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IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

In re Ethylene Oxide ("EtO") Property Devaluation Cases	CIVIL ACTION NO. 23-A-3085
This document relates to: 1. Andrew and Bridget Kurt; Civ. Action No.20-A-3432 2. Rhonda and Neal Crawford; Civ. Action No. 23-A-278 3. Holly and Gary Campbell; Civ. Action No. 23-A-281 4. Kathryn Measel; Civ. Action No. 23-A-275 5. Robert Ford; Civ. Action No. 23-A-2106 6. Brantley Barrow, Sr.; Civ. Action No. 23-A-2257 7. Karl Goodhew; Civ. Action No. 23-A-2402 8. Claudia and Luke Kennison; Civ. Action No. 23-A-2432 9. Rafael I. and Elizabeth P. San Miguel; Civ. Action No. 23-A-2709	

ORDER ON DEFENDANTS' MOTIONS

This action relates to several hundred cases filed by the same counsel representing plaintiffs making substantially similar factual allegations and asserting the same claims against the same defendants. By a Consolidated Case Management Order signed on July 24, 2023, this Court consolidated the cases for purposes of discovery and certain other pretrial matters pursuant to O.C.G.A. § 9-11-42.[1] The nine cases listed above were identified in the Stipulation for Second Amendment to Consolidated Case Management Order entered November 15, 2024. They are a

[1] The cases were consolidated for discovery and pretrial purposes only and were not joined under O.C.G.A. § 9-11-18 or 9-11-19.

sampling of the 305 total cases currently pending before this Court and were selected by the parties to proceed through motions practice and discovery while the remaining actions remain stayed.

Defendants Sterigenics U.S., LLC and Sotera Health LLC ("Defendants") filed a Consolidated Motion for Summary Judgment in this case on November 21, 2025, along with a Consolidated Rule 6.5 Statement in Support of Defendants' Motions for Summary Judgment.[2] Defendant Prologis First U.S. Properties ("Prologis") joined the Defendants' motions and filed a separate Consolidated Motion for Summary Judgment the same day. Concurrent with their Motions for Summary Judgment, Defendants also filed motions to exclude Plaintiffs' experts Samantha Sawyer, Ph.D., Leslie Stayner, Ph.D., and Ranajit Sahu, Ph.D., CEM, under O.C.G.A. § 24-7-702 ("*Daubert* Motions"). Defendant Prologis filed a motion to exclude Dr. Sahu.

The parties submitted briefs in support of and in response and reply to these Motions and presented oral argument to the Court on all Motions on March 9, 2026. The Court has reviewed and considered the briefs and supporting exhibits, the Parties' oral arguments, the record evidence, and the controlling law. The Court hereby holds and orders as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural History

These actions were filed by Plaintiff homeowners between 2020 and 2023 regarding properties individual Plaintiffs purchased at various times between the years 2005 and 2020. Plaintiffs' properties are located a half-mile or more (some more than two miles) from Sterigenics' facility ("the Facility"), which Plaintiffs' allege they did not know existed or emitted ethylene oxide ("EtO") until media coverage focused on the Facility during the summer of 2019.

[2] Defendants also filed Motions in the individual case dockets for each of the matters listed above, along with case-specific Rule 6.5 Statements in Support of their Motion for Summary Judgment.

Plaintiffs claim in their lawsuits that the Facility emission of EtO negatively affected their property values and their ability to use and enjoy their homes and properties. Plaintiffs do not allege to have suffered personal injuries and have expressly disclaimed personal injuries in these cases. Plaintiffs also admit that EtO is a colorless and odorless gas that they did not know was in the air above their properties at any time before the summer of 2019 at the earliest. Though some claims have been dismissed in the course of the litigation, Plaintiffs' remaining claims against the Defendants are (1) negligence, (2) trespass, (3) nuisance, and (4) punitive damages.

Plaintiffs disclosed expert witnesses to support their claims on November 5, 2024. Dr. Andrew Gray modeled EtO air emissions from the Facility over time. Dr. Ranajit Sahu used Dr. Gray's air model to estimate amounts of EtO which may have been blown by the wind and atmosphere into and through the air above Plaintiffs' properties. Plaintiffs also disclosed entomologist Dr. Samantha Sawyer, epidemiologist Dr. Leslie Stayner, and real estate appraiser Doug Kenney as experts to support their claims.

Defendants moved to exclude Drs. Sahu, Sawyer, and Stayner under O.C.G.A. § 24-7-702. After Defendants presented oral argument on their Motions to Exclude at the March 9, 2026 hearing, Plaintiffs withdrew Dr. Sawyer as an expert witness for their cases and withdrew Dr. Stayner as an expert witness to support any claims *except* Plaintiffs' derivative claim for punitive damages.

In November 2025, Defendants moved for summary judgment on Plaintiffs' trespass, nuisance, and negligence claims, asserting that Plaintiffs have failed to prove the underlying essential elements of their claims and that there is no remaining genuine issue of material fact for a jury to decide. Defendants also moved for summary judgment on Plaintiffs' derivative claim for

punitive damages. Thus, Defendants have moved for summary disposition of the entirety of these cases.

B. Undisputed Material Facts Relating to the Sterigenics Facility and Ethylene Oxide

Sterigenics has operated its Facility at 2971 Olympic Industrial Dr. in Cobb County since at least the early 1970s. The Facility sterilizes medical products using EtO according to sterilization processes approved by the U.S. Food and Drug Administration ("FDA").[3] The Facility is located and authorized, pursuant to a Cobb County Zoning Ordinance and Comprehensive Land Use Plan, in a "Heavy Industrial" zoning district of Cobb County which allows industrial activities including operations that "generate . . . air pollutants."[4] The Facility is surrounded by several other unrelated heavy industrial operations. A 1994 Special Land Use Permit expressly authorizes the Facility's operation as a sterilization facility subject to its Air Quality Permit issued by the Georgia Environmental Protection Division ("EPD")[5] and the Facility's use of and emission of EtO has also been authorized by air quality regulations enacted by the United States Environmental Protection Agency ("EPA")[6] and by the Georgia EPD.[7]

At environmental levels, EtO is undetectable to the human senses.[8] EtO is also naturally occurring in the environment, separate from any industrial emissions sources, and is present in ambient "background" air.[9] Both the human body and plant organisms naturally produce small

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[3] Nov. 21, 2025 Defs.' Notice of Filing, Part 4, **Ex. E**, Affidavit of Elbert Sabb (July 25, 2025).
[4] Nov. 21, 2025 Defs.' Notice of Filing, Part 4, **Ex. H**, Official Minutes of the Cobb County Board of Commissioners and associated attachment (December 26, 1972).
[5] Nov. 21, 2025 Defs.' Notice of Filing, Part 5, **Ex. J**, Cobb County Ordinance, Chapter 134, *Zoning* (September 27, 2022).
[6] Nov. 21, 2025 Defs.' Notice of Filing, Part 6, **Ex. P**, 40 C.F.R. Part 63, Subpart O (Ethylene Oxide Emissions Standards for Sterilization Facilities) (December 6, 1994).
[7] Ga. Comp. R. & Regs. r. 391-3-1.02(9)(a), (b)(2).
[8] *See* Nov. 21, 2025 Defs.' Consol. Rule 6.5 Statement at § II. ¶ 19, uncontroverted by Jan. 12, 2026 Plfs' Consol. Statement of Material Facts.
[9] *See* Nov. 21, 2025 Defs.' Consol. Rule 6.5 Statement at § II. ¶ 21 (uncontroverted).

amounts of EtO.[10] Naturally occurring EtO is chemically identical to manmade EtO that is used for medical sterilization and other industrial purposes.[11]

II. DEFENDANTS' MOTIONS TO EXCLUDE PLAINTIFFS' EXPERTS

The Court first addresses Defendants' motions to exclude Drs. Sawyer, Stayner and Sahu under O.C.G.A. § 24-7-702. As noted above, after Defendants presented oral argument on their Motions to Exclude at the March 9, 2026 hearing, Plaintiffs withdrew Dr. Samantha Sawyer as an expert witness for their cases. Consequently, the opinions of Dr. Sawyer are no longer before this Court and will not be allowed in this case, and Defendants' motion to exclude her is **MOOT**. The Court hereby grants Defendants' motions to exclude Drs. Stayner and Sahu for the following reasons.

