guidance for the subject aircraft, including its aircraft flight manual, aircraft operating manual, maintenance manual, maintenance and repair instructions, overhaul manual, service bulletins, inspection schedules and service life schedules, and/or performed maintenance thereon, and/or provided instruction, warning and guidance concerning training and/or instruction with regard to the operation of the subject aircraft, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft's de-ice systems, and its stall warning and protection system and furnished said warnings, advice, instructions and guidance for the subject aircraft to users, including

co-defendants, within the State of Florida.

42. Because this defendant EMBRAER SERVICES, INC. conducted substantial and not isolated activity, and maintains its principal place of business in this state, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

43. At all times relevant herein, Corporate Creations Network, Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410, was and is the registered agent of defendant EMBRAER SERVICES, INC., and is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

44. At all times relevant herein, and upon information and belief, the defendant EMBRAER AIRCRAFT CUSTOMER SERVICES, INC. was and is a corporation duly organized and existing under the laws of the state of Florida, maintaining a principal place of business in the state of Florida.

45. At all times relevant herein, defendant EMBRAER AIRCRAFT CUSTOMER SERVICES, INC. was and is a wholly owned subsidiary of the defendant EMBRAER S.A., and/or defendant EMBRAER AIRCRAFT HOLDING, INC. The defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. had complete control, power and authority over said defendant's financial and operating policies and/or each was and is the controlling and principal entity over said defendant as set forth above, and either in conjunction with defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. or on its own, defendant EMBRAER AIRCRAFT CUSTOMER SERVICES, INC. designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, sold and placed into the stream of commerce and specifically within the state of Florida, the subject model aircraft, as well as its component parts and systems, including, but not

limited to, the subject aircraft's de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and wrote and/or approved warnings, advice, instructions and guidance for the subject aircraft, including its aircraft flight manual, aircraft operating manual, maintenance manual, maintenance and repair instructions, overhaul manual, service bulletins, inspection schedules and service life schedules, and/or performed maintenance thereon, and/or provided instruction, warning and guidance concerning training and/or instruction with regard to the operation of the subject aircraft, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft's de-ice systems, and its stall warning and protection system and furnished said warnings, advice, instructions and guidance for the subject aircraft to users, including co-defendants, within the State of Florida.

46. Because this defendant EMBRAER AIRCRAFT CUSTOMER SERVICES, INC. conducted substantial and not isolated activity, and maintains its principal place of business in this state, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

47. At all times relevant herein, Corporate Creations Network, Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410, was and is the registered agent of defendant EMBRAER AIRCRAFT CUSTOMER SERVICES, INC., and is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

48. At all times relevant herein, and upon information and belief, the defendant EMBRAER EXECUTIVE JET SERVICES, LLC was and is a limited liability company duly organized and existing under the laws of the state of Delaware, maintaining a principal place of

business in the state of Florida, and whose sole member is a citizen of the state of Florida.

49. At all times relevant herein, defendant EMBRAER EXECUTIVE JET SERVICES, LLC was and is a wholly owned subsidiary of the defendant EMBRAER S.A., and/or defendant EMBRAER AIRCRAFT HOLDING, INC. The defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. had complete control, power and authority over said defendant's financial and operating policies and/or each was and is the controlling and principal entity over said defendant as set forth above, and either in conjunction with defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. or on its own, defendant EMBRAER EXECUTIVE JET SERVICES, LLC designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, sold and placed into the stream of commerce and specifically within the state of Florida, the subject model aircraft, as well as its component parts and systems, including, but not limited to, the subject aircraft's de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and wrote and/or approved warnings, advice, instructions and guidance for the subject aircraft, including its aircraft flight manual, aircraft operating manual, maintenance manual, maintenance and repair instructions, overhaul manual, service bulletins, inspection schedules and service life schedules, and/or performed maintenance thereon, and/or provided instruction, warning and guidance concerning training and/or instruction with regard to the operation of the subject aircraft, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft's de-ice systems, and its stall warning and protection system.

50. Because this defendant EMBRAER EXECUTIVE JET SERVICES, LLC conducted substantial and not isolated activity, maintains its principal place of business in this state and/or due to the fact that its member is a citizen of the state of Florida, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

51. At all times relevant herein, Corporate Creations Network, Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410, was and is the registered agent of defendant EMBRAER EXECUTIVE JET SERVICES, LLC, and is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

52. At all times relevant herein, and upon information and belief, the defendant EMBRAER EXECUTIVE AIRCRAFT, INC. was and is a corporation duly organized and existing under the laws of the state of Delaware, maintaining a principal place of business in the state of Florida.

53. At all times relevant herein, defendant EMBRAER EXECUTIVE AIRCRAFT, INC. was and is a wholly owned subsidiary of the defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. The defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. had complete control, power and authority over said defendant's financial and operating policies and/or each was and is the controlling and principal entity over said defendant as set forth above, and either in conjunction with defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC., or on its own defendant EMBRAER EXECUTIVE AIRCRAFT, INC. designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, sold and placed into the stream of commerce and specifically within the state of Florida, the subject model aircraft, as well as its component parts and systems, including, but not limited to, the subject aircraft's

de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and wrote and/or approved warnings, advice, instructions and guidance for the subject aircraft, including its aircraft flight manual, aircraft operating manual, maintenance manual, maintenance and repair instructions, overhaul manual, service bulletins, inspection schedules and service life schedules, and/or performed maintenance thereon, and/or provided instruction, warning and guidance concerning training and/or instruction with regard to the operation of the subject aircraft, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft's de-ice systems, and its stall warning and protection system.

