

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

GENERAL CIVIL DIVISION

AMARANNA VICTORIA OGBUKA, )  
Individually and as Personal Representative of the )  
Estate of CHIJOKE GODWIN OGBUKA, )  
deceased, )

Plaintiff, )

-vs- )

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. \_\_\_\_\_

**COMPLAINT AND  
JURY DEMAND**

COMES NOW Plaintiff AMARANNA VICTORIA OGBUKA, individually and as  
Personal Representative of the estate of, CHIJOKE GODWIN OGBUKA, deceased, and for her  
causes of action against the defendants states as follows:

### The Parties

1. Plaintiff AMARANNA VICTORIA OGBUKA is a resident and citizen of the state of North Carolina and the surviving wife of CHIJOKE GODWIN OGBUKA, now deceased, who was killed in the crash of an Embraer EMB-500/Phenom 100, Registration Number N100EQ that occurred on December 8, 2014 in Gaithersburg, Maryland. AMARANNA VICTORIA OGBUKA is the duly appointed Administrator of the Estate of CHIJOKE GODWIN OGBUKA, having been appointed to act in that capacity by the Superior Court of Wake County, State of North Carolina.

2. CHIJOKE GODWIN OGBUKA was survived by his wife and his minor child, Chijioke Lotanna Godwin Ogbuka.

3. Decedent MICHAEL ROSENBERG was the pilot in command of the aircraft and was also killed in the crash. Defendant ALICIA PALADIN is the duly appointed Personal Representative of the Estate of MICHAEL ROSENBERG, deceased, pursuant to letters of appointment issued by the Circuit Court for Volusia County, Florida, Probate Division. Upon information and belief, ALICIA PALADIN and MICHAEL ROSENBERG were citizens and residents of the state of Florida at all times relevant hereto.

4. The Estate of MICHAEL ROSENBERG, deceased, is being administered and is pending in the Circuit Court for Volusia County, Florida, Probate Division, bearing file number 2015-10016 PRDL. Defendant ALICIA PALADIN, residing at 1805 Wiley Post Trail, Port Orange, Florida, is being sued in her capacity as Personal Representative of the Estate of MICHAEL ROSENBERG, and she and/or her duly appointed agent is authorized to accept service of process pursuant to Fla. Stat. § 48.091.

5. Defendant SAGE AVIATION, LLC (“SAGE AVIATION”) is a Florida Limited Liability Company of which MICHAEL ROSENBERG was the sole owner, maintaining a principal place of business in the State of Florida. The agent for service of process is Clasp, Inc., 3001 Tamiami Trail North, Suite 400, Naples, Florida 34103.

6. 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, MICHAEL ROSENBERG.

7. Defendant KEN ROSENBERG is the duly appointed Trustee of the MICHAEL J. ROSENBERG TRUST dated June 4, 2010 (the “ROSENBERG TRUST”), which upon information and belief is the successor in interest to MICHAEL ROSENBERG and various entities in which MICHAEL ROSENBERG held an interest, including but not limited to defendant SAGE AVIATION. As such, and as successor in interest to said defendants, defendant ROSENBERG TRUST is liable for the actions and or omissions of MICHAEL ROSENBERG and SAGE AVIATION. Ken Rosenberg can be served at 2439 13<sup>th</sup> Court North, Arlington, Virginia, 22201.

8. Because MICHAEL 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 MICHAEL ROSENBERG and SAGE AVIATION,

this Court has both general and specific jurisdiction over the defendant ROSENBERG TRUST pursuant to Fla. Stat. § 48.193.

9. Defendant EMBRAER S.A. (“EMBRAER”) is a corporation organized and existing under the laws of Brazil with its principal place of business at Avenida Brigadeiro Faria Lima, 2170, 12227-901 São José dos Campos, São Paulo, Brazil.

10. Defendant EMBRAER AIRCRAFT HOLDING, INC., is a Delaware corporation with its principal place of business at 276 Southwest 34<sup>th</sup> Street, Fort Lauderdale, Florida 33315. The agent for service of process is Corporate Creations Network Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410.

11. Defendant EMBRAER SERVICES, INC., is a Delaware corporation with its principal place of business at 276 Southwest 34<sup>th</sup> Street, Fort Lauderdale, Florida 33315. The agent for service of process is Corporate Creations Network Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410.

12. Defendant EMBRAER AIRCRAFT CUSTOMER SERVICES, INC. is a Florida corporation with its principal place of business at 276 Southwest 34<sup>th</sup> Street, Fort Lauderdale, Florida 33315. The agent for service of process is Corporate Creations Network Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410.