A. *Georgia's Daubert* Standard

Expert witness admissibility is governed by O.C.G.A. § 24-7-702(b) ("Rule 702"), which provides that "[a] witness who is qualified as an expert . . . may testify in the form of an opinion or otherwise, if: (1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (2) The testimony is based upon sufficient facts or data; (3) The testimony is the product of reliable principles and methods; and (4) The expert has reliably applied the principles and methods to the facts of the case."

For the first requirement, the Georgia Supreme Court has directed that "the trial court must consider the 'fit' between the expert testimony and the issues in dispute." *Scapa Dryer Fabrics, Inc. v. Knight*, 299 Ga. 286, 290 (2016). The "expert testimony is helpful to the trier of fact and "fits" only to the extent that 'the testimony is relevant to the task at hand and logically advances a material aspect of the case.'" *Id.* (quoting *Boca Raton Community Hosp. v. Tenet Health Care*

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[10] *See id.* (uncontroverted).
[11] *See* Nov. 21, 2025 Defs.' Notice of Filing, Part 9, **Ex. AA,** 10/10/2025 Sawyer Dep. at 150:15-25.

Corp., 582 F.3d 1227, 1232 (II) (11th Cir. 2009)). With respect to the second requirement concerning reliability:

> the trial court must consider whether 'the methodology by which the expert reaches his conclusions is sufficiently reliable.' To this end, the trial court must ask whether the conclusions of the expert '[are] based upon sufficient facts or data,' whether the expert drew those conclusions by use of 'reliable principles and methods,' and whether the expert 'applied [those] principles and methods reliably to the facts of the case.'

Id. (citations omitted).

The proponent of an expert has the burden of establishing the reliability of the expert's opinion and must "show that [the expert's] proffered expert testimony is based upon sufficient facts or data and is the product of reliable principles and methods, which the expert applied reliably to the facts of the case." *Johnson v. Terminal Investment Corporation*, 374 Ga. App. 629, 633-634 (2025), *citing Adams v. Piedmont Henry Hosp.*, 365 Ga. App. 257, 276 (2022). And the proponent of an expert has the burden of proving the expert's admissibility by a preponderance of the evidence, "regardless of an expert's experience and qualifications." *HNTB Ga., Inc. v. Hamilton-King*, 287 Ga. 641, 646 (2010).

"[A] trial court must act as a 'gatekeeper' to ensure the relevance and reliability of expert testimony," *Dubois v. Brantley*, 297 Ga. 575, 585 (2015) (citation omitted), which "'imposes a special obligation upon [the] trial judge,'" *Scapa*, 299 Ga. at 289. That role "is especially significant since the expert's opinion 'can be both powerful and quite misleading because of the difficulty in evaluating it.'" *HNTB*, 287 Ga. at 645.

B. Leslie Stayner, Ph.D.

Defendants moved to exclude Dr. Stayner under O.C.G.A. § 24-7-702 on the grounds that his self-described "general causation" opinion about EtO and certain cancers does not inform, help, or "fit" these property claims and that his "no threshold" for increased risk of cancer opinion fails

under Georgia and Eleventh Circuit law and is not the product of reliable methodology. After Defendants' arguments at the March 9, 2026 hearing Plaintiffs withdrew Dr. Stayner on the record as an expert witness to support any aspects of their substantive claims of trespass, nuisance, or negligence, the Court will disregard his report, deposition testimony, and information in relevant briefs concerning his opinion testimony.

After withdrawing Dr. Stayner as an expert witness for their substantive claims, Plaintiffs asserted that they intend to still call Dr. Stayner as an expert witness on "punitive damages" and Sterigenics' "knowledge" concerning EtO hazards if a trial of these cases were to reach a punitive damages phase at trial. However, after many months of expert disclosures and discovery, Plaintiffs did not disclose Dr. Stayner as an expert witness on these topics, and the Court therefore will not allow him to testify on an undisclosed subject matter. Accordingly, Defendants' motion to exclude Dr. Stayner is **GRANTED**.

C. Ranajit Sahu, *Ph.D.*, CEM

Plaintiffs offered Dr. Sahu to opine on Sterigenics' "operational practices," how EtO emissions occur, and how much of EtO from the Facility's emissions reached the air above Plaintiffs' properties.[12] Dr. Sahu, who admits that EtO is an invisible, colorless, and odorless gas,[13] opined that "above zero" amounts of EtO from the Facility's emissions "come on and leave" the air above Plaintiffs' properties, moving with the wind.[14] Dr. Sahu presented his estimated EtO emissions amounts in an "Exposure Summary" for each Plaintiff, despite these cases not being personal injury cases.[15] Dr. Sahu testified that his "above zero" ETO exposure opinion was the

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[12] Jan. 12, 2026 Pls.' Resp. to Defs.' Mot. to Exclude Dr. Sahu at pp. 2, 19.
[13] Nov. 21, 2025 Defs.' Mot.to Exclude Dr. Sahu, App'x, Part 2, **Tab 7**, Expert Rep. of Dr. Sahu (Sept. 25, 2025).
[14] *Id.* at 12; Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 8**, Sept. 30, 2025 Dr. Sahu Dep. at 132:13–133:9, 133:19–25, 134:12-13.
[15] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 7,** Expert Rep. of Dr. Sahu (Sept. 25, 2025) at 129 (referencing "average exposure concentration" as set forth in Attachment D).

only opinion he was offering regarding the "impact" of the Facility's EtO emissions on Plaintiffs' properties.[16]

Plaintiffs also offered Dr. Sahu to provide opinions regarding "Sterigenics' conduct" and "standard of care" with respect to operations, emissions, and emissions controls dating back to the Facility's construction in 1967.[17]

1. Dr. Sahu's Opinions About the Facility's Emissions and EtO Levels in the Air Above Plaintiffs' Properties Are Inadmissible.

The law directs this Court to consider whether Dr. Sahu's expert testimony "fits" the questions and issues in dispute for Plaintiffs' property claims, whether his opinion testimony is based on reliable facts and data, and whether his conclusions are the result of application of reliable methodology applied reliably to the facts of these cases. O.C.G.A. § 24-7-702(b); *Scapa*, 299 Ga. at 290. This Court finds that Dr. Sahu's opinions fail both the "fit" and "reliability" requirements of Rule 702.

a. No "Fit" Under Rule 702

As discussed above, Plaintiffs' claims concern only alleged harm to property rights, *i.e.*, whether the Facility's EtO emissions harmed the Plaintiffs' properties or the Plaintiffs' use and enjoyment of their properties. No Plaintiffs allege to have suffered personal injuries and all have expressly disclaimed personal injuries attributable to Defendants. Thus, to prevail on their asserted property claims, as set forth in § III below, Georgia law requires Plaintiffs to prove that EtO from the Facility's emissions physically harmed their *properties* or caused the Plaintiffs sensory

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[16] Nov. 21, 2025 Defs.' Mot.to Exclude Dr. Sahu, App'x, Part 2, **Tab 8,** Sept. 30, 2025 Dr. Sahu Dep. at at pp. 130:1-19.

