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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

v.

AERODYNAMIC AVIATION, *et al.*,

Defendants.

Case No. RG-11-600721

**REPLY TO SETTLING DEFENDANTS'
OPPOSITION TO PLAINTIFF CENTER
FOR ENVIRONMENTAL HEALTH'S
MOTION TO ENFORCE AND MODIFY
CONSENT JUDGMENT**

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1 **I. INTRODUCTION**

2 Settling Defendants signed a Consent Judgment requiring them to sell the lowest lead fuel
3 that is approved by the Federal Aviation Administration (“FAA”) and commercially available in
4 California. While conceding both points in their opposition brief, Settling Defendants raise a host
5 of issues that are not relevant to the question before this Court in an unprecedented industry
6 attack on an approved fuel. The Court should ignore these distractions and grant the Center for
7 Environmental Health’s (“CEH”) motion to enforce and modify the Consent Judgment.

8 **II. RESPONSE TO SETTLING DEFENDANTS’ FACTUAL BACKGROUND**

9 The most important takeaways from the 21 declarations and 8 pages of “factual
10 background” presented by Settling Defendants in their Opposition is what they do not say. They
11 do not challenge that the FAA approved G100UL for use in most aircraft. They do not challenge
12 that G100UL is now available in quantities and at prices sufficient to meet the demand of their
13 customers. They do not challenge that G100UL is available for purchase by Settling Defendants,
14 i.e., “commercially available.” In short, Settling Defendants do not dispute that G100UL is
15 approved and “Commercially Available” as those terms are used and defined in the Consent
16 Judgment.

17 Settling Defendants also do not mention any steps that they have taken in an effort to
18 effectuate the Consent Judgment’s requirement that they sell the approved aviation fuel with the
19 lowest lead concentration. The Distributor Settling Defendants did not ask their FBOs if they
20 would purchase G100UL if they sold it. *See* Declarations of Stephanie Bryant-Jordan (“Bryant-
21 Jordan Decl.”), Beatrice Batty (“Batty Distributor Decl.”), Robert L. Stallings IV (“Stallings
22 Decl.”), and Thomas E. Huehl (“Huehl Decl.”). Nor did the FBO Settling Defendants ask their
23 customers whether they would purchase G100UL if the FBOs were selling it. *See* Declarations of
24 Rashid Yahya (“Yahya Decl.”), William Borgsmiller (“Borgsmiller Decl.”), Beatrice Batty
25 (“Batty FBO Decl.”), Carlos Tellez (“Tellez Decl.”), Tony L. Marlow (“Marlow Decl.”), and
26 Tom Panico (“Panico Decl.”).

27 Instead, Settling Defendants construct an alternative set of facts where equipment
28 manufacturers, not the FAA, approve aviation fuels and that the FAA’s cursory review and

1 approval of G100UL has led to its approval of an unsafe and untested fuel. *See Opp.*, pp. 4-9.
2 They further contend that consumers of avgas do not want to use G100UL such that there is no
3 demand for it. *See id.*, pp. 11-20. The latter point is supported entirely by supposition and
4 hypothesis. For example, one of Settling Defendants’ declarants states that he heard through an
5 unnamed source at his company that unnamed customers of unnamed FBOs were reluctant to use
6 G100UL for the reasons promulgated by Settling Defendants’ counsel. *See Huehl Decl.*, ¶ 8.
7 That is not a fact. What is clear is that Settling Defendants simply never bothered to ask their
8 customers whether they would use G100UL if Settling Defendants sold it.

9 The reality is quite different than Settling Defendants’ hypotheses. The FAA spent over a
10 decade analyzing G100UL and reviewing information and test data regarding all aspects of its
11 safety and use in engines and aircraft before finally approving it in 2022. Declaration of George
12 Braly (“Braly Decl.”) ¶¶ 5, 9-12. Regarding demand for G100UL, if provided with the
13 opportunity to purchase and sell G100UL, FBOs would do so.¹ Declaration of Priscilla Howden
14 (“Howden Decl.”), ¶ 4, Todzo Reply Decl., Exh. 1. Likewise, the ultimate consumers of aviation
15 fuel, airplane owners and pilots, recognize that leaded fuel harms communities and the
16 environment and would gladly purchase and use G100UL if it were offered. Declaration of Paul
17 Millner (“Millner Decl.”), ¶ 22.