13. Defendant EMBRAER AIRCRAFT MAINTENANCE SERVICES, INC., is a Delaware corporation with its principal place of business at 276 Southwest 34<sup>th</sup> Street, Fort Lauderdale, Florida 33315, and service of process may be made upon this defendant on any employee at that address pursuant to Fla. Stat. § 48.081(3)(a).

14. Defendant EMBRAER EXECUTIVE JET SERVICES, LLC, is a Delaware limited liability company with its principal place of business at 2008 General Aviation Drive,

Melbourne, Florida 32935. The agent for service of process is Corporate Creations Network Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410.

15. Defendant EMBRAER EXECUTIVE AIRCRAFT, INC., is a Delaware corporation with its principal place of business at 1205 General Aviation Drive, Melbourne, Florida 32935. The agent for service of process is Corporate Creations Network Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410.

16. Defendant EMBRAER TRAINING SERVICES, LLC, is a Delaware limited liability company with its principal place of business at 276 Southwest 34<sup>th</sup> Street, Fort Lauderdale, Florida 33315.

17. Defendant EMBRAER ENGINEERING & TECHNOLOGY CENTER USA, INC., is a Delaware corporation with its principal place of business at 1400 General Aviation Drive, Melbourne, Florida 32901. The agent for service of process is Corporate Creations Network Inc., 11380 Prosperity Farms Road, Suite 221E, Palm Beach Gardens, Florida 33410.

18. At all times relevant hereto, EMBRAER has been engaged in the design, development, manufacture and sale of aircraft and aircraft systems in the global market, and the provision of after-sales services with respect to same. EMBRAER is one of the world's leading manufacturers of executive jets, including the EMB-500/Phenom 100, and conducts sales, service, training and support for its U.S. operations through business operations based in Florida, both directly and through its Florida-based subsidiaries, including but not limited to EMBRAER AIRCRAFT HOLDING, INC., EMBRAER SERVICES, INC., EMBRAER AIRCRAFT CUSTOMER SERVICES, INC., EMBRAER AIRCRAFT MAINTENANCE SERVICES, INC., EMBRAER EXECUTIVE JET SERVICES, LLC, EMBRAER EXECUTIVE AIRCRAFT, INC., EMBRAER TRAINING SERVICES, LLC, and EMBRAER ENGINEERING &

TECHNOLOGY CENTER USA, INC. (collectively, “EMBRAER U.S.A.”) As such, EMBRAER has conducted regular and systematic commercial activities in the State of Florida sufficient to subject it to the general personal jurisdiction of this Court under Fla. Stat. § 48.193(2), and meets the continuous and systematic contact requirements for general jurisdiction under the Fourteenth Amendment of the Constitution of the United States.

19. At all relevant times herein, defendant EMBRAER, both directly and through its Florida-based subsidiaries collectively designated as EMBRAER U.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 and ice detection 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 the auto-pilot and de-icing systems 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-icing and ice detection systems, and its stall warning and protection system.

### **Jurisdiction and Venue**

20. This is an action for damages well in excess of \$15,000, exclusive of interest, costs, and attorney's fees, and therefore this Court has jurisdiction over it pursuant to Fla. Stat. § 26.012.

21. Venue for this action is properly laid in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, in that multiple defendants have their principal offices in Broward County.

### **General Allegations**

22. On December 8, 2014, CHIJOKE GODWIN OGBUKA was a passenger aboard the subject aircraft when it crashed while on approach to Montgomery Municipal County Airpark in Gaithersburg, Maryland (the "Gaithersburg Airpark") while en route from Horace Williams Airport in Chapel Hill, North Carolina.

23. The subject aircraft was registered to and operated by SAGE AVIATION, and was piloted by authorized pilot and sole member of SAGE, MICHAEL ROSENBERG as a business flight conducted under 14 CFR Part 91.

24. At approximately 8:30 a.m. on December 8, 2014, decedent MICHAEL ROSENBERG filed an Instrument Flight Rules ("IFR") flight plan for the approximately 57-minute flight from Horace Williams Airport to the Gaithersburg Airpark. Upon information and belief, the subject aircraft, piloted by decedent MICHAEL ROSENBERG, as authorized pilot of SAGE AVIATION, departed the Horace Williams Airport at approximately 9:45 a.m. on that same date.