[17] *Id.*; Jan. 12, 2026 Pls.' Resp. to Defs' Mot. to Exclude Dr. Sahu at p. 11 (Dr. Sahu was disclosed to discuss "operational practices . . . from 1967 through the present day.")

discomfort that interfered with their use and enjoyment of their properties. Dr. Sahu's opinions are not relevant under Rule 702 because they would not assist a trier of fact to determine those issues.

As an initial matter, Dr. Sahu provided no opinion that any EtO from the Facility's emissions caused Plaintiffs sensory discomfort. Therefore, to be relevant, Dr. Sahu's opinions would have to show physical harm to Plaintiffs' properties. They do not. His estimates of the amounts of EtO from the Facility that could have traveled through the air above Plaintiffs' properties show, at most, that airborne EtO molecules would "come on and leave" the air above the properties, blown by the wind and meteorologic conditions.[18] Those opinions do not show a physical harm to Plaintiffs' properties and, as such, are not "relevant to the task at hand" to assist a trier of fact under Rule 702. *Scapa*, 299 Ga. at 290. Moreover, Dr. Sahu's opinions concerning Plaintiffs' "exposure" to the EtO levels would confuse the issues to be decided, because Plaintiffs in these cases do not assert personal injury claims. For these reasons, Dr. Sahu's opinions are irrelevant and inadmissible under O.C.G.A. § 24-7-702(b)(1) and *Scapa*, 299 Ga. at 289.

b. No Reliability Under Rule 702

Dr. Sahu's opinions concerning the Facility's emissions and Plaintiffs' exposure levels are also inadmissible because Plaintiffs have not shown that they are reliable. Dr. Sahu's opinions are based on unsupported assumptions and flawed or unacceptable methodologies, as discussed below.

Unreliable factual assumptions regarding EtO usage at the Facility. Dr. Sahu assumed that the Facility used the same static amount of EtO every hour of each month from 2005 to 2023 (well outside of the relevant time period for these claims[19]). But it is not reliable to assume that

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[18] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 8** at 132:13–133:9, 133:19–25, 134:12-13.

[19] The earliest property ownership alleged in these cases is 2005. But Plaintiffs' counsel stated at the Court's March 9, 2026 hearing on Defendants' Motions that the relevant time period for Plaintiffs' claims is four years prior to when they filed suit. The first case filed was by the Kurt Plaintiffs on September 29, 2020, which would render the relevant time period for their claims no earlier than September 29, 2016. The remaining Plaintiffs filed between January and June of 2023, setting the relevant timeframe for the rest of the subject cases at no earlier than January to June 2019.

Sterigenics' facility operated in a static way. The record reflects that the Facility runs as a "batch" (non-static) process, so Dr. Sahu's assumptions are not based on facts or data, much less sufficient facts or data, and instead belie the evidentiary record. Such assumptions are not reliable.

Unreliable factual assumptions regarding allocations of EtO used to the Facility's various emissions sources. Dr. Sahu compounded the unreliability of his opinions by allocating his assumed static hourly usage amounts to the Facility's different emissions sources according to unreliable allocation percentages that were not based on sufficient facts or data.[20] He ignored U.S. EPA allocations that are based on years of industry research and investigation. And, although Dr. Sahu agreed that a site-specific analysis of the Facility is required to determine the emissions source allocations,[21] he admittedly failed to do any site-specific analyses for three of the four emissions sources included in his hourly emissions rate opinions.[22] And for the fourth emissions source, "fugitive emissions," Plaintiffs failed to show that Dr. Sahu's methodology for calculating them is reliable. Dr. Sahu used data from individual employee personal badge monitors and discrete stationary monitoring ports to calculate static hourly fugitive emissions rates for each year. But Dr. Sahu did no testing, had no data, and could not identify any study or publication showing that this methodology is reliable for determining the EtO concentration for an entire room.[23]

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[20] *See* Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 4, **Tab 16**, Memo from M. Morris, EPA, to D. Guinnup, EPA, "Subject: Resid. Risk Assess. for the Ethylene Oxide Com. Sterilization Source Category" (Sept. 23, 2005) at 8; Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 4, **Tab 17,** *Alternative Control Technology Document—Ethylene Oxide Sterilization/ Fumigation Operations* (EPA-450/3-89-007), EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC (Mar. 1989) at 3-21; Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 4, **Tab 18**, 88 *Fed. Reg.* 22,790 at 22,801.

[21] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 7**, Expert Rep. of Dr. Sahu (Sept. 25, 2025) at 9, 24–25, 94 ("I stress at the outset that, excepting residuals, the actual split allocations of EtO among the pathways is a site-specific analysis."); Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 4, **Tab 19**, Aug. 13, 2024 Dr. Sahu Dep.at 43:1-6.

[22] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 7** Expert Rep. of Dr. Sahu (Sept. 25, 2025) at 95-96; Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 3, **Tab 9**, May 6, 2025 Dr. Sahu Dep. at 109:24-110:23, 249:2-6, 255:4-256:10.

[23] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 7,** Expert Rep. of Dr. Sahu (Sept. 25, 2025) at 115; Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 3, **Tab 9**, May 6, 2025 Dr. Sahu Dep. at 124:12-125:6, 119:5-10 (agreeing he has no data), 118:12-15 (confirming he has not done any testing).

Plaintiffs likewise did not show that Dr. Sahu's opinions about the locations in the Facility where employee badge monitors were worn were reliable. And his assumption that the entire room air volumes would have the same homogenous level of EtO every hour of every year from 2005 to 2023 lacks reliability for a facility like Sterigenics that is engaged in batch processing, as discussed above.

Unreliable factual assumptions regarding efficiency rates of emissions controls. Further, although Dr. Sahu agreed that determining emissions control efficiencies requires a site-specific assessment of the emission controls,[24] he did not conduct any site-specific testing at the Facility to arrive at his emissions control efficiency opinions. He also ignores direct tests of the Facility's emissions controls that were validated by the Georgia Environmental Protection Division, which showed average control efficiencies 99.8% or above. He provided no facts or data or methodology to support his opinions that the efficiency of the Facility's emissions control equipment was a lower 99%. He instead bases that claim only on his so-called "engineering judgment" and purported emissions control tests at *other* companies' sterilization facilities he allegedly has seen as an expert for plaintiffs in *other* EtO litigation (but has not provided to the Court for it to assess).[25] With no underlying support or analysis, all that is left is Dr. Sahu's *ipse dixit*, which is not a reliable methodology for his opinions. *See Anderson v. AGL*, 324 Ga. App at 807-810.