54. Because this defendant EMBRAER EXECUTIVE AIRCRAFT, INC. conducted substantial and not isolated activity, and maintains its principal place of business in this state, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

55. At all times relevant herein, Corporate Creations Network, Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410, was and is the registered agent of defendant EMBRAER EXECUTIVE AIRCRAFT, INC., and is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

56. At all times relevant herein, and upon information and belief, the defendant EMBRAER ENGINEERING & TECHNOLOGY CENTER USA, INC. was and is a corporation duly organized and existing under the laws of the state of Delaware, maintaining a principal place of business in the state of Florida and furnished said warnings, advice, instructions and guidance for the subject aircraft to users, including co-defendants, within the State of Florida.

57. At all times relevant herein, defendant EMBRAER ENGINEERING & TECHNOLOGY CENTER USA, INC. was and is a wholly owned subsidiary of the defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC. The defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC., had complete control, power and authority over said defendant's financial and operating policies and/or each was and is the controlling and principal entity over said defendant as set forth above, and either in conjunction with defendant EMBRAER S.A. and/or defendant EMBRAER AIRCRAFT HOLDING, INC., or on its own defendant EMBRAER ENGINEERING & TECHNOLOGY CENTER USA, INC. designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, sold and placed into the stream of commerce and specifically within the state of Florida, the subject model aircraft, as well as its component parts and systems, including, but not limited to, the subject aircraft's de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and wrote and/or approved warnings, advice, instructions and guidance for the subject aircraft, including its aircraft flight manual, aircraft operating manual, maintenance manual, maintenance and repair instructions, overhaul manual, service bulletins, inspection schedules and service life schedules, and/or performed maintenance thereon, and/or provided instruction, warning and guidance concerning training and/or instruction with regard to the operation of the subject aircraft, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft's de-ice systems, and its stall warning and protection system and furnished said warnings, advice, instructions and guidance for the subject aircraft to users, including

co-defendants, within the State of Florida.

58. Because this defendant EMBRAER ENGINEERING & TECHNOLOGY CENTER USA, INC. conducted substantial and not isolated activity, and maintains its principal place of business in this state, this Court has both general and specific jurisdiction pursuant to section 48.193 of the Florida Statutes.

59. At all times relevant herein, Corporate Creations Network, Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410, was and is the registered agent of defendant EMBRAER EXECUTIVE AIRCRAFT, INC., and is authorized to accept service of process pursuant to Section 48.091 of the Florida Statutes.

60. At all times relevant herein, defendants EMBRAER S.A., EMBRAER AIRCRAFT HOLDING INC., EMBRAER SERVICES, INC., EMBRAER AIRCRAFT CUSTOMER SERVICES, INC., EMBRAER EXECUTIVE JET SERVICES, LLC, EMBRAER EXECUTIVE AIRCRAFT, INC., and EMBRAER ENGINEERING & TECHNOLOGY CENTER USA, INC. were and are inter-related companies and/or part of a joint venture, and/or were and are the parent and subsidiaries of the other, and each individually and/or collectively were responsible for the design, manufacture, assembly, inspection, testing, distribution, service, maintenance, monitoring, marketing, sale and placement into the stream of commerce and specifically within the state of Florida, the subject aircraft, as well as its component parts and systems, including, but not limited to, the subject aircraft's de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and wrote and/or approved warnings, advice, instructions and guidance for the subject aircraft, including its aircraft flight manual, aircraft operating manual, maintenance manual, maintenance and repair instructions, overhaul manual, service bulletins, inspection schedules and service life

schedules, and/or performed maintenance thereon, and/or provided instruction, warning and guidance concerning training and/or instruction with regard to the operation of the subject aircraft in this State and elsewhere, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft's de-ice systems, and its stall warning and protection system, and/or since the defendant EMBRAER S.A., was and is the controlling and principal entity over all Florida-based subsidiary-defendants, as alleged herein, and as such, said defendants shall be collectively referred to as the "EMBRAER Defendants".

General Allegations Applicable To All Counts

61. On the morning of December 8, 2014, the plaintiff KENNETH G. GEMMELL and his daughter A.G. left the familial home to begin their day. Plaintiff KENNETH G. GEMMELL commuted to his job in Alexandria, Virginia, while his daughter, A.G., attended school where she was in the second grade.

62. Remaining at home were the decedents, MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL. MARIE A. GEMMELL was on maternity leave from her job at First Potomac Realty Trust as she had recently given birth to her son, DEVIN M. GEMMELL, who was only 45 days old at the time of his death. Also home was COLE D. GEMMELL who had celebrated his third birthday just six weeks before his death.

63. At all times relevant herein, the subject aircraft was piloted by the decedent ROSENBERG. Also on board were two passengers, one of whom was sitting in the co-pilot seat of the aircraft.

