

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

GENERAL CIVIL DIVISION

JANET HARTMAN, Individually and as Personal)
Representative of the Estate of DAVID A.)
HARTMAN, deceased,)

Plaintiff,)

-vs.-)

HEALTH DECISIONS, INC., a North Carolina)
Corporation; ALICIA PALADIN, as Personal)
Representative of THE ESTATE OF MICHAEL)
ROSENBERG, Deceased; SAGE AVIATION,)
LLC, a Florida 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 foreign corporation; EMBRAER SERVICES,)
INC., a foreign corporation; EMBRAER AIRCRAFT)
CUSTOMER SERVICES INC., a Florida corporation;)
EMBRAER AIRCRAFT MAINTENANCE SERVICES,)
INC., a foreign corporation; EMBRAER EXECUTIVE)
JET SERVICES, LLC, a foreign limited liability)
Company; EMBRAER EXECUTIVE AIRCRAFT, INC.,)
a foreign corporation; EMBRAER TRAINING)
SERVICES, LLC, a foreign limited liability company;)
and EMBRAER ENGINEERING & TECHNOLOGY)
CENTER USA, INC., a foreign corporation,)

Defendants.)

CASE NO. CACE16-008157
DIVISION: 18

**THE ESTATE OF MICHAEL ROSENBERG, THE MICHAEL J. ROSENBERG TRUST
AND SAGE AVIATION LLC'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT AT LAW**¹

Defendants, ALICIA PALADIN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MICHAEL ROSENBERG (“the Estate”), KEN ROSENBERG, AS TRUSTEE OF THE MICHAEL J. ROSENBERG TRUST (“the Trust”), and SAGE AVIATION, LLC (“Sage”) (collectively, “the Defendants”), by and through counsel, McINTOSH, SAWRAN & CARTAYA, P.A. and ADLER MURPHY & McQUILLEN LLP, and in answer to Plaintiff’s Complaint at Law, state:

1. Defendants admit, only, that David Hartman was killed in the crash of an Embraer EMB-500/Phenom 100, Registration Number N100EQ, which occurred on December 8, 2014 in Gaithersburg, Maryland. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1 of Plaintiff’s Complaint, and they are therefore denied, and demand is made for strict proof thereof

2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of Plaintiff’s Complaint, and they are therefore denied, and demand is made for strict proof thereof.

3. Defendants admit that Michael Rosenberg was the operator and pilot in command of the aircraft and was also killed in the crash, that Michael Rosenberg was a resident of Florida, and that Alicia Paladin is the Personal Representative of the Estate of Michael Rosenberg. The remaining allegations of paragraph 3 of Plaintiff’s complaint contain legal conclusions to which no response from Defendants is required, and demand is made for strict proof thereof.

¹ As set forth more fully in Health Decisions, Inc.’s Motion to Dismiss, filed contemporaneously herewith, Health Decisions, Inc. is not subject to personal jurisdiction in Florida. Because personal jurisdiction is not proper as to Health Decisions, and to preserve this jurisdictional defense, Health Decisions is not answering the allegations of Plaintiff’s Complaint.

4. Defendants admit that the Estate of Michael Rosenberg is being administered and is pending in the Circuit Court for Volusia County, Florida, Probate Division, bearing file number [REDACTED] and that Alicia Paladin is being sued in her capacity as Personal Representative of the Estate of Michael Rosenberg. The remaining allegations of paragraph 4 of Plaintiff's Complaint contain legal conclusions to which no response from Defendants is required. To the extent a response to the remaining allegations is deemed required, they are denied, and demand is made for strict proof thereof.

5. Defendants admit that Sage is a Florida Limited Liability Company. Defendants further admit that, at varying times, Michael Rosenberg and Ken Rosenberg served as the sole members of Sage. Defendants deny the remaining allegations set forth in paragraph 5 of Plaintiff's Complaint, and demand strict proof thereof.

6. Defendants admit that Sage was the registered owner of an EMB-500 Phenom 100 aircraft, registration number N100EQ. The remaining allegations in paragraph 6 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the remaining allegations in paragraph 6 of Plaintiff's Complaint, and demand strict proof thereof.

7. Without prejudice to Health Decisions' personal jurisdiction defense reserved in footnote 1, supra, the allegations contained in paragraph 7 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 7 are deemed to require a response from Sage, the Estate or the Trust, Defendants admit that Health Decisions, Inc. is a North Carolina Corporation, of which Michael Rosenberg was the Chief Executive Officer, that Health

Decisions provides clinical development support and services. The remaining allegations contained in paragraph 7 of Plaintiff's Complaint are denied, and demand is made for strict proof thereof.