Plaintiffs therefore have failed to meet their burden of showing that Dr. Sahu's opinions regarding the Facility's emissions and the amounts of EtO that reached Plaintiffs' properties are

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[24] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 7** Expert Rep. of Dr. Sahu (Sept. 25, 2025) at 82; Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 4, **Tab 19**, Aug. 13, 2024 Dr. Sahu Dep. at 173:10-15.
[25] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 7,** Expert Rep. of Dr. Sahu (Sept. 25, 2025) at 95-96; Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 3, **Tab 9**, May 6, 2025 Dr. Sahu Dep. at 249:2-6; 255:4-256:10 (referencing performance tests he has seen in separate litigation and relies on but cannot produce). Again, his refusal to produce these records is a serious admissibility issue. Without producing his reliance materials, he cannot show that his methodology of relying on these other sterilizer's operations and records for his opinions about Sterigenics' facility in this case is reliable.

reliable under Rule 702. For this additional reason, those opinions are inadmissible under Rule 702.

2. Dr. Sahu's "Standard of Care" Opinions Are Inadmissible.

To opine on the standard of care applicable to a business or operation, an expert offering the opinion must be qualified by relevant knowledge, skill, experience, training or education in the business or industry for which he is offering to provide the opinion. OCGA § 24-7-702 (b); *HNTB*, 287 Ga. at 644–45; *Anderson v. Atlanta Gas Light Co.*, 324 Ga. App. 801, 810-12 (2013) ("*Anderson v. AGL*"). The expert also must have a sufficiently reliable basis for asserting a standard of care. An opinion that is not based on "readily ascertainable and verifiable standards" in an applicable treatise, industry standards and practices, or applicable statutes or regulations lacks reliability under Rule 702. *HNTB*, 287 Ga. at 643-45; *Anderson v. AGL*, 324 Ga. App. at 808-10. A standard of care opinion based solely on an expert's assertions, *i.e.*, the *ipse dixit* of an expert, is not reliable. *Anderson v. AGL*, 324 Ga. App. at 807.

Plaintiffs have not shown that Dr. Sahu is qualified to give a standard of care opinion in these cases. He has never worked in a sterilization facility or in the sterilization industry.[26] He has only visited an operating sterilization facility as a paid expert witness for plaintiffs suing sterilizers.[27] Before he began testifying against sterilizers in 2021, his only evaluation of a sterilization facility's emissions was one time in 2019 when he submitted written comments for a law firm opposing a facility's Air Quality Permit.[28] He has never been employed by the EPD or the EPA, and neither agency has ever asked for his advice about EtO or sterilization operations.[29]

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[26] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 4, **Tab 19**, Aug. 13, 2024 Dr. Sahu Dep. at 14:6–15:12, 240:2–5.
[27] *Id.* at 14:6–15:12, 21:20–22:8
[28] *Id.* at 15:21–18:14.
[29] *Id.* at 30:17–31:12.

When asked what expertise and specialized training he applied to reach his standard of care opinion in these cases, he identified only his "training as an engineer" and "education as an engineer over ten years."[30] He identified no expertise, training, or education in sterilization operations or standards that qualify him to offer a standard of care opinion in these cases.

Even if he had some minimal qualifications, Dr. Sahu's standard of care opinion lacks any reliable basis. He opines that the following standard of care governed the Facility's operations:

> Any reasonably careful chemical process facility (which includes an EtO sterilization operation) must take all feasible and practical steps to eliminate or minimize exposure of dangerous chemicals (e.g., a carcinogen such as EtO) to all concerned constituents, including members of the community, employees, contractors, visitors, customers, and end-users.).[31]

This statement is not a standard of care. It does not provide a readily ascertainable and verifiable standard, nor is it based on any readily ascertainable and verifiable standards. He cites no applicable treatise, industry standard or practices, or statute or regulation as a basis for this purported standard of care. Indeed, Dr. Sahu admits he did not rely on any sterilization industry standards and said that Sterigenics' compliance with industry standards was "irrelevant to my opinions."[32] Plaintiffs have not shown that Dr. Sahu's opinions are anything more than simply his own subjective assertions, *i.e.*, his *ipse dixit*, which is unreliable under Rule 702. *Anderson v. AGL*, 324 Ga. App at 810.

Plaintiff has not shown that Dr. Sahu is qualified and has a reliable basis for his standard of care opinion to be admissible under Rule 702.

This Court therefore **GRANTS** Defendants' Motion to exclude Dr. Sahu.

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[30] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 3, **Tab 9**, May 6, 2025 Dr. Sahu Dep. at 329:2-19, 331:12-16.

[31] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 2, **Tab 7**, Expert Rep. of Dr. Sahu (Sept. 25, 2025) at 53.

[32] Nov. 21, 2025 Defs.' Mot. to Exclude Dr. Sahu, App'x, Part 3, **Tab 9**, May 6, 2025 Dr. Sahu Dep. at 342:5-22.

III. DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

The Court next turns to Defendants' Motion for Summary Judgment. Having reviewed and considered the law, the submitted briefs, the parties' oral arguments, and the entire record, for the reasons explained below, this Court **GRANTS** summary judgment to Defendants on Plaintiffs' claims of trespass, nuisance, negligence and on the derivate claim of punitive damages, thus disposing of the cases in their entirety.

Though they arise under different statutes and aspects of Georgia property law, Plaintiffs' property law claims of trespass, nuisance, and negligence share common underlying required elements without evidence of which the claims cannot survive summary judgment. Moreover, the Court finds that Plaintiffs' claimed harm is not cognizable.

The Court has analyzed applicable law and the record at summary judgment for each of Plaintiffs' claims, reasoning as follows:

A. Summary Judgment Standard

Georgia law provides that summary judgment "shall be rendered" if the evidence shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." O.C.G.A. § 9-11-56(c). To obtain summary judgment, a moving defendant is not required to "disprove the nonmoving party's case." *Hatchett v. McCain Prop. Care, LLC*, 369 Ga. App. 71, 72 (2023). Instead, a defendant "must only point to an absence of evidence supporting at least one essential element of the plaintiff's claim." *Sheaffer v. Marriott Int'l, Inc.*, 349 Ga. App. 338, 338 (2019); *accord Butler v. Union Carbide Corp.*, 310 Ga. App. 21, 30 (2011). The moving party can prevail by showing the "court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a

jury issue on at least one essential element of plaintiff's case." *Lau's Corp. v. Haskins*, 261 Ga. 491, 491 (1991). In the absence of such evidence, the defendant "is entitled to summary judgment as a matter of law, irrespective of any issues of fact with regard to other essential elements." *Patel v. Diplomat 1419VA Hotels, LLC*, 358 Ga. App. 732, 738 (2021); *Sudduth v. Young*, 260 Ga. App. 56 (2003).

Plaintiffs miss the mark in their repeated assertion that whether a nuisance exists "ordinarily is a question of fact for the jury," citing to *Grier v. City of Atlanta*, 200 Ga. App. 575 (1991).[33] However, *Grier* is one of a line of cases against municipalities or landlords that do not involve property ownership. Instead, those non-property nuisance cases seek to recover for personal injuries caused by an unsafe condition controlled by a municipality or landlord (*e.g.* unsafe railroad crossings and malfunctioning traffic lights). *See, e.g., Banks v. City of Brunswick*, 529 F. Supp. 695, 698 (S.D. Ga. 1981). As personal injury cases, different and unique legal standards govern the claims, despite the use of the word "nuisance." *See Grier*, 200 Ga. App. at 575–576 (citing to Georgia Supreme Court precedent setting out three guidelines for non-property, municipal nuisance cases). By contrast, Georgia courts routinely dispose of property claims such as the trespass, nuisance and negligence claims asserted here.