64. At all times relevant herein, the subject flight was a business flight conducted by

and on behalf of the defendant HEALTH DECISIONS for its business purposes and in furtherance of said defendant's business interests as the occupants of the airplane were travelling to the metropolitan Washington D.C. area to participate in a business meeting on behalf of and in furtherance of the business interests of the defendant HEALTH DECISIONS.

65. The subject aircraft was at all times operated by the decedent ROSENBERG as an agent, servant and/or employee of defendant HEALTH DECISIONS and/or decedent ROSENBERG was at all times acting within the course and scope of his employment with defendant HEALTH DECISIONS and/or in furtherance of defendant HEALTH DECISIONS' business interests and as such, defendant HEALTH DECISIONS is liable, directly, vicariously or otherwise, for the actions and/or omissions of the decedent ROSENBERG and/or defendant SAGE AVIATION.

66. At approximately 8:30 a.m. on December 8, 2014, decedent ROSENBERG filed an Instrument Flight Rules ("IFR") flight plan for the approximate 57-minute flight from the Horace Williams Airport located in Chapel Hill, North Carolina to the Montgomery Municipal County Airpark (the "Gaithersburg Airport") located in Gaithersburg, Maryland (the "subject flight").

67. Upon information and belief, the subject aircraft piloted by decedent ROSENBERG departed the Horace Williams Airport in North Carolina at approximately 9:45 a.m. on December 8, 2014, for the flight to the Gaithersburg Airport.

68. The Gaithersburg Airport is an uncontrolled airport which means that no air traffic control tower is located on airport property. Air traffic control services are provided by the Washington Air Route Traffic Control Center located in Leesburg, Virginia (the "ARTCC"). In addition, when operating an aircraft in close proximity to the Gaithersburg Airport each

aircraft is required to announce its intentions on a Common Traffic Advisory Frequency (“CTAF”) so that each aircraft has an understanding as to the location, position and intentions of all other aircraft operating in the airspace above and near the airport, including whether an aircraft intended to land at the airport.

69. Upon information and belief, at approximately 10:20 a.m., the ARTCC advised the subject aircraft to contact Potomac Approach Control for approach instructions to the Gaithersburg Airport.

70. At said time and place, and upon information and belief, light to moderate icing conditions existed at altitudes below 5,000 feet and along the terminal route of the subject flight.

71. At approximately 10:39 a.m., the subject aircraft was operating in icing conditions and was established on final approach for landing on Runway 14 at the Gaithersburg Airport. At that time, decedent Rosenberg announced on the CTAF that the subject aircraft was 7 miles out from Runway 14.

72. The decedent Rosenberg then made two additional announcements on the CTAF advising that the subject aircraft was 6 miles out and then 3 miles out from Runway 14. These were the last known communications from the subject aircraft prior to the crash complained of herein.

73. The subject aircraft was equipped with both a Cockpit Voice Recorder (“CVR”) and Flight Data Recorder (“FDR”). The CVR records all sounds heard in the cockpit and the FDR captures the status of various aircraft systems, including but not limited to, aircraft speed, altitude, pitch, engine and systems functions, etc.

74. At approximately 10:41 a.m., and 46 seconds before the crash complained of herein, an audio altimeter callout was captured on the CVR indicating that the aircraft was

descending through an altitude of 500 feet above the ground. Upon information and belief, at this time (and throughout the descent), the subject aircraft was operating in icing conditions with the auto-pilot engaged and was in a landing configuration meaning that the aircraft's landing gear was down in preparation for landing and wing flaps were fully extended.

75. At said time, and approximately 20 seconds before the crash, the CVR captured the sounding of an audio stall warning which was intended to provide the pilot with a warning that the aircraft was about to enter an aerodynamic stall unless the pilot took corrective action to prevent the stall. As a result of the aural stall warning, the auto-pilot automatically disengaged. However, upon information and belief, due to the conditions then and there existing, the stall warning was immediately followed by the onset of a full aerodynamic stall. In addition, upon information and belief, at this time the subject aircraft was travelling dangerously slow and was approximately one mile from the threshold of Runway 14. The audio stall warning continued until the crash.

76. Upon information and belief, approximately 1.2 seconds after the stall warning sounded the subject aircraft's airspeed was approximately 88 knots and the pilot advanced the aircraft's throttles to add power in an attempt to prevent and/or recover from the aerodynamic stall.

77. The subject aircraft then departed controlled flight and experienced large excursions in both pitch and roll attitudes. As a result, the aircraft then crashed into the GEMMELL home located at 19733 Drop Forge Lane, Gaithersburg, Maryland approximately three quarters of a mile from Runway 14 at the Gaithersburg Airport.

78. At the time of the crash the decedents, MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL, were all located on the second floor of the

GEMMELL home and survived the aircraft's impact into their home. The crash, however, resulted in an extensive fire and immediately filled the home with thick black smoke consisting of chemical and toxic compounds and gases. Tragically, all escape routes out of the home were blocked by fire and deadly smoke.

79. Due the crash, extensive fire and billowing thick black poisonous smoke, and unable to escape the home, decedent MARIE A. GEMMELL ushered her two infant children COLE D. GEMMELL and DEVIN M. GEMMELL into a second floor bathroom in an attempt to protect her family from the raging fire.