18 It is unclear why Settling Defendants have now organized together with other members of
19 the industry in an attempt to block the widespread sale of G100UL, but it is clear that Settling
20 Defendants’ current positions regarding G100UL directly contradict their prior ones. Before
21 adopting the anti-G100UL talking points, Settling Distributor Defendant Avfuel admitted: (1) the
22 FAA “has approved the use of GAMI’s 100 unleaded avgas (G100UL) in all spark-ignition
23 aircraft and engines in the GA fleet;” (2) that G100UL has been extensively tested and it performs
24 as well as 100LL; (3) OEMs tested G100UL and “there were no concerns or objections raised by
25 either OEM engine manufacturer to the observed performance of the G100UL avgas;” (4) while
26

27 ¹ CEH is in no position to poll FBOs as it has no relationship with them and is only aware of the
28 few that reached out to it directly.

1 GAMI did not obtain an ASTM standard for G100UL, it “elected to use the already-approved
2 STC path to an FAA approval” which Avfuel admits is a “well-established” method; (5) there are
3 “no new toxicity issues” with G100UL; (6) “comingling of G100UL avgas and other gasolines
4 approved for use in your aircraft is specifically authorized;” and that (7) “following extensive
5 testing, no compatibility issues have been identified in any aircraft, engines, storage tanks or
6 transportation systems.” Todzo Reply Decl., Exh. 2.² Settling Defendants’ pre-litigation
7 recitation of the facts is accurate and should be trusted over their newly adopted ones. *See* Braly
8 Decl., ¶¶ 16-19.

9 III. ARGUMENT

10 Settling Defendants concede, as they must, that G100UL is approved for use in the vast
11 majority of piston-engine aircraft. *Opp.*, pp. 6, 13, 14. They also concede that G100UL meets
12 each of the explicitly specified factors for “Commercial Availability” under the terms of the
13 Consent Judgment. *See, e.g. id.*, pp. 10-20 (no argument that G100UL is not available for sale on
14 a consistent and sustained basis at prices and on terms, in quantities and at times sufficient to
15 meet the needs of Settling Defendants’ customers). That is and should be the end of the inquiry.
16 Given that an unleaded fuel is approved and Commercially Available, Settling Defendants must
17 sell it. Nevertheless, Settling Defendants together with their industry partners, raise a host of
18 hypothetical issues that are flatly wrong and fall far outside the scope of what triggers the
19 requirement for Settling Defendants to sell fuel with a lower lead concentration under the Consent
20 Judgment.

21 A. The Timing is Right To Enforce and Modify the Consent Judgment.

22 This motion has been contemplated by the parties for over a decade. In 2014, the parties
23 recognized that at least one entity was already seeking FAA approval for “a lead free alternative
24 to Avgas that may be used in all aircraft.” Consent Judgment § 1.6. The parties further agreed
25 that as soon as such a fuel was indeed approved and Commercially Available, Settling Defendants

26
27 ² Indeed, Vitol, the producer of G100UL, and Avfuel were negotiating a draft set of terms for
28 G100UL in early 2024. Reply Declaration of Robert Emmett, ¶¶ 3-4.

1 would need to sell it, and the Consent Judgment could be modified to reduce the maximum lead
2 concentration permissible thereunder. *Id.*, §§ 2.3.1(a) and (d). While it took much longer than
3 anyone could have anticipated, an unleaded fuel was finally approved by the FAA in 2022. Braly
4 Decl., ¶ 5. Settling Defendants then had another two years to prepare to distribute and sell that
5 fuel pending its widespread availability, which occurred in April 2024 when Vitol refined over 1
6 million gallons and made it available to Avgas consumers at prices and in quantities and on terms
7 that are consistent with those for 100LL. *See* Declaration of Robert Emmett (“Emmett Decl.”), ¶¶
8 4-8. This motion was thus completely ripe as of that date. Nevertheless, and despite numerous
9 warnings by CEH, CEH waited and prodded Settling Defendants for another 8 months before
10 finally giving up on Settling Defendants’ voluntary compliance with their clear obligations under
11 the Consent Judgment. *See* Declaration of Mark N. Todzo (“Todzo Decl.”) ¶¶ 25-29. Incredibly,
12 Settling Defendants chastise CEH being in a “rush” and for bringing this motion prematurely.
13 *Opp.*, pp. 1, 7.