25. The Gaithersburg Airpark is an uncontrolled airport, which means there is no air traffic control tower located at the facility. Air traffic control services are provided by the

Washington Air Route Traffic Control Center (“ARTCC”) located in Leesburg, Virginia. In addition, pilots operating aircraft in close proximity to the Gaithersburg Airpark are required to announce their intentions using a radio frequency known as the Common Traffic Advisory Frequency (“CTAF”) so that pilots in the area are made aware of the location, position, and intentions of all other pilots operating aircraft in the area.

26. Upon information and belief, at approximately 10:20 a.m. the ARTCC advised MICHAEL ROSENBERG to contact the Potomac Consolidated Terminal Radar Approach Control (“TRACON”) for approach instructions to the Gaithersburg Airpark.

27. At said time, 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.

28. At approximately 10:30 a.m., decedent MICHAEL ROSENBERG announced on the CTAF that the subject aircraft was 7 miles out from Runway 14. At that time, the subject aircraft was operating in icing conditions and was established on final approach for landing on Runway 14 at the Gaithersburg Airpark.

29. Decedent MICHAEL 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 communications from the subject aircraft.

30. The subject aircraft was equipped with both a Cockpit Voice Recorder (“CVR”) and a Flight Data Recorder (“FDR”). The CVR records sounds and communications audible in the cockpit area, while the FDR captures data from various aircraft systems, including but not limited to data regarding aircraft speed, altitude, and attitude, as well as data regarding engine and systems functions, operations, and deployment.



31. Upon information and belief, the CVR recording retrieved from the subject aircraft reflects an audible altimeter callout at approximately 10:41 a.m., 46 seconds before the crash, indicating that the aircraft was descending through an altitude of 500 feet above ground level. Upon information and belief, at this time, and throughout the descent, the subject aircraft was operating with the auto-pilot engaged, and was in landing configuration (i.e., the landing gear was down and the wing flaps were fully extended).

32. Upon information and belief, at approximately 20 seconds before the crash, the autopilot disengaged, and CVR captured the sound of an audible stall warning intended to notify the pilot to take corrective action to prevent the aircraft from entering into an aerodynamic stall. However, upon information and belief, the stall warning was immediately followed by the onset of a full aerodynamic stall.

33. Upon information and belief, approximately 1.2 seconds after the stall warning sounded, when the subject aircraft's speed was approximately 88 knots, decedent MICHAEL ROSENBERG advanced the throttle to add power in an attempt to prevent and/or recover from the aerodynamic stall, but the subject aircraft then departed from controlled flight, and decedent MICHAEL ROSENBERG lost control of the aircraft, which then flew violently out of control, and ultimately crashed into a house in Gaithersburg, Maryland. These sudden, violent, and unexpected movements resulted in the passengers aboard the aircraft, including plaintiff's decedent, being subjected to unusual g-forces and sustaining physical bodily injuries, pain and suffering, pre-impact terror, and ultimately causing the death of Plaintiff's decedent, CHIJIJOKE GODWIN OGBUKA.

34. At the time of the crash on December 8, 2014, and at all times relevant hereto, decedent MICHAEL ROSENBERG was the principal and authorized pilot of SAGE

AVIATION, and was acting in the course and scope of his employment and/or agency with SAGE AVIATION, such that each is responsible for his conduct under the doctrine of *respondet superior* and as having operational control of the flight and aircraft.

35. Defendants EMBRAER and/or EMBRAER U.S.A. (collectively the “EMBRAER DEFENDANTS”) designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, repaired, marketed and/or introduced into the stream of commerce the Embraer EMB-500/Phenom 100 registered as N100EQ and its component parts, including but not limited to the aircraft’s de-icing and ice detection system, flight control systems, autopilot system, stall warning systems, and flight instrumentation systems, along with instructions, warnings, flight operations, flight training, and maintenance manuals for the aircraft and its component parts.

36. The EMBRAER DEFENDANTS and their parents, subsidiaries, affiliates, associates, and partners, at all relevant times, were the agent, servant, employee, assignee, successor in interest, or a joint venturer of each other, and were acting within the time, purpose, or scope of such agency or employment, and all acts or omissions alleged herein of each of the EMBRAER DEFENDANTS were authorized, adopted, approved, or ratified by the others.

37. Plaintiff’s decedent, CHIJOKE GODWIN OGBUKA, in no way contributed to or caused the crash on December 8, 2014, or his injuries or death.