80. At this time, the decedent MARIE A. GEMMELL used her cell phone to contact her husband, plaintiff KENNETH G. GEMMELL, to advise him of what was going on. Unable to make contact with her husband, she then called a family friend. During this call MARIE A. GEMMELL's friend could hear the screams of MARIE A. GEMMELL and her children as well as the sounds of a raging fire.

81. The decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL all survived for approximately 15 minutes after impact, ultimately succumbing to smoke inhalation and burn injuries.

82. As a result of the foregoing and as a direct and proximate result of the acts and/or omissions of the defendants, jointly and severally, there was a measurable and significant period of time after the impact of the subject aircraft into the GEMMELL home and prior to the deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL where each of plaintiff's decedents sustained significant and horrific personal injuries, conscious and physical pain and suffering, including, but not limited to, extreme nausea, significant skin, eye, throat and lung irritation and pain, extreme headaches, tissue damage, difficulty and inability to

breathe, asphyxiation, mental changes, blistering of airways and nasal passages, thermal and burn injuries, pre-death fright and terror, fear of impending death, mental anguish, emotional distress, and other severe injuries for a measurable period of time prior to their deaths, for which the defendants are liable, jointly and severally.

83. The injuries and deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL were caused wholly and solely by the acts and/or omissions of the defendants with no negligence on the part of the plaintiff's decedents contributing thereto.

84. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of MARIE A. GEMMELL, her surviving spouse, child, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of MARIE A. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of past earnings, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

85. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of COLE D. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of COLE G. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering, and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

86. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of DEVIN M. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of DEVIN M. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice,

together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

COUNT I

NEGLIGENCE AGAINST THE DEFENDANT ROSENBERG, DEFENDANT SAGE AVIATION, DEFENDANT HEALTH DECISIONS AND/OR DEFENDANT ROSENBERG TRUST

87. Plaintiff repeats, reiterates and re-alleges all allegations contained in paragraphs 1 through 86 as though fully set forth at length herein.

88. The crash, injuries and deaths of the decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL were caused, in whole or in part, by the negligence, recklessness and/or carelessness of the decedent ROSENBERG, for which defendant ROSENBERG, defendant SAGE AVIATION, defendant HEALTH DECISIONS and/or defendant ROSENBERG TRUST are directly, vicariously and/or otherwise liable, including, but not limited to, the following:

- a. in that decedent ROSENBERG improperly flew the approach to Runway 14 at the Gaithersburg Airport and allowed the subject aircraft to become dangerously slow and improperly and belatedly reacted to the subject aircraft's audio stall warning which caused the subject aircraft to enter an aerodynamic stall, become uncontrollable and crash;
- b. in that decedent ROSENBERG failed to disconnect the auto-pilot during the descent and approach to the Gaithersburg Airport despite the fact that the aircraft was operating in known icing conditions;
- c. in that decedent ROSENBERG allowed ice to form on the aircraft's structure thereby causing a degradation of the subject aircraft's aerodynamic capabilities which in turn led to the aerodynamic stall;

- d. in that decedent ROSENBERG failed to maintain proper situational awareness to ensure that the subject aircraft maintained sufficient airspeed to prevent the onset of an aerodynamic stall;
- e. in that decedent ROSENBERG failed to observe or heed certain and/or aural visual cues which would have alerted him to the fact that the subject aircraft was becoming dangerously slow and was about to enter an aerodynamic stall which ultimately caused the aircraft to crash;
- f. in that decedent ROSENBERG failed to recover the subject aircraft after it departed from controlled flight; and
- g. decedent ROSENBERG was otherwise negligent, reckless and/or careless, all for which the defendant ROSENBERG, defendant SAGE AVIATION, defendant HEALTH DECISIONS and/or defendant ROSENBERG TRUST are directly, vicariously and/or otherwise liable.

89. By reason of the negligence, recklessness and/or carelessness of the decedent ROSENBERG, in whole or in part, all for which the defendant ROSENBERG, defendant SAGE AVIATION, defendant HEALTH DECISIONS and/or defendant ROSENBERG TRUST, are directly, vicariously and/or otherwise liable, as set forth herein, the subject aircraft crashed into the GEMMELL home, injuring and ultimately killing the decedents, MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL.

90. As a result of the foregoing and as a direct and proximate result of the acts and/or omissions of the decedent ROSENBERG, all for which Defendant ROSENBERG, Defendant SAGE AVIATION, defendant HEALTH DECISIONS and/or defendant ROSENBERG TRUST, are directly, vicariously and/or otherwise liable, jointly and severally, there was a measurable and significant period of time after the impact of the subject aircraft into the GEMMELL home and prior to the deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL where each of plaintiff's decedents sustained significant and horrific personal injuries, conscious and physical pain and suffering, including, but not limited to, extreme nausea, significant skin, eye, throat and lung irritation and pain, extreme headaches, tissue damage,

difficulty and inability to breathe, asphyxiation, mental changes, blistering of airways and nasal passages, thermal and burn injuries, pre-death fright and terror, fear of impending death, mental anguish, emotional distress, and other severe injuries for a measurable period of time prior to their deaths, for which the defendants are liable, jointly and severally.

91. The injuries and deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL were caused wholly and solely by the acts and/or omissions of the defendants with no negligence on the part of the plaintiff's decedents contributing thereto.

92. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of MARIE A. GEMMELL, her surviving spouse, child, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of MARIE A. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of past earnings, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

93. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of COLE D. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of COLE D. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

94. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of DEVIN M. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of DEVIN M. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice,

together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

WHEREFORE, plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, demands judgment against the defendant ROSENBERG, defendant SAGE AVIATION, defendant HEALTH DECISIONS and/or defendant ROSENBERG TRUST, jointly and severally, for all wrongful death and survival compensatory damages for and to each of plaintiff's decedent's Estates, costs and such other relief this Court deems appropriate. Plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, further demands a trial by jury of all issues triable as of right by jury.

COUNT II

NEGLIGENT ENTRUSTMENT AGAINST DEFENDANT SAGE AVIATION AND/OR DEFENDANT HEALTH DECISIONS

95. Plaintiff repeats, reiterates and re-alleges all allegations contained in paragraphs 1 through 94 as though fully set forth at length herein.

96. At all times relevant herein, defendant SAGE AVIATION and/or defendant HEALTH DECISIONS contracted with and/or entered into a joint venture with the decedent ROSENBERG allowing him to operate and/or control the subject aircraft for their business purposes, specifically including the day of the crash complained of herein, and/or said defendants specifically authorized and permitted the decedent ROSENBERG to act as pilot in

command of the subject aircraft.

97. The crash, injuries and deaths of the decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL were caused, in whole or in part, by the negligence, recklessness and/or carelessness of the defendant SAGE AVIATION and/or defendant HEALTH DECISIONS in their interview, investigation, hire, employment, retention, supervision, entrusting, control, testing, permitting, authorizing, and/or examination of the decedent ROSENBERG in that said defendants failed to inquire and/or investigate properly and thoroughly the decedent ROSENBERG's flying record; failed to inquire and/or investigate properly and thoroughly decedent ROSENBERG's prior turbo-jet aircraft operating history, including, but not limited to, the subject aircraft; failed to inquire and/or investigate properly decedent ROSENBERG's turbo-jet aircraft flying ability; failed to inquire and/or investigate properly and thoroughly the decedent ROSENBERG's training, or lack thereof, on turbo-jet aircraft, specifically including the subject aircraft, prior to entrusting him with same; failed to provide proper training, instruction and/or guidance concerning the use of the subject aircraft; failed to provide proper and/or adequate supervision; failed to enforce, monitor and/or oversee decedent ROSENBERG with respect to the safety, employment, training, and/or operation of the subject aircraft, including, but not limited to, any applicable policies, procedures, guidelines, and/or regulations; failed to determine whether the decedent ROSENBERG was fit to operate the subject aircraft; was otherwise negligent, reckless, and/or careless in its hiring, employing, retention, entrusting, permitting, authorizing, and/or allowing the decedent ROSENBERG to operate and control the subject aircraft; failed and improperly supervised, controlled, monitored and/or vetted the decedent ROSENBERG to insure that he was capable of properly and/or safely

operating and flying the subject aircraft; and said defendants were otherwise negligent, reckless and/or careless.

98. By reason of the negligence, recklessness and/or carelessness of the defendant SAGE AVIATION and/or defendant HEALTH DECISIONS, as set forth herein, the subject aircraft crashed into the GEMMELL home, injuring and ultimately killing the decedents, MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL.

99. As a result of the foregoing and as a direct and proximate result of the acts and/or omissions of the defendant SAGE AVIATION and/or defendant HEALTH DECISIONS, jointly and severally, there was a measurable and significant period of time after the impact of the subject aircraft into the GEMMELL home and prior to the deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL where each of plaintiff's decedents sustained significant and horrific personal injuries, conscious and physical pain and suffering, including, but not limited to, extreme nausea, significant skin, eye, throat and lung irritation and pain, extreme headaches, tissue damage, difficulty and inability to breathe, asphyxiation, mental changes, blistering of airways and nasal passages, thermal and burn injuries, pre-death fright and terror, fear of impending death, mental anguish, emotional distress, and other severe injuries for a measurable period of time prior to their deaths, for which the defendants are liable, jointly and severally.

100. The injuries and deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL were caused wholly and solely by the acts and/or omissions of the defendants with no negligence on the part of the plaintiff's decedents contributing thereto.

101. As a direct and proximate result of the foregoing, the within action is brought on

pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

103. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of DEVIN M. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of DEVIN M. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

WHEREFORE, plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, demands judgment against the defendant SAGE AVIATION, and/or defendant HEALTH DECISIONS, jointly and severally, for all wrongful death and survival compensatory damages for and to each of plaintiff's decedent's Estates, costs and such other

relief this Court deems appropriate. Plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, further demands a trial by jury of all issues triable as of right by jury.

COUNT III

NEGLIGENCE AGAINST THE EMBRAER DEFENDANTS

104. Plaintiff repeats, reiterates and re-alleges all allegations contained in paragraphs 1 through 103 as though fully set forth at length herein.