8. Without prejudice to Health Decisions' personal jurisdiction defense reserved in footnote 1, *supra*, the allegations contained in paragraph 8 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 8 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

9. Without prejudice to Health Decisions' personal jurisdiction defense reserved in footnote 1, *supra*, Sage, the Estate and the Trust admit only that Ken Rosenberg is the Trustee of the Michael J. Rosenberg Trust, and that he may be served at 2439 13th Court North, Arlington, Virginia, 22201. The remaining allegations contained in paragraph 9 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 9 are deemed to require a response from the Defendants, they are denied, and demand is made for strict proof thereof.

10. Without prejudice to Health Decisions' personal jurisdiction defense reserved in footnote 1, *supra*, Sage, the Estate and the Trust answer that the allegations contained in paragraph 10 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 10 are deemed to require a response from the Defendants, they are denied, and demand is made for strict proof thereof.

11. The allegations contained in paragraph 11 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 11 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of Plaintiff's Complaint, and they are therefore denied.

12. The allegations contained in paragraph 12 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 12 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of Plaintiff's Complaint, and they are therefore denied.

13. The allegations contained in paragraph 13 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 13 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of Plaintiff's Complaint, and they are therefore denied.

14. The allegations contained in paragraph 14 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 14 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a

belief as to the truth of the allegations set forth in paragraph 14 of Plaintiff's Complaint, and they are therefore denied.

15. The allegations contained in paragraph 15 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 15 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of Plaintiff's Complaint, and they are therefore denied.

16. The allegations contained in paragraph 16 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 16 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of Plaintiff's Complaint, and they are therefore denied.

17. The allegations contained in paragraph 17 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 17 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of Plaintiff's Complaint, and they are therefore denied.

18. The allegations contained in paragraph 18 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 18 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of Plaintiff's Complaint, and they are therefore denied.

19. The allegations contained in paragraph 19 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 19 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of Plaintiff's Complaint, and they are therefore denied.

20. The allegations contained in paragraph 20 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 20 are deemed to require a response from Sage, the Estate or the Trust, Defendants admit that Embraer manufactured the EMB-500/Phenom 100 aircraft, Reg. No. N100EQ. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 20 of Plaintiff's Complaint, and they are therefore denied.

21. The allegations contained in paragraph 21 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 21 are deemed to require a response from

Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of Plaintiff's Complaint, and they are therefore denied.

Jurisdiction and Venue

22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 22 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

23. The allegations contained in paragraph 23 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 23 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

General Allegations

24. Defendants admit the allegations in paragraph 24 of Plaintiff's Complaint.

25. Defendants admit the subject aircraft was registered to Sage and was piloted by Michael Rosenberg. The remaining allegations contain legal conclusions to which no response is required. To the extent the allegations in paragraph 25 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

26. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

27. The allegations of paragraph 27 are not directed to these Defendants and no response from these Defendants is required. To the extent that it is determined that a response is required from these Defendants, they lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

28. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

29. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

30. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 30 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

31. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

32. Defendant admits that subject aircraft was equipped with both a Cockpit Voice Recorder and a Flight Data Recorder. The remaining allegations of paragraph 32 are not directed to these Defendants and, as such, no response is required. To the extent that it is determined that

a response is required, the Defendants lack sufficient information to form a belief as to the truth of the allegations set forth in paragraph 32 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

33. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 33 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

34. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

35. Defendants deny the allegations in paragraph 35 of Plaintiff's Complaint, and demand is made for strict proof thereof.

36. The Defendants admit only that Rosenberg was the CEO of Health Decisions and that he was the sole member of Sage. The remaining allegations contained in paragraph 36 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 36 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

37. The allegations contained in paragraph 37 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 37 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a

belief as to the truth of the allegations set forth in paragraph 37 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

38. The allegations contained in paragraph 38 of Plaintiff's Complaint are not directed against Sage, the Estate or the Trust, and contain legal conclusions to which no response is required. To the extent the allegations in paragraph 38 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 38 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

39. The allegations contained in paragraph 36 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 36 are deemed to require a response from Sage, the Estate or the Trust, the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 39 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

COUNT ONE

NEGLIGENCE – HEALTH DECISIONS, SAGE AVIATION, MICHAEL ROSENBERG and the ROSENBERG TRUST

40. Defendants Sage, the Estate and the Trust restate and incorporate by reference their answers to paragraphs 1-10, 22-36 and 39 as if set forth fully herein.

