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Superior Court of California,
County of Alameda

12/04/2024 at 04:53:54 PM

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 CENTER FOR ENVIRONMENTAL
15 HEALTH, a non-profit corporation,

16 Plaintiff,

17 v.

18 AERODYNAMIC AVIATION, *et al.*,

19 Defendants.

Case No. RG-11-600721

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF CENTER FOR
ENVIRONMENTAL HEALTH'S
MOTION TO ENFORCE AND MODIFY
CONSENT JUDGMENT**

Date: January 28, 2025

Time: 1:30 p.m.

Dept: 21

Action Filed: October 20, 2011

Reservation ID: 690015831804

[Filed Concurrently with Notice of Motion and
Motion, and Declarations of Mark N. Todzo,
Robert Emmett, and Harry Freitas]

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I. INTRODUCTION

Almost ten years ago, this Court entered a judgment requiring the defendants – four distributors (“Distributor Settling Defendants”) of leaded aviation fuel and twenty-six fixed base operators and other businesses that sold the leaded aviation fuel at airports in California (“FBO Settling Defendants”) (together, the “Settling Defendants”)¹ – to sell the aviation gasoline with the lowest lead concentration that is approved for use and commercially available for sale in California. Nevertheless, now that an unleaded fuel meets both these criteria, Distributor Settling Defendants refuse to sell it. By this motion, plaintiff Center for Environmental Health (“CEH”) requests that the Court order Distributor Settling Defendants to comply with the terms of the judgment and to penalize them for their blatant disregard thereof. CEH also requests that the Court modify the Consent Judgment to reduce the maximum permissible lead concentration of aviation fuel to be sold by Settling Defendants.

In 2014, CEH entered into a Consent Judgment with Settling Defendants to resolve CEH’s case alleging that Settling Defendants exposed individuals living near airports to lead and lead compounds (collectively, “Lead”) without providing them with warnings as required by Proposition 65.² The Consent Judgment requires Settling Defendants to provide clear and reasonable warnings and, as relevant to this motion, to sell the aviation fuel with the lowest concentration of Lead that is approved for use and commercially available in California. Two years ago, an unleaded brand of aviation fuel was approved for use in nearly all piston-engine airplanes and associated engine models. That fuel, G100UL, is now being mass-produced and is not only available for shipment to and sale in California, it is presently being sold in California.

¹ Distributor Settling Defendants and FBO Settling Defendants that are subject to this Motion are identified on Exhibit 3, attached to the accompanying Declaration of Mark N. Todzo (“Todzo Decl.”).

² The Court entered the Amended Consent Judgment in this matter on December 9, 2014. The Amended Consent Judgment is referred to herein as the “Consent Judgment. A true and correct copy of the Consent Judgment minus the exhibits that are not relevant to this motion is attached as Exhibit 1 to the Todzo Decl.

1 Nevertheless, and despite months of urging from CEH, the Settling Defendants have refused to
2 ship, offer for sale and/or sell G100UL.

3 Accordingly, CEH brings this motion to: (1) remedy Distributor Settling Defendants’
4 failure to comply with their obligations under the Consent Judgment entered by the Court on
5 December 9, 2014; and (2) modify the terms of the Consent Judgment as to all Settling
6 Defendants to adjust the maximum permissible lead concentration in Avgas downward, as
7 permitted by the Consent Judgment. A redlined copy of CEH’s proposed modifications to the
8 Consent Judgment is attached as Exhibit 2 to the Todzo Decl.

9 **II. FACTUAL BACKGROUND**

10 Lead is a highly toxic metal that is known to the State of California to cause cancer and
11 reproductive harm including developmental harm to the fetus and children. Todzo Decl., ¶ 3.
12 Indeed, young children are especially susceptible to the toxic effects of Lead. *Id.* There is no
13 safe level of exposure to Lead, and studies have linked even low levels of Lead in children’s
14 blood to detrimental effects on their IQ, concentration, and academic performance, amongst other
15 impacts. *Id.* Some lead-related cognitive effects in children may be irreversible and continue into
16 adulthood. *Id.* Over the past fifty years, in an effort to reduce the well-known effects of Lead
17 exposures, the United States has implemented a series of policies that have banned Lead in
18 products such as paint, plumbing, food cans, and automotive gasoline. Todzo Decl., ¶ 4.
19 Notably, Lead in automotive gasoline has been completely banned for almost three decades. *Id.*

20 Yet, Lead is still used in aviation fuel for piston-engine aircraft, and it is the
21 last remaining legally permissible source of widespread Lead emissions. This fuel remains
22 responsible for approximately 470 tons of Lead pollution in the United States every year, which
23 constitutes 70% of Lead emissions entering the air annually. Todzo Decl., ¶ 5. Lead is emitted
24 at and near airports where leaded aviation fuel is used, resulting in elevated Lead concentrations
25 in these locations. *Id.* Studies have shown that children who live near airports where leaded
26 aviation fuel is used have blood Lead levels that are higher than children who do not. *Id.* at ¶ 6.
27 According to a 2021 study on Lead exposures near one airport in California, children living
28 within a half-mile of the airport had approximately 21% higher blood Lead levels compared with

1 children who lived farther away. Todzo Decl., ¶ 6. That study also found that during periods of
2 peak air traffic at the airport, the blood Lead levels of these children were nearly double the levels
3 observed during the height of the leaded water crisis in Flint, Michigan. *Id.* In October 2023, the
4 U.S. Environmental Protection Agency found that Lead emissions from aircraft that use leaded
5 aviation fuel are a danger to public health and welfare. *Id.*

6 The hazards associated with use of leaded aviation fuel have spurred demand for unleaded
7 aviation fuel. Although the Distributor Settling Defendants have refused to distribute the only
8 unleaded fuel currently available for use, a number of jurisdictions in California that run the local
9 airports are purchasing G100UL and selling it to the public. Declaration of Harry Freitas
10 (“Freitas Decl.”), ¶¶ 13, 15; Todzo Decl., ¶ 22.