105. The subject crash, injuries and deaths of plaintiff's decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL, were caused, in part, by the negligence, recklessness and/or carelessness of the EMBRAER Defendants, including its officers, agents, servants and/or employees, in that they:

- a. negligently, recklessly and/or carelessly designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, sold and placed into the stream of commerce, and specifically into the state of Florida, the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components;
- b. negligently, recklessly and/or carelessly failed to warn of the risks associated with the subject aircraft, including its anti-icing and de-icing systems, flight control systems, auto-pilot, and the stall warning and protection system, and their associated components;
- c. failed to design, manufacture, and assemble the subject aircraft free of all defects;
- d. failed to design, manufacture, assemble and/or equip the subject aircraft's auto-pilot with an auto-throttle system for use during final approach that would have automatically maintained sufficient airspeed to prevent the activation of the subject aircraft's stall warning and protection system thereby creating the potential for a catastrophic in-flight event, especially since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot;

- e. negligently, recklessly and/or carelessly provided improper warning and/or guidance to pilots operating the subject aircraft, including, but not limited to, with respect to flight in known icing conditions, the use of auto-pilot in known icing conditions, and upset recovery at low altitudes, including, but not limited to, recognizing, preventing and correcting an aerodynamic stall as well as the operation of the subject aircraft's anti-ice and de-ice systems, and its' stall warning and protection system and/or visual cues concerning the build-up of ice (or ice accretion) at low altitudes which degrades the subject aircraft's aerodynamic capabilities and could, and did, lead to the onset of an aerodynamic stall;
- f. negligently, recklessly and/or carelessly failed to provide warning, advice, instruction and/or guidance regarding the activation of the subject aircraft's stall warning and protection system specifically including, what, if any, pilot input is necessary once the stall warning and protection system is activated, as well as failed to require necessary simulator training in the stall warning and protection system, especially since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot;
- g. negligently, recklessly and/or carelessly failed to provide adequate warning, advice, instruction and/or guidance and specifically omitted from its aircraft operating manual the requirement that when flying an approach to landing in known icing conditions, the pilot be required to disconnect the auto-pilot so that he/she could determine the effect, if any, that ice accretion had on the aircraft prior to the upset and crash, especially since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot;
- h. negligently, recklessly and/or carelessly provided improper guidance concerning the use of the auto-pilot in icing conditions, especially since the auto-pilot was not equipped with an auto-throttle during low altitude operations, all contrary to guidance issued by various US government agencies including the Federal Aviation Administration and/or the National Transportation Safety Board;
- i. negligently, recklessly and/or carelessly failed to equip the subject aircraft with an ice detector, even though the first ten (10) production models of the subject aircraft were manufactured with an ice detector, especially since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot;
- j. were specifically aware that as a result of prior in-flight icing events on aircraft that they manufactured, the accretion of ice on the subject aircraft's structure presented a deadly and dangerous condition, and as such, said defendants negligently, recklessly and/or carelessly failed to warn of this known defect and/or provide the subject aircraft with adequate anti-ice and/or de-ice equipment,

including, but not limited to, an ice detector, as well as appropriate visual means with respect to visual recognition of ice accretion on the subject aircraft, including during approaches to landing, especially since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot;

- k. negligently, recklessly and/or carelessly designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, and sold the subject aircraft with a de-ice system, including, but not limited to, the de-ice pneumatic boots located on the leading edge of each wing, that made it especially difficult for the pilot to visually confirm ice accretion on the aircraft's wing, despite their specific knowledge that ice accretion presently a deadly and dangerous problem, especially at low altitudes when the aircraft is travelling at lower speeds in preparation for landing and since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot;
- l. negligently, recklessly and/or carelessly designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, marketed, and sold the subject aircraft, specifically with respect to its de-ice system and/or stall warning and protection system, since those systems failed to provide the pilot of the subject aircraft with adequate warning since the aerodynamic stall complained of herein occurred at or about the same time that the aural stall warning sounded thereby depriving the pilot of the subject aircraft with an opportunity to prevent the onset of a full aerodynamic stall which is required pursuant to various procedures, guidelines, recommendations and/or regulations, especially since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot;
- m. failed to comply with and/or meet various procedures, guidelines, recommendations and/or regulations in that the subject stall warning sounded at or about the same time the subject aircraft entered the aerodynamic stall thereby failing to give the necessary warning to the pilot that an aerodynamic stall was imminent, especially since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot;
- n. negligently, recklessly and/or carelessly failed to require proper and appropriate training concerning the operation of the subject aircraft, especially since the subject aircraft was marketed and sold to the aviation community as a turbo-jet aircraft for operation by a single pilot; and
- o. said defendants were otherwise negligent, reckless and/or careless.

106. By reason of the negligence, recklessness and/or carelessness of the EMBRAER

Defendants, in whole or in part, as set forth herein, the subject aircraft crashed into the

GEMMELL home, injuring and ultimately killing the decedents, MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL.

107. As a result of the foregoing and as a direct and proximate result of the acts and/or omissions of the Embraer defendants, jointly and severally, there was a measurable and significant period of time after the impact of the subject aircraft into the GEMMELL home and prior to the deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL where each of plaintiff's decedents sustained significant and horrific personal injuries, conscious and physical pain and suffering, including, but not limited to, extreme nausea, significant skin, eye, throat and lung irritation and pain, extreme headaches, tissue damage, difficulty and inability to breathe, asphyxiation, mental changes, blistering of airways and nasal passages, thermal and burn injuries, pre-death fright and terror, fear of impending death, mental anguish, emotional distress, and other severe injuries for a measurable period of time prior to their deaths, for which the defendants are liable, jointly and severally.