14 While the record demonstrates that CEH has not “rushed” to bring this motion, time is
15 clearly of the essence. The known harms from lead exposure continue to expand and as the single
16 largest source of environmental lead emissions, leaded avgas contributes significantly to all of
17 these harms. In addition to causing cancer, reproductive harm, neurotoxicity, and deleterious
18 effects on cognitive development/abilities and the cardiovascular system, lead has just recently
19 been linked to over 95 million cases of serious mental health illness. *See* 27 Cal. Code Regs. §§
20 27001(b) and (c); Reply Declaration of Mark N. Todzo (“Todzo Reply Decl.”), Exhs. 3 and 4.
21 These harms more prevalently affect individuals living in low income communities such as those
22 surrounding the airports where Settling Defendants continue to sell leaded fuel. *Id.*, Exh. 3. In
23 the face of all of these known harms, Settling Defendants point to anecdotal reports that G100UL
24 may stain the paint on aircraft. *Opp.*, pp. 7-8; Declaration of David Barnes (“Barnes Decl.”),
25 Exh. N. In the face of these competing harms, Settling Defendants nevertheless argue that their
26 ongoing failure to sell G100UL is somehow justified by safety concerns; safety concerns that are
27 completely illusory. *See* Todzo Reply Decl., Exh. 2; Braly Decl., ¶¶ 16-19.

1 **B. G100UL is Approved For Use in Nearly All Piston-Engine Aircraft.**

2 Settling Defendants do not dispute that G100UL has been approved by the FAA. They do,
3 however, imply that FAA approval is insufficient to demonstrate the fuel’s safety and argue for
4 the first time that G100UL is approved for only 83% of piston-engine aircraft. Opp., pp. 6, 13,
5 14. Settling Defendants are incorrect.

6 The FAA’s mission is “providing the safest, most efficient aerospace system in the world.”
7 <https://www.faa.gov/>. In fact, the FAA has exclusive authority to enact air safety standards.
8 *Booth v. Santa Barbara Biplanes Tours, LLC* (2008) 158 Cal.App.4th 1173, 1180. Accordingly,
9 the FAA’s approval of G100UL ensures that it may be safely used in all the aircraft and engines
10 for which it is approved. Nevertheless, Settling Defendants contend that the FAA’s approval is
11 not sufficient and that G100UL needs a private safety standard as well as approval by the engine
12 manufacturers before it can truly be safe. Opp., pp. 5-6, 7-9, 15-17. There is simply no support
13 for this, and these other types of approval are well outside the scope of what triggers the lower
14 lead requirements of the Consent Judgment. *See* Consent Judgment § 2.3.1(a). Indeed, the FAA
15 itself has refused to endorse an ASTM standard as the only or even preferred safety standard.
16 Rather, the FAA is agnostic as to whether a particular fuel obtains an ASTM or independent
17 safety standard is obtained for a fuel. *See* Barnes Decl., Exh. G. (chart displaying fleet
18 authorization and STC AML as pathways to FAA approval of new fuels). As Settling Defendants
19 themselves recognize but do not acknowledge, the FAA determined that G100UL was safe when
20 it approved the fuel and explicitly did so on the basis of an independent safety standard. *See*
21 Barnes Decl., Exh. G (chart displaying Types of Fuel Specifications).

22 Settling Defendants’ argument that some other type of approval in addition to that of the
23 FAA is clearly outside the scope of “approval” as defined in the Consent Judgment. The Consent
24 Judgment’s approval requirement for Settling Defendants to sell lower lead fuel is triggered when
25 such fuel is “approved for aviation use.” Consent Judgment, §2.3.1(a). The Consent Judgment
26 references fuel approvals a number of times, each limited to approval by the FAA. *See, e.g.,*
27 Consent Judgment §§ 1.6, 1.7. These provisions expressly reference FAA approval by way of
28 supplemental type certificate (“STC”), which is the specific type of approval received by

1 G100UL.³ *See, id.* In fact, Section 1.6 of the Consent Judgment recognized that at least one
2 entity “recently began the process of obtaining FAA approval of a lead free alternative to Avgas
3 that may be used in all aircraft.” While it took 8 additional years to finally obtain that approval, it
4 was fully contemplated by the Parties to the Consent Judgment that it would eventually happen.

5 If, as Settling Defendants contend now, an ASTM standard and/or approval by certain
6 engine manufacturers, were required for a fuel to be properly approved, they should have
7 included those as requirements for approval or “Commercial Availability” under the Consent
8 Judgment. They did not as neither is required for proper approval of an aviation fuel. Settling
9 Defendants’ critique and criticisms regarding the FAA’s approval of G100UL and its safety
10 standard ring hollow given that both have been rigorous and included dozens of FAA engineers
11 over a more than 10-year period. Braly Decl, ¶¶ 9-12. It is worth noting that in addition to the
12 FAA’s approval of G100UL for safe use in nearly all piston-engine aircraft, the actual experience
13 of pilots using G100UL confirms its safety. AOPA, an association of pilots, independently tested
14 G100UL and determined that it performed at least as well if not better than 100LL. Barnes Decl.,
15 Exh. N.