B. Defendants' Arguments

Defendants' summary judgment arguments are summarized as follows. Defendants argue that to survive summary judgment on their trespass and negligence claims under Georgia law, Plaintiffs must show property harm through a physical invasion of their properties. To survive summary judgment on their nuisance claims under Georgia law, Plaintiffs must show property harm through a physical invasion of their properties *or* that Defendants caused a sensory impact

[33] *See* Jan. 12, 2026 Pls. Resp. at 24, 25, and 36.

acutely experienced by Plaintiffs on their properties. Defendants contend that despite years of discovery in these cases, Plaintiffs have not presented evidence through admissible expert testimony or otherwise that EtO emission from the Facility physically invaded their properties or that they suffered any sensory impact from Facility EtO emissions and, without this evidence, Plaintiffs' trespass, nuisance, and negligence claims fail.

Defendants also argue as additional grounds for summary judgment on Plaintiffs' claims, that since the Facility is properly located within a Heavy Industrial zoning district that allows its operations and emissions, and the Facility has a Special Land Use Permit under that zoning from the County Board of Commissioners to operate as a sterilization facility pursuant to its EPD Air Quality Permit, and there is no evidence that they have operated outside of those bounds, the Facility operations cannot legally be a trespass or nuisance.

Without proof of a cognizable invasion of property or (for nuisance) any impact to the Plaintiffs' senses, Defendants submit there can be no recovery for any claimed property harm. But, as to Plaintiffs' claimed harm of devalued realty due to "stigma," Defendants argue that Georgia law precludes such claims as too remote and speculative to permit recovery in the absence of physical property damage. Similarly, Defendants contend that Plaintiffs' claimed "fear" of future harm (*i.e.*, claiming loss of use and enjoyment of their properties based on an alleged increased risk of possible future cancer) is not a recoverable injury in Georgia.

Finally, Defendants contend there can be no punitive damages where Plaintiffs have no viable underlying tort claims against Defendants.

C. Trespass

O.C.G.A. § 1-3-3(20) provides: "trespass means any misfeasance, transgression, or offense which damages another's health, reputation, or property." O.C.G.A. § 51-9-1 defines the cause of

action for interference with enjoyment of property: "[t]he right of enjoyment to enjoyment of private property being an absolute right of every citizen, every act of another which unlawfully interferes with such enjoyment is a tort for which an action shall lie." Georgia precedent has established that an actionable trespass occurs when there is either: (1) *a tangible physical invasion of* a plaintiff's property; or (2) an indirect invasion that causes *physical injury* to the property. *See Austin v. Augusta T. R. Co.*, 108 Ga. 671, 685 (1899) (holding that physical invasions to property are governed by the law of trespass, whereas liability for interferences such as noise and smoke are governed by the law of nuisance); *Jordan v. Georgia Power Co.*, 219 Ga. App. 690, 694–95, (1995) (upholding the trial court's ruling that the presence of electromagnetic fields could not constitute a trespass because they were not tangible and did not cause any physical harm to the property); *Satterfield v. J.M. Huber Corp.*, 888 F. Supp. 1567, 1572 (N.D. Ga. 1995) ("[T]he plaintiff must prove actual and substantial *physical* damage to [its] property" to establish a trespass claim based on an indirect invasion.) (emphasis in original); *see also* 75 Am. Jur. 2d Trespass § 29 (stating that for trespass, it "is generally held that the invasion of the property must be physical").

1. No Evidence of Physical Invasion to Property

Plaintiffs have not supported with evidence the allegations added in their amended complaint allegations that the Facility's EtO emissions physically invaded their properties. The evidentiary record shows no soil testing, air sampling, water testing, or any other form of ecological testing at Plaintiffs' properties demonstrating any form of physical invasion from the Facility's EtO emissions. No expert testified to any evidence of physical invasion and no documents or other evidence have been produced reflecting invasion of EtO on the Plaintiffs' structures or land. On the contrary, undisputed evidence offered by Plaintiffs' expert Dr. Sawyer

explained that EtO does not bioaccumulate in soil, water, air, or animal life; it biodegrades or evaporates.[34]

Instead of showing any kind of land invasion, Plaintiffs argue that the actionable physical invasion here is the entry of invisible EtO gas into the "protected residential airspace" over their properties.[35] While it is true that Georgia courts have held that a trespass can occur from an invasion of airspace, to be actionable the invasion must be close and physical in nature, such as the erection of a billboard overhanging the plaintiff's property. *See, e.g., Powell v. Norman Elec. Galaxy Inc.*, 229 Ga. App. 99 (1997); *Thrasher v. City of Atlanta*, 178 Ga. 514, 528-530 (1934) ("the owner of the soil beneath *[an] overhanging structure* may be entitled to…an action for trespass" (emphasis added)). Georgia law has long upheld this proximity and permanence requirement for an airspace-based trespass claim. In *Thrasher*, the Georgia Supreme Court rejected a literal application of what is now O.C.G.A. § 44-1-2(b), which states that property rights in real estate "extend[] downward and upward indefinitely," holding that an actionable airspace invasion must be within "the space immediately covering the trees, buildings, and structures affixed to the soil." 178 Ga. at 530. And the Supreme Court also rejected the idea that merely passing through airspace can constitute a nuisance; the invasion must have some sense of permanence: "the pilot of an airplane does not seize and hold the space or stratum of air through which he navigates, and cannot do so. He is merely a transient, and…does not partake of the nature of occupation in the sense of dominion and ownership." *Id.*

On these bedrock legal principles, the Court rejects Plaintiffs' argument that airborne EtO emissions could constitute a trespass and physical invasion of their properties. At most, the record

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[34] Nov. 21, 2025 Defs.' Notice of Filing, Part 9, **Ex. AA,** 10/10/2025 Sawyer Dep. at 143:4-145:18, 147:12; Nov. 21, 2025 Defs.' Mot. to Exclude Plfs' Expert Samantha Sawyer, **Ex. 5**, Expert Report of Dr. Sawyer (Oct. 3, 2025) at 7.
[35] *See* Pls.' March 9, 2026 Hearing Demonstrative on "Main MSJ Trespass" at p. 5 ("EtO crossed plaintiff's property boundary and *entered protected residential airspace*." (emphasis added)).

reflects that the Facility's colorless and odorless airborne EtO emissions move around in the air, into and out of the atmosphere above Plaintiffs' properties, as blown by the wind. This is not a close, physical occupation or domination of Plaintiffs' property or airspace and fails to establish a trespass to property under Georgia law. *See Thrasher*, 178 Ga. at 529-530.