### COUNT ONE

#### **NEGLIGENCE -- SAGE AVIATION, MICHAEL ROSENBERG and the ROSENBERG TRUST**

38. Plaintiff hereby restates and realleges each and every allegation contained in Paragraphs 1 through Paragraph 37 of the Complaint as if fully set forth herein.

39. The violent and tragic crash of the subject aircraft in which Plaintiff's decedent was killed was a direct and proximate result of negligence, carelessness, recklessness and misconduct on the part of the pilot in command, decedent MICHAEL ROSENBERG, individually and as principal and pilot of defendant SAGE AVIATION, for reasons including but not limited to the following:

- a. The defendants' careless, reckless, and negligent piloting, control, and operation of the subject aircraft;
- b. Failing to provide for the safe operation of the subject aircraft;
- c. The failure on the part of decedent MICHAEL ROSENBERG as pilot in command to operate the subject aircraft in a safe and competent manner;
- d. Failing to maintain proper, safe, and/or adequate control over the subject aircraft;
- e. Failing to properly use all available de-icing and/or anti-icing equipment;
- f. Failing to properly monitor ice accumulation during flight;
- g. Failing to take proper action to avoid and exit atmospheric icing conditions;
- h. Operating the flight in atmospheric icing conditions for an unsafe length of time;
- i. Allowing an unsafe ice accumulation to develop on the wings and other surfaces of the subject aircraft;
- j. Failing to maintain proper situational awareness of weather, flight, and operating conditions;
- k. Failing to ensure that pilot MICHAEL ROSENBERG was properly trained in Single Pilot Cockpit Resource Management;
- l. Failing to maintain low airspeed awareness;
- m. Failing to ensure that pilot MICHAEL ROSENBERG was properly trained in maintaining situational awareness;

- n. Failing to ensure that pilot MICHAEL ROSENBERG was properly trained in low-airspeed awareness;
- o. Failing to ensure that pilot MICHAEL ROSENBERG was properly trained in stall awareness, avoidance, and recovery;
- p. Failing to adequately detect and/or assess ice accretion on the subject aircraft;
- q. Failing to execute a timely recovery from an aerodynamic stall;
- r. Failing to use available information regarding meteorological conditions that could adversely affect the safety of the flight;
- s. Operating the flight when atmospheric icing conditions that might adversely affect the safety of the flight were predictable and/or expected and failing to safely fly the subject aircraft in such conditions;
- t. Failing to ensure that pilot MICHAEL ROSENBERG was properly trained in the proper techniques for control, management, and response to foreseeable adverse weather and/or atmospheric icing conditions;
- u. Failing to ensure that pilot MICHAEL ROSENBERG was properly trained regarding the specific flight characteristics of the Embraer EMB-500/Phenom 100 aircraft, including but not limited to the aircraft's stall characteristics, stall warning, and stick pusher system;
- v. Continued flight operation into known atmospheric icing conditions when defendants should have known that the subject aircraft was unsuited for flight in such conditions and that continued flight under said circumstances exposed the aircraft and its occupants to an unnecessary risk of harm; and
- w. Other acts of negligence, carelessness and/or recklessness to be proven at trial.

40. By reason of and as a direct and proximate result of these defendants' breaches of their duties, which caused the death of CHIJOKE GODWIN OGBUKA, his surviving wife and child have suffered pecuniary and nonpecuniary loss and damages for which they are entitled to recover compensatory damages, including but not limited to loss of support, services, nurture, care, guidance, assistance, affection, society, solace, protection, companionship, moral support,

guidance, counsel, inheritance, net accumulations, mental anguish, funeral expenses, and all other damages compensable under applicable law.

41. By reason of and as a direct and proximate result of these defendants' breaches of their duties, CHIJOKE GODWIN OGBUKA was caused to suffer pre-impact and post-impact terror, pain, suffering and injuries prior to his death for which his estate is entitled to recover damages.

## **COUNT TWO**

### **STRICT LIABILITY – EMBRAER DEFENDANTS**

42. Plaintiff hereby restates and realleges each and every allegation contained in Paragraphs 1 through 41 of the Complaint as if fully set forth herein.

43. At all times relevant, the Embraer EMB-500/Phenom 100 registered as N100EQ and its component parts and systems, including but not limited to its anti-icing and de-icing systems, flight control systems, autopilot, stall warning and protection systems, and their associated components, along with their attendant instructions, were being used for their intended and/or reasonably foreseeable purpose, and in a condition without substantial change from their original condition when sold by the EMBRAER DEFENDANTS.