16 After conceding that G100UL is approved for use in virtually all piston-engine aircraft,
17 Settling Defendants now argue that it is approved for use in 83% of such aircraft. *Opp.*, p. 6.
18 Prior to CEH’s initiation of this enforcement proceeding, Settling Distributor Defendant Avfuel
19 admitted that “the FAA has approved the use of [G100UL] in all spark-ignition piston aircraft and
20 engines in the GA fleet.” Todzo Reply Decl., Exh 2. Likewise, throughout the parties’ year-long
21 meet and confer regarding CEH’s anticipated motion, Settling Defendants conceded that G100UL
22 was approved for use in nearly all piston-engine aircraft. *Id.*, ¶ 3. Now, Settling Defendants
23 contend that G100UL may not be used in light sport aircraft (“LSAs”), experimental aircraft and
24

25 ³ Settling Defendants’ attempts to denigrate the STC approval process should be ignored. If the
26 PAFI or some other type of approval was truly superior and more reliable, Settling Defendants
27 would have insisted on including it in the Consent Judgment. They did not. Indeed, the FAA is
28 agnostic as to whether a fuel is approved through the STC or PAFI procedure. Barnes Decl., Exh.
E.

1 rotorcraft which make up 17% of all piston-engine aircraft. Opp., p. 13; Declaration of Carsten
2 Hoyt (“Hoyt Decl.”), ¶ 23. This is simply incorrect. Experimental aircraft are eligible to use
3 G100UL, and LSAs are able to use automotive gasoline. Braly Decl., ¶ 7. Thus, G100UL is
4 currently approved for use in over 97% of all piston-engine aircraft.

5 While G100UL is approved for use in all rotorcraft engines, it is not yet approved for use
6 in rotorcraft, which constitutes less than 3% of the total piston engine aircraft. *See* Hoyt Decl., ¶¶
7 20, 23. However, none of the FBO Settling Defendants report providing fuel for any rotorcraft.
8 *See* Yahya Decl., Borgsmiller Decl., Batty FBO Decl., Tellez Decl., Marlow Decl., and Panico
9 Decl. It is worth noting that this Motion is directed only to distributors and FBOs that entered
10 into the Consent Judgment in 2014, which constitutes a small percentage of the FBOs and general
11 aviation airports in California. *See* Yahya Decl., ¶ 5, Borgsmiller Decl., ¶ 5, Batty FBO Decl., ¶
12 5, Tellez Decl., ¶ 5, Marlow Decl., ¶ 5, Panico Decl., ¶ 5; Consent Judgment, Exh. D.⁴ Thus,
13 rotorcraft will have numerous fueling options after this motion is granted. Todzo Decl., Exh. 5.
14 In the event that any Settling FBO Defendant provides evidence that they supply fuel to
15 rotorcraft, CEH would be willing to provide it with a grace period to continue selling 100LL until
16 G100UL is approved for use in rotorcraft.

17 **C. G100UL is Commercially Available.**

18 Settling Defendants acknowledge that whether G100UL is “Commercially Available” is
19 governed by the terms of the Consent Judgment. Opp., p. 12. Nevertheless, Settling Defendants
20 seek to add a host of requirements to the clear contractual language. *Id.* That is impermissible
21 under California contract law. *See* Motion, p. 20.

22 A fuel is “Commercially Available” under the Consent Judgment where it is
23 “commercially available to that Settling Defendant on a consistent and sustained basis at prices
24

25 _____
26 ⁴ Settling FBO Defendants collectively testify that they provide FBO services at 21 airports in
27 California. In addition to those 21 airports, 4 additional airports are identified in the Consent
28 Judgment where non-represented FBO Settling Defendants that are subject to this Motion
operate: Montgomery-Gibbs Executive Airport, Camarillo Airport, Sacramento Executive
Airport, and Palo Alto Airport.

1 and on terms, in quantities and at times sufficient to meet the demands of the customers of that
2 Settling Defendant.” Consent Judgment § 2.3.1(a). Settling Defendants’ Opposition is devoid of
3 any argument that G100UL is not available for purchase or that the price of G100UL is too high
4 or that the supply of it is insufficient. These concessions by omission should be the end of the
5 inquiry as those are the only relevant requirements in addition to the fuel being available for
6 purchase for a fuel to satisfy the Consent Judgment’s definition of “Commercially Available.”