11 **A. The Action and The Consent Judgment.**

12 Prior to this Action, none of the entities responsible for the distribution and sale of leaded
13 aviation fuel provided any warnings regarding the significant Lead exposure caused by their
14 operations to the individuals living near the airports where such fuel is used and sold. Todzo
15 Decl., ¶ 9. To remedy that failure, CEH filed this action in 2011 under Proposition 65 (The Safe
16 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
17 25249.5, et seq.) (“Proposition 65”). Todzo Decl., ¶ 8. CEH’s complaint alleged that Settling
18 Defendants failed to warn individuals in California that they are being exposed to Lead through
19 the distribution, sale and/or use of leaded aviation fuel (“Avgas”).

20 Following a number of years of litigation, as well as lengthy and comprehensive
21 negotiations, the parties were able to resolve CEH’s claims by way of a Consent Judgment, which
22 the Court entered on December 9, 2014. Todzo Decl., ¶¶ 10, 12. The Consent Judgment
23 “contemplates two levels of injunctive relief – the provision of warnings and measures to reduce
24 the amount of Lead emitted at airports in California.” Todzo Decl., Exh. 4 at 7. More
25 specifically, CEH and Settling Defendants agreed to resolve CEH’s claims by: “(a) requiring
26 clear and reasonable warnings via the posting of signs at the airport locations . . . ; and (b)
27 ensuring that Settling Defendants distribute and sell the airplane fuel with the lowest lead content
28 that is Commercially Available (as defined below).” Consent Judgment § 1.10. While the term

1 “commercially available” ordinarily means “able to be bought and sold by people,”³ the parties
2 recognized that it might not be fair to condition a requirement for selling a particular fuel on the
3 availability for purchase alone of an approved unleaded or lower lead fuel. For example, if an
4 unleaded fuel were approved for use but only 100 gallons of it had been manufactured, that fuel
5 would be incredibly expensive and would not be able to meet the demand of any Settling
6 Defendant, let alone all of them. Accordingly, the Parties negotiated a special meaning for
7 whether a lower lead or unleaded fuel is “Commercially Available,” which is defined to mean
8 that such fuel is both “approved for aviation use” and “available to that Settling Defendant on a
9 consistent and sustained basis at prices and on terms, in quantities and at times sufficient to meet
10 the needs of its customers.” Consent Judgment § 2.3.1(a).

11 The Consent Judgment further prohibits each Settling Defendant from “purchas[ing] for
12 resale in California, distribut[ing] for sale in California, or sell[ing] in California Avgas that
13 contains a lead concentration of more than 0.56 grams of lead per liter of fuel.” Consent
14 Judgment § 2.3.1(a). This 0.56 concentration is the maximum concentration of Lead that is
15 permitted in 100LL (also referred to as 100 octane “low lead”). *Id.* at § 1.6.

16 Nearly ten years ago, when the Consent Judgment was executed, 100LL was the only
17 form of Avgas that was Commercially Available for sale in California. *See* Consent Judgment §
18 1.6. Although there was an unleaded fuel that could be used in some aircraft ten years ago – an
19 automotive gasoline known as “Mogas” – high performance aircraft could not use this fuel
20 because Mogas’ octane level was too low. *Todzo Decl.*, ¶ 13; *see also* Consent Judgment § 1.7.
21 High performance piston engine aircraft make up only approximately one-fourth of the piston
22 engine fleet. *Id.* However, these high-performance aircraft require a high octane Avgas to
23 operate safely, and consume approximately 70% of the total amount of 100LL sold annually. *Id.*
24 Also during that time, a “newer form of Avgas, known as 100VLL for ‘very low lead’” had been
25 approved for use by the Federal Aviation Administration (“FAA”) but was not yet “commercially
26

27 _____
28 ³ *See, e.g., commercially available*, Cambridge Dictionary, accessible at:
<https://dictionary.cambridge.org/us/dictionary/english/commercially-available>.

1 available for sale in California.” Consent Judgment § 1.6. As such, CEH could not require
2 Settling Defendants to reduce or eliminate Lead exposures by selling and/or distributing a lower
3 Lead or unleaded Avgas at that time. *See* Todzo Decl., ¶ 13.

4 There was, however, recognition on the part of the parties that at some point there may be
5 a lower Lead or unleaded fuel that could be approved for use and Commercially Available in
6 California. Accordingly, the parties included two provisions regarding lower Lead fuels. The
7 first provides that once a “lower lead alternative to 100LL Avgas that is approved for aviation use
8 becomes Commercially Available for the California market, any Party may file a motion to
9 modify” this 0.56 grams per liter of Lead concentration downward. Consent Judgment § 2.3.1(d).
10 A party may file such motion on the basis that “Avgas with a lead concentration at a level of 0.45
11 is more than 10 percent over the lead concentration level in fuel that is approved for aviation and
12 that is Commercially Available such that the level should be adjusted downward.” *Id.* The party
13 seeking modification is required to provide written notice to all affected parties and meet and
14 confer with all interested parties for at least 30 days before filing any such motion. *Id.* The
15 second requires Settling Defendants to “(a) distribute and sell airplane fuel with the lowest Lead
16 content that is commercially available, and (b) make unleaded fuel available to aircraft that are
17 capable of using such fuel.” Todzo Decl., Exh. 4 at 1; *see also* Consent Judgment § 2.3.

18 The Consent Judgment vests the Court with continuing jurisdiction to implement and
19 modify its terms. Consent Judgment, § 10.5. Finally, the Consent Judgment requires Settling
20 Defendants to pay CEH’s reasonable attorneys’ fees and costs if CEH is the prevailing party in
21 any motion or other proceeding to enforce violations of the Consent Judgment. *Id.* at §§ 3, 9.1.