44. The Embraer EMB-500/Phenom 100 registered as N100EQ and its component parts, systems, manuals, instructions, and warnings were defective and unreasonably dangerous by reason of defective design, manufacture, and/or marketing and the failure of the EMBRAER DEFENDANTS to give adequate and proper warning of the dangers existing, and adequate instructions regarding the avoidance of such dangers.

45. The defective and dangerous condition of the subject aircraft exposed Plaintiff's decedent, CHIJOKE GODWIN OGBUKA, and others similarly situated on the flight and the

general public to an unreasonable risk of harm, and were a direct and proximate cause of the December 8, 2014 crash and CHIJOKE GODWIN OGBUKA'S resulting injuries and death.

46. The unreasonably dangerous and defective conditions include, among other things, the subject aircraft's de-icing and ice detection system, the pilot's approved flight manual and pilot operation manual, the flight control systems, autopilot, stall warning systems, the stick pusher system, and their associated components, maintenance manuals, instructions, and procedures, and the absence of adequate warnings and instructions regarding the dangers.

47. At the time the subject aircraft and its de-icing and ice detection system, operations manual, flight control systems, stall warning system, stick pusher system, maintenance procedures, and their associated components, maintenance manuals, instructions, and procedures were sold and/or marketed and/or placed in the stream of commerce by the EMBRAER DEFENDANTS, such products were defective and unreasonably dangerous to persons, including Plaintiff's decedent, CHIJOKE GODWIN OGBUKA, who could reasonably be expected to use or benefit from them, and which defective and unreasonably dangerous conditions were a direct and proximate cause of the December 8, 2014 crash and CHIJOKE GODWIN OGBUKA'S resulting injuries and death.

48. The aircraft and its associated systems were also defective by reason of the EMBRAER DEFENDANTS' failure to include, supply, or place within the subject aircraft adequate or proper warnings and/or instructions as to the dangers associated with the design and foreseeable maintenance and/or use of the subject aircraft and its associated systems and how to avoid such dangers, which defects rendered the subject aircraft and its associated systems defective and unreasonably dangerous to persons, including Plaintiff's decedent, CHIJOKE GODWIN OGBUKA, who could reasonably be expected to use or benefit from them, and which

defective and unreasonably dangerous conditions were a direct and proximate cause of the December 8, 2014 crash and CHIJOKE GODWIN OGBUKA'S resulting injuries and death.

49. The subject aircraft, its associated systems, and its operating manuals and procedures, maintenance manuals, and warnings issued by the EMBRAER DEFENDANTS were defective in that they were so likely to be harmful that a reasonable person who had actual knowledge of their potential for producing injury or death would conclude that they should not have been marketed and sold in that condition.

50. The defective and unreasonably dangerous subject aircraft, associated systems, and dangerously inadequate manuals and warnings sold and/or marketed and/or supplied by the EMBRAER DEFENDANTS were a substantial factor in causing the December 8, 2014 crash and CHIJOKE GODWIN OGBUKA'S resulting injuries and death, and the EMBRAER DEFENDANTS are strictly liable for the resulting damages.

51. By reason of and as a direct and proximate result of these defendants' breaches of their duties, which caused the death of CHIJOKE GODWIN OGBUKA, his surviving wife and child have suffered pecuniary and nonpecuniary loss and damages for which they are entitled to recover compensatory damages, including but not limited to loss of support, services, nurture, care, guidance, assistance, affection, society, solace, protection, companionship, moral support, guidance, counsel, inheritance, net accumulations, mental anguish, funeral expenses, and all other damages compensable under applicable law.

52. By reason of and as a direct and proximate result of the December 8, 2014 crash, CHIJOKE GODWIN OGBUKA was caused to suffer pre-impact and post-impact terror, pain, suffering and injuries prior to his death for which his estate is entitled to recover damages, and for which the EMBRAER DEFENDANTS are strictly liable.

### COUNT THREE

#### **NEGLIGENCE – EMBRAER DEFENDANTS**

53. Plaintiff hereby restates and realleges each and every allegation contained in Paragraphs 1 through 52 of the Complaint as if fully set forth herein.

54. The EMBRAER DEFENDANTS owed Plaintiff's decedent, CHIJOKE GODWIN OGBUKA, a duty of reasonable care in the design, manufacture, testing, and marketing of the Embraer EMB-500/Phenom 100 registered as N100EQ and its component parts, systems, manuals, instructions, and warnings.

