

SEP 04, 2020 01:33 PM

Robin C. Bishop
Robin C. Bishop, Clerk of State Court
Cobb County, Georgia

**IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA**

DAVINA BREWER,)	
)	
PLAINTIFF,)	
)	
VS.)	
)	
STERIGENICS U.S., LLC; SOTERA)	CIVIL ACTION FILE NO.
HEALTH, LLC; PROLOGIS FIRST)	_____
U.S. PROPERTIES, LP; DARYL)	
MOSBY; DONNIE WRIGHT;)	
ELBERT SABB; and JOHN DOES NO.)	
1-10,)	
)	
DEFENDANTS.)	

COMPLAINT FOR DAMAGES AND JURY TRIAL DEMAND

COMES NOW, Plaintiff DAVINA BREWER, by and through counsel of record, and hereby states her Complaint for Damages as follows:

INTRODUCTION

1. This action arises from injuries and damages sustained by DAVINA BREWER as a proximate result of her exposure to ethylene oxide that was used on, stored on, and emitted from the premises owned by Defendant PROLOGIS FIRST U.S. PROPERTIES, LP and used on, stored on, and emitted from the facility operated by Defendants STERIGENICS U.S., LLC and SOTERA HEALTH, LLC, by and through their managers and agents, through their unsafe practices in sterilizing medical equipment and releasing and emitting ethylene oxide as part of that process. As a proximate result of Defendants' unsafe ethylene oxide emissions, DAVINA BREWER contracted, was diagnosed with, and is suffering from breast cancer, and more particularly, Invasive Ductal Carcinoma.

2. The State Court of Cobb County has original jurisdiction over this matter, and this action is not subject to federal jurisdiction or removal to federal court under the provisions of 28 U.S.C. § 1332 because the claims asserted in this action relate to a tort committed in Cobb County, State of Georgia, and one or more of the parties in interest properly joined and served as a defendant in this action is a citizen of the state in which the action has been brought. *See*, 28 U.S.C. § 1441(b).

PARTIES

3. Plaintiff DAVINA BREWER is and at all relevant times has been a resident and citizen of the State of Georgia.

4. Defendant STERIGENICS U.S., LLC, is a foreign limited liability company that is registered to do business in the State of Georgia and regularly and systematically transacts business in the State of Georgia. Defendant STERIGENICS U.S., LLC maintains its principal place of business in the State of Illinois.

5. Defendant STERIGENICS U.S., LLC may be served with Summons and Complaint through its registered agent Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092.

6. Defendant STERIGENICS U.S., LLC is subject to the jurisdiction and venue of this Court.

7. Defendant SOTERA HEALTH, LLC is a foreign limited liability company that regularly and systematically transacts business in the State of Georgia. Defendant SOTERA HEALTH, LLC maintains its principal place of business in the State of Ohio.

8. Defendant SOTERA HEALTH, LLC may be served with Summons and Complaint through its registered agent Corporation Service Company, 50 West Broad Street, Suite 1330, Columbus, Ohio 43215.

9. Defendant SOTERA HEALTH, LLC is subject to the jurisdiction and venue of this Court.

10. Defendant PROLOGIS FIRST U.S. PROPERTIES, LP (sometimes referred to herein simply as “PROLOGIS”) is a foreign corporation that is registered to do business in the State of Georgia. Defendant PROLOGIS FIRST U.S. PROPERTIES, LP maintains its principal place of business in the State of Colorado.

11. Defendant PROLOGIS FIRST U.S. PROPERTIES, LP may be served with Summons and Complaint through its registered agent Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, GA 30092.

12. Defendant PROLOGIS FIRST U.S. PROPERTIES, LP is subject to the jurisdiction and venue of this Court.

13. Defendant DARYL MOSBY is a citizen and resident of the State of Georgia.

14. Defendant DARYL MOSBY can be personally served with Summons and Complaint at his residence at 302 Wynfield Drive, Tyrone, Georgia 30290-1546 in Fayette County. In the alternative, Defendant DARYL MOSBY can be served at his place of employment at the following address: 2971 Olympic Industrial Dr. SE, Atlanta, Georgia, 30339, in Cobb County.

15. Defendant DARYL MOSBY is subject to the jurisdiction and venue of this Court.

16. Defendant ELBERT SABB is a citizen and resident of the State of Georgia.

17. Defendant ELBERT SABB can be personally served with Summons and Complaint at his residence at 200 Eagles Flt, Villa Rica, Georgia 30180 in Douglas County. In the alternative, Defendant ELBERT SABB can be served at his place of employment at the following address: 2971 Olympic Industrial Dr. SE, Atlanta, Georgia, 30339, in Cobb County.