2. No Evidence of Unlawful Operation

In addition to failing to prove an actionable physical invasion of their properties, Plaintiffs' trespass claims fail for the independent reason that a lawfully operating industrial emitter cannot interfere with the enjoyment of private property to give rise to a claim for trespass. *See Ga.-Pac. Consumer Prods., LP v. Ratner*, 345 Ga. App. 434, 443 (2018) ("GP has not acted unlawfully in the operation of its manufacturing plant. As such, there can be no trespass.") (physical precedent only). In *Ratner*, the Court of Appeals assessed whether the lawful operation of a recycled paper plant could constitute a trespass. *Id.* The plaintiff there had alleged that when a byproduct of the plant's operations (hydrogen sulfide) "mixes with moisture in the air . . . it allegedly corrodes the metal components in HVAC units, metal fixtures, main panel components, copper piping, and smoke detectors." *Id.* Despite the proof of actual property damage attributed to the industrial emissions,[36] the trial court granted summary judgment for the defendant against the plaintiff's trespass claim, and the Court of Appeals affirmed, reasoning that since it was undisputed that the plant had not operated illegally, "there can be no trespass." *Id.*

As set forth above, the record before this Court reflects that the Facility is located within and has operated for decades in a Heavy Industrial zoning district of Cobb County that specifically allows its operation and emissions of EtO as a medical device sterilizer. The record further reflects that the Facility's emission of EtO is authorized, permitted, and heavily regulated by federal and

[36] By contrast, Plaintiffs here do not allege, nor have they offered proof, that EtO has damaged their properties or fixtures in any way.

state laws, permits, and regulations. Plaintiffs have offered no evidence to dispute that governing bodies have authorized and regulated the Facility in the relevant time period[37] and have not issued any violations. Karen Hays, the Georgia EPD Air Quality Division Chief during the years at issue, testified that the Facility's emissions have been authorized by Air Quality Permits issued for the Facility by the Georgia EPD.[38] And an August 2019 Consent Order between Sterigenics and the Georgia EPD stated that "to the extent the Division can ascertain, [Sterigenics] is currently operating the Facility in compliance with the Permit and all applicable Federal and State air regulations."

With no evidence to the contrary, Plaintiffs point to several inapposite things that they claim create an issue of fact on Sterigenics' lawful operation. First, Plaintiffs cite to testimony from company witnesses and Facility records from well before the relevant time period, which, by Plaintiffs' own account, is no earlier than September 2016 for the Kurt Plaintiffs and no earlier than 2019 for the remaining Plaintiffs. *See infra* n.19. Yet Plaintiffs point to company emissions from 1986 to 2015 and the installation of various emissions controls in 1987, 1988, 1999, 2000, 2005, and 2015 to "early 2016."[39] Not only do these facts fail to prove that any of those events constituted unlawful activity, they fall clearly outside of the scope of the relevant time period at issue. Similarly, Plaintiffs point to several events or practices that they interpret as having led to "fugitive emissions" (which are expressly authorized under Georgia EPD and U.S. EPA[40]), but those instances either facially predate the relevant time period or are undated.[41] Finally, Plaintiffs assert that the mere allegation that the Facility is a nuisance is sufficient to create an "issue of fact

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[37] *I.e.*, after September 29, 2016 for the *Kurt* Plaintiffs and after January to June 2019 for the remaining Plaintiffs. *See infra* n.19.
[38] Nov. 21, 2025 Defs.' Notice of Filing, Part 7, **Ex. S**, Depo. of Karen Hays (Feb. 22, 2023) at 49:8-51:22.
[39] *See* Jan. 12, 2026 Pls.' Resp. at pp. 10-14.
[40] *See* Jan. 12, 2026 Pls.' Notice of Filing, Part 30, **Ex. X**, Depo. of Karen Hays (April 21, 2023) at 42:18-43:14.
[41] *See* Jan. 12, 2026 Pls.' Resp. at pp. 14-18.

for a jury to resolve the alleged violations" that *Plaintiffs* are alleging but that no regulator has ever found.[42] Under that circular logic, the mere allegation of a nuisance would dissolve the protections Georgia courts have afforded to regulatorily compliant, lawfully operating companies. No Georgia court has interpreted Georgia's environmental regulations, and specifically the general duty clause of Ga. Comp. R & Regs. 391-3-1-.02[2][a][1]'s (relied on by Plaintiffs[43]), as open to the interpretation and enforcement of a jury to override the decisions of the regulators charged with enforcing those rules. The Court declines to so expand Georgia law.

As such, the Court finds there are no issues of material fact to preclude summary judgment and Defendants' Motion for Summary Judgment on Plaintiffs' **TRESPASS** claims is **GRANTED**.

D. **Nuisance**

As is required to prevail in trespass, Georgia law provides that to prove a violation of a property interest under Georgia nuisance law, "a physical invasion" of property is also "generally necessary." *Jordan v. Ga. Power Co.*, 219 Ga. App. 690, 695 (1995). Georgia nuisance law holds that invisible gasses in the atmosphere "merely moving across the surface of the [Plaintiffs'] property" does not constitute a physical invasion to property sufficient to state a nuisance claim. *Hammond v. City of Warner Robins*, 224 Ga. App. 684, 691 (1997). The Court in *Hammond* distinguished between situations showing evidence that a gas is "trapped into the very body of the property" (as was measured and shown in the *Hammond* case) and situations where gas was

[42] *See id.* at pp. 18-19 (arguing, "In essence, the permit incorporates Georgia nuisance law when it states that the holder of the permit can not cause injury to others by its emissions").
[43] *See* Jan. 12, 2026 Pls.' Resp. at p. 18.

"*merely moving across the surface of the property.*" *Id.* at 691 (emphasis added). The former are actionable in nuisance, but the latter are not.

However, unlike trespass claims, Georgia nuisance law provides an additional avenue by which nuisance claims may proceed even in the absence of evidence of physical invasion to property. In those cases, certain claimed nuisances that impair the landowner's enjoyment of his property can constitute actionable nuisances. *See Austin*, 108 Ga. 671 at 685 ("If . . . the liability for damages caused by smoke and noise can not be based upon the theory of a physical invasion, it must be governed by the law of nuisance"). Those non-physical impacts can include activities which create extremely bright lights, loud noises, noxious odors, smoke, or other airborne emissions. *See Coker v. Birge*, 9 Ga. 425, 428 (1851) ("It is sufficient if it produces that which is *offensive to the senses*, and which renders the enjoyment of life and property uncomfortable." (emphasis added)). But in order for noise, odors, smoke, or other airborne emission to be actionable in the absence of an invasion or injury to property, Georgia law requires the claimed nuisance to render the property "specially uncomfortable or inconvenient, or to materially interfere with the ordinary comfort of human existence." *Holman v. Athens Empire Laundry Co.*, 149 Ga. 345, 350-351 (1919). In other words, if there is no tangible injury to property, to state a claim for nuisance, a plaintiff must present evidence that the air impurity causes "*physical* discomfort, as detracts sensibly from the ordinary enjoyment of life." *Id.* at 351 (emphasis added).

1. No Evidence of Physical Invasion to Property

As discussed above, the record here shows no soil testing, air sampling, water testing, or any other form of ecological testing at Plaintiffs' properties demonstrating any form of physical invasion by the Facility's emissions. Plaintiffs have not presented any expert testimony or other evidence showing invasion, impact, or damage to their property structures or land. As the Court

found in § III.C.1. above, Plaintiffs' evidence shows, at most, that colorless, odorless, gaseous EtO is blown by the wind from the Facility in the atmosphere above Plaintiffs' properties and does not bioaccumulate in soil, groundwater, or vegetation. That distinguishes EtO from the actionable invasion of methane gas in *Hammond*, where the plaintiff could demonstrate with scientific proof that measurable amounts of methane gas had been "trapped" in the subsurface of that plaintiffs' real property. *Hammond*, 224 Ga. App. at 691. No such physical invasion of EtO has been, nor can be, shown by Plaintiffs here. Gas or emissions "merely moving across the surface of the property" does not equate to physical invasion actionable in nuisance. *Hammond*, 224 Ga. App. at 691. *Hammond* controls to preclude Plaintiffs' nuisance claim to the extent it is based on an alleged physical invasion.