55. The EMBRAER DEFENDANTS negligently designed, manufactured, tested, marketed, maintained, updated, and repaired the Embraer EMB-500/Phenom 100 registered as N100EQ and its component parts, systems, manuals, instructions, and warnings in that they, among other things:

- a. Failing to design, manufacture and assemble the Embraer EMB-500/Phenom 100 and its component parts and systems free of all defects, including but not limited to the subject aircraft's anti-icing and de-icing systems, flight control systems, autopilot, stall warning systems, and their associated components, instructions and manuals;
- b. Failing to design, manufacture and assemble the Embraer EMB-500/Phenom 100 and said component parts and systems in such a way as to assure it was safe and appropriate for its intended use;
- c. Failing to properly and adequately test and monitor the Embraer EMB-500/Phenom 100 and its component parts and systems so as to learn of its inherent inability to perform safely in atmospheric icing conditions;
- d. Failing to equip the Embraer EMB-500/Phenom 100 with an effective low-airspeed alert system;
- e. Fail to equip the Embraer EMB-500/Phenom 100 with an effective ice detection and de-icing system;
- f. Failing to equip the Embraer EMB-500/Phenom 100 with an effective stall warning system;



- g. Failing to equip the Embraer EMB-500/Phenom 100 with an effective angle of attack indicator and warning system;
- h. Failing to equip the Embraer EMB-500/Phenom 100 with an effective stick pusher system;
- i. Failing to equip the Embraer EMB-500/Phenom 100 with an effective auto-throttle system in order to assure appropriate airspeed is maintained in icing conditions;
- j. Failing to correct known structural wing icing problems in the Embraer EMB-500/Phenom 100;
- k. Failing to provide adequate instructions, manuals, and warnings of known hazards associated with the operation of the Embraer EMB-500/Phenom 100 in atmospheric icing conditions, and how to avoid or preclude such hazards in the course of flight operations;
- l. Failing to provide adequate instructions, manuals, and warnings of known hazards associated with flight and stall characteristics that are specific to the Embraer EMB-500/Phenom 100 and its stall warning systems, and how to recognize, avoid, preclude, or recover from such hazards in the course of flight operations;
- m. Designing, manufacturing, distributing and/or selling the Embraer EMB-500/Phenom 100 with a wing structure and de-icing system that resulted in an unsafe accumulation of ice; and
- n. The EMBRAER DEFENDANTS were otherwise, careless, negligent, and/or reckless as will be proven at trial.

56. The EMBRAER DEFENDANTS knew, or in the exercise of ordinary care should have known, that the Embraer EMB-500/Phenom 100 registered as N100EQ and its component parts, systems, manuals, instructions, and warnings were defective and unreasonably dangerous to those persons likely to use the aircraft and component parts for the purposes and in the manner for which they were intended to be used and for purposes reasonably foreseeable to the EMBRAER DEFENDANTS.

57. The EMBRAER DEFENDANTS knew, or in the exercise of ordinary care should have known, how to design, manufacture, test, and equip the subject aircraft, its de-icing and ice

detection systems, flight control systems, low airspeed warning systems, stall warning systems, stick pusher systems, instructions, and manuals so as to prevent the type of incident and resulting injuries and death described in this Complaint.

58. The EMBRAER DEFENDANTS had actual knowledge of how to design, build, and test an aircraft, its de-icing and ice detection systems, flight control systems, low airspeed warning systems, stall warning systems, stick pusher systems, instructions, and manuals such that the aircraft and its systems, instructions, and manuals would not be inadequate or unreasonably dangerous.

59. The EMBRAER DEFENDANTS were further negligent in that they failed to give adequate or proper warnings or instructions to ordinary and foreseeable users of the Embraer EMB-500/Phenom 100 registered as N100EQ and its component parts and systems, including defendants MICHAEL ROSENBERG and SAGE AVIATION, as well as Plaintiff's decedent CHIJOKE GODWIN OGBUKA, and failed to recall or timely recall the products or make appropriate post-sale efforts, including but not limited to post-sale warnings and instructions, to prevent incidents such as the crash described herein.

60. The EMBRAER DEFENDANTS' negligence was a direct and proximate cause of the loss of control and crash of the Embraer EMB-500/Phenom 100 registered as N100EQ and CHIJOKE GODWIN OGBUKA'S resulting injuries and death.