18. Defendant ELBERT SABB is subject to the jurisdiction and venue of this Court.

19. Defendant DONNIE WRIGHT is a citizen and resident of the State of Georgia.

20. Defendant DONNIE WRIGHT can be personally served with Summons and Complaint at his place of employment at the following address: 2971 Olympic Industrial Dr. SE, Atlanta, Georgia, 30339, in Cobb County.

21. Defendant DONNIE WRIGHT is subject to the jurisdiction and venue of this Court.

22. Defendants JOHN DOE No. 1 through 10 are believed to be Georgia or foreign corporations, partnerships, associations, adult individuals, or other legal entities that have transacted business in the State of Georgia and are responsible for the injuries and damages incurred by Plaintiff. Once the identity and the whereabouts of the John Doe Defendants are established, said Defendant(s) will be served with a copy of summons and complaint as provided by law. Defendants JOHN DOE No. 1 through 10 are subject to the jurisdiction and venue of this court.

23. STERIGENICS U.S., LLC, has at all relevant times operated a facility in Cobb County, Georgia, that sterilized medical equipment using the chemical Ethylene Oxide (hereinafter "EtO"). Defendant SOTERA HEALTH, LLC, is the parent company of STERIGENICS U.S., LLC. SOTERA HEALTH, LLC, jointly with or by and through STERIGENICS U.S., LLC, has at all relevant times operated a facility in Cobb County, Georgia,

that sterilized medical equipment using the chemical EtO. The facility (“the Sterigenics Facility”) is located at 2971 Olympic Industrial Drive, Atlanta, GA 30339. Defendants STERIGENICS U.S., LLC and SOTERA HEALTH, LLC will at times be referred to collectively herein as “STERIGENICS DEFENDANTS.”

24. Defendant PROLOGIS FIRST U.S. PROPERTIES, LP is the owner of the property and buildings on which and in which the Sterigenics facility operates. Since at least 2006, the STERIGENICS DEFENDANTS have rented the property from Defendant PROLOGIS FIRST U.S. PROPERTIES, LP. In addition to being landlord to the STERIGENICS DEFENDANTS, Defendant PROLOGIS FIRST U.S. PROPERTIES, LP also has actively assisted Sterigenics in maintaining its permits with Cobb County for operation of the Sterigenics facility.

25. At all times relevant to this Complaint, Defendants DARYL MOSBY, ELBERT SABB, and DONNIE WRIGHT were high-level supervisors and managers employed by Sterigenics, in Cobb County. Defendants DARYL MOSBY, ELBERT SABB, and DONNIE WRIGHT were each acting in the course and scope of their employment and were agents of the STERIGENICS DEFENDANTS. Defendants DARYL MOSBY, ELBERT SABB, and DONNIE WRIGHT were responsible for the operation, management, and/or control of the Sterigenics facility located in Cobb County, Georgia, including said facility’s handling of EtO. Defendants DARYL MOSBY, ELBERT SABB, and DONNIE WRIGHT will at times be referred to collectively herein as “STERIGENICS MANAGERS.”

26. Venue of this action is proper in Cobb County, State of Georgia, under Article VI, Section II, Paragraph IV of the Georgia Constitution, O.C.G.A. §§ 14-2-510(b)(3), 9-10-93, and other applicable law because Defendants are joint tortfeasors, the cause of action originated in

Cobb County, and at least one Defendant has an office and transacts business within Cobb County.

FACTUAL ALLEGATIONS

27. Plaintiff DAVINA BREWER was diagnosed with Invasive Ductal Carcinoma on or about May 29, 2015. Her diagnosis and treatment took place within the State of Georgia.

28. From 2000 through July 2020, Plaintiff DAVINA BREWER resided less than 2 miles from the Sterigenics facility on Calibre Lake Parkway, Smyrna, GA 30082.

29. At the time of her diagnosis at age 44, Plaintiff DAVINA BREWER had been in very good health, was stunned by her diagnosis, and was unaware that her disease was caused by exposure to EtO emitted by the STERIGENICS DEFENDANTS, by and through their agents and employees, including the STERIGENICS MANAGERS. She has since moved from that Calibre Lake Parkway after her diagnosis but remains a citizen and resident of the State of Georgia.