22 **B. An Approved Unleaded Avgas is Now Commercially Available and Being**
23 **Distributed and Sold in California But Not by Settling Defendants.**

24 On September 1, 2022, the FAA approved an unleaded Avgas, G100UL, for use in nearly
25 all piston-engine aircraft. Todzo Decl., ¶ 14. The FAA approval of G100UL for use in all of the
26 aircraft engines and airplanes, along with the explicit language in the FAA approved production
27 specification for G100UL, documents that this high-octane unleaded aviation gasoline may be
28

1 produced, distributed and safely used throughout the country.⁴ Todzo Decl., ¶ 17. Notably,
2 G100UL’s approved use, production, and distribution requirements are essentially the same as
3 those for 100LL. *Id.* More specifically, the FAA approved specification for G100UL states:

4 . . . the FAA has, in fact, made a determination that this Specification and
5 Standard for a High Octane Unleaded Aviation Gasoline provides, not
6 only an equivalent, but, in fact, an enhanced level of quality control of the
7 properties and performance of the aviation gasoline produced under this
8 specification and distributed throughout the supply chain, as compared to
9 the traditional governmental, military, or industry voluntary consensus
10 based standards which have previously defined and controlled the
11 production and distribution of aviation gasolines used for spark ignition
12 piston engines.

13 *Id.* Additionally, the FAA approved commingling G100UL and 100LL and the use of
14 commingled G100UL and 100LL in the airplanes and engines. *Id.* This means that G100UL and
15 100LL can be safely mixed together in a single fuel tank. *Id.* at ¶ 19. Moreover, because
16 G100UL and 100LL are both 100 octane fuels, any resulting intermixed fuel may still be used in
17 high performance aircraft that require higher octane Avgas. *See id.* As a significant portion of
18 the fleet must use 100 octane fuel, FBOs will be able to readily meet the demands of all of their
19 customers by selling G100UL. *See Id.* at ¶ 13.

20 The same cannot be said for other lower octane unleaded Avgas currently on the market,
21 such as UL94 (a 94-octane fuel). Indeed, as the FBO Settling Defendants have acknowledged:

22 Many aircraft engines are also incompatible with UL94 and simply require a
23 higher octane fuel. Thus, the demand is low because many aircraft simply cannot
24 use UL94. In fact, about two-thirds of all avgas purchases are made by aircraft that
25 cannot use UL94 because they require a fuel with 100 octane.

26 Todzo Decl., Exh. 15 at 5. As with Mogas nearly ten years ago, wherein the parties
27 acknowledged that “FBOs cannot offer Mogas in lieu of Avgas but only in addition to Avgas,”
28 FBOs cannot offer UL94 in lieu of 100LL, only in addition to it. Consent Judgment § 1.7.
G100UL eliminates these concerns.

⁴ CEH is aware of at least one additional unleaded Avgas that has been approved by the FAA, 100R, though that fuel is currently only approved for a small number of aircraft and associated engine models. Todzo Decl., ¶ 16.

1 In April 2024, Vitol Aviation Company (“Vitol”), a company involved in aviation
2 gasoline production and wholesale, commenced large-scale production of G100UL. *See*
3 Declaration of Robert Emmett (“Emmett Decl.”), ¶ 1. At present, Vitol has produced over one
4 million gallons of G100UL which is available for sale and distribution to the California market.
5 *Id.* at ¶ 5. Vitol has the capacity to continuously and consistently supply G100UL to the entire
6 California market. *Id.* at ¶ 6. Additionally, Vitol can facilitate the distribution of G100UL to any
7 FBO or fuel distributor in California. *Id.* at ¶ 6. Vitol has proactively contacted over 100 airports
8 in California to inform them that G100UL is available for sale and distribution, and that Vitol is
9 ready and willing to contract with these airports for the sale of G100UL. *Id.* at ¶ 11.

10 A number of airports in California have begun purchasing G100UL and are offering it for
11 sale to pilots and aircraft owners. On October 16, 2024, the County of Santa Clara executed a
12 contract with Vitol for the purchase and delivery of G100UL to two County operated airports:
13 Reid-Hillview airport in San Jose, California and San Martin airport in San Martin, California.
14 Freitas Decl., ¶ 11. Prior to contracting for the purchase of G100UL, the County reviewed the
15 relevant FAA approvals for G100UL, as well as information from General Aviation
16 Modifications, Inc. (“GAMI”), the creator of G100UL, Vitol, and other sources regarding the
17 safety and suitability of G100UL. *Id.* at ¶ 19. Based on this information, the County determined
18 that G100UL was compatible with the County’s fueling infrastructure and equipment and
19 approved by the FAA as safe for use in a virtually all the aircraft that use Reid-Hillview Airport.
20 *Id.* On October 28, 2024, the County received its first approximately 7,589-gallon truckload of
21 G100UL. *Id.* at ¶ 13. On October 30, 2024, the County began offering G100UL for sale at Reid-
22 Hillview airport at a price of \$6.99 per gallon. *Id.* at ¶ 15. This \$6.99 price point is comparable
23 to, and in some cases less than, the price of 100LL at various airports near Reid-Hillview. *Id.* at ¶
24 16. The County paid less than 5.50 per gallon for G100UL, including all taxes, fees, and
25 transportation costs. *Id.* at ¶ 13.

26 To date, Santa Clara has sold over 2,800 gallons of G100UL without any adverse safety
27 incidents whatsoever. *Id.* at ¶ 20. A second transport truck load of approximately 7,387 gallons
28 of G100UL has already been delivered to Reid Hillview airport. *Id.* at ¶ 18. Moreover, Vitol has

1 now contracted with at least one other airport in California that will be purchasing and selling
2 G100UL. Emmett Decl., ¶ 10. The unleaded fuel is being distributed from Vitol’s manufacturing
3 facility to California by AEG Fuels. Emmett Decl., ¶ 12.

4 On November 12, 2024, the city of Watsonville voted to begin purchasing G100UL for
5 sale at its local airport. Todzo Decl., ¶ 23 and Ex. 9. In doing so, Watsonville determined that
6 specification and standard for G100UL provides “an enhanced level of quality control of the
7 properties and performance” as compared to other aviation fuel. *Id.* On November 14, 2024,
8 Watsonville and Vitol entered into a contract for the provision of G100UL. Emmett Decl., ¶ 10.
9 Shortly thereafter, Vitol facilitated the transportation of approximately 7,500 gallons of G100UL
10 to Watsonville’s local airport. *Id.* Notwithstanding the growing distribution and use of this
11 approved unleaded fuel, Settling Defendants have refused to distribute or sell G100UL.