7 Nevertheless, and while acknowledging that the Consent Judgment was “subject to
8 extensive negotiation,” Settling Defendants argue that the expressly defined term silently
9 incorporates a host of additional requirement such as: “approval by aircraft manufacturers,
10 availability of insurance, assurances of quality control” and that G100UL falls short on these
11 “requirements.” Opp., p. 2. Settling Defendants’ approach is wrong for a number of reasons.
12 First, they cannot unilaterally change the definition of “Commercially Available” ten years after
13 the judgment was entered because they no longer like the definition they negotiated. Second,
14 they utterly fail to support even the new requirements they seek to add.⁵

15 Settling Defendants’ attempt to rewrite the Consent Judgment runs counter to its express
16 language as well as the spirit of the agreement. While the parties could have included language to
17 support what Settling Defendants now argue such as “*including but not limited to* on prices and
18 on terms, in quantities and at times sufficient...,” they did not. Likewise, Settling Defendants
19 could have reached out to CEH to request a modification of the Consent Judgment’s definition of
20 Commercially Available. They did not. Todzo Reply Decl., ¶ 2. The list of requirements that
21 comprise “Commercially Available” is finite, and each has now been satisfied. Allowing Settling
22 Defendants to simply add new requirements essentially affords them with veto power over every
23 and any lower lead or unleaded fuel as there will always be some requirement that such fuel does
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25 _____
26 ⁵ Likewise, to the extent that Settling Defendants attempt to shoehorn these additional
27 requirements into the undefined term “commercially available,” that fails as the ordinary meaning
28 of commercially available is “available for purchase.” See, e.g., *commercially available*,
Cambridge Dictionary, accessible at:
<https://dictionary.cambridge.org/us/dictionary/english/commercially-available>.

1 not meet. Yet the Consent Judgment is designed specifically to require the sale of lower lead
2 and/or unleaded Avgas.

3 Moreover, the specific “requirements” Settling Defendants now seek to add to the
4 definition of Commercially Available make no sense and are unsupported. *See Opp.*, p. 12. The
5 notion that a fuel must be approved by aircraft manufacturers before it is commercially available
6 is something that financially interested entities have made up in order to ensure that G100UL
7 does not gain significant market share before the other fuels they have invested in are approved.⁶
8 It is not and has never before been a requirement for approval of fuel. The FAA approves the fuel
9 for use in different aircraft at which point it may be used therein. There is no formal mechanism
10 for manufacturer approval. Braly Decl., ¶¶ 13-14. If this were really a requirement for approval
11 and/or use of a fuel, Settling Defendants would have included it in the Consent Judgment.
12 Indeed, Settling Distributor Defendant Avfuel admits that manufacturers tested G100UL and
13 “there were no concerns or objections raised by either OEM engine manufacturers to the observed
14 performance of the G100UL avgas.” Todzo Reply Decl., Exh. 2. Avfuel’s prior admission is
15 truthful, given that Cirrus conducted extensive testing of G100UL and determined that it was safe
16 and was at least equivalent to, if not better than 100LL in terms of performance. Braly Decl., ¶¶
17 16-17. Given that, Settling Defendants’ current position is puzzling.

18 Contrary to Settling Defendants’ claims that questions surrounding G100UL’s “material
19 compatibility” have arisen and there have been “reports” of damage to aircraft following use of
20 G100UL, use of unleaded Avgas has been demonstrated to provide substantial benefits to such
21 aircraft over use of leaded Avgas. *Opp.*, pp. 17-18; Millner Decl., ¶¶ 8-12. These benefits
22 include the reduction of harmful deposits on spark plugs and extended periods of time between oil
23 changes, along with associated reduction in associated maintenance costs. Millner Decl., ¶¶ 8-11.
24 Additional benefits include improved engine reliability and extended times between engine
25 replacements and/or overhauls. *Id.* at 12. Moreover, and contrary to Settling Defendants’ current
26

27 ⁶ *See* Declaration of Chris D’Acosta (“D’Acosta Decl.”), the CEO of Swift fuels, which develops
28 unleaded Avgas and is a competitor of GAMI; *See also* Braly Decl., ¶ 21.

1 position, Distributor Settling Defendant Avfuel has admitted that there are “no toxicity issues”
2 with G100UL and that “following extensive testing, no compatibility issues have been identified
3 in any aircraft engines, storage tanks or transportation systems.” Todzo Reply Decl., Exh. 2.
4 Additionally, any reports that G100UL damages aircraft have either been disproven or are purely
5 unsubstantiated and speculative. *See* Braly Decl., ¶¶ 19-20.