30. Before July 2019, Plaintiff DAVINA BREWER was totally unaware of the STERIGENICS DEFENDANTS' and STERIGENICS MANAGERS' conduct and emissions of EtO and unaware that they were the proximate cause of her disease, in part because the STERIGENICS DEFENDANTS, STERIGENICS MANAGERS and PROLOGIS failed to inform Plaintiff DAVINA BREWER, the government or the public at large of their continuous, systematic, and dangerous emissions of EtO into the surrounding area.

31. Plaintiff first gained knowledge about the continuous, systematic, and dangerous emissions of EtO from the Sterigenics Facility in or around July 2019, well after her cancer diagnosis, when Georgia Health News, WebMD, and other local and national media first "broke the story" to the public that Sterigenics was releasing EtO in the air and that air modeling data

had demonstrated heightened and deeply concerning levels of EtO in areas near the Sterigenics facility.

32. July 2019 was the first time Plaintiff had knowledge or should have had knowledge that her cancer was proximately caused by the STERIGENICS DEFENDANTS' emission of EtO.

33. Plaintiff DAVINA BREWER'S bodily injury developed over the extended period of time she was exposed to EtO emitted by the STERIGENICS DEFENDANTS, by and through their agents and employees, including the STERIGENICS MANAGERS, and aided and abetted by PROLOGIS.

34. Additionally, Plaintiff DAVINA BREWER'S injury was a continuing tort up to and after she discovered her disease was proximately caused by the STERIGENICS DEFENDANTS' emission of EtO, by and through their agents and employees, including the STERIGENICS MANAGERS, and aided and abetted by PROLOGIS.

35. Therefore, any applicable statutes of limitations were tolled up to and until Plaintiff DAVINA BREWER discovered the Defendants' conduct and this action is brought within two years of her discovery.

36. Ethylene oxide, or EtO, is an odorless and colorless flammable gas at room temperature that is produced in large volumes for industrial uses.

37. Commercial medical equipment sterilizers use EtO in their sterilization processes for over 20 billion health care products every year in the United States. The EtO sterilization process begins by placing medical equipment in a gas chamber. After air is pumped out of the room, EtO is introduced and allowed to diffuse into the products for several hours. Once the

medical equipment is sterilized, the EtO is pumped out of the chamber and the remaining EtO is allowed to slowly dissipate.

38. Since at least 1987, the STERIGENICS DEFENDANTS have used, and continue to use, EtO in its industrial medical device sterilization process.

39. Through its industrial processes, the STERIGENICS DEFENDANTS, by and through their agents and employees, emit EtO into the air allowing it to disburse and be carried by wind and natural air movement throughout the area surrounding its facility. As such, residents and workers in the area have unknowingly been exposed to carcinogenic EtO for decades.

40. At all relevant times, the STERIGENICS DEFENDANTS, STERIGENICS MANAGERS and PROLOGIS knew, or should have known, that EtO is dangerous, toxic, carcinogenic, mutagenic, and the cause of various illnesses. As long-term users and emitters of EtO, Defendants had superior knowledge of an access to information regarding the dangers of EtO than the general public or Plaintiff DAVINA BREWER.

41. EtO is highly reactive, readily taken up by the lungs, efficiently absorbed into the blood stream, and easily distributed throughout the human body.

42. While the deleterious properties of EtO are not widely known to the average person not involved in the business of utilizing EtO, the deleterious properties have been known, or should have been known to Defendants and anyone in the business of using and emitting EtO as part of a sterilization process, for decades. By way of example:

- a. In a 1977 article, the National Institute of Occupational Safety and Health (“NIOSH”) concluded that occupational exposure to EtO may increase the frequency of genetic mutations in humans. The NIOSH report also raised concerns about the potential carcinogenicity of EtO.