12 **C. Meet and Confer Regarding G100UL and Distributor Settling Defendants**
13 **Refusal to Distribute and Sell Such Fuel.**

14 On December 18, 2023, CEH sent its first letter to Distributor Settling Defendants,
15 notifying them that G100UL Avgas would be available to each Distributor Settling Defendant for
16 sale and distribution by early 2024. Todzo Decl., ¶ 24. In that letter, CEH informed each
17 Distributor Settling Defendant of its obligation under the Consent Judgment to distribute G100UL
18 as the Avgas with lowest concentration of lead approved for aviation use that is Commercially
19 Available to it in California. *Id.* CEH wanted to make sure that Distributor Settling Defendants
20 would have sufficient time to prepare for the distribution of this unleaded fuel. Although
21 G100UL had been approved for use for over a year and there was a small amount of the fuel
22 available for purchase, CEH took a very conservative approach regarding whether G100UL was
23 “Commercially Available” and did not demand that Distributor Settling Defendants begin selling
24 G100UL at that time.

25 Unbeknownst to CEH at the time, GAMI sent letters to Distributor Settling Defendants in
26 March 2023 informing them that Vitol would begin manufacturing G100UL on a wide scale and
27 in sufficient quantities to meet the demand of their customers, but requested a commitment from
28 the distributors that they would purchase the fuel before it undertook such an expensive endeavor.

1 Todzo Decl., ¶ 20, and Exhs. 5-8. The Distributor Settling Defendants refused to make such
2 commitment. *Id.*

3 On April 9, 2024, CEH wrote a follow-up email to Distributor Settling Defendants
4 informing them that once G100UL became available in sufficient quantities, Distributor Settling
5 Defendants would be required to distribute it pursuant to the Consent Judgment. Todzo Decl., ¶
6 25. Following Vitol’s mass production of G100UL, CEH wrote an email to Distributor Settling
7 Defendants informing them that G100UL was available for sale in sufficient quantities on May 2,
8 2024. *Id.* at ¶ 26. In that email, CEH requested that Distributor Settling Defendants confirm
9 within 30 days that each Distributor Settling Defendant would contract with Vitol for the
10 purchase and distribution of G100UL, and that each Distributor Settling Defendant begin
11 distributing G100UL by July 1, 2024. *Id.* Distributor Settling Defendants refused to distribute
12 G100UL. *Id.*

13 In response to CEH’s efforts, Distributor Settling Defendants contend they are not
14 violating the Consent Judgment and have raised a slew of hypothetical issues with respect to
15 G100UL’s “Commercial Availability” in California. Todzo Decl., ¶ 27 and Exh. 13. For
16 example, Distributor Settling Defendants claim that they are not in violation of the Consent
17 Judgment because they offer UL94 to their FBO customers, while also acknowledging that there
18 is very little demand for such fuel. Todzo Decl., Exh. 13 at 6. This lack of demand is not
19 surprising given that UL94 may not be used in a significant number of aircraft so many FBOs are
20 incapable of selling it. Todzo Decl., Exh. 15. They also challenge the FAA’s safety
21 determination regarding G100UL and argue that they will not distribute G100UL unless or until it
22 meets a safety standard issued by ASTM, a private organization. Todzo Decl., Exh. 13 at 7-9.
23 Distributor Settling Defendants also claim that recently passed federal legislation requires their
24 FBO customers to continue selling 100LL or risk violating airport grant assurance obligations,
25 therefore it does not make business sense for Distributor Settling Defendants to offer G100UL to
26 the vast majority of their customers who only have one Avgas tank. *Id.* at 9-10. Settling
27 Defendants also invoke comment sections within the legislative history of a recently passed
28 California law which completely bans unleaded Avgas by 2031 as support for their argument that

1 G100UL is not “Commercially Available” now. Todzo Decl., Exh. 12 at 4-5. Regardless, given
2 that G100UL is being distributed, sold, and safely used in California, Distributor Settling
3 Defendants’ alleged concerns and contentions are clearly misplaced and wrong.

4 On August 13, 2024, in a final effort to induce Distributor Settling Defendants to comply
5 with their obligations under the Consent Judgment without an enforcement action, CEH sent them
6 a letter again informing them that they must sell and offer for sale G100UL as the Avgas with the
7 lowest lead concentration that is approved for use and Commercially Available in California.
8 Todzo Decl., ¶ 28. In that letter, and as required by the Consent Judgment, CEH also provided
9 notice to Distributor Settling Defendants of CEH’s intent to file a motion to adjust the Consent
10 Judgment’s maximum lead concentration downward. *Id.*; *see also* Consent Judgment § 2.3.1(d).
11 On August 16, 2024, CEH sent letters to FBO Settling Defendants⁵ also informing them of its
12 intent to file such motion. Todzo Decl., ¶ 29. As with Distributor Settling Defendants, FBO
13 Settling Defendants contend that G100UL is not Commercially Available, so reducing the
14 maximum lead concentration allowable under the Consent Judgment is improper. *Id.* at 30.
15 Despite CEH’s efforts to urge Settling Defendants to comply with their obligations under the
16 Consent Judgment and/or agree to CEH’s requested modification reducing the maximum lead
17 concentration allowable thereunder, Settling Defendants refuse.