61. By reason of and as a direct and proximate result of these defendants' breaches of their duties, which caused the death of CHIJOKE GODWIN OGBUKA, his surviving wife and child have suffered pecuniary and nonpecuniary loss and damages for which they are entitled to recover compensatory damages, including but not limited to loss of support, services, nurture, care, guidance, assistance, affection, society, solace, protection, companionship, moral support,

guidance, counsel, inheritance, net accumulations, mental anguish, funeral expenses, and all other damages compensable under applicable law.

62. By reason of and as a direct and proximate result of the December 8, 2014 crash, CHIJOKE GODWIN OGBUKA was caused to suffer pre-impact and post-impact terror, pain, suffering and injuries prior to his death for which his estate is entitled to recover damages, and for which the EMBRAER DEFENDANTS are liable.

### **FRAUDULENT TRANSFER ALLEGATIONS**

63. The Plaintiff re-alleges and incorporates by reference as though fully set forth herein each and every allegation set forth in Paragraphs 1-62 above.

64. At the time of the crash, SAGE AVIATION was a single member Limited Liability Company, whose sole member was MICHAEL ROSENBURG. Following the crash and death of MICHAEL ROSENBURG, his brother, KEN ROSENBURG, became the sole member of SAGE AVIATION.

65. Shortly after the crash, which killed both passengers and three people on the ground, both passengers' estates, along with the estates of the victims on the ground notified defendants of their claims for wrongful death and survival damages.

66. Upon Mr. Ogbuka's death, the Estate of Mr. Ogbuka accrued a claim against SAGE AVIATION, namely the monetary value of an action for wrongful death and survival damages.

67. SAGE was underinsured to pay the claims of the five victims killed in the crash.

68. Because, the Estate of Chijioke Godwin Ogbuka has an existing claim against SAGE AVIATION, SAGE AVIATION is a debtor within the meaning of Florida Statute § 726.102(5).

69. Plaintiff has had discussions with SAGE AVIATION in an attempt to resolve the claims against SAGE AVIATION.

70. Through those discussions Plaintiff has learned that SAGE AVIATION had approximately \$3 million in an account following the crash. Subsequently, PALADIN, as Personal Representative of the ROSENBERG ESTATE (PALADIN) and/or ROSENBERG, as Trustee of the ROSENBERG TRUST (TRUST) depleted the SAGE AVIATION account and placed the proceeds into an account of the TRUST.

71. Upon information and belief, these funds were assets of the debtor SAGE within the meaning of Florida Statute § 726.102 (2).

72. Upon information and belief, PALADIN and TRUST are using these assets as monies of the TRUST for purposes other than paying the debts of SAGE or otherwise disposing of the assets transferred from SAGE to PALADIN and TRUST.

73. Upon information and belief, PALADIN and TRUST were affiliates of SAGE AVIATION within the meaning of Florida Statute § 726.102 (1)(d), in that PALADIN and TRUST controlled substantially all of SAGE 's assets.

74. Because PALADIN and TRUST were affiliates of SAGE, PALADIN and TRUST are also insiders pursuant to Florida Statutes § 726.102(7)(d).

75. Upon information and belief, SAGE AVIATION did not receive reasonably equivalent value from PALADIN or TRUST for the transfer of assets.

76. Upon information and belief, PALADIN and TRUST now hold the only assets and/or proceeds of assets formerly owned by SAGE AVIATION that Plaintiff can draw upon for payment when her claim against SAGE AVIATION is liquidated.

#### **COUNT IV**

**FRAUDULENT TRANSFER *PER SE*  
AS TO DEFENDANTS, SAGE, PALADIN, AND TRUST**

77. The Plaintiff re-alleges and incorporates by reference as though fully set forth herein each and every allegation set forth in paragraphs 1 through 76 above.

78. The transfer of assets by PALADIN from SAGE to TRUST after the fatal accident rendered SAGE AVIATION insolvent, as the only available liability insurance was inadequate to satisfy all the existing claims against SAGE AVIATION.

79. Because PALADIN and TRUST were insiders to SAGE AVIATION, PALADIN and TRUST knew, should have known, or in the exercise of reasonable diligence would have known that the transfer of these assets from SAGE AVIATION to TRUST would leave SAGE AVIATION insolvent and unable to pay valid claims, such as the claim of Ogbuka.

80. Because SAGE AVIATION did not receive reasonably equivalent value for the assets transferred to TRUST and because SAGE AVIATION became insolvent because of the transfer, the transaction is fraudulent per se pursuant to Florida Statutes § 726.106(1).