- b. In 1981, the NIOSH released a subsequent report which recommended that EtO be regarded in the workplace as a potential occupational carcinogen. The NIOSH based its recommendation on new evidence of EtO's carcinogenic, mutagenic, and reproductive hazards, including studies demonstrating that EtO induced cancer in experimental animals. Specifically, the studies showed an increase in instances of leukemia in line with increases of EtO concentrations, in addition to other adverse effects on reproductive health. An epidemiological investigation of Swedish workers exposed to EtO also revealed increased incidences of leukemia and other cancers.
- c. In 1985, the U.S. Department of Health and Human Services published the Fourth Annual Report on Carcinogens and classified EtO as reasonably anticipated to be a human carcinogen.
- d. In the early 1990s, the NIOSH published the largest and most informative epidemiological study of EtO. The study analyzed over 18,000 employees working with EtO at fourteen different industrial facilities sterilizing medical equipment and food spices. The study found sufficient evidence to support a causal link between exposure to EtO and increased mortality from lymphatic and hematopoietic cancers. Follow-up studies have additionally demonstrated an association between EtO exposure and breast cancer.
- e. In 1994, as a result of these findings, the World Health Organization ("WHO") listed EtO as a Group 1 human carcinogen—the agency's highest risk classification—finding EtO to be carcinogenic to humans.

- f. In 2000, following suit, the U.S. Department of Health and Human Services reclassified EtO to “known to be a human carcinogen.”
- g. The U.S. Department of Labor's Occupational Safety and Health Administration’s (hereinafter "OSHA") 2002 fact sheet on EtO indicates that “[b]oth human and animal studies show that EtO is a carcinogen” and requires employers to provide clear signs and labels notifying workers of EtO's "carcinogenic and reproductive hazards.”¹
- h. In 2016, the EPA’s Integrated Risk Information System similarly reclassified EtO as carcinogenic to humans, and increased—by a multiple of thirty—its estimate of EtO’s cancer potency.
- i. EtO exposure affects the most vulnerable members of the population. The United States Environmental Protection Agency (“U.S. EPA”) states that “for a single year of exposure to EtO, the cancer risk is greater for children than for adults. That is because EtO can damage DNA.”

43. On August 22, 2018, the U.S. EPA released the 2014 National Air Toxic Assessment (“NATA”) – a screening tool that estimates cancer risks based on emission data in 76,727 census tracts across the United States. The 2014 NATA revealed 109 census tracts in the United States with cancer risk scores greater than 100 cases per one million people exposed to toxic air pollution during their lifetime, more than what the U.S. EPA considers “acceptable” limits. Two of the tracts surrounded the Sterigenics facility in Smyrna, Georgia; four other tracts surrounding the facility had elevated cancer risks.

44. The U.S. EPA “considers any exposure, however small, to a carcinogen to create some cancer risk.”

¹ https://www.osha.gov/OshDoc/data_General_Facts/ethylene-oxide-factsheet.pdf accessed 7/31/2020.

45. The U.S. EPA estimates the lifetime risk of developing cancer due to air toxics in one of the tracts near the Sterigenics facility to be up to five times higher than the average national cancer risk across the U.S. population.

46. Fewer than one percent of the census tracts in the U.S. have an estimated cancer risk due to air toxics that measures up to the cancer risk in the two tracts surrounding the Sterigenics facility, with cancer risk scores greater than 100 cases per one million.

47. The STERIGENICS DEFENDANTS by and through their agents, including the STERIGENICS MANAGERS, have consistently emitted significant and dangerous volumes of EtO from their Cobb facility:

- a. From 2002 to 2015, Sterigenics has consistently emitted between approximately 2,200 and 3,500 pounds of carcinogenic EtO from its facility.
- b. These reported emissions, however, are overshadowed by Sterigenics' emissions in previous years. For example, in 1998 Sterigenics emitted over 15,000 pounds of EtO; over 10,500 pounds in 1999; over 22,800 pounds in 1988; and over 89,000 pounds in 1987.
- c. A significant portion of Sterigenics' emissions include fugitive emissions from leaking valves and other equipment. These reported emissions are only based on estimates due to their elusive nature.

48. Sterigenics' recent and widely publicized EtO leak serves as an example of the facility's fugitive emissions and concealment thereof. The incident—which occurred on July 31, 2019 and involved an incident in which a drum containing EtO leaked from a gas valve—went undisclosed until the Atlanta Journal-Constitution released an internal company report about the leak.

49. The July 2019 leak caused the Georgia’s Environmental Protection Division (“GA EPD”) to launch an investigation into the Sterigenics facility. The GA EPD found nine other EtO leaks and/or incidences had occurred at the Sterigenics facility since 2015: February 3, 2015; November 11, 2015; November 15, 2015; January 31, 2017; June 11, 2017; April 2, 2018; July 10, 2018; July 17, 2018; and April 10, 2019.