2. No Evidence of Impact to Senses

Plaintiffs' nuisance claims also fail under the alternative evidentiary basis because there is no record evidence that Plaintiffs suffered from physical discomfort as a result of the Facility's EtO emissions blown by the wind into and out of the air above their properties. Similarly, there is no evidence that Plaintiffs ever saw, heard, smelled, tasted, or felt the EtO emissions in the atmosphere above their properties. Rather, it is undisputed that environmental levels of EtO are undetectable to the human senses.[44] And Plaintiffs' Complaints aver that EtO "is an odorless and colorless" gas.[45] There is no evidence in the record that the Facility's EtO emissions was "offensive to the senses" and "sensibly" detracted from Plaintiffs' use of their properties as required by *Coker*, 9 Ga. at 428, and *Holman*, 149 Ga. at 351. Indeed, the Plaintiffs' own averments

[44] *See* Nov. 21, 2025 Defs.' Cons. Rule 6.5 Statement at § II. ¶ 10 (uncontroverted).
[45] *Kurt* Am. Compl. at ¶ 50; *Crawford* Compl. at ¶ 50, *Campbell* Compl. at ¶ 50, *Measel* Compl. at ¶ 48, *Ford* Compl. at ¶ 45; *Barrow* Am. Compl. at ¶ 45; *Goodhew* Am. Compl. at ¶ 45; *Kennison* Compl. at ¶ 46; and *San Miguel* Am. Compl. at ¶ 46.

make clear that EtO has had *no sensory impact* on Plaintiffs at their properties. Therefore, Plaintiffs' nuisance claims fail as a matter of law.

3. No Evidence of Unlawful Operations

As with their trespass claims, Plaintiffs' nuisance claims fail for the independent reason that the Facility has been, at all times relevant to these cases, properly zoned and lawfully operated. Under long-standing Georgia law, "'that which the law authorizes to be done, if done as the law authorizes, cannot be a nuisance. Thus, where the act is lawful in itself, it becomes a nuisance only when conducted in an illegal manner to the hurt, inconvenience or damage of another.'" *Anderson v. Atlanta Comm. for the Olympic Games, Inc.*, 261 Ga. App. 895, 901 (2003) ("*Anderson v. ACOG*") (quoting *Mayor of Savannah v. Palmerio*, 242 Ga. 419 (1978)); *see also City of Douglasville v. Queen*, 270 Ga. 770, 771 (1999)). Applying this rule, Georgia appellate courts have held repeatedly that an activity occurring legally *in a zoning district that authorizes the activity* cannot constitute a nuisance. *See, e.g., Kempton v. S. Flavor Real Estate, L.P.*, 362 Ga. App. 137, 138 (2021).

As discussed above, the record before this Court reflects that the Facility is located within and has operated for decades in a Heavy Industrial zoning district of Cobb County that allows its operation and EtO emissions as a medical device sterilizer. The record further reflects that the Facility's emission of EtO is authorized, permitted, and heavily regulated by Cobb County, federal, and state laws, permits, and regulations. There is no evidence of any finding by the Georgia EPD or any other regulatory body that the Facility is or has ever been operating unlawfully or in violation of its permit. As discussed in § III.C.2. above, Plaintiffs have provided no evidence creating a genuine issue of material fact on the Facility's proper zoning and lawful operations throughout the relevant time period. As such, Plaintiffs' nuisance claims fail independently based

on the law set forth in *Anderson v. ACOG*, 261 Ga. App. at 901, *Mayor of Savannah*, 242 Ga. 419, and related Georgia case law.

The Court thus finds there are no issues of material fact to preclude summary judgment and Defendants' Motion for Summary Judgment on Plaintiffs' **NUISANCE** claims is **GRANTED**.

E. Negligence

Like nuisance and trespass, a property-based negligence claim requires physical damage to the property at issue. Without that, Plaintiffs' negligence claims are barred by Georgia's economic loss rule, which dictates that "a plaintiff can recover in tort only those economic losses resulting from injury to his person or damage to his property." *GE v. Lowe's Home Ctrs., Inc.*, 279 Ga. 77, 78 (2005); *see also Home Depot U.S.A., Inc. v. Wabash Nat'l Corp.*, 314 Ga. App. 360, 366 (2012) ("In the present case, there is no evidence that anyone suffered physical injury or that any property was damaged other than the trailers themselves as a result of Wabash's alleged negligence; hence, the economic loss rule barred Home Depot's tort claims . . . ."). This longstanding principle of Georgia law barred property claims in *Remax the Mountain Co. v. Tabsum, Inc.*, 280 Ga. App. 425, 427 n.6 (2006) (affirming trial court's dismissal of negligence claim under Georgia's economic loss rule limiting tort claims to scenarios where there is an injury to person or damage to property).

As discussed above, Plaintiffs assert no physical property damage here; they exclusively claim economic damages for alleged loss of use and diminution in value of their properties. Plaintiffs' failure to show a physical invasion to state a claim for nuisance or trespass under Georgia property law prevents advancing a property-based action under a "negligence" theory.

The Court thus finds there are no issues of material fact to preclude summary judgment and Defendants' Motion for Summary Judgment on Plaintiffs' **NEGLIGENCE** claims is **GRANTED**.

F. Plaintiffs' Claimed Harm

In the absence of proof of a physical invasion or sensory impact, Plaintiffs' trespass, nuisance and negligence claims fail. These claims fail for the independent reason that the key harm Plaintiffs assert — *i.e.*, that Facility operations causing emissions of EtO have caused diminution in their property value due to "market fear" or stigma and has deprived Plaintiffs of use and enjoyment of their properties due to "fear" of elevated health risks — is unrecoverable as a matter of law. Georgia law precludes recovery of such harms under any legal theory.

1. Diminution of Property Values Due to Economic Stigma

Plaintiffs claim that their properties were devalued because of "market fear" surrounding the Facility and its EtO emissions following media coverage of the Facility in summer 2019.[46] However, the Georgia Court of Appeals has held that "stigma to realty" can be a component of damages in a property action only "when there exists a minimum physical invasion through nuisance[.]" *Hammond*, 224 Ga. App. 684, 690 (1997). Without evidence of such physical invasion, "Stigma to realty, in and of itself, is too removed and speculative to be a damage . . . ." *Id.*; *see also J. N. Legacy Grp. v. City of Dall.*, 322 Ga. App. 465, 485 (2013) ("[T]he mere possibility or potential for bacterial contamination is insufficient to state a claim to damages for a continuing, abatable nuisance."). Because there has been no physical invasion here, Georgia law precludes recovery of any damages for alleged "market fear" or stigma.

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[46] *See Kurt* Am. Compl. at ¶ 142 ("As a proximate result of *market fear* of EtO from the Sterigenics Smyrna Facility, Plaintiffs suffered lost value to their property." (emphasis added)). *See also Crawford* Compl. at ¶ 133; *Campbell* Compl. at ¶133; *Measel* Compl. at ¶133; *Ford* Compl. at ¶ 130; *Barrow* Am. Compl. at ¶130; *Kennison* Compl. at ¶131; *Goodhew* Am. Compl. at ¶ 130; *San Miguel* Am. Compl. at ¶ 131 (all with identical allegations).