18 III. STATUTORY BACKGROUND

19 Within the past year, there have been two legislative developments with respect to the sale
20 of leaded Avgas. First, in May 2024, the FAA Reauthorization Act of 2024 (“FAA
21 Reauthorization Act”) was signed into law. Relevant here, the FAA Reauthorization Act added a
22 new FAA grant assurance⁶ provision related to the replacement of 100LL with unleaded Avgas.
23 *See* 49 U.S.C. § 47107(a)(22). More specifically, the FAA Reauthorization Act’s new grant

24 _____
25 ⁵ CEH complied with the Consent Judgment by sending these letters to each person identified in
26 the Consent Judgment to receive notice on behalf of FBO Settling Defendants. Todzo Decl., ¶
27 29. CEH received responses from some, but not all, FBO Settling Defendants. *Id.*

28 ⁶ Grant assurances are conditions and obligations placed on airport owners, sponsors, or other
organizations that accept funds from FAA-administered airport financial assistance programs.
Grant assurances are codified at 49 U.S. Code § 47107.

1 assurance precludes airport owners or operators from restricting or prohibiting the sale of 100LL
2 until *either*: (A) December 31, 2030; *or* (B) the date that an airport or retail fuel seller at such
3 airport makes available an unleaded aviation gasoline that:

4 (i) has been authorized for use by the Administrator of the Federal Aviation
5 Administration as a replacement for 100-octane low lead aviation gasoline for use in
6 nearly all piston-engine aircraft and engine models; and

7 (ii) meets either an industry consensus standard or other standard that facilitates the safe
8 use, production, and distribution of such unleaded aviation gasoline, as determined
9 appropriate by the Administrator.

10 49 U.S.C. § 47107(a)(22). The FAA Reauthorization Act’s new grant assurance therefore does
11 not prohibit airports or retail fuel sellers, such as FBOs, from exclusively selling an unleaded
12 Avgas now, provided it has been authorized by the FAA as a replacement for 100LL in nearly all
13 piston-engine aircraft and engine models, and meets an adequate safety standard.

14 Second, California Senate Bill 1193 (“SB 1193”) was signed into law in September 2024.
15 SB 1193 bans the sale of leaded avgas, but not until January 1, 2031. Specifically, SB 1193
16 prohibits airport operators and aviation retail establishments⁷ from selling, distributing, or
17 otherwise making available leaded Avgas to consumers on or after January 1, 2031. Pub. Util.
18 Code § 21711.⁸ SB 1193 broadly applies to *all* distributors of Avgas in California, and *all* FBOs
19 selling Avgas in California. *Id.* at §§ 21710-11. The law establishes the last possible date that
20 Leaded Avgas may be sold by distributors and FBOs in California; it does not prohibit these
21 entities from selling unleaded Avgas at an earlier date. *See generally* Pub. Util. Code §§ 21710,
22 *et seq.*

23 IV. ARGUMENT

24 The Consent Judgment is clear. As soon as an Avgas with a lower concentration of Lead
25 than 100LL is approved and Commercially Available for sale in California, Settling Defendants

26 ⁷ Defined as “any public or private entity that sells aviation gasoline, or offers or otherwise makes
27 available aviation gasoline, to a customer, including other businesses or government entities, for
28 use in the state.” Pub. Util. Code § 21710.

⁸ SB 1193 is to be codified at Public Utilities Code §§ 21710 *et seq.* References to SB 1193
herein will be to the code provisions to be codified.

1 must make such fuel available for sale, and any party may obtain modification of the Consent
2 Judgment to reduce the permissible Lead concentration of Avgas sold by Settling Defendants.
3 Consent Judgment ¶¶2.3.1(a) and (d). Given that there is now an unleaded Avgas that meets the
4 preconditions of approval and availability, Distributor Settling Defendants⁹ must distribute
5 unleaded fuel in California and the Consent Judgment should be modified to reduce the allowable
6 concentration of Lead in all Avgas sold by all Settling Defendants. Accordingly, the Court
7 should grant CEH's motion to: (1) require Distributor Settling Defendants to sell unleaded Avgas
8 in California; and (2) modify the Consent Judgment to reduce the permissible Lead concentration
9 in Avgas sold by Distributor Settling Defendants and purchased by FBO Settling Defendants to
10 0.013 grams of lead per liter of fuel.¹⁰

11 In addition, the Court should order Distributor Settling Defendants to reimburse CEH for
12 the \$193,162 it has spent and anticipates spending on its efforts to enforce and modify the
13 Consent Judgment. Finally, given the egregious refusal by Distributor Settling Defendants to
14 comply with the terms of the Consent Judgment by making unleaded Avgas available to its
15 customers in California, the Court should set a hearing on an order to show cause why Distributor
16 Settling Defendants should not be held in contempt of Court and to issue significant sanctions
17 against them.

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23 ⁹ CEH is not moving to enforce section 2.3.1(a) against FBO Settling Defendants at this time
24 given that the entities that they purchase fuel from, Distributor Settling Defendants, are not
25 making the fuel available to them. Although Vitol is providing distribution service directly to
26 FBOs for G100UL, given that modification of the Consent Judgment under 2.3.1(d) will result in
requiring FBO Settling Defendants to sell unleaded Avgas, enforcement under 2.3.1(a) against
FBO Settling Defendants is currently unnecessary.

27 ¹⁰ The rationale for having this requirement apply to FBO Settling Defendants' purchases of
28 Avgas rather than to the sale is to allow for the possibility that FBO Settling Defendants may mix
the newly purchased unleaded fuel with the 100LL still in their tank.

1 **A. The Preconditions for Enforcement and Modification of the Consent**
2 **Judgment Have Been Met.**

3 The enforcement and modification provisions of the Consent Judgment each include two
4 preconditions – approval and Commercial Availability – both of which have now been met. The
5 enforcement provision provides:

6 Each Settling Defendant shall purchase for resale, distribute, and sell in California Avgas
7 with the lowest concentration of lead approved for aviation use that is commercially
8 available to that Settling Defendant on a consistent and sustained basis at prices and on
9 terms, in quantities and at times sufficient to meet demands of the customers of that
10 Settling Defendant in California (“Commercially Available”).