50. The GA EPD was aware of only two of the nine EtO leaks at the Sterigenics facility.

51. The STERIGENICS DEFENDANTS and the STERIGENICS MANAGERS failed to report or disclose seven EtO leaks to the GA EPD.

52. As a result of the STERIGENICS DEFENDANTS emissions of carcinogenic EtO into the air and the surrounding communities, people living and working in the surrounding community areas have been unknowingly exposed to elevated concentrations of EtO.

53. According to the GA EPD’s air modeling, the Sterigenics facility exceeds Georgia’s annual Acceptable Ambient Concentration (“AAC”) for EtO. The AAC is the maximum allowable air concentration of a toxic air pollutant like EtO. The GA EPD calculated the annual AAC for EtO at 0.00033 $\mu\text{g}/\text{m}^3$ based on the EPA’s Integrated Risk Information System (“IRIS”) and the Inhalation Unit Risk (“IUR”) for EtO.

54. On June 7, 2019, the GA EPD published its air dispersion modeling of EtO in the areas surrounding the Sterigenics facility in Smyrna, Georgia. The GA EPD relied on emissions rates provided by Sterigenics and discrete receptors placed along the facility’s property boundaries.

55. The GA EPD’s modeling revealed a maximum ground level concentration—the concentration of a pollutant to which a human is normally exposed—in excess of the AAC.

Specifically, the GA EPD found that the highest annual concentration of EtO in the previous five years around the facility was 1.5 $\mu\text{g}/\text{m}^3$ — over 4,545 times the AAC.

56. The GA EPD also modeled the EtO levels in residential areas next to the Sterigenics facility. It registered a maximum ground level concentration of EtO between 0.009 $\mu\text{g}/\text{m}^3$ and up to 0.02 $\mu\text{g}/\text{m}^3$ or between 27 and 61 times the annual AAC of EtO.

57. The GA EPD concluded that “the current emission scenario indicates that residential areas are well above the AAC levels” for EtO.

58. Preliminary test results show high levels of EtO in areas around the Sterigenics facility and communities in Smyrna, Georgia. Unsurprisingly, these real-world measurements show higher air concentrations of EtO in the communities around Sterigenics than the GA EPD’s air modeling. For example:

- a. Government officials in Smyrna conducted a series of air monitoring tests for five consecutive days in September 2019 by placing air cannisters in areas around the facility. A number of the air cannisters registered the presence of EtO in high concentrations reaching as high as 7.9 $\mu\text{g}/\text{m}^3$ in an area adjected to the Sterigenics facility—significantly higher than the GA EPD’s initial air modeling. Indeed, that concentration is 395 times higher than the U.S. EPA’s acceptable limit and over 23,939 times the AAC for EtO exposure.
- b. The monitoring tests also show high concentrations of EtO as far as 3 miles from the Sterigenics facility where they measured 0.78 $\mu\text{g}/\text{m}^3$ —or 39 times the U.S. EPA’s acceptable limit¹ and over 2,363 times the AAC for EtO exposure.
- c. These tests took place more than a week after Sterigenics suspended its sterilization operation to install new air pollution control.

59. At all relevant times, the STERIGENICS MANAGERS were responsible for the operation, management, and/or control of the Sterigenics facility located in Cobb County, Georgia, including said facility's handling of EtO. The factual allegations set forth in ¶¶ 23-48 apply equally to the STERIGENICS MANAGERS and are realleged as if set forth more fully in this paragraph. The STERIGENICS MANAGERS knew, or should have known, of the carcinogenic properties of EtO and acted to prevent its emissions. The STERIGENICS MANAGERS negligently and/or intentionally failed to report or disclose the numerous EtO spills. The STERIGENICS MANAGERS took steps to prevent the government and the public from gaining knowledge about the extent of EtO emissions.

60. At all times relevant to this Complaint, Defendant PROLOGIS FIRST U.S. PROPERTIES, LP has actively assisted the STERIGENICS DEFENDANTS in maintaining their permits with Cobb County for operation of the Sterigenics facility.

61. Upon information and belief, Defendant PROLOGIS FIRST U.S. PROPERTIES, LP is and has always been aware of the operations occurring at the Sterigenics facility, the use and emission of EtO from the Sterigenics facility, and the dangers EtO poses to the general public.

62. Upon current information and belief, in 2007 Defendant PROLOGIS FIRST U.S. PROPERTIES, LP specifically assisted the STERIGENICS DEFENDANTS in acquiring a "storage" certificate of occupancy for a building adjacent to the Sterigenics facility where the STERIGENICS DEFENDANTS stores product.