81. As a result of these fraudulent transfers, Plaintiff is unable to recover damages caused by SAGE AVIATION that accrued upon the wrongful death of her husband.

**COUNT V**

**FRAUDULENT TRANSFER BY IMPLICATION  
AS TO DEFENDANTS, SAGE AVIATION, PALADIN, AND TRUST**

82. The Plaintiff re-alleges and incorporates by reference as though fully set forth herein each and every allegation set forth in paragraphs 1 through 81 above.

83. The transfer of assets from SAGE AVIATION to insiders PALADIN and TRUST included substantially all of SAGE AVIATION's assets.

84. SAGE AVIATION became insolvent shortly after the transfer of assets from SAGE to PALADIN and TRUST.

85. The transfer of assets from SAGE AVIATION to PALADIN and TRUST occurred shortly after SAGE AVIATION incurred a substantial debt, namely wrongful death claims from the aircraft accident on December 8, 2014.

86. As a result of these fraudulent transfers, Plaintiff is unable to recover sufficient damages caused by SAGE AVIATION that accrued upon the wrongful death of her husband.

87. The transfer of assets from SAGE AVIATION to PALADIN and TRUST is fraudulent pursuant to Florida Statutes § 726.105(1)(a) because the transfer was made to hinder, delay, and defraud creditors of SAGE AVIATION, including Plaintiff.

**RELIEF REQUESTED – PRELIMINARY INJUNCTION**  
**AS TO DEFENDANTS SAGE AVIATION, PALADIN, AND TRUST**

88. The Plaintiff re-alleges and incorporates by reference as though fully set forth herein each and every allegation set forth in paragraphs 1 through 87 above.

89. Plaintiff seeks a preliminary injunction to enjoin Defendants from destroying, selling, encumbering, depleting, or otherwise diminishing the value of the assets transferred to PALADIN and TRUST by SAGE AVIATION.

90. Upon information and belief, PALADIN and TRUST have disposed of, encumbered, sold, and/or commingled SAGE AVIATION assets with common funds of the Rosenberg Estate and is paying non SAGE AVIATION debts with those funds that were transferred to PALADIN and TRUST by SAGE AVIATION.

91. If PALADIN and TRUST continue to dispose of and/or encumber the assets that have been transferred to PALADIN and TRUST by SAGE AVIATION, Plaintiff will be irreparably harmed by the dilution of assets from which her claim can be paid.

92. Plaintiff has no adequate remedy at law to prevent the disposition of these assets.

93. Because the assets were fraudulently transferred per se, and because Plaintiff's claims against SAGE AVIATION sound in the highest duty of care, Plaintiff has a substantial likelihood of success on the merits of both the underlying claim and the present allegations of fraud.

94. A Preliminary Injunction will serve the public interest by preventing debtors from escaping fiscal responsibility through fraudulent transfers.

**RELIEF REQUESTED – APPOINTMENT OF A RECEIVER  
AS TO DEFENDANTS SAGE AVIATION, PALADIN, AND TRUST**

95. The Plaintiff re-alleges and incorporates by reference as though fully set forth herein each and every allegation set forth in paragraphs 1 through 94 above.

96. The Plaintiff requests that pursuant to Florida Statutes § 726.108(c)(2), this Court appoint a receiver to marshal, inventory, and safeguard the assets that SAGE AVIATION fraudulently transferred to PALADIN and TRUST until Plaintiff's claim is liquidated and paid out of the assets and/or proceeds thereof.

WHEREFORE, Plaintiff demands judgment against the Defendants, as follows:

1. As to Counts I, II, and III, general damages for wrongful death for the heirs and beneficiaries of CHIJOKE GODWIN OGBUKA; including his surviving spouse, AMARANNA VICTORIA OGBUKA, his surviving child, Chijioke Lotanna Godwin Ogbuka, and surviving next of kin as allowed by applicable law;
2. As to Counts I, II, and III, survival damages as allowed by law on behalf of the decedent's estate, including but not limited to damages for pre-impact and pre-death pain, fear and suffering endured by CHIJOKE GODWIN OGBUKA while he lived;
3. As to Counts IV and V, that this Court issue a preliminary injunction prohibiting Defendants from destroying, selling, encumbering, depleting or otherwise diminishing the value of assets transferred from SAGE AVIATION;
4. As to Counts IV and V, that this Court appoint a receiver to marshal, inventory, and safeguard the assets transferred from SAGE AVIATION;