41. Defendants Sage, the Estate and the Trust deny the allegations in paragraph 41 of Plaintiff's Complaint, including all subparts (a)-(w), and demand is made for strict proof thereof.

42. Defendants Sage, the Estate and the Trust deny the allegations in paragraph 42 of Plaintiff's Complaint, and demand is made for strict proof thereof.

43. Defendants Sage, the Estate and the Trust deny the allegations in paragraph 43 of Plaintiff's Complaint, and demand is made for strict proof thereof.

COUNT TWO

STRICT LIABILITY- EMBRAER DEFENDANTS

44-54. Count Two is not directed against these Defendants, and as such, no response is required of these Defendants. In the event that any of the allegations in this Count relate to, implicate or are deemed to require a response by these Defendants, Defendants (a) incorporate their responses to paragraphs 1, 2, 11-35, and 37-39, of Plaintiff's Complaint as if set forth fully herein, (b) deny any remaining allegations to the extent they relate to, implicate or are deemed to require a response by the Defendants, and (c) lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this Count, and demand is made for strict proof thereof.

COUNT THREE

NEGLIGENCE - EMBRAER DEFENDANTS

55-64. Count Three is not directed against these Defendants, and as such, no response is required of these Defendants. In the event that any of the allegations in this Count relate to, implicate or are deemed to require a response by these Defendants, Defendants (a) incorporate their responses to paragraphs 1, 2, 11-35, and 37-39, of Plaintiff's Complaint as if set forth fully herein, (b) deny any remaining allegations to the extent they relate to, implicate or are deemed to require a response by these Defendants, and (c) lack knowledge or information sufficient to form

a belief as to the truth of the remaining allegations in this Count, and demand is made for strict proof thereof.

COUNT FOUR

FRAUDULENT TRANSFER *PER SE* – SAGE AVIATION, ESTATE OF MICHAEL ROSENBERG, and the ROSENBERG TRUST

65. Defendants Sage, the Estate and the Trust restate and incorporate by reference their answers to paragraphs 1-6, 9-10, 22-36 and 40-43, as if set forth fully herein.

66. The allegations contained in paragraph 66 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 66 are deemed to require a response from Sage, the Estate or the Trust, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 66 of Plaintiff's Complaint, and they are therefore denied, and demand is made for strict proof thereof.

67. Defendants deny the allegations set forth in paragraph 67 of Plaintiff's Complaint, and demand is made for strict proof thereof.

68. The allegations contained in paragraph 68 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 68 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

69. Defendants admit that Sage was a named insured under a policy of insurance providing coverage for loss or damage to the accident aircraft, and that the certain proceeds of

that insurance policy attributed to the loss of the aircraft are now held by the Trust. Defendants deny the remaining allegations set forth in paragraph 69 of Plaintiff's Complaint. Defendants also object to any mention of insurance as a violation of Florida's Non-Joinder statute, and reserve the right to strike paragraph 69 from the Complaint.

70. The allegations contained in paragraph 70 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 70 are deemed to require a response from Sage, the Estate or the Trust, Defendants admit only that the insurance proceeds it received for the loss of the aircraft were assets of Sage. Defendants deny the remaining allegations set forth in paragraph 70 of Plaintiff's Complaint. Defendants also object to any reference to insurance as a violation of Florida's Non-Joinder statute, and reserve the right to strike paragraph 70 from the Complaint.

71. Defendants deny the allegations set forth in paragraph 71 of Plaintiff's Complaint, and demand strict proof thereof.

72. The allegations contained in paragraph 72 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 72 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

73. The allegations contained in paragraph 73 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 73 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

74. The allegations contained in paragraph 74 of Plaintiff's Complaint contain legal conclusions to which no response is required. To the extent the allegations in paragraph 74 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

75. Defendants deny the allegations set forth in paragraph 75 of Plaintiff's Complaint, and demand strict proof thereof.

76. Defendants deny the allegations set forth in paragraph 76 of Plaintiff's Complaint and demand is made for strict proof thereof.

77. Defendants deny the allegations set forth in paragraph 77 of Plaintiff's Complaint, and demand is made for strict proof thereof.