63. Upon current information and belief, without the assistance of Defendant PROLOGIS FIRST U.S. PROPERTIES, LP in securing the Cobb County operating permits, the

STERIGENICS DEFENDANTS would not have been able to operate or continue operations of the Sterigenics Facility.

64. Upon current information and belief, the product stored in the adjacent warehouse is in fact equipment recently treated with EtO that fugitively emits EtO into the atmosphere. Upon information and belief, the STERIGENICS DEFENDANTS and Defendant PROLOGIS FIRST U.S. PROPERTIES, LP were aware that the stored product produced such fugitive emissions.

65. Therefore, the adjacent warehouse, if its activities were fully disclosed to the county by either the STERIGENICS DEFENDANTS, the STERIGENICS MANAGERS or Defendant PROLOGIS FIRST U.S. PROPERTIES, LP would have been required to attain a “high-hazardous” certificate of occupancy which would have significantly reduced the fugitive emissions of EtO from the adjacent warehouse.

FIRST CAUSE OF ACTION

(Negligence)

66. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in ¶¶ 1-65 of this Complaint with the same force and effect as if fully set forth herein.

67. Plaintiff DAVINA BREWER was exposed to harmful levels of EtO as a proximate result of the acts and omissions of each defendant, individually and collectively.

68. As a proximate result of each defendant’s negligent acts and omissions, individually and collectively, Plaintiff DAVINA BREWER developed and was otherwise diagnosed as suffering from Invasive Ductal Carcinoma.

69. At all times relevant, each Defendant owed a duty to exercise reasonable care in the operation of the Sterigenics facility, including regulating the emission of EtO.

70. At all times relevant hereto, each Defendant knew, or should have known, of the carcinogenic properties of EtO generally and in amounts being omitted from the work of the Sterigenics Facility.

71. At all times relevant hereto, each defendant knew, or should have known, of the carcinogenic properties of EtO generally and also of that being omitted from the work of the Sterigenics Facility.

72. Defendants breached their duty in one or more of the following ways:

- a. Emitting EtO into the air from the Sterigenics facility;
- b. Emitting excessive, unnecessary, and/or dangerous volumes of EtO into the air from the Sterigenics facility;
- c. Using EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purposed without presenting the same level of risk to human health and well-being;
- d. Disregarding safe methods to adequately control EtO emissions from the Sterigenics facility;
- e. Failing to report fugitive emissions of EtO;
- f. Placing its own economic interest above the health and well-being of those who live or work in the community near the Sterigenics Facility;
- g. Failing to warn or advise Plaintiff, as well as those who live or work in the community near the Sterigenics Facility, that they are being exposed to EtO;
- h. Failing to warn or advise Plaintiff, as well as those who live or work in the community near the Sterigenics Facility, that they were breathing in EtO;

- i. Failing to warn or advise Plaintiff, as well as those who live or work in the community near the Sterigenics Facility, that it was emitting a known carcinogen into the air from its facility in Atlanta;
- j. Failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the Sterigenics facility;
- k. Failing to adequately study and test the effect of its EtO emission from the Sterigenics facility on the quality of air;
- l. Misleading government entities as to the nature and extent of EtO emissions from the Sterigenics facility.
- m. Concealing from the public the nature and extent of EtO emissions from the Sterigenics Facility;
- n. Failing to adequately study and test the effect of its EtO emissions from the Sterigenics facility on the health and well-being of those who live and work in the nearby community; and
- o. Subjecting Plaintiff and those who live and work near the Sterigenics facility to an elevated cancer risk.

73. The STERIGENICS DEFENDANTS were additionally negligent in the hiring, training supervision, and retention of their employees and agents, the STERIGENICS MANAGERS, and other employees and agents who participated in the activities of the Sterigenics facility. The STERIGENICS MANAGERS were likewise and specifically negligent in regard to their own individual actions as it relates to the oversight, supervision, training and retention of employees and agents at the Sterigenics facility.

74. Defendants' negligent, grossly negligent, willful, wanton and reckless conduct, as described herein, was the proximate cause of Plaintiff DAVINA BREWER'S illness and injuries, as a result of which Plaintiff has suffered damages in the form of medical expenses, physical disability, mental and physical pain and suffering, extreme emotional distress, and other damages as can be proven at a trial of this action.