11 Consent Judgment § 2.3.1(a). The modification provision provides:

12 At any time after 100VLL or any other lower lead alternative to 100LL Avgas that is
13 approved for aviation use becomes Commercially Available for the California market, any
14 Party may file a motion to modify the terms of Section 2.3.1(a) on the basis that either:

- 15 . . .
- 16 (b) Avgas with a lead concentration at a level of 0.45 is more than 10 percent over the lead
17 concentration level in fuel that is approved for aviation and that is Commercially
18 Available such that the level should be adjusted downward.

19 *Id.* at § 2.3.1(d). As G100UL has a maximum 0.013 grams of Lead per liter of fuel, it is
20 considerably more than 10 percent below the 0.45 Lead concentration which triggers the
21 modification provision. *See* Todzo Decl., ¶ 18.

22 These provisions are clear and unambiguous. Thus, the only questions relevant to this
23 motion are: (1) has an unleaded Avgas been approved for sale; and (2) is it Commercially
24 Available. As discussed above, the answer to both of those questions is yes.

25 First, there is an unleaded Avgas that is approved for aviation use. On September 1, 2022,
26 the FAA approved G100UL for use in nearly all piston engine airplanes. Todzo Decl., ¶¶ 14-15.
27 Thus, an unleaded Avgas, G100UL, easily meets the first requirement.

28 Second, G100UL is available to each Distributor Settling Defendant on a consistent and
sustained basis at prices and on terms, in quantities and at times sufficient to meet the demands of
the customers of each Distributor Settling Defendant in California. Over one million gallons of
G100UL have been produced by Vitol to date, which is currently available for sale and
distribution to California. Emmett Decl., ¶ 5. This is not hypothetical. Rather, G100UL is

1 currently being distributed to and sold in California. Emmett Decl., ¶¶ 9-10; Freitas Decl., ¶ 15.
2 Further, Vitol has enough capacity to consistently and continuously supply G100UL to the entire
3 California market, which includes Distributor Settling Defendants. Emmett Decl., ¶ 6. In terms
4 of pricing, in the case of Reid Hillview, Santa Clara County is able to sell G100UL at competitive
5 prices due to its ability to purchase G100UL from Vitol at over a dollar under the price at which
6 the County sells the fuel. *See* Freitas Decl., ¶ 13. Although in some cases, the price of G100UL
7 may be slightly higher than that of 100LL, the ultimate price of G100UL depends on where it is
8 sold and the local pricing decisions made by FBOs and their distributors. *See* Emmett Decl., ¶ 7.
9 It is worth noting, however, that the ultimate price of G100UL to the consumer at Reid-Hillview
10 airport is comparable to, and in some cases less than, the price of 100LL at various airports in the
11 region. Freitas Decl., ¶ 16. Finally, because G100UL is a 100 octane fuel, it meets the demands
12 of Distributor Settling Defendants' customers: FBOs. FBOs, who need to be able to offer 100
13 octane fuel for a portion of their customers, can freely mix G100UL and 100LL without the need
14 for any additional storage tank as they transition to exclusive sale of G100UL. *See* Todzo Decl.,
15 ¶ 19. Thus, an unleaded Avgas, G100UL, meets the second requirement.

16 Given that an unleaded Avgas meets both preconditions under the Consent Judgment,
17 Distributor Settling Defendants are required to distribute such fuel in California. Nevertheless,
18 Distributor Settling Defendants have refused to do so. In a misguided attempt to justify their
19 refusal, Distributor Settling Defendants hide behind imaginary and hypothetical excuses
20 regarding the Commercial Availability of G100UL, even while such fuel is being distributed and
21 sold in California. The Consent Judgment expressly authorizes the Court to put a stop to
22 Distributor Settling Defendants' flaunting of its terms and to compel them to comply with the
23 Consent Judgment. *See* Consent Judgment § 3.

24 Further, because an unleaded Avgas meets the requirements of approval and Commercial
25 Availability, the Court should modify the Consent Judgment to reduce the maximum allowable
26 Lead concentration pursuant to Section 2.3.1(d) of the Consent Judgment. More specifically, the
27 Consent Judgment should be modified to reduce the permissible Lead concentration in Avgas
28 sold by Distributor Settling Defendants, and purchased by FBO Settling Defendants, to 0.013

1 grams of Lead per liter of fuel. The Consent Judgment provides for modification of its terms by
2 motion to this Court, and the Court is authorized to so modify. Consent Judgment, §§ 2.3.1(d); 5.

3 **B. Settling Defendants’ Excuses for Refusing to Sell G100UL and Agree to**
4 **Modification of the Consent Judgment to Reduce the Permissible Lead Level**
5 **in Avgas Sold Have No Merit.**

6 The Consent Judgment’s language with respect to the meaning of Commercial
7 Availability is clear and explicit. As defined in the text itself, Commercial Availability comprises
8 approval, consistent and sustained availability, and pricing. In an attempt to circumvent the
9 obligations they agreed to comply with in the Consent Judgment, Settling Defendants have
10 presented a host of arguments as to why G100UL is not Commercially Available. Their
11 arguments, however, are not based on the plain language of the Consent Judgment or Commercial
12 Availability as it is defined therein. Settling Defendants’ arguments are instead premised on
13 nonexistent terms. Settling Defendants’ interpretation of the Consent Judgment does not comport
14 with the facts or law.

15 Settling Defendants claim that G100UL is not “Commercially Available” because some
16 FBOs have only a single Avgas tank, and those FBOs must continue selling 100LL or risk
17 violating the new grant assurance provision in the FAA Reauthorization Act. *See* Todzo Decl.,
18 Exh. 13 at 9-10. Settling Defendants are wrong. Under the FAA Reauthorization Act, FBOs can
19 stop selling 100LL without violating the new grant assurance if they sell an unleaded Avgas that:
20 (1) has been authorized by the FAA as a replacement for 100LL in nearly all piston-engine
21 aircraft and engine models; and (2) meets a standard that facilitates the safe use, production, and
22 distribution of such unleaded Avgas. 49 U.S.C. § 47107(a)(22). G100UL meets these
23 requirements. G100UL meets the first requirement because the FAA approved G100UL for use
24 in nearly all piston-engine airplanes and associated engine models. *See* Section II.B., *supra*. It
25 also meets the second requirements because the FAA approved G100UL as meeting a standard
26 for “safe use, production, and distribution.” Todzo Decl., ¶ 17. In sum, G100UL meets the
27 requirements of the FAA Reauthorization Act and FBOs with one Avgas tank would not run afoul
28 of the new grant assurance by exclusively selling it. Indeed, because FBOs may exclusively sell
unleaded Avgas that meets the FAA Reauthorization Act’s requirements, they would not be

1 required to expend more resources to obtain additional fuel tanks or fuel trucks to accommodate
2 both an unleaded Avgas and 100LL.