78. Defendants deny the allegations set forth in paragraph 78 of Plaintiff's Complaint, and demand is made for strict proof thereof.

79. Defendants deny the allegations set forth in paragraph 79 of Plaintiff's Complaint, and demand is made for strict proof thereof.

COUNT FIVE

FRAUDULENT TRANSFER BY IMPLICATION – SAGE AVIATION, ESTATE OF MICHAEL ROSENBERG, and the ROSENBERG TRUST

80. Defendants Sage, the Estate and the Trust restate and incorporate by reference their answers to paragraphs 1-6, 9-10, 22-36, 40-43, and 66-79 as if set forth fully herein.

81. Defendants deny the allegations set forth in paragraph 81 of Plaintiff's Complaint, and demand is made for strict proof thereof.

82. Defendants deny the allegations set forth in paragraph 82 of Plaintiff's Complaint, and demand is made for strict proof thereof.

83. Defendants deny the allegations set forth in paragraph 83 of Plaintiff's Complaint, and demand is made for strict proof thereof.

84. Defendants deny the allegations set forth in paragraph 84 of Plaintiff's Complaint, and demand is made for strict proof thereof.

85. Defendants deny the allegations set forth in paragraph 85 of Plaintiff's Complaint, and demand is made for strict proof thereof.

86. The allegations contained in paragraph 86 of Plaintiff's Complaint are not directed to these Defendants and contain legal conclusions and purport to seek a legal remedy, which is inappropriate and to which no response is required. To the extent the allegations in paragraph 86 are deemed to require a response from Sage, the Estate or the Trust, they are denied. Defendants also deny that any injunctive relief is proper under Florida law.

87. Defendants deny the allegations set forth in paragraph 87 of Plaintiff's Complaint, and demand is made for strict proof thereof.

[There is no Paragraph 88.]

89. The allegations contained in paragraph 89 of Plaintiff's Complaint contain legal conclusions and purport to seek a legal remedy, which is inappropriate and to which no

response is required. To the extent the allegations in paragraph 89 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

90. Paragraph 90 fails to state a claim recognized under Florida law and contains legal conclusions which are inappropriate and to which no response is required. To the extent the allegations in paragraph 90 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

91. The allegations contained in paragraph 91 of Plaintiff's Complaint contain legal conclusions and purport to seek a legal remedy, which is inappropriate and to which no response is required. To the extent the allegations in paragraph 91 are deemed to require a response from Sage, the Estate or the Trust, they are denied, and demand is made for strict proof thereof.

92. Defendants deny the allegations set forth in paragraph 92 of Plaintiff's Complaint, and demand strict proof thereof.

**AFFIRMATIVE DEFENSES OF THE ESTATE OF MICHAEL ROSENBERG, THE
MICHAEL J. ROSENBERG TRUST AND SAGE AVIATION LLC**

FIRST AFFIRMATIVE DEFENSE

The events described in Plaintiff's Complaint were caused either wholly or in part by and through the acts or omissions of one or more third parties for whom or which the Defendants are not responsible and over which or whom Defendants have no control, and any damages ultimately deemed recoverable by the plaintiff against Defendants should be barred or reduced accordingly.

SECOND AFFIRMATIVE DEFENSE

The acts and/or omissions of one or more third parties for whom or which Defendants are not responsible and over whom or which Defendants have no control were the sole proximate cause of the events described in the Complaint, thereby barring and precluding any determination of liability against Defendants.

THIRD AFFIRMATIVE DEFENSE

Without admitting any liability on the part of Defendants, other persons or entities which may as yet be known or unknown, or which may be discovered, was or were contributorily negligent or comparatively at fault, or otherwise legally responsible in whole or in part, for any damages which the plaintiffs may prove in this matter. Therefore, any and all recovery against Defendants must be extinguished or diminished by an amount proportional to such other's or others' degree(s) of negligence, fault or other legal responsibility, as required by Florida Statute § 768.81 and by *Fabre v. Martin*, 623 So. 2d 1182 (Fla. 1993) or by the applicable law of indemnity, contribution and apportionment and other applicable law. In compliance with *Nash v. Wells Fargo Guard Services, Inc.*, 678 So.2d 1262 (Fla. 1996), Defendants will identify any other such persons and/or entities with as much particularity as is feasible as discovery progresses, and in sufficient time to allow Plaintiff to respond.

FOURTH AFFIRMATIVE DEFENSE

All claims asserted in the Complaint are barred by the applicable statute(s) of limitations.