75. Plaintiff is entitled to recover damages against each defendant for their individual and collective acts of negligence in an amount to be proven at trial.

SECOND CAUSE OF ACTION

Private Nuisance

76. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in ¶¶ 1-75 of this Complaint with the same force and effect as if fully set forth herein.

77. The right of enjoyment of private property is an absolute right of every citizen.

78. At all relevant times, Defendants knew or should have known EtO to be hazardous and harmful to humans.

79. At all relevant times, Defendants knew or should have known that the levels of EtO gas emitted from the Sterigenics facility would have a toxic, poisonous, and deleterious effect upon the health, safety, and wellbeing of people living and working in the community.

80. Defendants knew or should have known that the levels of EtO gas emitting from the Sterigenics facility would have a toxic, poisonous, and deleterious effect upon the health, safety, and wellbeing of persons breathing it.

81. Defendants' operation, maintenance, and use of the Sterigenics sterilizing facility caused those who live and work in the area surrounding its facility to breathe air containing high levels of EtO on a routine and constant basis, causing a substantially elevated risk of cancer.

82. Defendants' emissions of carcinogenic EtO interfere with Plaintiff's enjoyment of property and cause hurt, inconvenience, or damage to Plaintiff.

83. As a proximate result of the Defendants' operation, maintenance, and use of the Sterigenics sterilizing facility, Plaintiff's right to breathe clean air without dangerous levels of carcinogens such as EtO was eliminated and/or severely diminished.

84. As a proximate result of Defendants' operation, maintenance, and use of the Sterigenics sterilizing facility, EtO continuously invaded and contaminated the areas surrounding the Sterigenics facility, including Plaintiff's residence.

85. As a proximate result of Defendants' use and emission of EtO, Plaintiff was exposed to and inhaled significant, meaningful, and more than *de minimis* amounts of EtO.

86. As a proximate result of Defendants' use and emission of EtO, Plaintiff DAVINA BREWER sustained and will continue to sustain severe and permanent damage to her health due to the emission of EtO.

87. As a proximate result of Plaintiff DAVINA BREWER'S inhalation of EtO from the Sterigenics facility, Plaintiff DAVINA BREWER has suffered damages in the form of medical expenses, physical disability, mental and physical pain and suffering, extreme emotional distress, and other damages as can be proven at a trial of this action, and for which the Defendants are liable for money damages.

THIRD CAUSE OF ACTION

(Ultrahazardous Activity/Strict Liability)

88. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in ¶¶ 1-87 of this Complaint with the same force and effect as if fully set forth herein.

89. Defendants' use and emission of EtO from the Sterigenics sterilization facility constitutes an ultrahazardous activity.

90. Defendants' use and emission of EtO created a high degree of risk to those who live and work in the surrounding area. Further, the likelihood of cancer caused by Defendants' use and emission of EtO is significantly higher than the level of acceptable risk.

91. Defendants' use and emission of EtO is especially inappropriate given the densely populated residential and commercial area in which the Sterigenics facility is located.

92. The activities, as conducted by each and every defendant, are exceedingly dangerous and offer little to no value to the surrounding community.

93. Because Defendants' activities are ultrahazardous, it is strictly liable for any injuries proximately resulting therefrom.

94. As a proximate result of Defendant's ultrahazardous activities, Plaintiff was exposed to and inhaled carcinogenic amounts of EtO.

95. As a proximate result of Plaintiff DAVINA BREWER'S inhalation of EtO from the Sterigenics facility, Plaintiff DAVINA BREWER has suffered damages in the form of medical expenses, physical disability, mental and physical pain and suffering, extreme emotional distress, and other damages as can be proven at a trial of this action.

FOURTH CAUSE OF ACTION

(Aiding and Abetting Tortious Conduct – As to Defendant PROLOGIS FIRST U.S. PROPERTIES, LP only)

96. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in ¶¶ 1-95 of this Complaint with the same force and effect as if fully set forth herein.

97. Defendant PROLOGIS FIRST U.S. PROPERTIES, LP owns and rents to Sterigenics the property upon which the Sterigenics facility is located.

98. In addition to leasing the property, Defendant PROLOGIS FIRST U.S. PROPERTIES, LP has assisted Sterigenics in obtaining operating permits from Cobb County.

99. At all times Defendant PROLOGIS FIRST U.S. PROPERTIES, LP assisted Sterigenics, Defendant PROLOGIS FIRST U.S. PROPERTIES, LP knew Sterigenics' operations would emit EtO into the atmosphere.