6 With regard to insurance, Settling Defendants first argued that there was no insurance for
7 G100UL. Now, after CEH provided proof that Vitol does insure G100UL, Settling Defendants
8 argue that the amount of the insurance is insufficient. *Opp.*, pp. 19-20. They do so, however,
9 without stating how much insurance they claim is required or showing that they attempted to
10 negotiate more insurance with Vitol and that Vitol refused to negotiate. *See, e.g.* Bryant-Jordan
11 Decl., ¶ 12, Stallings Decl., ¶ 12, and Huehl Decl., ¶ 13. Nor do they provide or reference copies
12 of their existing policies or explain why their existing insurance will not cover their distribution
13 and/or sale of G100UL. *See, id.* Indeed, each of the Settling Distributor Defendants have
14 confirmed that insurance would be available to them once they began to sell G100UL which was
15 approved for use by the FAA. Braly Decl., ¶ 22. Thus, Settling Defendants’ argument that the
16 insurance is insufficient rings hollow.

17 While Settling Defendants admit that “the turnover rate of the existing GA fleet is low,”
18 they also argue that pilots who use G100UL risk violating the manufacturer warranty on their
19 aircraft. *Opp.*, pp. 4, 16-17. Indeed, the average age of piston engine aircraft in the United States
20 is around 50 years. Todzo Reply Decl., Exh. 3. Accordingly, most aircraft have long outlived
21 any manufacturer warranty. *See* Millner Decl., ¶ 15. Settling Defendants fail to provide any facts
22 demonstrating that any of the customers of the FBO Settling Defendants would be adversely
23 affected in any way by the switch to G100UL. Rather, the aircraft pilots who are the FBOs’
24 customers would gladly switch to G100UL if provided the opportunity. Millner Decl., ¶ 22.

25 Settling Defendants’ argument that G100UL may violate some unnamed regulatory
26 requirements is illusory. They fail to cite any such requirements and CEH is not aware of any.
27 Nor do Settling Defendants point to or argue that any federal product approval constitutes
28 approval for all state and local regulatory requirements. Thus, the fact that the FAA’s approval of

1 G100UL does not provide that assurance is of no moment.

2 Settling Defendants contend that the California legislature has determined that G100UL is
3 not commercially available, and that CEH has endorsed that position. Opp., pp. 9-10. Both of
4 these contentions are wrong. First, the statutory text approved by the Legislature does not
5 reference the term “commercially available” and Settling Defendants fail to point to any
6 ambiguity in the statutory language that permits reference to the legislative history. See Opp., at
7 pp. 3, 5-6, 9-10, 15-16; Pub. Util. Code §§ 21710 *et seq.* Instead, the only references to the
8 “commercial availability” of G100UL cited by Settling Defendants are included in legislative
9 committee “Comments” sections, which are merely a collection of comments submitted to the
10 Legislature in support of, or in opposition to, the bill. See Barnes Decl., Exhs. J, K. These
11 comments evince no findings by the Legislature. Second, CEH endorsed “banning the sale of
12 leaded avgas” under the bill. Todzo Decl., Exh. 6. CEH did not endorse the entire bill file and
13 certainly not the false statement from unnamed commenters on the bill that G100UL was not
14 commercially available when, in fact, it was.

15 **D. G100UL Meets the Demands of Settling Distributor Defendants’ Customers.**

16 The question of whether a fuel can meet the demands of Settling Defendants’ customers
17 within the meaning of the Consent Judgment is an objective, not subjective one. Where a fuel
18 may only be offered in addition to, rather than in lieu of 100LL, it cannot meet the demands of
19 certain FBOs. See, e.g., Consent Judgment §1.7. The mere fact that some customers may
20 hypothetically prefer to continue using 100LL rather than switching to G100UL is not grounds to
21 deny CEH’s motion. Yet, that is all Settling Defendants offer.

22 Apparently recognizing that simply adding new terms to a ten-year-old Consent Judgment
23 is improper, Settling Defendants attempt to frame their argument as there being no demand for an
24 unleaded fuel that fails to meet their newly-invented requirements. They do so, however, without
25 ever bothering to ask their customers – either FBOs (in the case of the Settling Distributor
26 Defendants) or pilots (in the case of the Settling FBO Defendants) – whether such customers
27 would purchase unleaded fuel if made available to them. See Bryant-Jordan Decl., Batty
28 Distributor Decl., Stallings Decl., Huehl Decl., Yahya Decl., Borgsmiller Decl., Batty FBO Decl.,

1 Tellez Decl., Marlow Decl., and Panico Decl. Instead, they proffer statements such as “one of my
2 staff spoke to someone at an FBO who indicated that it has heard from some of its customers
3 that” they would not want to use a fuel that has not been approved by the manufacturer. *See*
4 Huehl Decl., ¶ 8.