108. The injuries and deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL were caused wholly and solely by the acts and omissions of the defendants with no negligence on the part of the plaintiff's decedents contributing thereto.

109. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of MARIE A. GEMMELL, her surviving spouse, child, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of MARIE A. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including

the loss of the gross earning power of the decedent, the loss of past earnings, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

110. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of COLE D. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of COLE D. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

111. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of DEVIN M. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of DEVIN M. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

WHEREFORE, plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, demands judgment against the EMBRAER Defendants, jointly and severally, for all wrongful death and survival compensatory damages for and to each of plaintiff's decedent's Estates, costs and such other relief this Court deems appropriate. Plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, further demands a trial by jury of all issues triable as of right by jury.

COUNT IV

BREACH OF WARRANTY AGAINST THE EMBRAER DEFENDANTS

112. Plaintiff repeats, reiterates and re-alleges all allegations contained in paragraphs 1 through 111 as though fully set forth at length herein.

113. Prior to December 8, 2014, the EMBRAER Defendants, expressly and/or impliedly warranted that the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, which were sold, supplied and placed into the stream of commerce were airworthy, of merchantable quality, fit and safe for the purposes for which they were designed, manufactured, assembled, inspected, tested, sold, serviced, repaired, maintained, overhauled, intended and used, and the EMBRAER Defendants, further warranted that that the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, were free from all defects, and said defendants knew that these warranties would be, and actually were, relied upon; and said defendants warranted expressly and/or impliedly that the warnings, advice and instructions for the that the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, including its flight manual, maintenance manual, maintenance instructions, overhaul manual, service bulletins, inspection schedules and service life schedules were proper, adequate and correct.

114. The EMBRAER Defendants breached said warranties in that that the subject

aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, were not airworthy, not of merchantable quality and were not fit for the purposes for which they were designed, manufactured, assembled, inspected, tested, sold, serviced, repaired, maintained, overhauled, intended and used, and were not free from all defects; and that the warnings, advice and instructions for the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, including its flight manual, maintenance manual, maintenance instructions, overhaul manual, service bulletins, inspection schedules and service life schedules were improper, inadequate, incorrect and misleading.

115. As a direct and proximate result of the EMBRAER Defendants breach of warranties in whole or in part, as set forth herein, the subject aircraft crashed into the GEMMELL home, injuring and ultimately killing the decedents, MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL.

116. As a result of the foregoing and as a direct and proximate result of the acts and/or omissions of the EMBRAER Defendants, jointly and severally, there was a measurable and significant period of time after the impact of the subject aircraft into the GEMMELL home and prior to the deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL where each of plaintiff's decedents sustained significant and horrific personal injuries, conscious and physical pain and suffering, including, but not limited to, extreme nausea, significant skin, eye, throat and lung irritation and pain, extreme headaches, tissue damage, difficulty and inability to breathe, asphyxiation, mental changes, blistering of airways and nasal

passages, thermal and burn injuries, pre-death fright and terror, fear of impending death, mental anguish, emotional distress, and other severe injuries for a measurable period of time prior to their deaths, for which the defendants are liable, jointly and severally.

117. The injuries and deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL were caused wholly and solely by the acts and/or omissions of the defendants with no negligence on the part of the plaintiff's decedents contributing thereto.

118. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of MARIE A. GEMMELL, her surviving spouse, child, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of MARIE A. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of past earnings, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

119. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of COLE D. GEMMELL, his father, sibling, all potential heirs, beneficiaries,

survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of COLE D. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

120. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of DEVIN M. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of DEVIN M. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain

and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

WHEREFORE, plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, demands judgment against the EMBRAER defendants, jointly and severally, for all wrongful death and survival compensatory damages for and to each of plaintiff's decedent's Estates, costs and such other relief this Court deems appropriate. Plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, further demands a trial by jury of all issues triable as of right by jury.

COUNT V

STRICT PRODUCTS LIABILITY AGAINST THE EMBRAER DEFENDANTS

121. Plaintiff repeats, reiterates and re-alleges all allegations contained in paragraphs 1 through 120 as though fully set forth at length herein.

122. On December 8, 2014, the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and their attendant warnings, advice, instructions and guidance, were being operated and used for the purposes and in the manner for which they were designed, manufactured, assembled, inspected, tested, distributed, sold, serviced, maintained, and/or repaired, and intended to be used, in a manner reasonably foreseeable to the EMBRAER Defendants, and in a condition without substantial change from their original condition when sold by the EMBRAER

Defendants.

123. On December 8, 2014, the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and their attendant instructions, were defective and unreasonably dangerous and unsafe by reason of the EMBRAER Defendants' defective design, manufacture, assembly, inspection, testing, distribution, sale, warnings and instructions, service, maintenance and/or repair of the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and their attendant warnings, advice, instructions and guidance, all of which had the potential to lead to an unsafe condition, including, but not limited to, an aerodynamic stall with little or no warning provided to the pilot of the impending stall, which ultimately could, and did, lead to the loss of controlled flight.