3 Settling Defendants also argue that SB 1193’s deadline for prohibiting the sale of leaded
4 Avgas support their contention that unleaded Avgas is not Commercially Available to them, and
5 may similarly argue that the FAA Reauthorization Act’s deadline for restricting use of 100LL
6 supports the same. *See* Todzo Decl., Exh. 14 at 4-5, and Exh. 13 at 9-10. Not so. These two
7 laws broadly apply to all airports and all sellers of Avgas and both expressly allow for the
8 immediate sale of unleaded Avgas. The fact that sellers and distributors who did not sign the
9 Consent Judgment and expressly agree to sell Avgas with the lowest lead concentration approved
10 and available for use have additional time to begin distributing and selling unleaded Avgas does
11 not undo Settling Defendants’ obligations under the Consent Judgment. Settling Defendants
12 negotiated a Consent Judgment that was entered by this Court that requires them to sell unleaded
13 Avgas as soon as it is approved and available. As discussed above, those conditions have
14 undoubtedly been met.¹¹

15 Settling Defendants also argue that G100UL is not Commercially Available because it
16 lacks an ASTM certification standard. *See* Todzo Decl., Exh. 13 at 7-9. ASTM is private
17 organization that provides certification standards for a variety of industries and products. Todzo
18 Decl., ¶ 17. While ASTM standards are sometimes used for aviation fuels, they are not required.
19 *Id.* Rather, in order for an aviation fuel to be sold, it must meet “either an industry consensus
20 standard ***or other standard that facilitates the safe use, production, and distribution.***” 49 U.S.C.
21 § 47107(a)(22)(B)(ii) (emphasis added). Here, the FAA has expressly determined that G100UL
22 meets such a standard, finding that G100UL’s specification exceeds any ASTM requirement in
23 terms of safety throughout the production and distribution supply chain. *See* Section II.B., *supra*.
24 Moreover, ASTM aviation fuel standards existed long before the Parties entered into the Consent
25

26 _____
27 ¹¹ Although the statutory text of SB1193 is clear and unambiguous, Settling Defendants may
28 point to a comment in the assembly report that says G100UL is not commercially available. First,
any reference to legislative history for SB1193 is improper. Second, it appears as though this
comment comes directly from industry lobbyists. *See* Todzo Decl., Exh. 16.

1 Judgment. In fact, the Consent Judgment explicitly references an ASTM fuel standard in Section
2 1.6. If Settling Defendants believed that meeting an ASTM standard was a prerequisite for the
3 distribution and sale of a lower lead or unleaded fuel, they could have negotiated for its inclusion
4 in the definition of “Commercially Available.” They did not.

5 Distributor Settling Defendants also claim that they are in compliance with the Consent
6 Judgment by offering UL94 to their FBO customers and therefore do not need to sell G100UL.
7 This is not the case. As detailed by a number of FBO Settling Defendants, UL94, a 94 octane
8 fuel, does not meet their demand or the demand of their customers because many aircraft require
9 a fuel with 100 octane. *See* Todzo Decl., Exh. 15 at 5-6. Although these FBOs could
10 theoretically offer both UL94 and 100LL, they could only do so if they had two storage tanks,
11 which most FBOs do not. *Id.* at 6-8. Given that UL94 does not meet the demand of Distributor
12 Settling Defendants’ customers, it is not “Avgas with the lowest concentration of lead ...
13 sufficient to meet the demands of the customers of that Settling Defendant.” Consent Judgment §
14 2.3.1(a). Indeed, Distributor Settling Defendants themselves recently acknowledged that “there is
15 very little demand for this fuel [UL94].” Todzo Decl., Exh. 13 at 6. In contrast, G100UL is a
16 100-octane fuel, and is thus capable of meeting the demands of FBOs throughout the state.
17 Distributor Settling Defendants’ refusal to distribute and sell G100UL has prevented most FBOs
18 from offering this or any unleaded fuel in California.

19 To the extent that Settling Defendants seek to impose additional or different preconditions
20 for their sale of unleaded fuel than those expressly included in the Consent Judgment, such
21 attempts fail. In California, a consent judgment is “construed as any other contract.” *Cuenca v.*
22 *Cohen* (2017) 8 Cal.App.5th 200, 222. Thus, a consent judgment “must be so interpreted as to
23 give effect to the mutual intention of the parties as it existed at the time of contracting.” Cal. Civ.
24 Code § 1636. “Where contract language is clear and explicit and does not lead to an absurd
25 result, [courts] ascertain this intent from the written provisions and go no further.” *Van Ness v.*
26 *Blue Cross of California* (2001) 87 Cal.App.4th 364, 372 (citing Cal. Civ. Code §§ 1638, 1639).

27 An unleaded Avgas meets the Consent Judgment’s clear and explicit requirements. As
28 such, Distributor Settling Defendants are required to distribute it in California, and the Consent

1 Judgment should be modified to reduce the permissible level of lead in Avgas sold by Distributor
2 Settling Defendants, and purchased by FBO Settling Defendants, to 0.013 grams of Lead per liter
3 of fuel.