100. At all times Defendant PROLOGIS FIRST U.S. PROPERTIES, LP assisted Sterigenics, Defendant PROLOGIS FIRST U.S. PROPERTIES, LP knew or should have known that EtO has harmful health effects on humans.

101. Without assistance from Defendant PROLOGIS FIRST U.S. PROPERTIES, LP, Sterigenics would not have been able to operate the Sterigenics facility or been able to emit EtO into the area surrounding the Sterigenics facility.

102. As a proximate result of Defendant PROLOGIS FIRST U.S. PROPERTIES, LP'S assistance, the STERIGENICS DEFENDANTS negligently breached their duty and failed to exercise ordinary care for the health and well-being of Plaintiff.

103. Defendant PROLOGIS FIRST U.S. PROPERTIES, LP, having knowingly assisted, aided and abetted the STERIGENICS DEFENDANTS in their negligence against Plaintiff, is liable to Plaintiff along with the other Defendants for causing or contributing to Plaintiff's injuries.

104. As a proximate result of the actions and omissions of Defendant PROLOGIS FIRST U.S. PROPERTIES, LP, Plaintiff DAVINA BREWER has suffered damages in the form of medical expenses, physical disability, mental and physical pain and suffering, extreme emotional distress, and other damages as can be proven at a trial of this action.

FIFTH CAUSE OF ACTION

**(Respondeat Superior and/or Vicarious Liability – as to the STERIGENICS
DEFENDANTS only)**

105. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in ¶¶ 1-104 of this Complaint with the same force and effect as if fully set forth herein.

106. Upon information and belief, at all times pertinent to this Complaint, the STERIGENICS MANAGERS were employees and/or agents of the STERIGENICS DEFENDANTS.

107. Upon information and belief, at all times pertinent to this Complaint, the STERIGENICS MANAGERS were acting within the course and scope of their employment and/or agency with the STERIGENICS DEFENDANTS.

108. Upon information and belief, at all times pertinent to this Complaint, the STERIGENICS MANAGERS were acting in furtherance of the interests of the STERIGENICS DEFENDANTS.

109. The STERIGENICS DEFENDANTS are therefore liable under the doctrines of *respondeat superior*, vicarious liability and/or statutory employer liability for the tortious acts and/or omissions of their employees and/or agents.

110. As a proximate cause of the acts and omissions of the STERIGENICS DEFENDANTS, by and through the STERIGENICS MANAGERS, Plaintiff DAVINA BREWER has suffered damages in the form of medical expenses, physical disability, mental and physical pain and suffering, extreme emotional distress, and other damages as can be proven at a trial of this action.

SIXTH CAUSE OF ACTION

(Punitive Damages)

111. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in ¶¶ 1-110 of this Complaint with the same force and effect as if fully set forth herein.

112. At all times relevant, Defendants owed a duty to refrain from willful and wanton misconduct and/or conduct which exhibited an indifference and/or conscious disregard to the health, safety, and well-being of Plaintiff and those living and working in the area surrounding the Sterigenics facility.

113. The conduct of each defendant as set forth hereinabove showed willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which would raise the presumption of a conscious indifference to consequences. Accordingly, punitive damages should be imposed against each defendant pursuant O.C.G.A. § 51-12-5.1 and other applicable laws, to punish and deter each defendant from repeating or continuing such unlawful conduct.

WHEREFORE, Plaintiff prays:

- a. That process issue according to law;
- b. That each defendant be served with a copy of Plaintiff's Complaint and show cause why the prayers for relief requested by Plaintiff herein should not be granted;
- c. That Plaintiff be granted a trial by jury in this matter;
- d. That the Court enter a judgment against each defendant for all general and compensatory damages allowable to Plaintiff;
- e. That the Court enter a judgment against each defendant for all special damages allowable to Plaintiff;

- f. That the Court enter a judgment against each defendant serving to award Plaintiff punitive damages under the provisions of O.C.G.A. § 51-12-5.1 and as otherwise provided by law;
- g. That the Court enter a judgment against each Defendant for all other relief sought by Plaintiff under this Complaint;
- h. That the costs of this action be cast upon Defendants; and
- i. That the Court grant Plaintiff such further relief which the Court deems just and appropriate.

Respectfully submitted this 4th day of September, 2020.

CONLEY GRIGGS PARTIN LLP

/s/ Cale H. Conley

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