124. The crash, injuries and deaths of the decedents MARIE A. GEMMELL, COLE D. GEMMELL, and DEVIN M. GEMMELL, were caused, in part, by the aforementioned defective, unreasonably dangerous and unsafe condition of the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's anti-icing and de-icing systems, flight control systems, auto-pilot, and its stall warning and protection system, and their associated components, and their attendant warnings, advice, instructions and guidance, in conjunction with said defendants' improper and inadequate warnings, advice and instructions, as well as said defendants' failure to take appropriate measures to remedy and correct known defects and dangerous conditions, or provide accurate and up to date information in the flight manual, maintenance manual, maintenance instructions, overhaul manual, service bulletins, inspection

schedules and service life schedules all of which had the potential to lead to an unsafe condition, including, but not limited to, an aerodynamic stall with little or no warning provided to the pilot of the impending stall, which ultimately could, and did, lead to the loss of controlled flight, and accordingly, the EMBRAER Defendants are strictly liable in tort to the plaintiff.

125. As a direct and proximate result of the EMBRAER Defendants' product and warning defects and strict liability in tort, as set forth above, in whole or in part, the subject aircraft crashed into the GEMMELL home, injuring and ultimately killing the decedents, MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL.

126. As a result of the foregoing and as a direct and proximate result of the acts and/or omissions of the EMBRAER Defendants, jointly and severally, there was a measurable and significant period of time after the impact of the subject aircraft into the GEMMELL home and prior to the deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL where each of plaintiff's decedents sustained significant and horrific personal injuries, conscious and physical pain and suffering, including, but not limited to, extreme nausea, significant skin, eye, throat and lung irritation and pain, extreme headaches, tissue damage, difficulty and inability to breathe, asphyxiation, mental changes, blistering of airways and nasal passages, thermal and burn injuries, pre-death fright and terror, fear of impending death, mental anguish, emotional distress, and other severe injuries for a measurable period of time prior to their deaths, for which the defendants are liable, jointly and severally.

127. The injuries and deaths of decedents MARIE A. GEMMELL, COLE D. GEMMELL and DEVIN M. GEMMELL were caused wholly and solely by the acts and/or omissions of the defendants with no negligence on the part of the plaintiff's decedents contributing thereto.

128. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of MARIE A. GEMMELL, her surviving spouse, child, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of MARIE A. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of past earnings, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

129. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of COLE D. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of COLE D. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary

values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

130. As a direct and proximate result of the foregoing, the within action is brought on behalf of the Estate of DEVIN M. GEMMELL, his father, sibling, all potential heirs, beneficiaries, survivors, distributees and/or anyone entitled to recover under the applicable law, represented by the plaintiff KENNETH G. GEMMELL, Personal Representative of the Estate of DEVIN M. GEMMELL, deceased, seeking all wrongful death and survival damages under the applicable law, including, but not limited to, all economic and non-economic damages, including the loss of the gross earning power of the decedent, the loss of future earnings and earning capacity, loss of accumulations, full pecuniary loss of the decedent, loss of income, support, society, love, grief, consortium, services, guidance, care, comfort, companionship, advice, together with the pecuniary values of the losses thereof, and the inheritance of the decedent, loss of life's pleasures, loss of enjoyment of life, and damages for mental anguish and mental pain and suffering; and the heirs and distributees of the decedent's Estate were caused to incur other necessary and reasonable expenses as a result of the decedent's death, including, but not limited to, funeral and burial costs, and were otherwise damaged.

WHEREFORE, plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, demands judgment against the EMBRAER Defendants, jointly and severally, for all wrongful death and survival compensatory damages for and to each of plaintiff's decedent's

Estates, costs and such other relief this Court deems appropriate. Plaintiff KENNETH G. GEMMELL, Personal Representative of the Estates of MARIE A. GEMMELL, deceased; COLE D. GEMMELL, deceased; and DEVIN M. GEMMELL, deceased, further demands a trial by jury of all issues triable as of right by jury.

Dated this 3rd day of May, 2016.

Respectfully submitted,

PODHURST ORSECK, P.A.

Attorneys for Plaintiffs
25 West Flagler Street, Suite 800
Miami, Florida 33130
Telephone: (305) 358-2800
Fax: (305) 358-2382

By: /s/ Ricardo M. Martínez-Cid
RICARDO M. MARTÍNEZ-CID
Florida Bar No. 383988
Email: rmcid@podhurst.com
aducci@podhurst.com; lbarrington@podhurst.com
LEA P. VALDIVIA
Florida Bar No. 84763
Email: lvaldivia@podhurst.com
aducci@podhurst.com; mestevez@podhurst.com

-and-

FRANK H. GRANITO, III, Esq.
Email: f3g@speiserkrause.com
DOUGLAS A. LATTO, Esq.
Email: dal@speiserkrause.com
JEANNE M. O'GRADY, Esq.
Email: jog@speiserkrause.com
SPEISER KRAUSE
800 Westchester Avenue, Suite S-608
Rye Brook, New York 10573
Telephone: (914) 220-5333
Fax: (914) 220-5334
(pending *pro hac vice* admittances)

-and-

DANIEL D. BARKS, Esq.
Email: ddb@speiserkrause.com
SPEISER KRAUSE
3445 Peachtree Road NE
Atlanta, Georgia 30326
Telephone: (404) 751-0632
(pending *pro hac vice* admittance)

Attorneys for Plaintiffs