5 In contrast, after reviewing Settling Defendants’ opposition, CEH was contacted by an
6 FBO Settling Defendant asking about the Motion. CEH asked the FBO Settling Defendant
7 whether it would use G100UL if its distributor offered it and it said it would. Howden Decl., ¶ 4.
8 Similarly, CEH is aware that at least one other FBO Settling Defendant informed its distributor
9 that it would like to offer G100UL. Todzo Reply Decl., Exh. 1. Likewise, CEH reached out to a
10 local pilots’ association to determine whether California pilots would use G100UL if it were
11 offered by the FBOs where they fuel. On behalf of its pilots, this association said “yes.” Millner
12 Decl., ¶ 22.

13 **E. G100UL Complies with the FAA Reauthorization Act.**

14 As discussed in CEH’s opening brief, G100UL meets both requirements under the FAA
15 Reauthorization Act. Motion, at pp. 18-19. Accordingly, it may serve as a replacement for
16 100LL and airports offering it in lieu of 100LL will not lose any federal funding. *Id.* As
17 discussed above in Section III.B, G100UL has been approved by the FAA for use in nearly all
18 piston-engine aircraft and engine models. *See also*, Braly Decl., ¶¶ 5-7. Federal courts have
19 found the phrase “nearly all” to be anywhere from 87.5 percent to 98 percent. *See Turpin v. Sec’y*
20 *of Health & Hum. Servs.*, 2008 WL 5747914, at *11 (Fed. Cl. Dec. 23, 2008); *Warner-Lambert*
21 *Co. v. United States*, 425 F.3d 1381 (Fed. Cir. 2005). The approval of G100UL for use in over
22 97% of piston-engine aircraft thus easily satisfies this standard. Second, the FAA approved
23 G100UL as meeting a standard for “safe use, production, and distribution.” Todzo Decl., ¶ 17.
24 Contrary to what Settling Defendants claim, G100UL was not simply approved by an “unnamed
25 ‘Engineer/Pilot’” mere days after the Reauthorization Act was signed into law. *Opp.*, p. 13.
26 Rather, the FAA’s approval of G100UL – in September 2022 – followed over a decade of
27 comprehensive FAA review and testing by approximately 50 FAA engineers and managers.
28 Braly Decl., ¶ 9.

1 Settling Defendants also misstate the relationship between themselves and the
2 Reauthorization Act, as well as its requirements. First, FBOs cannot violate the Reauthorization
3 Act because it only applies to airports. *See* Opp., pp. 12-14; 49 U.S.C. § 47107(a)(22). Second,
4 the Reauthorization Act does not require the FAA to make a determination that the sale of 100LL
5 can be “prohibited fleetwide and nationwide” across all airports simultaneously in conjunction
6 with the FAA’s approval of an unleaded fuel. Opp., p. 14. Rather, the Reauthorization Act
7 regulates the actions of individual airports receiving federal funding. It states that *an* airport – not
8 *all* airports – can restrict or prohibit the sale of 100LL on “the date on which *the airport or any*
9 *retail fuel seller at such airport* makes available an unleaded aviation gasoline” that meets the
10 Reauthorization Act’s requirements. 49 U.S.C. § 47107(a)(22) (emphasis added). In other
11 words, a single airport is not subject to the prohibition on banning 100LL if *that airport* makes an
12 unleaded fuel available that meets the Act’s requirements.

13 As G100UL meets the Reauthorization Act’s requirements, once each FBO Settling
14 Defendant begins selling G100UL, the airport at which it operates is not at risk of violating the
15 Act’s requirements – even to the extent that FBO is the only one operating at a particular airport.

16 **F. Settling Distributor Defendants’ Offer To Sell 94UL Does Not Satisfy Their**
17 **Obligation to Sell Unleaded Fuel.**

18 The Consent Judgment requires Settling Distributor Defendants to “*purchase for resale,*
19 *distribute, and sell* in California Avgas with the lowest concentration of lead approved for
20 aviation use that is commercially available...” Consent Judgment, § 2.3.1(a) (emphasis added).
21 Perplexingly, Distributor Settling Defendants first argue that that “neither G100UL nor any other
22 unleaded avgas is ‘Commercially Available’ within the meaning of the” Consent Judgment. Opp.,
23 p. 1. Then, Settling Distributor Defendants argue that they are in compliance with this provision
24 because they *offer* to make 94UL available to their customers. *Id.*, p. 11; Bryant-Jordan Decl., ¶
25 7, Stallings Decl., ¶ 7, and Huehl Decl., ¶ 6. Offering to make unleaded fuel available is not the
26 same as actually distributing and selling an unleaded fuel as required by the Consent Judgment.