4 **C. CEH Is Entitled to Its Attorneys' Fees and Costs Associated With Its Efforts to**
5 **Enforce the Consent Judgment.**

6 The Court should also order Distributor Settling Defendants to reimburse CEH for its
7 reasonable attorneys' fees and costs associated with this motion. Where, as here, CEH follows
8 the meet and confer requirements in the Consent Judgment, the Consent Judgment requires
9 Settling Defendants to pay CEH's reasonable attorneys' fees and costs as the prevailing party in
10 this enforcement action. Consent Judgment §§ 3, 9.1. CEH exhaustively met and conferred with
11 Distributor Settling Defendants regarding their obligations under the Consent Judgment to
12 distribute unleaded Avgas. *See* Todzo Decl., ¶¶ 24-30. Distributor Settling Defendants refused.
13 *Id.* CEH also met and conferred with Distributor and FBO Settling Defendants regarding CEH's
14 requested modification to reduce the maximum allowable Lead concentration under the Consent
15 Judgment. Todzo Decl., ¶ 29. Settling Defendants refused to agree to any such modification. *Id.*
16 at ¶ 30. An award of attorneys' fees and costs is warranted here, as CEH been required to file this
17 motion to enforce and modify the Consent Judgment and has expended significant attorney time
18 and resources doing so.

19 As described in the accompanying Todzo Declaration, CEH has incurred more than
20 \$158,162 in attorneys' fees and costs in enforcing and seeking to modify the Consent Judgment.
21 Todzo Decl., ¶ 33. The attorneys' fees include time spent meeting and conferring with Settling
22 Defendants since December 2023, research related to unleaded Avgas, strategy meetings, and
23 time spent on preparation of the instant motion. *Id.* Although CEH could seek fees and costs
24 from all Settling Defendants, CEH is only seeking to recover from Distributor Settling
25 Defendants. CEH anticipates incurring an additional \$35,000 in attorneys' fees and costs
26 preparing the reply brief and for the hearing on this motion. *Id.* at ¶ 34. Distributor Settling
27
28

1 Defendants should thus be required to pay CEH \$193,162 for its reasonable attorneys’ fees and
2 costs incurred in pursuit of enforcing the Consent Judgment.¹²

3 **D. The Court Should Set Another Hearing to Determine Whether Each Distributor**
4 **Settling Defendant Should be Held in Contempt of Court and To Determine the**
5 **Appropriate Amount of Sanctions and/or Penalties to be Assessed Against Them**
6 **For Their Refusal to Comply the Terms of the Consent Judgment.**

7 Distributor Settling Defendants have flaunted the requirement that they distribute and sell
8 unleaded Avgas in California. Despite being provided every opportunity to do so by CEH as well
9 as the manufacturer of the unleaded Avgas, Distributor Settling Defendants chose not only not to
10 distribute and sell it, but to band together in an attempt to block the sale of the only unleaded
11 aviation fuel approved for use in nearly all aircraft. *See, e.g.,* Freitas Decl., ¶¶ 9-10 (Settling
12 Distributor Defendant Avfuel Corporation refused to supply G100UL to the County upon
13 request). By doing to do so, Distributor Settling Defendants have caused the continued sale of
14 leaded fuel throughout California, resulting in thousands of exposures to individuals, including
15 children, every day. These exposures are significant and are now wholly avoidable. *See* Todzo
16 Decl., ¶¶ 5-6. Accordingly, the Court should hold Distributor Settling Defendants in contempt of
17 Court and impose significant sanctions and/or penalties against each of them for their violations
18 of its Judgment.

19 The Consent Judgment contemplates that sanctions may be appropriate where a party
20 violates the terms of the Consent Judgment. Consent Judgment § 9.3. Pursuant to California
21 Code of Civil Procedure (“CCP”) §177.5, the Court may impose sanctions in the amount of
22 \$1,500 for each violation of the Court’s Judgment. Under the Consent Judgment, Distributor
23 Settling Defendants were required to “purchase for resale, distribute, and sell in California Avgas
24 with the lowest concentration of lead approved for use that is [Commercially Available].” Thus,
25 each purchase, distribution and sale in California of Avgas that did not meet this requirement
26 once G100UL became Commercially Available constitutes a violation of this Court’s Order.
27 G100UL has been Commercially Available since April 2024, so each purchase, distribution and

28 ¹² CEH will update the Court regarding its actual fees and costs incurred up through the filing of
the reply brief with that filing.

1 sale after that date is a violation of the Court's Judgment. In addition, CCP § 1209(a)(5) provides
2 the Court with authority to hold the Distributor Settling Defendants in contempt of Court.

3 The Court should therefore set a future hearing date to: (1) determine the appropriate
4 amount of sanctions to be imposed against Distributor Settling Defendants pursuant to CCP
5 §177.5; and (2) show cause why Distributor Settling Defendants should not be held in contempt
6 of Court pursuant to CCP § 1209. In order to obtain the evidence necessary to support the proper
7 amount of sanctions, CEH should be granted the opportunity to take discovery of Distributor
8 Settling Defendants. This should include, but not be limited to, Distributor Settling Defendants'
9 purchases for sale, distribution and sales of aviation fuel in California from April 1, 2024 up
10 through the present as well as any agreement to block the sale of G100UL in California and what,
11 if any financial incentives Distributor Settling Defendants have in the continued sale of 100LL
12 and the sale of unleaded fuels other than G100UL.

13 V. CONCLUSION

14 For the foregoing reasons, CEH respectfully requests that the Court: (1) compel each
15 Distributor Settling Defendant to comply with the terms of the Consent Judgment by selling
16 G100UL; (2) modify the Consent Judgment to reduce the maximum lead level from 0.56 grams
17 per liter to 0.013 grams per liter; (3) award CEH \$193,162 in attorneys' fees and costs; (5) set a
18 hearing date to determine whether each Distributor Settling Defendant should be held in contempt
19 of court and to determine the appropriate amount of sanctions and/or penalties to be assessed
20 against them for violating this Court's Judgment; and (6) re-open discovery to allow CEH to
21 obtain information to support the amount of sanctions to be imposed.

22
23 Dated: December 4, 2024

Respectfully submitted,

24 LEXINGTON LAW GROUP

25 

26
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