FIFTH AFFIRMATIVE DEFENSE

All claims asserted in the Complaint are barred by the applicable statute(s) of repose.

SIXTH AFFIRMATIVE DEFENSE

Defendants conduct was not the actual or proximate cause of the occurrence in question.

SEVENTH AFFIRMATIVE DEFENSE

If the plaintiffs sustained damages as alleged in their Complaint, which Defendants specifically deny, Defendants cannot be held jointly and severally liable to the plaintiffs for the negligence or fault of other defendants to this action because the doctrine of joint and several liability is mutually inconsistent with the doctrine of comparative fault, is against the public policy, and, if it is determined that the laws of the United States are applicable to the litigation of this matter, violates Defendant's constitutional rights under Article I, § 8 and the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and also any other state constitutions that may apply.

EIGHTH AFFIRMATIVE DEFENSE

Defendants are entitled to a reduction of any verdict and/or judgment awarded against Defendants by the greater of the stipulated amount of any settlement agreement entered into by the plaintiffs, with any other person, entity or tortfeasor(s), or the amount actually paid thereby.

NINTH AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action upon which relief may be granted.

TENTH AFFIRMATIVE DEFENSE

There is no connection between the incident as alleged in the plaintiffs' Complaint and the State of Florida sufficient to warrant the litigation of this action in Florida. As such venue for this action is improper and the matter should be dismissed pursuant to the doctrine of *forum non-conveniens*.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims should be dismissed because plaintiffs have failed to join one or more indispensable parties, necessary for the proper adjudication of this matter.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Defendants are barred because plaintiffs' decedents assumed the risks of which plaintiffs complain.

THIRTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, the plaintiffs' claims against DEFENDANTS should be dismissed because plaintiffs lack the proper standing and/or capacity to prosecute the claims set forth in the plaintiffs' complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

The injuries and damages alleged in the plaintiffs' complaint were caused by the intervening and/or superseding negligence, fault, and/or wrongful conduct of one or more persons or entities for which Defendants are not responsible as a matter of law.

FIFTEENTH AFFIRMATIVE DEFENSE

The laws of states other than Florida may apply to this action, including on an issue-by-issue, claim-by-claim basis.

SIXTEENTH AFFIRMATIVE DEFENSE

Pursuant to §768.76 Fla. Stat., Defendants are entitled to a reduction of any amounts awarded as damages in this action, pursuant to the applicable law on collateral sources.

SEVENTEENTH AFFIRMATIVE DEFENSE

At all relevant times, Michael Rosenberg acted reasonably, prudently and in compliance with the applicable standard of care, if any, due and owing.

RESERVATION OF FURTHER DEFENSES

Defendants reserve the right to supplement and amend its defenses in this action, as necessary in light of the facts, allegations, claims and changes or modifications in the law.

WHEREFORE, defendant Defendants THE ESTATE OF MICHAEL ROSENBERG, THE MICHAEL J. ROSENBERG TRUST AND SAGE AVIATION LLC pray that the plaintiffs take nothing by way of their Complaint and that this Court enter judgment in favor of Defendants and against the plaintiffs on this Complaint; and Defendants further pray that the plaintiffs be required to reimburse Defendants for their costs in defending this action. Defendants pray for this relief together with any further relief this Court deems just and equitable.

JURY DEMAND

Without waiving its objections set forth herein, Defendants hereby demands a trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a correct copy hereof has been furnished to: **David M. Buckner, Esq.**, Buckner & Miles, 3350 Mary Street, Miami Florida 33133, david@bucknermiles.com; e.service@bucknermiles.com; **Jamie Lebovitz, Esq. and Brenda Johnson, Esq.**, Nurenberg Paris Heller & McCarthy Co, LPA, 600 Superior Avenue E., Suite 1200, Cleveland, OH 44114, jlebovitz@nphm.com; Bjohnson@nphm.com; **Michael Wiggins, Esq. and John Reid, Jr., Esq.**, McDonald Toole Wiggins, P.A., 111 Magnolia Avenue, Suite 1200, Orlando, FL 32801, gtoole@mtwlegal.com; jreid@mtwlegal.com; mwiggins@mtwlegal.com; e.service@mtwlegal.com and **Stephen R. Stegich, Esq.**, Condon &

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By: **KATHLEEN O. KING**

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(pending *pro hac vice* admittance)

Co-counsel for Defendant Health Decisions, Inc.