27 Moreover, 94UL cannot possibly meet the demand of Settling Distributor Defendants’
28 customers. As with Mogas before it, 94UL can only be used with subset of aircraft and may not

1 be commingled with 100LL. Accordingly, most FBOs cannot sell 94UL so it does not meet the
2 demands their demand as required under the Consent Judgment. Consent Judgment § 1.7, *see*
3 *also*, Todzo Decl., Exh. 15.

4 Conversely, G100UL may be used by nearly all piston-engine aircraft and may be safely
5 commingled with 100LL. Therefore, FBOs with a single tank that have been exclusively selling
6 100LL may switch to exclusively selling G100UL. *See* Todzo Reply Decl., Exh. 2 (Distributor
7 Settling Defendant Avfuel has conceded that “commingling of G100UL avgas and other
8 gasolines approved for use in your aircraft is specifically authorized”). Thus, selling G100UL
9 can fully meet the demands of the Distributor Settling Defendants’ customers.

10 Settling Distributor Defendants argue that CEH previously agreed that they could comply
11 with the Consent Judgment by selling 94UL and not G100UL. *Opp.*, p. 11; D’Acosta Decl., Exh.
12 B. This is wrong. In CEH’s letter from February 2024, Ms. Charles-Guzman refers to a prior
13 letter in which CEH informed *FBOs* that CEH would not pursue them for violations of the
14 Consent Judgment for failure to sell 94UL provided they informed their distributors that they
15 want to purchase G100UL. *Id.*; Todzo Decl., Exh. 7. Nothing in either letter applies in any way
16 to Settling Distributor Defendants.

17 **G. The Consent Judgment Authorizes CEH to Move to Lower the Lead Level for**
18 **All Avgas Sold by Settling Defendants.**

19 The Consent Judgment explicitly permits a party to seek modification of the maximum
20 lead level contained in section 2.3.1(a) “[a]t any time after 100VLL *or any other lower lead*
21 *alternative* to 100LL becomes Commercially Available for the California market.” Consent
22 Judgment § 2.3.1(d). There is only one lead concentration level set forth in Section 2.3.1(a),
23 100LL’s concentration of 0.56 grams of Lead per liter. Consent Judgment, §§ 1.6, 2.3.1(a).
24 G100UL’s lead concentration is more than 10% lower than 0.45 grams per liter, so the
25 modification provision clearly applies to G100UL as a lower lead alternative to 100LL. Settling
26 Defendants are correct that the Consent Judgment – as currently written – does not state that
27 Settling Defendants must only distribute Avgas with the lowest concentration of lead that is
28 approved and Commercially Available. *Opp.*, p. 20. It does, however, set a maximum

1 concentration level, which, once modified, will govern all of their sales of Avgas. Thus, once the
2 Consent Judgment is modified, Settling Defendants will not be able to sell or distribute any
3 Avgas that contains more than 0.03 grams of lead per liter of fuel.

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

6 Rather than acquiescing, Settling Defendants submitted an overwhelming amount of paper in
7 opposition to CEH's motion requiring CEH to expend significant additional time and effort on
8 these proceedings. Given all the additional time required to unpack and respond to Settling
9 Defendants' opposition papers, CEH's total fees and costs incurred enforcing the terms of the
10 Consent Judgment have increased over what CEH had anticipated expending in additional
11 attorneys' fees in their opening brief, that number has increased to a total of \$240,417. Todzo
12 Reply Decl., ¶13.

13 **I. The Court Should Set Another Hearing to Determine Whether Each Distributor**
14 **Settling Defendant Should be Held in Contempt of Court and To Determine the**
15 **Appropriate Amount of Sanctions and/or Penalties to be Assessed Against**
16 **Them.**

17 Settling Defendants do not oppose CEH's request for an additional hearing to consider the
18 penalties and/or sanctions to be imposed against them. Accordingly, the Court should grant
19 CEH's request. Settling Defendants' Opposition highlights that, rather than attempting to
20 effectuate the requirements of the Consent Judgment, they embarked on a campaign of
21 disinformation designed to reduce or eliminate the demand for the only unleaded fuel that is
22 approved and Commercially Available. Todzo Decl., ¶12. Thus, rather than facilitating the
23 adoption, distribution and sale of a lower lead fuel as required under the Consent Judgment,
24 Settling Defendants have collectively obstructed it. This is extremely problematic as some FBOs
25 have now apparently adopted the views of Settling Defendants and their financially interested
26 supporters that have initiated the misinformation regarding G100UL. This egregious conduct
27 deserves a significant rebuke from the Court.

28 **IV. CONCLUSION**

For the foregoing reasons, and those raised in the Motion, CEH respectfully requests that
this Court grant CEH the relief requested.

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Respectfully submitted,
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