2. Loss of Enjoyment of Property Due To Fear of Possible Future Harm

Plaintiffs' claims for loss of enjoyment of property due to "concerns" and "fear" of increased risk of possible future cancer are also too remote and speculative to be cognizable under Georgia statutes and case law. O.C.G.A. § 51-12-8 provides: "If the damage incurred by the plaintiff is only the *imaginary* or *possible result* of a tortious act or if other and contingent circumstances preponderate in causing the injury, such damage is too remote to be the basis of recovery against the wrongdoer." (emphasis added). Applying this bedrock legal principle, the Georgia Court of Appeals affirmed the grant of summary judgment to a corporate defendant on plaintiffs' effort to recover for "increased risk of cancer to which [plaintiff] children had been exposed" from a chemical used in termite treatments in the home. *Boyd v. Orkin Exterminating Co.*, 191 Ga. App. 38, 40 (1989) (overruled on other grounds). Even with record evidence that the plaintiffs' blood showed measured levels of metabolites indicative of exposure to the chemical at issue, the Court of Appeals held that "absent any indication that the presence of these metabolites *had caused or would eventually cause* actual disease, pain, or impairment of some kind, this testimony must be considered insufficient to support an award of actual damages in any amount." *Id.* at 39, 40 (emphasis added); *see also Jefferson v. Hous. Hosps.*, Inc., 336 Ga. App. 478, 486-87 (2016) ("appellants have never been diagnosed with breast cancer, and any emotional distress attributable to mistrust of the mammogram procedure *or fear of a misdiagnosis in the future is not cognizable in damages*") (emphasis added); *Russaw v. Martin*, 221 Ga. App. 683, 686 (1996) (recovering damages for a "*generalized fear of contracting disease*" was "per se unreasonable as a matter of law") (emphasis added).

Specifically in the property law context, Georgia law has long made clear that "mere apprehension of injury" is insufficient to support a claim for fear of possible future harm to

constitute a nuisance. *Thrasher*, 178 Ga. at 519 (finding no nuisance to the extent the plaintiffs' claim was based on fear of airplanes from the defendant's airport crashing over his property because "[t]he petition show[ed] nothing more than a mere apprehension of injury"). *Thrasher* reiterated longstanding Georgia law that to state a nuisance claim, "the consequences [of the feared harm] must be to a reasonable degree certain." *Id.* While Plaintiffs have testified to and averred their concerns about increased risk of cancer, there is no expert opinion or other evidence showing that the alleged feared, possible future harm is "to a reasonable degree certain" to occur.[47] *Thrasher*, 178 Ga. at 519. And there is no evidence in the record that the Facility's EtO emissions, even if they were blown by the wind into and out of the air above their properties, "caused or would eventually cause actual disease." *Boyd*, 191 Ga. App. at 40.

Plaintiffs' reliance on select regulatory risk assessments[48] is unavailing. Regulatory risk assessments by public agencies are based on "protective," "worst-case" cost-benefit analyses, which are incompatible with assessing actual causation in a tort cases. *See McClain v. Metabolife Intl., Inc.*, 401 F.3d 1233, 1249-50 (11th Cir. 2005) (confirmed as binding Georgia law for causation in toxic tort cases in *Sterigenics U.S., LLC v. Mutz*, 923 S.E.2d 176, 181 (Ga. App. 2025)); *see also Williams v. Mosaic Fertilizer, LLC*, 889 F.3d 1239, 1247 (11th Cir. 2018) (holding that "EPA has expressly stated that the dose-response assessments in IRIS are not suited to

[47] Cancer risk is decidedly a subject that would require expert testimony, but Plaintiffs' only expert on cancer causation or risk, Dr. Leslie Stayner, provided no opinion whatsoever applicable to any of the Plaintiffs, on the properties at issue, the levels of the Facilities' EtO emissions, or the amounts of EtO that could have blown through the air to those areas (let alone consideration of Plaintiffs' actual exposure levels, locations, or duration). Regardless, after Defendants' argument at the March 9, 2026 hearing on their Motion to Exclude Dr. Stayner under O.C.G.A. § 24-7-702 for lack of relevance and fit, Plaintiffs withdrew Dr. Stayner as an expert witness for the liability phase of these cases and stated an intention to offer him only in a punitive damages phase (a purpose for which he had not been previously disclosed). *See infra* § II.B. As such, even if Georgia law allowed recovery of damages for fear of increased cancer risk, there is no evidence, with or without Dr. Stayner's opinion, that Plaintiffs' fears of getting cancer from living near the Facility had any factual basis.

[48] *See, e.g.*, Jan. 12, 2026 Pls.' Resp. at pp. 19-20 (asserting that the EPA's National Air Toxics Assessment ("NATA") report "revealed elevated cancer risks of the people living in census tracts around the plant").

predicting the incidence of exposure-caused disease in humans"). Even so, the theoretical regulatory risk assessments on which Plaintiffs rely are inapplicable to Plaintiffs for a number of reasons (including location and duration) and in any event, cannot be read to support that contracting cancer is "to a reasonable degree certain" for the Plaintiffs or anyone else in the area.[49]

G. Punitive Damages

Plaintiffs' claims for punitive damages are not stand-alone causes of action but are derivative of their substantive claims for trespass, nuisance, and negligence. *See Irvin Int'l, Inc. v. Riverwood Int'l Corp.*, 299 Ga. App. 633, 639 n.17 (2009) ("punitive damages and attorney fees flowing from a specific tort are not independent causes of action"). The Court has determined that Plaintiffs have failed to prove the elements required to maintain their underlying claims for trespass, nuisance and negligence, and there are no issues of material fact for the jury to consider as to those claims. Since those underlying claims cannot survive summary judgment, Plaintiffs' claims for punitive damages similarly cannot stand. *See DaimlerChrysler Motors Co. v. Clemente*, 294 Ga. App. 38, 52 (2008) (claim for punitive damages fails when underlying causes of action are dismissed).

Accordingly, Defendants' Motion for Summary Judgment on **PUNITIVE DAMAGES** is **GRANTED**.

IV. ORDER

For the foregoing reasons, it is hereby ORDERED that:

1) Defendants' Motion to Exclude Samantha Sawyer, Ph.D. is **MOOT**;

2) Defendants' Motion to Exclude Leslie Stayner, Ph.D. is **GRANTED**;

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[49] *See* Nov. 21, 2025 Defs.' Notice of Filing, Part 7, **Ex. S**, Depo. of Karen Hays (Feb. 22, 2023) at 102:18-103:11 (explaining that the EPA's theoretical excess cancer risk assessment equates to a "ten to the minus six" (or 1/1,000,000) chance for someone residing in the relevant census tracts for 70 years).

3) Defendants' Motion to Exclude Ranajit Sahu, Ph.D., CEM is **GRANTED**;

4) Defendants' Motion for Summary Judgment is **GRANTED**.

SO ORDERED this 5 day of Nov., 2026.

DIANA M. SIMMONS, JUDGE
COBB COUNTY STATE COURT

PROPOSED ORDER PREPARED BY:

ALSTON & BIRD LLP

By: */s/ Christina Hull*

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CERTIFICATE OF SERVICE

This is to certify that I have this date served copies of the within and foregoing Order by mailing same (through the Cobb County Mail System, and/or through the PeachCourt Electronic Filing Portal) to the parties in this case as follows:

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This 6th day of November, 2026.

Carrie A. Bricker

Carrie A. Bricker
Judicial Assistant to Judge Diana Simmons
State Court of Cobb County